

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2012-AKL-

IN THE MATTER

of the Resource Management Act
1991

A N D

IN THE MATTER

of an Appeal pursuant to Clause 14 of
the First Schedule, Resource
Management Act 1991 in respect to
Proposed Western Bay of Plenty
District Plan

BETWEEN

IMF BACKSTOP LIMITED of Tauranga

Appellant

A N D

**WESTERN BAY OF PLENTY
DISTRICT COUNCIL**, as a Local
Territorial Authority

Respondent

NOTICE OF APPEAL

Instructing Solicitors

Buddle Findlay
PO Box 1433
Auckland
Attn: Patrick Mulligan/Andrew Braggins

Counsel Acting

Kate Barry-Piceno
Barrister
PO Box 8318
TAURANGA
Tel: 07 576 9637

**Notice of Appeal to Environment Court against
Decision on Proposed Tauranga City Plan**

Clause 14(1) of the First Schedule, Resource Management Act 1991

TO: The Registrar
Environment Court
Auckland

1. Name and Address of Appellant:

IMF Backstop Limited, c/o Aurecon, PO Box 2292, Tauranga ("IMF")

2. Name of Respondent

Western Bay of Plenty District Council, as Territorial Authority ("WBOPDC")

3. Details of Submission

IMF made submissions 21 February 2012 on the WBOPDC Plan Review in relation to Proposed Plan Change 12. A copy of these submissions is **attached** as "Annexure 1".

4. IMF received notice of the decision on or about 30 August 2012 (**attached** as Annexure "2"). The decision was made by WBOPDC as the Territorial Authority.

5. Description of the subject matter of the decision and the specific parts of the decision that the Appellant is appealing:

a. Plan Change 12 – Protection Lots

The IMF submission on Plan Change 12 sought for an amendment to the rule framework to provide for ecological restoration, with the implementation of such works directly tied to release of s224 certificates. It was submitted that the provisions remained inadequate in incentivising ecological restoration or heritage protection, and that provisions should

be made in the Plan to encourage restoration of habitat or heritage protection, in exchange for the creation of protection lots.

b. Plan Change 12 – Community Benefit

The IMF submission supported in principle the issue of features of community benefit being used for protection lots. However, IMF did not support a monopoly being imposed on this mechanism and suggested that the criteria in 3 (page 9 of the Planner report) needed to be broadened to extend beyond a reserve protection mechanism, to allow for the consideration of other mechanisms.

The decision has included provisions relating to features of community benefit, however they do so as a full discretionary activity with minimum size requirements being a 1km length for access (esplanade reserve) features, and 1ha are requirements for the expansion of reserves.

The WBOPDC decision states that rule 16.4.2(h)(i) and (iv) and 16.4.2(1)(ii) are to stay unchanged, as notified.

Relief Sought:

IMF seeks:

- i. Protection lot rule provisions that allow for credit or to transfer qualifying sites or features in the provisions across all the District zones; and
- ii. No limitation to scheduled sites or features identified in the Plan, as this unnecessarily fetters discretion to include as yet important features from protection;
- iii. No maximum number of lots should be specified, but that this falls as part of the discretionary rule framework at the time of assessment;
- iv. Include additional plan provisions so that rather than just a reserve protection mechanism, QEII covenants or other legal mechanisms for protection can be successfully applied.

- v. Any other further or consequential relief the Court may consider necessary to address the Appellants' concerns as set out above.



Signed by Counsel for
IMF Backstop Limited
Kate Barry-Piceno

DATED this 18th day of September 2012

Address for Service of Appellant:

c/o Kate Barry-Piceno
Barrister
PO Box 8318
Tauranga

ADVICE TO RECIPIENTS OF COPY OF NOTICE OF APPEAL

How to become a party to Proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court **within 15 working days after the period for lodging a notice of appeal ends.**

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38).

The copy of notice served on you does not attach a copy of the relevant application or the relevant part of the decision. These documents may be obtained, on request from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department for courts in Wellington, Auckland, or Christchurch. Documents may be lodged with the Environment Court by lodging them with the Registrar.

Contact details of Environment Court for lodging documents

Documents may be lodged with the Environment Court by lodging them with the Registrar.

