

IN THE MATTER of the Resource Management Act
1991 (the Act)

AND

IN THE MATTER of an appeal pursuant to Clause 14
of Schedule 1 to the Act in
relation to proposed Plan Changes
52 and 53 to the Western Bay of
Plenty District Plan

BETWEEN D155 LIMITED

ENV-2015-AKL-000105

Appellant

AND

WESTERN BAY OF
PLENTY DISTRICT
COUNCIL

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J A Smith sitting alone under section 279 of the Act

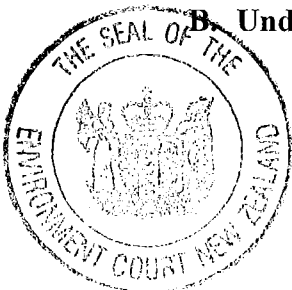
IN CHAMBERS at Auckland

CONSENT ORDER

A. Under s 279(1)(b) of the Act, the Environment Court by consent, orders that:

i. The appeal is allowed in part subject to Annexure A and Annexure B to this order.

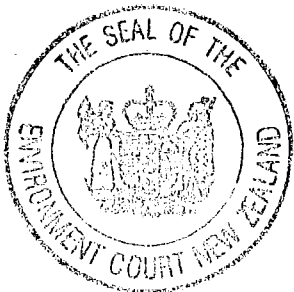
B. Under s 285 of the Act, there is no order as to costs in relation to this order.



REASONS

Introduction

- [1] This appeal relates to proposed plan changes 52 and 53 to the operative Western Bay of Plenty District Plan. The appellant sought relief in relation to the Protection Lot Rule and Protection Lots for esplanades. The parties have now reached an agreement that resolves this appeal in full.
- [2] In making this order the Court has read and considered the appeals and the Memorandum of the parties dated 20 November 2015.
- [3] The Trustees of the Gideons Valley Trust gave notice of its intention to become a party under section 274 of the Act and have signed the memorandum of the parties setting out the relief sought.
- [4] The Court is making this order under section 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:
- (a) All parties to the proceedings have executed the memorandum requesting this order; and
 - (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Act, and in particular Part 2.



Order

[5] Following negotiations, the parties have agreed that the appeal can be resolved in full.

In summary, the parties have agreed to the following changes:

- a. The three new categories (identified but non-priority proposed esplanade reserves / strips; new reserves and other land for public purposes) are collectively named as 'land for community benefit' along with identified priority esplanade reserves and strips and public access to reserves.
- b. In relation to land for community benefit, amendments to the information required to be provided with an application for consent, to require the provision of evidence of consultation with /the degree of support by Council's reserves staff on particular aspects of the proposal [4A.6.3];
- c. A new RDA for land for community benefit other than priority esplanade reserves and strips (up to two additional lots) [18.3.3(d)];
- d. Amendments to clarify that the existing RDA for three to five protection lots includes the new category of land for community benefit [18.3.4(m)];
- e. Consequential removal of the proposed Non-complying Activity Status for the above activities [was 18.3.5(f)];
- f. New activity performance standards for the new RDA relating to land for community benefit [18.4.2(h)(i)4 and 18.4.2(h)(vii) 1-5];
- g. New matters of discretion for the new RDA relating to land for community benefit [18.5.11].

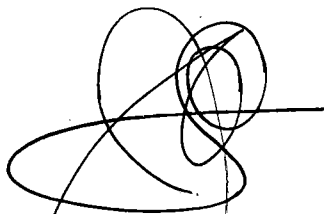
[6] Therefore the Court orders, by consent, that the operative Western Bay of Plenty District Plan is amended as shown in **Annexure A underline** (for additions) and ~~striketrough~~ (for deletions) (with a clean version attached at **Annexure B**).

There is no order for costs.

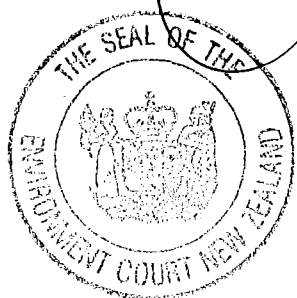


[8] The appeal is otherwise dismissed.

Dated at Auckland this 30th day of November . 2015



J A Smith
Environment Judge



ANNEXURE A

(Underline (for additions) and strikethrough (for deletions))

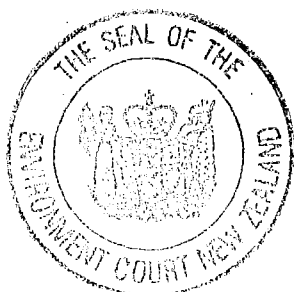
Amend the Operative Western Bay of Plenty District Plan as follows:

4A.6 Information Required with Applications

4A.6.3 Information requirements for the creation of on-site Protection Lots or Transferable Protection Lot credits based on land for community benefit

In addition to the information requirements above the following shall also be provided;

- (a) Evidence that the applicant has met with Council's reserves staff to discuss the proposal and a record of the extent to which the proposal is supported by Council's reserves staff with respect to the following;
 - (i) Plans showing the area of land which is being provided and for what particular feature type/s and purpose/s;
 - (ii) The reasons why the provision of the land will have a significant community benefit;
 - (iii) How legal protection is to be achieved;
 - (iv) The number of on-site Protection Lots or Transferable Protection Lot credits proposed.



