

Western Bay of Plenty District Council

Change to the District Plan – First Review

Plan Change 40 Rural Yard Exemption Statement

Section 32 Report

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1.0 Introduction

1.1. General Introduction and Background

The purpose of this report is to consider a change to the Rural Yard performance standard provision in the 2012 Operative District Plan. This report will consider whether it is appropriate to return to the Plan a provision from the 2002 Operative District Plan which required resource consent applicants to provide an exemption statement thereby indemnifying Council and the abutting property owners of effects that may be received by them through locating closer than the Plan's Yard provisions provided for.

Council, in seeking initial submissions from the public and the consultant community published the following statement outlining the issue:

40 Rural Yard Exemption Statement

The previous yard exemption statement Rule allowed yard reductions from 30m to 10m. It was removed under the Proposed District Plan Review and new rules were instead introduced which allowed a reduction from 30m to 10m in circumstances where it was impracticable to meet the yard or where the effects would be minimal.

However, there is still a possibility that conflicts may arise between neighbours under these circumstances i.e. where a house is established at a 10m yard on a lot less than 1ha. Council should still require the yard exemption statement to be signed (as a performance standard) before allowing yard reductions. This covers Council against those who choose a reduced yard and then complain about effects from neighbours.

When assessing a land use consent for a Yard infringement, the reporting planner must also assess the application against criteria under Rule 18.5.3; in particular (c), (f) and (g) making the signing of an exemption statement a key factor in identifying an acknowledgement from the applicant that these effects are identified and accepted.

Rule 18.5.3 Assessment Criteria for Activities Failing to Meet Rule 18.4.1(c) Minimum Yard Requirements

Council shall have regard to the following matters in addition to relevant matters stated in 18.4.

- (a) Due to size, shape, topographical or geotechnical constraints, it is not practicable to meet the yard requirements.*
- (b) The location of archaeological sites or other Identified Significant Heritage or Ecological Features makes it not practicable to meet the yard requirements.*
- (c) The potential for conflict with existing and foreseeable activities in the area.***
- (d) Compliance with the yard requirements will result in a significant constraint on maximising the productive use of the site.*
- (e) Compliance with the yard requirements will result in an adverse visual effect on the low density rural character of the area by forcing the dwelling into a visually prominent position such as a ridgeline.*

- (f) Separation distances from other dwellings and any resultant loss of privacy of adjoining dwellings.**
- (g) In regard to the front yard whether the road is sealed or unsealed.**
- (h) In regard to the front yard adjoining Old Coach Road (between the entrance to Cameron's Quarry and State Highway 2) whether any potential for conflict between activities and the use of the road for heavy vehicles can be avoided through the design and construction of buildings to restrict noise levels within any habitable room to a reasonable level.*

Rule 2.3.5(c)(ii) of the 2002 Operative Plan stated:

2.3.5 (c) Yards

- (i) Dwellings, Minor Dwellings, Accommodation Facilities, Education Facilities*

- Minimum 30m.

Provided that

a yard (not adjoining a State Highway) may be reduced to not less than 10m upon submission to Council of a written statement from the applicant accepting any adverse environmental effects which may be created by the reduced yard.

Except that as provided for in (iv) and (v) below.

Explanatory Note (not a rule)

Research available to Council indicates that in rural areas a 30m yard is generally sufficient to avoid or adequately mitigate the following potential adverse environmental effects:

<i>dust</i>	<i>spray drift</i>
<i>noise</i>	<i>smell</i>
<i>shading/overshadowing</i>	<i>loss of privacy</i>

- (ii) Additions or alterations to Dwellings, Minor Dwellings, Accommodation Facilities or Education Facilities granted building consent prior to 22 November 1997 or were subject to a building consent application submitted prior to 22 November 1997.*

- Minimum 30 metres.