The Auckland address of the Environment Court is:

8th Floor, District Court Building
3 Kingston Street,
Auckland

Its postal address is:

PO Box 7147
Wellesley Street,
Auckland

And its telephone and fax numbers are:

Telephone: (09) 916 9091
Facsimile: (09) 916 9090

The Wellington address of the Environment Court is:

The District Court Building,
43-49 Balance Street,
Wellington

Its postal address is:

PO Box 5027,
Lambton Quay,
Wellington

And its telephone and fax numbers are:

Telephone: (04) 918 8300
Facsimile: (04) 918 8303

The Christchurch address of the Environment Court is:

83 Armagh Street (corner Durham Street)
Christchurch

Its postal address is:

PO Box 2069,
Christchurch

And its telephone and fax numbers are:

Telephone: (03) 962 4170
Facsimile: (03) 962 4171

ANNEXURES

1. A copy of the submissions.
2. A copy of the decision.
3. A list of the names and addresses of persons to be served with a copy of this notice.

ANNEXURE 1

Copy of the submissions

1

IN THE MATTER OF: The Resource Management Act
1991

AND

IN THE MATTER OF: Plan Change 12 to the Proposed
Western Bay of Plenty District Plan

FURTHER SUBMISSION BY IMF BACKSTOP LIMITED

To: Western bay of Plenty District Council

Name of Submitter: IMF Backstop Limited

Address for Service: c/- Aurecon
PO Box 2292
TAURANGA
Attention: Aaron Collier

The nature of our further submissions are as follows:

Submitter 40 Surveying Services Limited & J& B Denton (Note: these submissions appear to be the same)

Rule 16.4.2(h) Protection Lot provisions points and Whole of Plan change

We support in part a number of matters raised in the submission. Our further submission is as follows:

1. We agree that there should not be maximum number of lots specified in the plan but that this should be a discretionary consideration. The number of lots should be based on merit and the significance and importance of the feature to the community.

We seek that the maximum be deleted.

2. We oppose the use of protection lots for *other features* being restricted to just those being significant features as defined in the District Plan. The reason for our submission is that the Plan does not contain all significant features in the District.

We seek that more enabling provisions be included to provide for features regardless of whether these are currently scheduled in the plan or not. For example not all significant Heritage and archaeological sites are scheduled.

We also seek that provisions be incorporated to allow for an assessment of community, cultural and archaeological values to be provided through a rule framework to allow for such assessment.

3. We oppose the provisions for a reserve protection mechanism. The reason for our submission is that other suitable mechanisms are available other than a reserve status. We seek that other mechanisms be provided for in addition to the option of a Reserve status under the Reserves Act. Examples include covenants under the Historic Places Act which have been successfully applied on sites in the District.

Submitter 43 Bay of Plenty Regional Council

Plan Change 12 – Whole of Plan change

We oppose in part the submission which seeks that the provisions be retained as notified. Our further submission is as follows:

1. We oppose the use of protection lots for other features being restricted to just those being significant features as defined in the District Plan (as notified) and what is considered to be a very standardised and inflexible methodology. The reason for our submission is that the Plan does not contain all features of significance to the community within the District and a more flexible approach is required.

We seek that more enabling provisions be included to provide for features regardless of whether these are currently scheduled in the Plan. We also seek that provisions be considered to provide for protection lots in exchange for the setting aside of large areas of land which may be of significant community benefit.

In addition we seek that provisions be incorporated to allow for an assessment of community, cultural and archaeological values to be provided through a more enabling rule framework than exists in the plan as notified.

2. We oppose the provisions for a reserve protection mechanism as notified. The reason for our submission is that there needs to be flexibility and other suitable mechanisms are available apart from a reserve status. Reserves also have a long term management cost for Council.

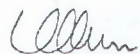
We seek that a range of other protection mechanisms be provided for. Examples include covenants under the Historic Places Act which have been successfully applied on sites in the District.

3. We oppose the adoption of the provisions as notified on the basis that they do not contain rules which allow for the creation of protection lots in exchange for large scale ecological restoration projects. The reason for our submission is that much of the coastal margin and environment around Tauranga, and its rivers and streams is highly modified and degraded and provisions should be included in the Plan to encourage restoration of habitat in exchange for the creation of protection lots. The current rule framework does not facilitate this and the economic risk of achieving this "up front" without the certainty of a resource consent is a barrier.

