

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**ENV-2015-AKL-**

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

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

**BETWEEN**

**D155 LIMITED**

Appellant

**AND**

**WESTERN BAY OF PLENTY DISTRICT  
COUNCIL**

Respondent

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**NOTICE OF APPEAL**

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**Notice of Appeal to Environment Court against Western Bay of Plenty  
District Plan, Plan Changes 52 and 53**

TO: The Registrar  
Environment Court  
Auckland

**1. Name and Address of Appellant**

D155 Limited, a New Zealand registered company having its registered office at 19d Gargan Road, RD1, Tauranga 3171 ('the Appellant')

**2. Name of Respondent**

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

**3. Details of Submission**

The Appellant made a submission on or about 12 December 2014 on the Western Bay of Plenty District Council Plan and Plan Changes 52 and 53, relating to protection lot subdivision rules. The Appellant supported the Council's use of protection lot subdivision but sought more enabling and flexible provisions to support protection and enhancement of ecological and heritage features. In particular the Appellant sought more enabling provisions for subdivision where there was significant community benefit, such as the setting aside of areas of land which may contain a feature of significance to the community or which could provide for the expansion of or access to reserves.

The submission sought further amendments be made to the rule framework and criteria to support the existing District Plan policies in relation to enhancement of areas with ecological, heritage, and community benefit values. A copy of the submission is **attached** as Annexure '1'.

The Appellant received notice of the decision on 29 June 2015 (**attached** as Annexure '2'). The decision was made by WBOPDC as the Territorial Authority.

**4. Description of the subject matter of the Decision and the specific parts of the Decision that the Appellant is appealing**

The qualifying reserve features set out for protection lots (Rule 18.4.2h) are limited to;

- only those proposed esplanade reserves and strips referred to in Appendix 4A of the District Plan , which must also meet the standards as set out in 18.4.2h(vii) of the District Plan.
- expansion of or access to reserves, which must also meet the standards as set out in 18.4.2h(viii) of the District Plan.

All other protection lot subdivision relating to provision of reserves or community benefit is a non-complying activity.

The standards set out in 18.4.2 (viii) specifically exclude esplanade reserves and strips. The majority of reserves in the District are esplanade reserves. Provision should be made to incorporate proposed expansions to esplanade reserves. The rules should also provide for new reserves (not being an expansion).

In addition to reserves, the protection lot rules should provide for subdivision in exchange for the setting aside of areas of land (not necessarily vested as reserve) where there is a significant community benefit or feature of significance to the community that is not otherwise already listed as a feature of value to the community. This includes sites of significant cultural importance.

The standards and criteria for land associated with access to or expansion of reserves are too stringent and the failure of the rule to provide for protection lot subdivision where there is a significant community benefit resulting defeat the purpose of the rules as set out in the objectives and policies.

**5. The reasons for the appeal are as follows**

The standards and qualifications of protection lots status are too limiting to provide opportunities for realistic achievement of the objectives and policies sought, namely enhancement and protection of heritage and ecological features and other sites of community benefit within the District.

The subdivision provisions relating to land for the expansion of, or access to, reserves are confusing and contrary to s.6 of the Resource Management Act 1991.

The non-complying activity default status for protection lots which do not comply with the standards and rules is overly restrictive. The Council should have discretion through its District Plan to consider subdivision where there is significant community benefit, such as the setting aside of areas of land which contain a feature of significance to the community, and/or which provide strategic public access to and along the coastal environment, rivers, lakes and/or which could provide for the expansion of or access to reserves.

## **6. Relief Sought**

- (a) Amendments to the protection lot subdivision rules to be more flexible and enabling and give effect to the objectives and policies set out in the Plan and to take into account the above considerations. The following should be changed from a non-complying activity to a restricted discretionary activity:
- Proposed esplanade reserves/strips shown on the planning maps but not identified as a priority in Appendix 4A.
  - Protection lots for the provision of land for new reserves (not being an expansion).
  - Protection lots for the provision of other land where there is significant community benefit.
  - Amendments to 18.5.11 (restricted discretionary assessment criteria) to provide for the above, and to require the assessment of significant public benefit associated with the setting aside of areas of land which may contain a feature of significance and/or value to the community and/or which could provide for the expansion of or access to reserves.

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



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Signed on behalf of D155 Limited

**Aaron Collier**  
05 August 2015

**Address for Service of Appellant:**

D155 Limited  
c/- Aurecon  
PO Box 2292  
TAURANGA  
Attn: Aaron Collier

**ADVICE TO RECIPIENTS OF COPY OF NOTICE**

**How to become party to proceedings**

You may be a party to the appeal if you made a submission or a further submission on this appeal and you lodge a notice of your wish to be a part 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 requirements (see form 38).

The copy of this 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 in Auckland, Wellington, or Christchurch.