18.3 Activity Lists

18.3.2 Controlled Activities

- (k) On-site protection lot subdivision (excluding Matakana Island) for up to two additional *lots* in accordance with Rules 18.4.2(h)(i)-(ii) when based on ecological features, viewshafts, cultural features, or land for community benefit ~~for the provision of (priority esplanade reserves and strips only)~~ in accordance with Rules 18.4.2(h)(iv)-(vii) and Rule 18.4.2(h) ~~(ix)(viii)~~.

18.3.3 Restricted Discretionary Activities

- (d) On-site protection lot subdivision (excluding Matakana Island) for up to two additional *lots* in accordance with Rules 18.4.2(i)-(ii) when based on land for community benefit (except priority esplanade reserves and strips) ~~solely on land for expansion of or access to reserves or in combination with another feature of value to the community~~ in accordance with Rules 18.4.2(h) ~~(vii) (iv)-(viii)~~ and 18.4.2(h) ~~(ix)(viii)~~.
- (e) On-site protection lot subdivision (excluding Matakana Island) for three to five additional *lots* in accordance with Rule 18.4.2(h)(i)-(ii) when based on any feature or features of value to the community District in accordance with Rules 18.4.2(h)(iv)-(viii) and 18.4.2(h) ~~(ix)(viii)~~.

18.3.4 Discretionary Activities

- (m) On-site protection lot subdivision (excluding Matakana Island) for one to five additional *lots* when based on any feature or features of value to the community District (including land for community benefit) not in accordance with Rules 18.4.2(h)(i)-(ii), 18.4.2(iv)-(viii), or 18.4.2 ~~(ix)(viii)~~.

~~18.3.5 Non-Complying Activities~~

- ~~(f) On-site protection lot subdivision based on other features not listed as "features of value to the community" under Rules 18.4.2 (h) (i) (1-5).~~



18.4.2 Subdivision Activity Performance Standards (see Section 12)

(h) Protection lots

(i) Purpose

Over and above what other rural subdivision rules provide for, additional on-site Protection Lots for subdivision in the Rural Zone, or Transferable Protection Lot credits for subdivision within the Lifestyle Zone, may be created from a qualifying existing *lot* within the Rural Zone in conjunction with the legal protection in perpetuity of a feature of value to the community District.

In the context of this rule a "feature of value to the community District" is deemed to be:

1. Identified Significant Ecological Features as listed in Appendix 1 of the District Plan or other ecological features which at the time of application are demonstrated as complying with the respective provisions of this rule applying to such features.
 - *Tall forest*
 - *Regenerating forest*
 - *Secondary shrub land*
 - *Riparian margins*
 - *Wetlands*
2. Identified Outstanding *Viewshafts* as listed in Appendix 2 of the District Plan.
3. Identified Significant Cultural Heritage Features as listed in Appendix 3 of the District Plan or other cultural heritage features which at the time of application are demonstrated as complying with the respective provisions of this rule applying to such features.
4. ~~Land for the provision of esplanade reserves or strips as listed in Appendix 4A of the District Plan;~~
5. ~~Land for the expansion of, or access to, reserves.~~
4. Land for community benefit;
 - Esplanade reserves or strips shown on the Planning Maps and listed as a priority in Appendix 4A of the District Plan



- Other esplanade reserves or strips shown on the Planning Maps and listed in Appendix 4 of the District Plan
- Expansion to an existing reserve or creation of a new reserve (not otherwise listed above).
- Other land (not established as any of the above) for public purposes
- Public access to an existing or proposed reserve or to an existing or proposed esplanade reserve or strip

Except that;

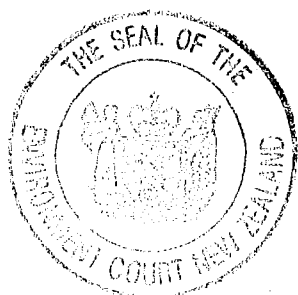
On-site Protection Lots or Transferable Protection Lot credits shall not be created from ecological features on any land that has been designated in the District Plan (for any purpose), or is classified under the Reserves Act 1977, or is subject to the Conservation Act 1987.

(ii) Standards for on-site Protection Lot subdivision in the Rural Zone

1. The feature or features to be protected must be within the land being subdivided;
2. Vehicle access shall be to an existing sealed road, excluding a State Highway;
3. Maximum *lot* size shall be 1ha.

(iii) Use of Transferable Protection Lot credits for subdivision in the Lifestyle Zone

1. In addition to or instead of the creation of on-site Protection Lots, one or more Transferable Protection Lot credits may be created for the subdivision of land within the Lifestyle Zone, subject to compliance with the requirements for subdivision in that Zone (refer Section 17).
2. Where multiple credits are created and not all are able to be used for a subdivision of land within the Lifestyle Zone, credits will be given for future subdivisions of land within the Lifestyle Zone.
3. 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 became operative (16 June 2012), whichever is the later.

4. For credits created prior to 30 January 2010 the following applies:

(a) The credit will expire ten years from the date that the Minden Lifestyle Zone Structure Plan became operative (16 June 2012).

(b) Thirty percent of the total credits (calculated per donor lot) may be used in conjunction with Rule 18.4.2(f).

