

Decision Report

Plan Change 52 – Protection Lot Rule

1.0 Introduction

- 1.1 This report shows the decisions made on the topics in the Planning Report and then shows the whole of the Plan Change i.e. how the full notified Plan Change and subsequent decisions on topics are proposed to change the District Plan First Review.
- 1.2 For topics, 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 in blue.
- 1.3 For the whole of the Plan Change, any changes to rules are shown as described in paragraph 14.1.

2.0 Topic 1: Activity Lists

2.1 Decision

- 2.1.1 That restricted discretionary activity (e) be amended as follows;

On-site protection lot subdivision (excluding Matakana Island) for ~~up~~ 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 in accordance with Rules 18.4.2(h)(iv)-(viii) and Rule 18.4.2(ix).

- 2.1.2 That discretionary activity (m) be amended as follows;

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

- 2.1.3 That the following non-complying activity be added;

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).

The following submissions are therefore:

Accepted

Submission	Point Number	Name
16	4	Brian Flegg

Accepted in part

Submission	Point Number	Name
8	1	Bay of Plenty Regional Council
22	2	D155 Limited

2.2 Reasons

2.2.1 Protection lots for scheduled features of value to the community (ecological, viewshafts, cultural heritage, esplanade reserves) are already a controlled activity for **two** lots off a sealed road. Council has already changed the default activity status from non-complying to discretionary for features that don't meet the required standards. This is consistent with what D155 Limited requested in the side agreement to settle their appeal against Plan Change 39 (Protection Lots).

2.2.2 Protection lots for scheduled features of value to the community (ecological, viewshafts, cultural heritage, esplanade reserves) are a discretionary activity for up to **five** lots off a sealed road. The larger number of lots has the potential to generate greater effects so it is not appropriate to make these a controlled activity.

2.2.3 Protection lots for features not listed as features of value to the community are not provided for so default to non-complying. This signals that such an activity is not anticipated and/or appropriate and gives Council greater ability to decline inappropriate applications. Discretionary status on the other hand signals that such an activity is generally anticipated and/or appropriate subject to an assessment of effects. This will make it more difficult for Council to decline inappropriate applications for other features that are not being targeted for protection.

2.2.4 The recommended changes are minor edits that have been made for the purpose of providing clarity.

3.0 Topic 2: Protection lots for non-scheduled "features of value to the community"

3.1 Decision

That the list of "features of value of community" which qualify for protection subdivision is retained as notified.

The following submissions are therefore:

Accepted in Part

Submission	Point Number	Name
22	2	D155 Limited

3.2 Reasons

- 3.2.1** The protection lot rules do already specifically provide for non-scheduled ecological features, cultural heritage features and expansion and access to reserves.
- 3.2.2** This leaves only non-scheduled landscape features and viewshafts and esplanade reserves not within Appendix 4A that are not specifically provided for. The reasons for this are provided in the Decision Report for Plan Change 52 (Topic 4 - landscape) and the Decision Report for Plan Change 53 (esplanade reserves) respectively.
- 3.2.3** There may be instances where land providing for community benefit (but not a reserve) would be acceptable to Council. Such a proposal would be a non-complying activity which is appropriate because it is not an anticipated activity in terms of the protection lot rules.

4.0 Topic 3: Protection lots for the reversal of harbour reclamations

4.1 Decision

- 4.1.1** That no changes be made under Plan Change 52 with respect to the issue of deleting the words "above MHWS".
- 4.1.2** That a separate Plan Change relating to protection lots for the reversal of harbour reclamations be investigated as requested by the Council Committee. The timing for this will depend on capacity to undertake the work. It is unlikely that this will be ready in time for the next group of Plan Changes to be notified in August 2015 (anticipated).

The following submissions are therefore:

Accepted in Part

Submission	Point Number	Name
22	4	D155 Limited
16	6	Brian Flegg

4.2 Reasons

- 4.2.1** This matter is more complex than appears and there is not enough evidence from the submitter to prove that the removal of the words "above MHWS" from the District Plan will actually allow protection lots for the reversal of harbour reclamations on land not within a legal title.
- 4.2.2** A separate Plan Change relating to protection lots for the reversal of harbour reclamations is due to be investigated again

soon. It is appropriate that the issue be addressed as a part of that investigation.