We seek that further provisions and rules are included in the Plan to provide for ecological restoration and that the s.224 certification process is used to facilitate this so that subdivision consents can be granted on the basis of restoration plans but that the implementation of such projects is directly tied to s.224 certificates. We disagree that such processes may be abused as described in the s.32 analysis. Like any subdivision consent, if the conditions of subdivision are not met at s.224 stage, then there is no ability for a title to issue. Current provisions are inadequate in incentivising ecological restoration and as a result the quality of the environment remains degraded particularly along riparian margins and around Tauranga Harbour. This is contrary to the Operative and Proposed Regional Policy Statement.

We wish to be heard in support of our submission and are happy to provide a number of case studies at the hearing in support of our submission,.

If others make a similar submission we would be prepared to consider presenting a joint case with them at any hearing.



Aaron Collier

21/2/2012

ANNEXURE 2

A copy of the decision



Decision Report

Plan Change 12 – Protection Lots for Community Benefit

Important Note

The Proposed District Plan May 2011 Annotated Version was the current version of the District Plan when Plan Changes 1-27 were notified in November 2011 and this version was therefore used as the base document for preparing the Plan Changes and the Section 32 and Planning Reports.

Since then the District Plan has been made operative (16 June 2012). The Operative District Plan 2012 is now the current version of the District Plan and therefore Plan Changes 1-27 are proposed to change this version only.

For the purpose of understanding how decisions on this Plan Change relate to the Section 32 and Planning Report and to both versions of the District Plan discussed above, this Decision Report is divided into three parts.

Part A contains the decisions made on the topics in the Planning Report and uses the Proposed District Plan May 2011 Annotated Version as the base document.

Part B shows how the full notified Plan Change and subsequent decisions on topics would change the Proposed District Plan May 2011 Annotated Version Base Document.

Part C shows how the full notified Plan Change and subsequent decisions on topics are proposed to change the Operative District Plan 2012.

Advice to Submitters:

Submitters will be familiar with the rule and map numbers from the Proposed District Plan May 2011 Annotated Version and so should refer to Parts A and B of this report to understand the decisions on their submission points.

However any submitter wishing to make an appeal will need to refer to the rule and map numbers of the Operative District Plan 2012 in Part C and reference these in their appeal.

Part A: Decisions on Topics in the Planning Report

Any changes to rules are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and any changes resulting from decisions on the topics in the Planning Reports in blue.

Topic 1: Number of Lots

Decision

That there is no change to Rules 16.4.2(h)(i) and 16.4.2(l)(ii) as notified.

The following submissions are therefore;

Accepted

Submission	Point Number	Name
40	5	Surveying Services Ltd
40	6	Surveying Services Ltd
41	22	Denton, J & B
41	23	Denton, J & B
FS 74	11	NZ Transport Agency

Rejected

Submission	Point Number	Name
40	2	Surveying Services Ltd
40	3	Surveying Services Ltd
40	4	Surveying Services Ltd
41	19	Denton, J & B
41	20	Denton, J & B
41	21	Denton, J & B
FS 82	1	Katikati Heritage Museum
FS 84	1,2	IMF Backstop Ltd

Reason for Decision

The purpose of the Plan Change is to add an additional category to the protection lot rule. Not to revisit the basis of the rule.

Topic 2: Qualifying Area

Decision

That there is no change to Rule 16.4.2(h)(iv)3 as notified.

The following submissions are therefore

Rejected

Submission	Point Number	Name
40	7	Surveying Services Ltd
41	24	Denton, J & B
FS 84	3	IMF Backstop Ltd

Reason for Decision

The use of the size criteria for riparian margins and wetlands are considered appropriate. Smaller land area may be justified on a case by case basis for exceptional circumstances.

Topic 3: Whole of Plan Change

Decision

That there is no change to Plan Change 12 as notified.