(iv) Standards for the creation of on-site Protection Lots or Transferable Protection Lot credits based on ecological features

1. Certification from an appropriately qualified independent person that the feature in question meets the criteria in 2 below shall be submitted with the application for subdivision consent. 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.

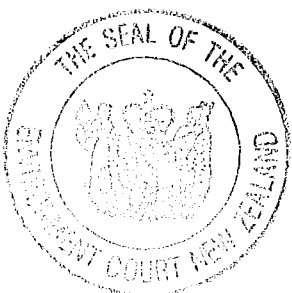
2. The feature must be assessed in the context of the relevant ecological district, bioclimatic zone and landform type. Each feature is required to rank highly on three or more of the following criteria:

a) Representativeness - the extent to which an area is characteristic or representative of natural diversity;

b) Diversity and pattern - the diversity of species and community types;

c) Shape - larger areas with a compact shape are more likely to be ecologically viable;

d) Ecological viability and sustainability - the likelihood of an area remaining ecologically viable and the management input necessary for long term sustainability;



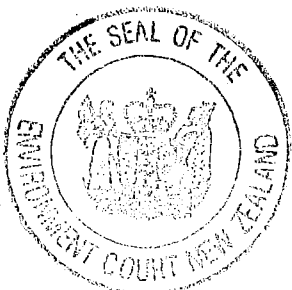
- e) Naturalness - degree of modification as compared with likely original unmodified character.
- f) Rarity and special features - presence of rare community types, species or other rare features;
- g) Fragility and threat - threat processes or agents (actual or potential) that are likely to destroy or substantially modify the feature, and the vulnerability of the feature to damage;
- h) 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;
- i) Long term viability – the extent to which the features of the area will maintain themselves in the long term.

Explanatory Note:

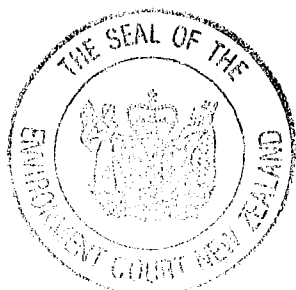
Riparian margins only need to meet criteria (e) and (h) above to qualify.

3. Minimum feature sizes for the creation of a single one or more on-site Protection Lots or Transferable Protection Lot credits and minimum average feature sizes for the creation of two to five on-site Protection Lots or any number of Transferable Protection Lot credits dependant on whether the feature is identified in Appendix 1 of the District Plan as significant or whether it can be identified as an 'other ecological feature' are shown in the table below.

Feature Type	Minimum feature sizes for the creation of a single on-site Protection Lot or Transferable Protection Lot credit	Minimum feature sizes for the creation of two to five on-site Protection Lots, or any number of Transferable Protection Lot credits				
		1	Avg	2	3	4
Significant Ecological						
<i>Tall Forest</i>	3ha	6ha	12ha	18ha	24ha	30ha



<i>Regenerating Forest</i>	4ha	8ha	16ha	24ha	32ha	40ha
<i>Secondary Shrub Land</i>	5ha	10ha	20ha	30ha	40ha	50ha
<i>Riparian Margins (above MHWS)</i>	500m in length 20m wide	1km 20m	2km 20m	3km 20m	4km 20m	5km 20m
<i>Wetlands (above MHWS)</i>	0.5ha surrounded by a 10m indigenous buffer	1ha 10m	2ha 10m	3ha 10m	4ha 10m	5ha 10m
Other Ecological						
<i>Tall Forest</i>	5ha	10ha	20ha	30ha	40ha	50ha
<i>Regenerating Forest</i>	8ha	16ha	32ha	48ha	64ha	80ha
<i>Secondary Shrub Land</i>	10ha	20ha	40ha	60ha	80ha	100ha
<i>Riparian Margins (above MHWS)</i>	500m in length 20m wide	1km 20m	2km 20m	3km 20m	4km 20m	5km 20m
<i>Wetlands (above MHWS)</i>	0.5ha surrounded by a 10m indigenous buffer	1ha 10m	2ha 10m	3ha 10m	4ha 10m	5ha 10m
Notes /						
<ol style="list-style-type: none"> 1. The creation of further Transferable Protection Lot credits shall be allowed in accordance with the average specified for the particular feature type. 2. The width of <i>riparian margins</i> is measured from 20m landward of the stream edge on one side. When a stream is wholly contained within one title the length of the <i>riparian margin</i> is the combined total length of the <i>riparian margins</i> on each side of the stream. 3. <i>Wetlands</i> 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. <i>Wetlands</i> equal to or greater than 2ha require a buffer area of a suitable width prescribed by the certifying ecologist and must be established prior to obtaining Section 224 consent. 4. <u>Within the subject existing lot, where an ecological feature exceeds the above sizes then the entire feature shall be protected.</u> 						



~~4. Within the subject existing lot, where an ecological feature exceeds the above sizes then the entire feature shall be protected.~~

(v) Standards for the creation of on-site Protection Lots or Transferable Protection Lot credits based on *viewshafts*

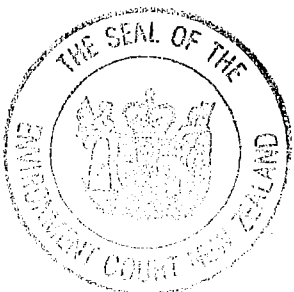
1. Certification from an appropriately qualified independent person that the feature in question still exists in terms of the description as provided in Appendix 2 shall be submitted with the application for subdivision consent.
2. The whole of the *viewshaft* falling within the subject existing *lot* shall be protected.
3. No more than one on-site Protection Lot or Transferable Protection Lot credit per *lot* shall be created under this clause.