5.0 Topic 4: Protection lots for landscape features and natural character

5.1 Decision

That scheduled landscape features are deleted as a “feature of value to the community” so they are not eligible for protection lots (as notified).

The following submissions are therefore:

Rejected

Submission	Point Number	Name
8	3	Regional Council

5.2 Reasons

5.2.1 The protection of landscape features is problematic under the protection lot mechanism because of how they differ in nature from other features. Landscape features are significant for their visual appearance when either viewed as a whole feature or as a significant part of a whole feature. This is also subjective. This presents a number of practical issues.

- Landscape features cover extensive areas of land and can range over a large number of individual titles making it unlikely that an entire feature, or a large part of a feature, can be protected through a single application or small number of applications. This is in contrast to other features such as many ecological features, viewshafts and many cultural heritage features (such as pa) which can often be protected in this manner.
- It is unlikely that there will be multiple applications made with respect to the same landscape feature to solve the above problem.
- If a landscape feature covers a number of lots, how can the protection of one of those portions (on a single lot) be certified as having significant value without the protection of the other portions also? This is in contrast to other features such as bush or pa that may cover multiple titles but which still contain significant value in their own right without protection of the rest of the feature.
- Even if all portions were protected, does this warrant a protection lot subdivision for each landowner? There is no way of quantifying the amount that needs to be protected as with other features.

- There is no certainty over what would qualify as protecting a landscape feature. Is it complete avoidance of building on a property i.e. leaving it vacant? Or is it simply building a dwelling in accordance with the rules within the landscape section? This may lead to landowners seeking protection lots for choosing a darker paint colour.

5.2.2 The protection of natural character through the protection lot rules raises many of the same issues discussed above with respect to landscape features. The Regional Council has not provided reasons as to why the protection lot mechanism would be suitable for the protection of natural character.

6.0 Topic 5: Whole of a cultural heritage feature within a subject lot to be protected

6.1 Decision

That Proposed Rule 18.4.2 (h) (vi) is retained as notified.

The following submission is therefore:

Rejected

Submission	Point Number	Name
7	1	Heritage New Zealand

6.2 Reasons

6.2.1 The proposed wording clearly shows the intention of the rule.

6.2.2 It is not the intention of the rule to require a landowner to protect a feature, or portion of a feature, that is outside of their property. It is also not the intention to require landowners to undertake a boundary adjustment to ensure that a feature ends up being within one lot (instead of multiple lots).

7.0 Topic 6: Protection lots for expansion of or access to reserves – clarification of what reserves qualify

7.1 Decision

7.1.1 That Proposed Rule 18.4.2 (h) (viii) (1) is amended as follows;

“The land must provide for expansion ~~(not otherwise shown in the District Plan)~~ of an existing reserve or access ~~(not otherwise shown in the District Plan)~~ to an existing or proposed reserve or esplanade reserve or strip. The acceptance of such applications is at Council's sole discretion.”

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.

The following submission is therefore:

Accepted

Submission	Point Number	Name
16	2	Brian Flegg

7.2 Reasons

7.2.1 Because there are no proposed reserves or accesses to reserves in the Rural Zone, it appears there is no need for the wording "not otherwise shown in the District Plan".

7.2.2 For clarification, "expansion" of a reserve does not include the obtaining of an esplanade reserve, and "existing reserve" does not include an existing esplanade reserve. This needs to be reflected in the rules.

8.0 Topic 7: Minimum size requirements for the creation of protection lots based on land for expansion of or access to reserves

8.1 Decision

That the minimum feature sizes are retained as notified.

The following submissions are therefore:

Rejected

Submission	Point Number	Name
22	3	D155 Limited

8.2 Reasons

8.2.1 Plan Change 52 has already provided matters of discretion (restricted) relating to the strategic value of reserves in addition to the minimum feature sizes currently in place. This is in accordance with the side agreement between Council and D155 Limited to settle their appeal to Plan Change 39 (Protection Lots).

8.2.2 Minimum feature sizes have been retained as they provide a guide as to what level of land provision is likely to be acceptable to gain a protection lot. This will avoid a proliferation of applications for small reserves (for example) and will provide a level of equity between landowners in terms of what they receive for the amount of land given. Applications can still be

granted taking into account the strategic value of what expansions or accesses to reserves are being proposed.

