

Western Bay of Plenty District Council

Change to the District Plan – First Review

Plan Change 44 Boundary Adjustments to Create Independently Usable Titles

Section 32 Report

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1.0 Introduction

1.1. General Introduction and Background

This Plan Change considers whether the boundary adjustment rules should be revised to prevent boundary adjustments being used as a way to create independently usable titles that previously did not exist, without the need to pay financial contributions.

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.*

- (a) 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 "Surveyors Newsletter".

The following feedback was received from the New Zealand Transport Agency:

"The NZTA is interested in the creation of lots and associated new accessways onto Strategic Roads. It is essential that the provisions of the Western Bay of Plenty District Plan Section 4B - Transportation, Access and Parking apply. It is assumed that as a result of this Plan Change Section 12 - Subdivision and Development would be updated to include 'Boundary Adjustments' as a controlled activity. If so the NZTA is comfortable with the Performance Standard '12.4.4.4 Property Access which links to Section 4B.'"

The focus of this Plan Change is to review whether financial contributions should be payable when boundary adjustments are used to create independently usable titles that previously did not exist. It does not seek to change the activity status of boundary adjustments nor are the provisions of Sections 4B and 12 being reviewed.

4.0 Issue - Boundary Adjustments being used to create independently usable titles or to significantly increase the usability of an existing title without the need to pay Financial Contributions

Boundary adjustment is a form of subdivision which allows landowners to reconfigure lot boundaries for a number of purposes such as to realign boundaries with fence lines and buildings, sell/purchase a particular area of land to/from a neighbour, or to change the size and shape of a lot to allow for better use of the land.

The District Plan provides for boundary adjustments as follows;

"12.3.3 Boundary Adjustments – All Zones

12.3.3.1 Controlled Activity Boundary Adjustments

As a Controlled Activity the boundaries between any existing land titles served by an existing legal public road currently maintained by *Council* and complying with all relevant provisions of this section of the District Plan may be adjusted subject to all newly formed *lots* also complying with the relevant provisions of this section and the minimum *lot* sizes rules that apply in the respective zones, provided that the minimum *lot* size for the applicable zone shall not apply where:

- (a) One or more of the existing land titles subject of the boundary adjustment is/are already non-complying in respect of the relevant minimum *lot* size; and

- (b) The number of non-complying *lots* will not be increased by the boundary adjustment.

12.3.3.2 Restricted Discretionary Activity Boundary Adjustments

- (a) As a Restricted Discretionary Activity the boundaries between any existing complying land titles served by an existing legal public road currently maintained by *Council* and complying with the relevant provisions of this section of the District Plan may be adjusted in a manner which renders one or more of the newly formed *lots* non-complying in respect of the minimum *lot* size for the applicable zone subject to all newly formed *lots* also complying with the relevant provisions of this section. *Council's* discretion is restricted to an assessment of the extent to which the alignment of the existing boundary is illogical or otherwise inconsistent with:
 - (i) Existing topographical or other physical characteristics of the land concerned;
 - (ii) Efficient and practical farm management.
- (b) As a Restricted Discretionary Activity the boundaries between one or more land titles served by an existing legal public road not currently maintained by *Council* may be adjusted subject to the following matters to which *Council's* discretion is restricted:
 - (i) The extent to which the boundary adjustment will result in any increase in traffic on the road concerned;
 - (ii) The need to impose financial contributions where the boundary adjustment is deemed either to create an independently usable title which did not previously exist or to significantly increase the usability of an existing title."

These rules were put in place to allow for the general purposes discussed earlier. However, recent boundary adjustment proposals have made it apparent that Rules 12.3.3.1 and 12.3.3.2 (a) also allow for small or narrow titles (such as titles created from old road closures and separation strips) not capable of accommodating a dwelling, and titles not capable of legal and physical access, to be increased in size or reconfigured to become independently usable titles or to significantly increase usability of the land, without the requirement to pay financial contributions to mitigate any additional impact on infrastructure.

Rule 12.3.3.2 (b) on the other hand allows Council the discretion “to impose financial contributions where the boundary adjustment is deemed either to create an independently usable title which did not previously exist or to significantly increase the usability of an existing title.” Whether this should also be applied to Rule 12.3.3.1 as a matter of control and to 12.3.3.2(a) as a matter of discretion is considered in the options below.

4.1. Option 1 – Status Quo

Advantages	<ul style="list-style-type: none"> ▪ Provides for the social and economic wellbeing of landowners who have the opportunity to use the boundary adjustment rules to create independently usable titles and without having to pay financial contributions where subdivision rules otherwise do not allow for such to occur. This allows the title to be sold, made better use of, or used to establish another dwelling for family or rental purposes.
Disadvantages	<ul style="list-style-type: none"> ▪ Allows small and narrow titles and titles not capable of legal and physical access to be boundary adjusted to create independently usable titles or to significantly increase the usability of those titles without the need to pay financial contributions to mitigate the additional impact on Council infrastructure. ▪ Creates an inequity between those landowners who can boundary adjust to create independently usable titles without paying financial contributions and those landowners would need to pay these if subdividing (creating new lots).
Efficiency/Effectiveness	<ul style="list-style-type: none"> ▪ Not effective as the rules allow for an unintended outcome being extra pressure put on infrastructure without mitigation.

4.2. Option 2 – Continue to allow boundary adjustments to be used to create independently usable titles but add a matter of control to Rule 12.3.3.1 and a matter of discretion to 12.3.3.2 (a) as follows;

“(x) The need to impose financial contributions where the boundary adjustment is deemed either to create an independently usable title which did not previously exist or to significantly increase the usability of an existing title.”

Advantages	<ul style="list-style-type: none"> ▪ Requiring financial contributions will allow for the mitigation of any impact on Council infrastructure. ▪ Is consistent with the approach taken to restricted discretionary boundary adjustments in 12.3.3.2 (b). ▪ Removes inequity between landowners by requiring financial contributions.
Disadvantages	<ul style="list-style-type: none"> ▪ Landowners lose the opportunity to create another usable title without having to pay financial contributions.

Efficiency/Effectiveness	▪ Effective as ensures financial contributions will be payable to mitigate impacts on infrastructure.
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4.3. Preferred Option

The preferred option is Option 2.

Add a matter of control to 12.3.3.1 and matter of discretion to 12.3.3.2 (a) to require financial contributions as follows;

The need to impose financial contributions where the boundary adjustment is deemed either to create an independently usable title which did not previously exist or to significantly increase the usability of an existing title.