(vi) Standards for the creation of on-site Protection Lots or Transferable Protection Lot credits based on cultural heritage features

1. In the case of Identified Significant Cultural 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 Appendix 3 shall be submitted with the application for subdivision consent.
2. With respect to cultural heritage features not listed in Appendix 3, the feature in question shall be certified by an appropriately qualified and experienced person as being of such cultural or archaeological significance as to warrant preservation in perpetuity. Such certification shall be accompanied by a report prepared by the certifier detailing the attributes of the feature recommended for preservation and shall include:

(a) Endorsement from an authorised representative of the recognised tangata whenua for the area in question;

(b) A management plan specifying any protective or enhancement measures deemed necessary.



3. The whole of the cultural heritage feature falling within the subject existing *lot* shall be protected.
4. No more than one on-site Protection Lot or Transferable Protection Lot credit per *lot* shall be created under this clause.

(vii)

Standards for the creation of on-site Protection Lots or Transferable Protection Lot credits based on the provision of land for community benefit ~~esplanade reserves and esplanade strips as listed in Appendix 4A of the District Plan.~~

1. The land shall provide for one or more of the purposes relevant to the particular feature type;
 - a) Priority esplanade reserves and strips in Appendix 4A
 - Linkages along targeted waterways
 - b) Other esplanade reserves and strips in Appendix 4
 - = Purposes of esplanade reserves and strips under Section 229 of the RMA
 - c) Expansion of an existing reserve or creation of a new reserve
 - = General purposes of reserves under Section 3 of the Reserves Act 1977
 - d) Other land (not established as any of the above) for public purposes
 - = Public purposes that can be provided for through the establishment of community facilities, infrastructure, parks, open space, or similar.
 - e) Public access to an existing or proposed reserve or to an existing or proposed esplanade reserve or strip

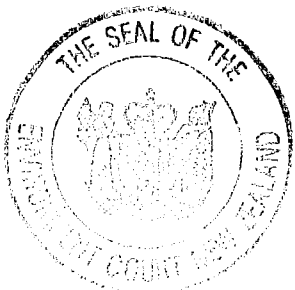
~~Minimum feature sizes for the creation of a single on-site Protection Lot or Transferable Protection Lot credit and minimum average feature sizes for the creation of two to five on-site Protection Lots or any number of Transferable Protection Lot credits are shown in the table below.~~



2. The minimum feature sizes in the table below shall be used as a guide for assessing the number of on-site Protection Lots or Transferable Protection Lot Credits able to be created.

Feature Type	Minimum feature sizes for the creation of a single on-site Protection Lot or Transferable Protection Lot credit	Minimum feature sizes for the creation of two to five on-site Protection Lots, or any number of Transferable Protection Lot credits				
		1	Avg	2	3	4
Priority Esplanade Reserves/Strips in Appendix 4A	Entire feature ±30m in-length 20m wide	1km 20m	2km 20m	3km 20m	4km 20m	5km 20m
Other Esplanade Reserves/Strips in Appendix 4	Entire feature 20m wide	1km 20m	2km 20m	3km 20m	4km 20m	5km 20m
Expansion of an existing reserve or creation of a new reserve	No minimum size	1ha	2ha	3ha	4ha	5ha
Other land (not established as any of the above) for public purposes	No minimum size	1ha	2ha	3ha	4ha	5ha
Public access to an existing or proposed reserve or to an existing or proposed esplanade reserve or strip	No minimum length 7m wide	1km 7m	2km 7m	3km 7m	4km 7m	5km 7m
Notes /						
<p>1. The creation of further Transferable Protection Lot credits <u>may be allowed for each particular feature type using the specified averages as a guide. shall be allowed in accordance with the average specified for the particular feature type.</u></p> <p>2. <u>Within the subject existing lot, where a priority esplanade reserve or strip or other esplanade reserve or strip exceeds the above sizes then the entire feature shall be protected.</u></p> <p>3. <u>No piece of land within the subject existing lot shall be used to qualify as more than one feature type e.g. land for esplanade reserve cannot also qualify as land for public access to an existing reserve or esplanade reserve.</u></p>						

3. Within the subject existing lot, where a esplanade reserve or strip exceeds the above sizes then the entire feature shall be protected.
4. With respect to the provision of land for priority esplanade reserves or strips or other esplanade reserves or strips,



landowners shall waive the right to compensation under s237E(2) of the RMA.

Note: See also Rule 4A.6.3 for specific information requirements.

(viii) Standards for the creation of on-site Protection Lots or Transferable Protection Lot credits based on land for expansion of, or access to, reserves

1. The land must provide for expansion of an existing reserve, or access to an existing or proposed reserve or esplanade reserve or strip.

Note: For the purposes of this rule, "expansion" does not include the obtaining of an esplanade reserve, and "existing reserve" does not include an existing esplanade reserve.