9.0 Topic 8: Non notification rule for expansion of or access to reserves

9.1 Decision

That a non-notification rule is not introduced with respect to applications for expansion of and access to reserves.

The following submission is therefore:

Rejected

Submission	Point Number	Name
16	3	Brian Flegg

9.2 Reason

9.2.1 Expansion of and access to reserves is proposed to be a restricted discretionary activity so is not only limited to "complying" with standards. If applications have the potential to affect other parties, then notification should be required.

10.0 Topic 9: General - Multiple Lots

10.1 Decision

That the rules clarifying which features qualify for a single protection lot or multiple protection lots are retained as notified.

The following submissions are therefore:

Accepted

Submission	Point Number	Name
8	4	Bay of Plenty Regional Council

10.2 Reasons

10.2.1 The submitter supports the proposed changes.

10.2.2 This will provide greater clarity and certainty for prospective applicants and for Council staff when responding to enquiries about opportunities for multiple protection lots.

10.2.3 It will remove existing inappropriate wording applying to applications based on the expansion of or the provision of access to an existing reserve (this wording reserves Council total discretion to not accept any particular application).

11.0 Topic 10: General - Certification of Features

11.1 Decision

That the requirement to certify scheduled ecological features, viewshafts and cultural heritage features is retained.

The following submission is therefore:

Rejected

Submission	Point Number	Name
22	5	D155 Limited

11.2 Reason

11.2.1 Although these features have already had their significance assessed in order to be scheduled, there is no guarantee that they still exist or are in the same condition as when they were first scheduled. For example, the majority of ecological features were first scheduled over 20 years ago and some may have been degraded or removed (partially or fully) over this time. Likewise, viewshafts may have become obstructed and cultural heritage features may have been modified or destroyed. It would defeat the purpose of the protection lot rules to award subdivision opportunities for features that have not actually been protected. Ongoing maintenance will still be required through resource consent conditions.

12.0 Topic 11: Matters of Discretion

12.1 Decision

12.1.1 That the introduction to Rule 18.5.11 (a) is amended to read as follows;

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.

12.1.2 That Rule 18.5.11 (a) (i) is amended to read as follows:

"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 additional lots greater than 1ha are proposed to be located."

12.1.3 That the proposed definition of "rural production activities" is not added to the District Plan.

12.1.4 That Rule 18.5.11 (b) (ii) is amended to read as follows;

“Whether the reserve is in a strategic location, or is to service future urban growth requirements, and there would be a clear public benefit resulting from the additional land or provision of access;”

12.1.5 That Rule 18.5.11 (a) (iii) is amended to read as follows;

“The extent to which the proposal is consistent with any existing reserve management plan or other ~~related Council reserves plan~~ or strategy relevant plans, strategies or policies.

The following submissions are therefore:

Accepted in part

Submission	Point Number	Name
8	2	Bay of Plenty Regional Council
16	5	Brian Flegg
FS53	3	Horticulture NZ and NZ Kiwifruit Growers

12.2 Reasons

12.2.1 The Regional Council’s proposed additional wording to 18.5.11 (a) (i) provides further explanation on what is meant by protecting the capability of the rural land resource. There is no disadvantage of adding the extra wording.

12.2.2 18.5.11 (a) is intended to apply only to protection lot subdivision for three to five lots off a sealed road (which is a restricted discretionary activity). This assessment is essential for all such subdivisions including those based on expansion of or access to reserves. This rule needs to be amended so that its intention is clear.

12.2.3 18.5.11 (b) (ii) allows Council to take into account the strategic value of any opposed reserve expansion or access. The wording change suggested by the submitter provides clarity and does not remove any items from consideration. It also adds the ability to take into account any relevant policies such as national or regional ones.

12.2.4 Adding a further matter of discretion to 18.5.11 (b) to consider whether access to future reserves is necessary to service future urban growth requirements is appropriate provided there is a clear public benefit.

13.0 Topic 12: Additional Lifestyle Zones

13.1 Decision

That proposed rule 18.4.2 (h) (iii) is retained as notified.