The following submissions are therefore:

Accepted

Submission	Point Number	Name
43	5	Bay of Plenty Regional Council
45	25	Federated Farmers of NZ
48	7	Toi Te Ora Public Health
56	4	Board, LM

8	2	Winstone Aggregates
FS 81	5	Bay of Plenty Regional Council

Accepted in Part

Submission	Point Number	Name
40	1	Surveying Services
41	1	Denton, J & B

Rejected

Submission	Point Number	Name
35	7	Land Matters
FS 84	4	IMF Backstop Ltd

Reasons for Decision

Accepted submitters – support the Plan Change.

Accepted in part submitters – amendments not made to the Plan Change – see specific submission parts.

Rejected: Submitter 35 - the implications for Matakana Island are being dealt with through the appeals to the District Plan Review;

Further Submitter FS 84 – the matter is outside the scope of the Plan Change.

Part B: Changes to the Proposed District Plan May 2011 Annotated Version Base Document

Any changes to rules are shown as follows; existing District Plan text in black and changes (being the culmination of the notified Plan Change and subsequent decisions) are shown in red.

That Rule 16.4.2 (h) is amended as follows;

16.4.2(h) Protection lots

In exchange for the protection of ~~an ecological feature of significance~~ a significant feature as defined in the Plan or other existing feature of value to the community additional lots over and above what other rural subdivision rules provide for may be created.

(i) Application

Additional lots from a qualifying existing lot or transferable protection lot credits may be created in conjunction with the legal protection in perpetuity of a significant natural or other existing feature of value to the community as follows:

- Rural Zone – maximum of 5 additional lots. The feature to be protected must be within the land being subdivided.
- Transferable credits are subject to clause (vi) of this rule.

~~The feature to be protected must be within the land being subdivided. In this context a "feature of value to the community" is deemed to be:~~

1. An *Identified Significant Feature* as specified in this Plan (see Appendices 1, 2, and 3).
2. Other features subject to clause (iv) of this rule. This may include previously degraded ecological sites that through enhancement or restoration can at the time of application be proven to meet the requirements of clause (iv).

Explanatory Note:

Enhancement means improving the existing qualities and values of an area that are ecological, cultural, and/or related to amenity. Restoration will have a corresponding meaning. In the context terms of a protection lot, enhancement or restoration means improvement to a level which meets the qualifying criteria for ecological features set out in section 16.4.2(h)(iv)2.

(ii) Qualifying standards for controlled onsite protection lot subdivision

1. To qualify for an on-site protection lot subdivision, the lot to be created shall meet the following criteria:
 - (i) Up to two additional lots on a sealed road;
 - (ii) Rural Zone - be a maximum of 1ha;
 - (iii) Does not gain access directly to a State Highway.
2. The Transferable Protection Lot Credit may only be transferred into the Lifestyle Zone.

(iii) Qualifying feature

1. This rule shall apply to features according to their respective lot boundaries as existed at 1 August 1992.
2. Within the subject title, where the feature concerned exceeds the size criteria in (iv) 2. or (vi) below then the entire feature shall be protected under this rule.
3. Where the feature being protected is capable of realising more than one protection lot, credits will be given for additional lots. These credits are able to be used in the Lifestyle Zone only.
 - (a) For credits created on or after 30 January 2010, the credits will expire five years from the date of issue of the consent or five years after the date that the Minden Lifestyle Zone Structure Plan becomes operative, whichever is the later

(b) For credits created prior to 30 January 2010 the following applies:

- (i) The credit will expire ten years from the date of the Minden Lifestyle Zone Structure Plan being made operative;
- (ii) Thirty percent of the total credits (calculated per donor lot) may be used in conjunction with Rule 16.4.2(f).

(iv) Certification

1. (i) In the case of those Identified Significant Ecological Features referred to in Appendix 1 of this Plan or of other ecological features, certification from an appropriately qualified independent person that the feature in question meets the criteria in ~~two~~ 2. below shall be submitted with the application for subdivision consent.

(i) In the case of Viewshafts referred to in Appendix 2 and Identified Significant Historic Heritage features referred to in Appendix 3 certification from an appropriately qualified independent person that the feature in question still exists in terms of the description as provided in the respective Appendix shall be submitted with the application for subdivision consent.

(ii) In the case of features of community benefit, certification from an appropriately qualified independent person that the feature in question meets the criteria in 3. below shall be submitted with the application for subdivision consent.