2. Minimum feature sizes for the creation of a single on-site Protection Lots or Transferable Protection Lot credits and minimum average feature sizes for the creation of two to five on-site Protection Lots or any number of Transferable Protection Lot credits are shown in the table below.

Feature Type	Minimum feature sizes for the creation of a single on-site Protection Lot or Transferable Protection Lot credit	Minimum feature sizes for the creation of two to five on-site Protection Lots, or any number of Transferable Protection Lot credits				
		Avg	2	3	4	5
Access to an existing or proposed reserve or esplanade reserve or strip	6m wide 500m long	N/A	N/A	N/A	N/A	N/A
Expansion of an existing reserve, or creation of a new reserve	0.5ha	1ha	2ha	3ha	4ha	5ha

Note
The creation of further Transferable Protection Lot credits shall be allowed in accordance with the average specified for the particular feature type.

(ix) (viii) Legal protection

Legal protection in perpetuity of the relevant feature of value to the community District shall be achieved by way of a



condition imposed on the subdivision consent requiring a Consent Notice, Memorandum of Encumbrance or similar legal instrument such as a QEII covenant, heritage covenant or esplanade strip to be registered on the title of the land concerned, or the vesting of land into crown or territorial authority ownership. The type of instrument and the level of protection provided by it must be to the satisfaction of the *Council* and where relevant is 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;

18.5 Matters of Discretion

18.5.1 Restricted Discretionary Activities – non-compliance with activity performance standards

With respect to any Permitted or Controlled Activity which fails to comply with any activity performance standard listed in 18.4, *Council's* discretion is restricted to the actual or potential adverse effects arising from the particular non-compliance, having regard to the extent and nature of the non-compliance.

18.5.11 Restricted Discretionary Activities – Protection Lot Subdivision based on land for community benefit

With respect to on-site Protection Lot subdivision or the creation of Transferable Protection Lot credits based on land for community benefit, *Council* shall restrict its discretion to the following:

- (a) The provision of land must provide for a significant community benefit now or in the future taking into account the extent to which the land;
 - (i) is in a strategic location;
 - (ii) is of a sufficient size;
 - (iii) is in a sufficient condition to be used or established for the proposed purpose;
 - (iv) will be physically accessible to the public;
 - (v) is likely to be accessed or used by the public;
 - (vi) will provide connectivity between existing esplanade reserves or strips or to other reserves or other public access such as paper roads or walkways and cycleways;
 - (vii) meets outcomes within existing reserve management plans and other relevant plans, strategies and policies;



- (viii) services future urban growth requirements;
- (ix) is needed by Council for the proposed purpose;
- (x) is unlikely to be otherwise acquired by Council now or in the future.

~~(b) With respect to on-site Protection Lot subdivision or the creation of Transferable Protection Lot credits based on expansion of or provision of access to reserves an under Rule 18.4.2(h)(viii):~~

- ~~(i) Whether the reserve is in a strategic location, or is to service future urban growth requirements, and there would be a clear significant public benefit resulting from the additional land or provision of access;~~
- ~~(ii) The extent to which the proposal is consistent with any existing reserve management plan or other relevant plans, strategies or policies.~~

18.5.12 Restricted Discretionary Activities – On-site Protection Lot Subdivision for three to five additional lots

- ~~(a) With respect to on-site Protection Lot subdivision for three to five additional lots off a sealed road, Council shall restrict its discretion to the extent to which the number, size and location of the *lots*:
 - ~~(i)(a) Maintains the productive capability of the rural land resource by avoiding reverse sensitivity effects on rural production activities and the fragmentation of versatile land, in particular where *lots* greater than 1ha in area are proposed to be created;~~
 - ~~(ii)(b) Maintains existing rural character and amenity values;~~
 - ~~(iii)(c) Avoids the creation of adverse traffic and roading effects;~~~~

For the avoidance of doubt, where the land being provided is for community benefit, Council's discretion includes the matters listed in 18.5.11.



ANNEXURE B

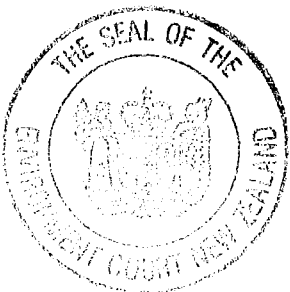
Clean version of amended Operative Western Bay of Plenty District Plan

4A.6 Information Required with Applications

4A.6.3 Information requirements for the creation of on-site Protection Lots or Transferable Protection Lot credits based on land for community benefit

In addition to the information requirements above the following shall also be provided;

- (a) Evidence that the applicant has met with Council's reserves staff to discuss the proposal and a record of the extent to which the proposal is supported by Council's reserves staff with respect to the following;
 - (i) Plans showing the area of land which is being provided and for what particular feature type/s and purpose/s;
 - (ii) The reasons why the provision of the land will have a significant community benefit;
 - (iii) How legal protection is to be achieved;
 - (iv) The number of on-site Protection Lots or Transferable Protection Lot credits proposed.