The following submission is therefore:

Rejected

Submission	Point Number	Name
5	6	Stratum Consultants Ltd

13.2 Reason

13.2.1 The request is not within the scope of the Plan Change.

14.0 Whole of Plan Change 52 - Changes to the District Plan First Review

14.1 That the protection lot rules are amended as shown in the following attachments;

Attachment A – Strikeout/Underline Version

This shows the proposed changes to the protection lot rule as follows;

New rules

~~Deletion of existing rules~~

Existing rules (unchanged) in a new location

~~Existing rules (unchanged) removed from their existing location~~

Attachment B – Clean Version

This shows the protection lot rule as it would appear in the District Plan.

18.3 Activity Lists

18.3.2 Controlled Activities

- (k) ~~Protection lot subdivision for up to two additional lots off a sealed road as specified in Rule 18.4.2(h)(ii)1.~~

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 the provision of esplanade reserves and strips in accordance with Rules 18.4.2(h)(iv)-(vii) and Rule 18.4.2(ix).

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 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)(iv)-(viii) and Rule 18.4.2(ix).

- (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 in accordance with Rules 18.4.2(h)(iv)-(viii) and Rule 18.4.2(ix).

18.3.4 Discretionary Activities

- (m) ~~Subdivision specified in Rule 18.4.2(h) Protection Lot Subdivision, excluding Matakana Island.~~

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 not in accordance with Rules 18.4.2(h)(i)-(ii), 18.4.2(iv)-(viii), or 18.4.2(ix).

- ~~(q) Protection Lot subdivision not complying with 18.4.2(h)(ii);~~

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

~~In exchange for the protection of an Identified Significant Feature as defined in this District 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 Purpose

~~Over and above what other rural subdivision rules provide for, additional lots 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 significant natural or other existing feature of value to the community, as follows:~~

~~On-site Protection Lots within the Rural Zone maximum of 5 additional lots. The feature to be protected must be within the land being subdivided.~~

~~One or more Transferable Protection Lot credits to be used in conjunction with the subdivision of land within the Lifestyle Zone, subject to compliance with the requirements for subdivision in that Zone (refer Section 17).~~

~~In both the foregoing clauses, clause (vi) of this rule shall apply where the additional lots or credits are being created in conjunction with the protection of an ecological feature.~~

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

- ~~1. An Identified Significant Feature as specified in the District Plan (see Appendices 1, 2, and 3).~~
- ~~2. Other cultural heritage or ecological features subject to clause (iv) of this rule. In the case of ecological features, 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).~~

~~— In the case of cultural heritage features, these are items of historic heritage (as defined in section 2 of the RMA) which are of cultural significance to Maori, including wahi tapu.~~

3. ~~Land for the expansion of, or access to, reserves.~~

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.~~

~~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)(1)(b).~~

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 esplanade strips as listed in Appendix 4A of the District Plan.

5. Land for the expansion of, or access to, reserves.

Except that;

On-site Protection Lots or Transferable Protection Lot credits shall not be created from 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) Qualifying standards for controlled onsite protection lot subdivision~~

~~Up to two additional lots may be created through an on-site Protection Lot subdivision within the Rural Zone, subject to each lot complying with the following:~~

~~1. Vehicle access shall be to an existing sealed road, excluding a State Highway;~~

~~2. Maximum lot size shall be 1ha.~~

~~(iii) Qualifying features~~

~~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 an ecological feature exceeds the size criteria in (iv)1(b) 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.~~

~~(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 ~~of that~~ the Minden Lifestyle Zone Structure Plan ~~being made~~ 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 ~~of that~~ the Minden Lifestyle Zone Structure Plan ~~being made~~ 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. Ecological Features~~

1. ~~In the case of those Identified Significant Ecological Features referred to in Appendix 1 of the District Plan or of other ecological features,~~ Certification from an appropriately qualified independent person that the feature in question meets the criteria in ~~1(b)~~ 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.

~~(b)~~ — Criteria for ecological features

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 ~~areas~~ margins only need to meet criteria ~~(v)~~ (e) and ~~(ix)~~ (h) above to qualify.

~~The following table shows minimum feature size dependent on whether the feature is listed in the District 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 shall 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. 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 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				
		Avg	2	3	4	5
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. 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

~~2.~~ **Viewshafts**

- ~~1.~~ In the case of *Viewshafts* referred to in Appendix 2 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

~~3.~~ **Cultural Heritage Features**

- ~~1.~~ In the case of Identified Significant **Historic 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 esplanade reserves and esplanade strips as listed in Appendix 4A of the District Plan.