Except that:

- (a) Where the existing yard distance (not adjoining a State Highway) is between 5-10 metres, the alteration or addition shall not reduce the yard.*
- (b) Where the existing yard distance (including those adjoining a State Highway) is greater than 10 metres, the minimum yard shall be 10 metres.*

Note: (a) and (b) above are provided for subject to submission to Council of a written statement from the applicant accepting any adverse environment effects which may be created by the reduced yard.

[writer emphasis added]

(c) *As provided for in (iv) and (v) below.*

(iii) *All Other Structures*

- Minimum 5m.

Provided that:

a building may be located within and up to a side or rear boundary where the written approval of the owner of the immediately adjoining property to a specified lesser distance is obtained.

Except that:

where the yard adjoins a State Highway, it shall be a minimum of 10m.

and as provided for in (iv) and (v) below.

It is intended to add a similar notation back into the Proposed Plan giving some comfort to Council staff implementing the Plan that an applicant has formally acknowledged in writing that by locating closer to a site boundary the potential for effects upon them from activities that may occur over the respective property or road boundary may arise.

This report will consider the changes required to the Operative District Plan [First Review] – June 2012 in order to modify the Rural Yard performance standard under Rule 18.4.1(c).

2.0 Resource Management Act 1991

2.1. Section 32

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

(3) *An evaluation must examine-*

- (a) *the benefits to which each objective is the most appropriate way to achieve the purpose of the Act; and*
- (b) *whether, having regard to their efficiency and effectiveness, the policies, rules or other methods are the most appropriate for achieving the objectives.*

(4) *For the purposes of [[the examinations referred to in subsections (3) and (3A)], an evaluation must take into account-*

- (a) *The benefits and costs of policies, rules or other methods; and*
- (b) *the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods.*

The benefits and costs are defined as including benefits and cost of any kind, whether monetary or not. This report must evaluate the extent to which the proposed plan change is the most appropriate way to achieve the purpose of the Act.

2.2. Section 74

In accordance with Section 74(2A) of the Act, Council must take into account any relevant planning document recognised by an iwi authority lodged with Council. None of the Iwi Management Plans that have been lodged with Council raise any issues which are of relevance to this Plan Change.

3.0 Consultation

Council engaged with the public to request input prior to the writing of this report, this was done by notices in our local newspapers and a specific information page on the Council website relating to the proposed changes.

Council also engaged with the surveying and planning community in the Western Bay of Plenty and Tauranga area via the "Surveyor & Agents Newsletter".

No feedback was received for this Plan Change.

4.0 Issue 1 - Adopt the Plan Change: Exemption Statement

4.1. Option 1 – Status Quo – No Changes to Rule 18.4.1(c) - Yards

Advantages	<ul style="list-style-type: none"> ▪ Nil
Disadvantages	<ul style="list-style-type: none"> ▪ The status quo does not give Council the confidence that resource consent applicants have acknowledged the potential for effects upon them notwithstanding they have applied to reduce the yard.
Efficiency/Effectiveness	<ul style="list-style-type: none"> ▪ No change to existing process under the Plan.

4.2. Option 2 - Add Exemption Statement to Rule 18.4.1(c) - Yards

Advantages	<ul style="list-style-type: none"> ▪ The holding of a signed statement on Council records will allow Council, should there ever be a dispute, to provide written evidence that the applicant acknowledged the potential for effects upon them.
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	<ul style="list-style-type: none"> ▪ This provision worked well under the 2002 Operative District Plan.
Disadvantages	<ul style="list-style-type: none"> ▪ Nil
Efficiency/Effectiveness	<ul style="list-style-type: none"> ▪ No change to the provision of a written approval for compliance with the performance standard as a Permitted Activity or under separate resource consent.

4.3. Preferred Option

The preferred option is:

Option 2 – Add Exemption Statement to Rule 18.4.1(c) - Yards

Insert between the end of Rule 18.4.1(c)(iii) and 18.4.1(c)(iv) the following:

Explanatory Note:

(i) to (iii) above are provided for subject to submission to Council of a written statement from the applicant accepting any adverse environment effects which may be created by the reduced yard.