18.3 Activity Lists

18.3.2 Controlled Activities

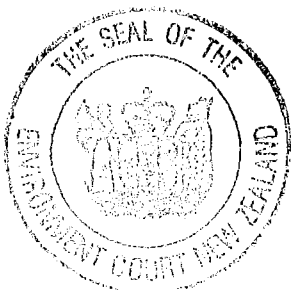
- (k) On-site protection lot subdivision (excluding Matakana Island) for up to two additional *lots* in accordance with Rules 18.4.2(h)(i)-(ii) when based on ecological features, viewshafts, cultural features, or land for community benefit (priority esplanade reserves and strips only) in accordance with Rules 18.4.2(h)(iv)-(vii) and Rule 18.4.2(h) (viii).

18.3.3 Restricted Discretionary Activities

- (d) On-site protection lot subdivision (excluding Matakana Island) for up to two additional *lots* in accordance with Rules 18.4.2(i)-(ii) when based on land for community benefit (except priority esplanade reserves and strips) in accordance with Rules 18.4.2(h) (vii) and 18.4.2(h)(viii).
- (e) On-site protection lot subdivision (excluding Matakana Island) for three to five additional *lots* in accordance with Rule 18.4.2(h)(i)-(ii) when based on any feature or features of value to the District in accordance with Rules 18.4.2(h)(iv)-(vii) and 18.4.2(h)(viii).

18.3.4 Discretionary Activities

- (m) On-site protection lot subdivision (excluding Matakana Island) for one to five additional *lots* when based on any feature or features of value to the District (including land for community benefit) not in accordance with Rules 18.4.2(h)(i)-(ii), 18.4.2(iv)-(vii), or 18.4.2(viii).



18.4.2 Subdivision Activity Performance Standards (see Section 12)

(h) Protection lots

(i) Purpose

Over and above what other rural subdivision rules provide for, additional on-site Protection Lots for subdivision in the Rural Zone, or Transferable Protection Lot credits for subdivision within the Lifestyle Zone, may be created from a qualifying existing *lot* within the Rural Zone in conjunction with the legal protection in perpetuity of a feature of value to the District.

In the context of this rule a "feature of value to the District" is deemed to be:

1. Identified Significant Ecological Features as listed in Appendix 1 of the District Plan or other ecological features which at the time of application are demonstrated as complying with the respective provisions of this rule applying to such features.
 - *Tall forest*
 - *Regenerating forest*
 - *Secondary shrub land*
 - *Riparian margins*
 - *Wetlands*
2. Identified Outstanding *Viewshafts* as listed in Appendix 2 of the District Plan.
3. Identified Significant Cultural Heritage Features as listed in Appendix 3 of the District Plan or other cultural heritage features which at the time of application are demonstrated as complying with the respective provisions of this rule applying to such features.
4. Land for community benefit;
 - Esplanade reserves or strips shown on the Planning Maps and listed as a priority in Appendix 4A of the District Plan
 - Other esplanade reserves or strips shown on the Planning Maps and listed in Appendix 4 of the District Plan
 - Expansion to an existing reserve or creation of a new reserve (not otherwise listed above).



- Other land (not established as any of the above) for public purposes
- Public access to an existing or proposed reserve or to an existing or proposed esplanade reserve or strip

Except that:

On-site Protection Lots or Transferable Protection Lot credits shall not be created from ecological features on any land that has been designated in the District Plan (for any purpose), or is classified under the Reserves Act 1977, or is subject to the Conservation Act 1987.

(ii) Standards for on-site Protection Lot subdivision in the Rural Zone

1. The feature or features to be protected must be within the land being subdivided;
2. Vehicle access shall be to an existing sealed road, excluding a State Highway;
3. Maximum *lot* size shall be 1ha.

(iii) Use of Transferable Protection Lot credits for subdivision in the Lifestyle Zone

1. In addition to or instead of the creation of on-site Protection Lots, one or more Transferable Protection Lot credits may be created for the subdivision of land within the Lifestyle Zone, subject to compliance with the requirements for subdivision in that Zone (refer Section 17).
2. Where multiple credits are created and not all are able to be used for a subdivision of land within the Lifestyle Zone, credits will be given for future subdivisions of land within the Lifestyle Zone.
3. 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 became operative (16 June 2012), whichever is the later.
4. For credits created prior to 30 January 2010 the following applies:



- (a) The credit will expire ten years from the date that the Minden Lifestyle Zone Structure Plan became operative (16 June 2012).
 - (b) Thirty percent of the total credits (calculated per donor lot) may be used in conjunction with Rule 18.4.2(f).
- (iv) Standards for the creation of on-site Protection Lots or Transferable Protection Lot credits based on ecological features
- 1. Certification from an appropriately qualified independent person that the feature in question meets the criteria in 2 below shall be submitted with the application for subdivision consent. 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. 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:
 - a) Representativeness - the extent to which an area is characteristic or representative of natural diversity;
 - b) Diversity and pattern - the diversity of species and community types;
 - c) Shape - larger areas with a compact shape are more likely to be ecologically viable;
 - d) Ecological viability and sustainability - the likelihood of an area remaining ecologically viable and the management input necessary for long term sustainability;
 - e) Naturalness - degree of modification as compared with likely original unmodified character.
 - f) Rarity and special features - presence of rare community types, species or other rare features;



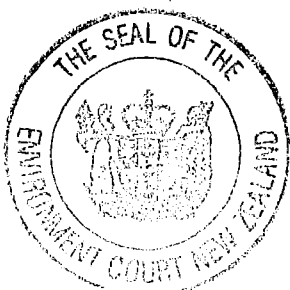
- g) Fragility and threat - threat processes or agents (actual or potential) that are likely to destroy or substantially modify the feature, and the vulnerability of the feature to damage;
- h) Ecological context – the extent to which an area is buffered from modifying influences, or provides a key buffer for other ecological areas, or the connectivity role that site provides for the wider landscape;
- i) Long term viability – the extent to which the features of the area will maintain themselves in the long term.