1. 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.

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
<u>Esplanade Reserves/Strips In Appendix 4A</u>	<u>130m in length 20m wide</u>	<u>1km 20m</u>	<u>2km 20m</u>	<u>3km 20m</u>	<u>4km 20m</u>	<u>5km 20m</u>
Note <u>The creation of further Transferable Protection Lot credits shall be allowed in accordance with the average specified for the particular feature type.</u>						

2. Within the subject existing lot, where an esplanade reserve or strip exceeds the above sizes then the entire feature shall be protected.

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

(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

~~4. **Land for expansion of, or access to, reserves**~~

~~1. In the case of land for expansion of, or access to, reserves, certification from an appropriately qualified independent person that the feature in question meets the criteria below shall be submitted with the application for subdivision consent.~~

~~2. The land must provide for expansion (not otherwise shown in the District Plan) of an existing reserve, or access (not otherwise shown in the District Plan) to an existing or proposed reserve or esplanade reserve or strip. The acceptance of such applications is at Council's sole discretion.~~

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.

3. 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. and multiple lot entitlement is the same as for the following ecological features:

~~(a) Access equates to Riparian Margins~~

~~(b) Expansion of reserves equates to Wetlands~~

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
<u>Access to an existing or proposed reserve or esplanade reserve or strip</u>	<u>6m wide 500m long</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
<u>Expansion of an existing reserve</u>	<u>0.5ha</u>	<u>1ha</u>	<u>2ha</u>	<u>3ha</u>	<u>4ha</u>	<u>5ha</u>

Note

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

~~(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
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

(ix) Legal protection

Legal protection in perpetuity of the relevant feature of value to the community 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;

~~(viii) Exclusions~~

~~This rule shall not apply to 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.~~

18.5 Matters of Discretion

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

With respect to ~~a Restricted Discretionary Activity~~ or 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

- (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) 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) Maintains existing rural character and amenity values;
 - (iii) Avoids the creation of adverse traffic and roading effects.

- (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 under Rule 18.4.2(h)(viii):
 - (ii) Whether the reserve is in a strategic location, or is to service future urban growth requirements, and there would be a clear public benefit resulting from the additional land or provision of access;
 - (iii) The extent to which the proposal is consistent with any existing reserve management plan or other relevant plans, strategies or policies.

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 the provision of esplanade reserves and strips in accordance with Rules 18.4.2(h)(iv)-(vii) and Rule 18.4.2(ix).

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 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)(iv)-(viii) and Rule 18.4.2(ix).
- (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 in accordance with Rules 18.4.2(h)(iv)-(viii) and Rule 18.4.2(ix).

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 not in accordance with Rules 18.4.2(h)(i)-(ii), 18.4.2(iv)-(viii), or 18.4.2(ix).

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.

In the context of this rule a "feature of value to the community" 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 esplanade strips as listed in Appendix 4A of the District Plan.
5. Land for the expansion of, or access to, reserves.

Except that;

On-site Protection Lots or Transferable Protection Lot credits shall not be created from 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 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 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				
		Avg	2	3	4	5
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. 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 esplanade reserves and esplanade strips as listed in Appendix 4A of the District Plan.

1. 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.

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
Esplanade Reserves/Strips In Appendix 4A	130m in length 20m wide	1km 20m	2km 20m	3km 20m	4km 20m	5km 20m
Note The creation of further Transferable Protection Lot credits shall be allowed in accordance with the average specified for the particular feature type.						

2. Within the subject existing lot, where an esplanade reserve or strip exceeds the above sizes then the entire feature shall be protected.

3. Landowners shall waive the right to compensation under s237E(2) of the *RMA*.

(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 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.

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	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) Legal protection

Legal protection in perpetuity of the relevant feature of value to the community 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

- (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) 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) Maintains existing rural character and amenity values;
 - (iii) Avoids the creation of adverse traffic and roading effects.
- (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 under Rule 18.4.2(h)(viii):
 - (ii) Whether the reserve is in a strategic location, or is to service future urban growth requirements, and there would be a clear public benefit resulting from the additional land or provision of access;
 - (iii) The extent to which the proposal is consistent with any existing reserve management plan or other relevant plans, strategies or policies.