(iii) Such certification shall be accompanied by a report prepared by the certifier detailing the attributes of the feature recommended for preservation and include a management plan specifying any protective or enhancement measures deemed necessary.

2. Criteria for ecological features

The feature must be assessed in the context of the relevant ecological district, bioclimatic zone and landform type. Each feature is required to rank highly on three or more of the following criteria:

(i) Representativeness - the extent to which an area is characteristic or representative of natural diversity.

(ii) Diversity and pattern - the diversity of species and community types.

(iii) Shape - larger areas with a compact shape are more likely to be ecologically viable.

- (iv) Ecological viability and sustainability - the likelihood of an area remaining ecologically viable and the management input necessary for long term sustainability.
- (v) Naturalness - degree of modification as compared with likely original unmodified character.
- (vi) Rarity and special features - presence of rare community types, species or other rare features.
- (viii) Fragility and threat - threat processes or agents (actual or potential) that are likely to destroy or substantially modify the feature, and the vulnerability of the feature to damage.
- (ix) Ecological context – the extent to which an area is buffered from modifying influences, or provides a key buffer for other ecological areas, or the connectivity role that site provides for the wider landscape.
- (x) Long term viability – the extent to which the features of the area will maintain themselves in the long term.

Explanatory Note:

Riparian Areas only need to meet criteria (v) and (ix) above to quality.

The following table shows minimum feature size dependant on whether the feature is listed in the Plan as significant or whether it can be identified as an 'other feature' subject to 16.4.2(h), (i) and (iv).

Features smaller than the minimums below can be considered as Non-Complying Activities:

Habitat Type	Minimum Size for significant ecological features	Minimum size for 'other features'
Tall Forest	3ha	5ha
Regenerating Forest	4ha	8ha
Secondary Shrub Land	5ha	10ha
Riparian margins (above MHWS)	500m in length and 20m wide	
Wetlands (above MHWS)	0.5ha surrounded by a 10m indigenous buffer	

Explanatory Note:

Riparian areas are measured from 20m landward of the stream edge on one side. When a stream is wholly contained within one title this can be measured on each side.

3. Criteria for features of community benefit

- (i) The feature must provide for expansion of an existing reserve, or access (not otherwise shown in the Plan) to an existing or proposed reserve or esplanade reserve. The acceptance of such applications is at Council's sole discretion.
- (ii) The minimum size and multiple lot entitlement is the same as for the following ecological features:

Access equates to Riparian Margins
Expansion of reserves equates to Wetlands

(v) Buffering on Wetlands

- (i) Wetlands less than 2ha require a minimum of 10m indigenous buffer (larger areas may be required where topography dictates). This buffer must be established prior to being eligible for a protection lot.
- (ii) Wetlands greater than or equal to 2ha require a buffer area of a suitable width prescribed by the certifying ecologist and must be established prior to obtaining C224.

(vi) Number of lots

One lot for every separate feature type as set out in clauses (i) and (iv) of this rule. Multiple lots will be allowed based on feature type, whether the feature is listed as significant or as an 'other feature', and the feature size. The following tables show the feature sizes required in hectares and the total number of corresponding multiple protection lots that can be obtained.

Multiple Lots Features listed as significant in the District Plan:

Feature Type	Feature Size Requirement per lot
Tall Forest	6ha
Regenerating Forest	8ha
Secondary Shrubland	10ha
Riparian Margins	1km
Wetlands	1ha

Multiple Lots for Features not listed as significant in the District Plan:

Feature Type	Feature Size Requirement per lot
Tall Forest	10ha
Regenerating Forest	16ha
Secondary Shrubland	20ha
Riparian Margins	1km
Wetlands	1ha

(vii) Legal protection

Legal protection of the feature shall be achieved by way of a condition imposed on the subdivision consent requiring a Consent Notice, Memorandum of Encumbrance or similar legal instrument to the satisfaction of the Council to be registered on the title of the land containing the feature to be protected. All costs associated with compliance with this requirement shall be met by the applicant.

(viii) Exclusions

This rule shall not apply to any land that has been designated in this Plan (for any purpose), or is classified under the Reserves Act 1997, or is subject to the Conservation Act 1987.

Part C: Changes to the Operative District Plan 2012

Any changes to rules are shown as follows; existing District Plan text in black and changes (being the culmination of the notified Plan Change and subsequent decisions) are shown in red.