Explanatory Note:

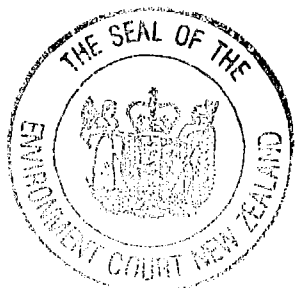
Riparian margins only need to meet criteria (e) and (h) above to qualify.

- 3. Minimum feature sizes for the creation of one or more on-site Protection Lots or Transferable Protection Lot credits are shown in the table below.

Feature Type	Minimum feature sizes for the creation of a single on-site Protection Lot or Transferable Protection Lot credit	Minimum feature sizes for the creation of two to five on-site Protection Lots, or any number of Transferable Protection Lot credits				
		1	Avg	2	3	4
Significant Ecological						
<i>Tall Forest</i>	3ha	6ha	12ha	18ha	24ha	30ha
<i>Regenerating Forest</i>	4ha	8ha	16ha	24ha	32ha	40ha
<i>Secondary Shrub Land</i>	5ha	10ha	20ha	30ha	40ha	50ha
<i>Riparian Margins (above MHWS)</i>	500m in length 20m wide	1km 20m	2km 20m	3km 20m	4km 20m	5km 20m
<i>Wetlands (above MHWS)</i>	0.5ha surrounded by a 10m indigenous buffer	1ha 10m	2ha 10m	3ha 10m	4ha 10m	5ha 10m
Other Ecological						
<i>Tall Forest</i>	5ha	10ha	20ha	30ha	40ha	50ha
<i>Regenerating Forest</i>	8ha	16ha	32ha	48ha	64ha	80ha
<i>Secondary Shrub Land</i>	10ha	20ha	40ha	60ha	80ha	100ha
<i>Riparian Margins (above MHWS)</i>	500m in length 20m wide	1km 20m	2km 20m	3km 20m	4km 20m	5km 20m
<i>Wetlands</i>	0.5ha surrounded by a	1ha	2ha	3ha	4ha	5ha



(above <i>MHWS</i>)	10m indigenous buffer	10m	10m	10m	10m	10m
Notes / related standards						
<p>5. The creation of further Transferable Protection Lot credits shall be allowed in accordance with the average specified for the particular feature type.</p> <p>6. The width of <i>riparian margins</i> is measured from 20m landward of the stream edge on one side. When a stream is wholly contained within one title the length of the <i>riparian margin</i> is the combined total length of the <i>riparian margins</i> on each side of the stream.</p> <p>7. <i>Wetlands</i> 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. <i>Wetlands</i> equal to or greater than 2ha require a buffer area of a suitable width prescribed by the certifying ecologist and must be established prior to obtaining Section 224 consent.</p> <p>8. Within the subject existing lot, where an ecological feature exceeds the above sizes then the entire feature shall be protected.</p>						



(v) Standards for the creation of on-site Protection Lots or Transferable Protection Lot credits based on *viewshafts*

1. Certification from an appropriately qualified independent person that the feature in question still exists in terms of the description as provided in Appendix 2 shall be submitted with the application for subdivision consent.
2. The whole of the *viewshaft* falling within the subject existing *lot* shall be protected.
3. No more than one on-site Protection Lot or Transferable Protection Lot credit per *lot* shall be created under this clause.

(vi) Standards for the creation of on-site Protection Lots or Transferable Protection Lot credits based on cultural heritage features

1. In the case of Identified Significant Cultural 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 Appendix 3 shall be submitted with the application for subdivision consent.
2. With respect to cultural heritage features not listed in Appendix 3, the feature in question shall be certified by an appropriately qualified and experienced person as being of such cultural or archaeological significance as to warrant preservation in perpetuity. Such certification shall be accompanied by a report prepared by the certifier detailing the attributes of the feature recommended for preservation and shall include:
 - (a) Endorsement from an authorised representative of the recognised tangata whenua for the area in question;
 - (b) A management plan specifying any protective or enhancement measures deemed necessary.
3. The whole of the cultural heritage feature falling within the subject existing lot shall be protected.
4. No more than one on-site Protection Lot or Transferable Protection Lot credit per lot shall be created under this clause.



(vii) Standards for the creation of on-site Protection Lots or Transferable Protection Lot credits based on the provision of land for community benefit

5. The land shall provide for one or more of the purposes relevant to the particular feature type;

- a) Priority esplanade reserves and strips in Appendix 4A
 - Linkages along targeted waterways
- b) Other esplanade reserves and strips in Appendix 4
 - = Purposes of esplanade reserves and strips under Section 229 of the RMA
- c) Expansion of an existing reserve or creation of a new reserve
 - = General purposes of reserves under Section 3 of the Reserves Act 1977
- d) Other land (not established as any of the above) for public purposes
 - = Public purposes that can be provided for through the establishment of community facilities, infrastructure, parks, open space, or similar.
- e) Public access to an existing or proposed reserve or to an existing or proposed esplanade reserve or strip

2. The minimum feature sizes in the table below shall be used as a guide for assessing the number of on-site Protection Lots or Transferable Protection Lot Credits able to be created.