That Rule 18.4.2 (h) is amended as follows;

18.4.2(h) Protection lots

In exchange for the protection of an ~~ecological feature of significance~~ an Identified Significant Feature as defined in this Plan or other existing features of value to the community additional *lots* over and above what other rural subdivision rules provide for may be created.

(i) Application

Additional *lots* from a qualifying existing *lot* or Transferable Protection Lot credits may be created in conjunction with the legal protection in perpetuity of a significant natural or other existing feature of value to the community as follows:

- Rural Zone – maximum of 5 additional *lots*. The feature to be protected must be within the land being subdivided.
- Transferable credits are subject to clause (vi) of this rule.

~~The feature to be protected must be within the land being subdivided.~~ In this context a "feature of value to the community" is deemed to be:

1. An *Identified Significant Feature* as specified in this Plan (see Appendices 1, 2, and 3).
2. Other features subject to clause (iv) of this rule. This may include previously degraded ecological sites that through enhancement or restoration can at the time of application be proven to meet the requirements of clause (iv).

Explanatory Note:

Enhancement means improving the existing qualities and values of an area that are ecological, cultural, and/or related to amenity. Restoration will have a corresponding meaning. In the context terms of a protection lot, enhancement or restoration means improvement to a level which meets the qualifying criteria for ecological features set out in section 18.4.2(h)(iv)2.

(ii) Qualifying standards for controlled onsite protection lot subdivision

1. To qualify for an on-site protection lot subdivision, the *lot* to be created shall meet the following criteria:
 - (i) Up to two additional *lots* on a sealed road;
 - (ii) Rural Zone - be a maximum of 1ha;
 - (iii) Does not gain access directly to a State Highway.
2. The Transferable Protection Lot Credit may only be transferred into the Lifestyle Zone.

(iii) Qualifying feature

1. This rule shall apply to features according to their respective *lot* boundaries as existed at 1 August 1992.
2. Within the subject title, where the feature concerned exceeds the size criteria in (iv) 2. or (vi) below then the entire feature shall be protected under this rule.
3. Where the feature being protected is capable of realising more than one protection lot, credits will be given for additional *lots*. These credits are able to be used in the Lifestyle Zone only.
 - (a) For credits created on or after 30 January 2010, the credits will expire five years from the date of issue of the consent or five years after the date that the Minden Lifestyle Zone Structure Plan becomes operative, whichever is the later
 - (b) For credits created prior to 30 January 2010 the following applies:
 - (i) The credit will expire ten years from the date of the Minden Lifestyle Zone Structure Plan being made operative;
 - (ii) Thirty percent of the total credits (calculated per donor lot) may be used in conjunction with Rule 18.4.2(f).

(iv) Certification

1. In the case of those *Identified Significant Ecological Features* referred to in Appendix 1 of this Plan or of other ecological features, certification from an appropriately qualified independent person that the feature in question meets the criteria in ~~two~~ 2. below shall be submitted with the application for subdivision consent.

- (i) In the case of *Viewshafts* referred to in Appendix 2 and Identified Significant Historic Heritage Features referred to in Appendix 3 certification from an appropriately qualified independent person that the feature in question still exists in terms of the description as provided in the respective Appendix shall be submitted with the application for subdivision consent.
- (ii) In the case of features of community benefit, certification from an appropriately qualified independent person that the feature in question meets the criteria in 3. below shall be submitted with the application for subdivision consent.
- (iii) Such certification shall be accompanied by a report prepared by the certifier detailing the attributes of the feature recommended for preservation and include a management plan specifying any protective or enhancement measures deemed necessary.

2. **Criteria for ecological features**

The feature must be assessed in the context of the relevant ecological district, bioclimatic zone and landform type. Each feature is required to rank highly on three or more of the following criteria:

- (i) Representativeness - the extent to which an area is characteristic or representative of natural diversity.
- (ii) Diversity and pattern - the diversity of species and community types.
- (iii) Shape - larger areas with a compact shape are more likely to be ecologically viable.
- (iv) Ecological viability and sustainability - the likelihood of an area remaining ecologically viable and the management input necessary for long term sustainability.
- (v) Naturalness - degree of modification as compared with likely original unmodified character.
- (vi) Rarity and special features - presence of rare community types, species or other rare features.
- (viii) Fragility and threat - threat processes or agents (actual or potential) that are likely to destroy or substantially modify the feature, and the vulnerability of the feature to damage.
- (ix) Ecological context – the extent to which an area is buffered from modifying influences, or provides a key buffer for other ecological areas, or the connectivity role that site provides for the wider landscape.
- (x) Long term viability – the extent to which the features of the area will maintain themselves in the long term.