Feature type	Minimum feature sizes for the creation of a single on-site Protection Lot or Transferable Protection Lot credit	Minimum feature sizes for the creation of two to five on-site Protection Lots, or any number of Transferable Protection Lot credits				
		Avg	2	3	4	5
	1					



Priority Esplanade Reserves/Strips in Appendix 4A	Entire feature 20m wide	1km 20m	2km 20m	3km 20m	4km 20m	5km 20m
Other Esplanade Reserves/Strips in Appendix 4	Entire feature 20m wide	1km 20m	2km 20m	3km 20m	4km 20m	5km 20m
Expansion of an existing reserve or creation of a new reserve	No minimum size	1ha	2ha	3ha	4ha	5ha
Other land (not established as any of the above) for public purposes	No minimum size	1ha	2ha	3ha	4ha	5ha
Public access to an existing or proposed reserve or to an existing or proposed esplanade reserve or strip	No minimum length 7m wide	1km 7m	2km 7m	3km 7m	4km 7m	5km 7m

Notes / related standards

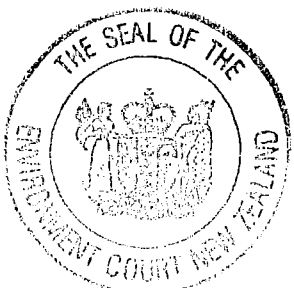
4. The creation of further Transferable Protection Lot credits may be allowed for each particular feature type using the specified averages as a guide.
5. Within the subject existing lot, where a priority esplanade reserve or strip or other esplanade reserve or strip exceeds the above sizes then the entire feature shall be protected.
6. No piece of land within the subject existing lot shall be used to qualify as more than one feature type e.g. land for esplanade reserve cannot also qualify as land for public access to an existing reserve or esplanade reserve.

3. With respect to the provision of land for priority esplanade reserves or strips or other esplanade reserves or strips, landowners shall waive the right to compensation under s237E(2) of the RMA.

Note: See also Rule 4A.6.3 for specific information requirements.

(viii) Legal protection

Legal protection in perpetuity of the relevant feature of value to the District shall be achieved by way of a condition imposed on the subdivision consent requiring a Consent Notice, Memorandum of Encumbrance or similar legal instrument such as a QEII covenant, heritage covenant or esplanade strip to be registered on the title of the land concerned, or the vesting of land into crown or territorial authority ownership. The type of instrument and the level of protection provided by it must be to the satisfaction of the *Council* and where relevant is 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;

18.5 Matters of Discretion

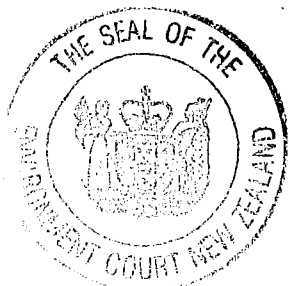
18.5.1 Restricted Discretionary Activities – non-compliance with activity performance standards

With respect to any Permitted or Controlled Activity which fails to comply with any activity performance standard listed in 18.4, *Council's* discretion is restricted to the actual or potential adverse effects arising from the particular non-compliance, having regard to the extent and nature of the non-compliance.

18.5.11 Restricted Discretionary Activities – Protection Lot Subdivision based on land for community benefit

With respect to on-site Protection Lot subdivision or the creation of Transferable Protection Lot credits based on land for community benefit, *Council* shall restrict its discretion to the following;

- (a) The provision of land must provide for a significant community benefit now or in the future taking into account the extent to which the land;
 - (i) is in a strategic location;
 - (ii) is of a sufficient size;
 - (iii) is in a sufficient condition to be used or established for the proposed purpose;
 - (iv) will be physically accessible to the public;
 - (v) is likely to be accessed or used by the public;
 - (vi) will provide connectivity between existing esplanade reserves or strips or to other reserves or other public access such as paper roads or walkways and cycleways;
 - (vii) meets outcomes within existing reserve management plans and other relevant plans, strategies and policies;
 - (viii) services future urban growth requirements;
 - (ix) is needed by Council for the proposed purpose;
 - (x) is unlikely to be otherwise acquired by Council now or in the future.



18.5.12 Restricted Discretionary Activities – On-site Protection Lot Subdivision for three to five additional lots

With respect to on-site Protection Lot subdivision for three to five additional lots off a sealed road, Council shall restrict its discretion to the extent to which the number, size and location of the *lots*:

- (a) Maintains the productive capability of the rural land resource by avoiding reverse sensitivity effects on rural production activities and the fragmentation of versatile land, in particular where *lots* greater than 1ha in area are proposed to be created;
- (b) Maintains existing rural character and amenity values;
- (c) Avoids the creation of adverse traffic and roading effects;

Explanatory note:

For the avoidance of doubt, where the land being provided is for community benefit, Council's discretion includes the matters listed in 18.5.11.