Explanatory Note: *Riparian areas* only need to meet criteria (v) and (ix) above to quality.

The following table shows minimum feature size dependant on whether the feature is listed in the Plan as significant or whether it can be identified as an 'other feature' subject to 18.4.2(h), (i) and (iv).

Features smaller than the minimums below can be considered as Non-Complying Activities:

Habitat Type	Minimum Size for significant ecological features	Minimum size for 'other features'
<i>Tall Forest</i>	3ha	5ha
<i>Regenerating Forest</i>	4ha	8ha
<i>Secondary Shrub Land</i>	5ha	10ha
<i>Riparian margins (above MHWS)</i>	500m in length and 20m wide	
<i>Wetlands (above MHWS)</i>	0.5ha surrounded by a 10m indigenous buffer	

Explanatory Note: *Riparian areas* are measured from 20m landward of the stream edge on one side. When a stream is wholly contained within one title this can be measured on each side.

3. Criteria for features of community benefit

(i) The feature must provide for expansion of an existing reserve, or access (not otherwise shown in the Plan) to an existing or proposed reserve or esplanade reserve. The acceptance of such applications is at Council's sole discretion.

(ii) The minimum size and multiple lot entitlement is the same as for the following ecological features:

Access equates to Riparian Margins

Expansion of reserves equates to Wetlands

(v) Buffering on Wetlands

(i) Wetlands less than 2ha require a minimum of 10m indigenous buffer (larger areas may be required where topography dictates). This buffer must be established prior to being eligible for a protection *lot*.

(ii) Wetlands greater than or equal to 2ha require a buffer area of a suitable width prescribed by the certifying ecologist and must be established prior to obtaining Section 224 consent.

(vi) Number of lots

One *lot* for every separate feature type as set out in clauses (i) and (iv) of this rule. Multiple *lots* will be allowed based on feature type, whether the feature is listed as significant or as an 'other feature', and the feature size.

The following tables show the feature sizes required in hectares and the total number of corresponding multiple protection *lots* that can be obtained.

Multiple Lots Features listed as significant in the District Plan:

Feature Type	Feature Size Requirement per lot
<i>Tall Forest</i>	6ha
<i>Regenerating Forest</i>	8ha
<i>Secondary Shrubland</i>	10ha
<i>Riparian Margins</i>	1km
<i>Wetlands</i>	1ha

Multiple Lots for Features not listed as significant in the District Plan:

Feature Type	Feature Size Requirement per lot
<i>Tall Forest</i>	10ha
<i>Regenerating Forest</i>	16ha
<i>Secondary Shrubland</i>	20ha
<i>Riparian Margins</i>	1km
<i>Wetlands</i>	1ha

(vii) Legal protection

Legal protection of the feature shall be achieved by way of a condition imposed on the subdivision consent requiring a Consent Notice, Memorandum of Encumbrance or similar legal instrument to the satisfaction of the *Council* to be registered on the title of the land containing the feature to be protected. All costs associated with compliance with this requirement shall be met by the applicant.

(viii) Exclusions

This rule shall not apply to any land that has been designated in this Plan (for any purpose), or is classified under the Reserves Act 1997, or is subject to the Conservation Act 1987.

ANNEXURE 3

Names and addresses of persons to be served with a copy of the notice

Respondent:

Western Bay of Plenty District Council
Private Bag 12803
TAURANGA 3143

Submitters:

Surveying Services Limited
Attn: Brent Trail
E: btrail@surveyingservices.co.nz

J and B Denton
c/o Surveying Services
PO Box 852
TAURANGA

NZTA
PO Box 430
Seventh Avenue
TAURANGA 3140

Katikati Heritage Museum
3 Wharawhara Road
KATIKATI 3178