

Planning Report

Plan Change 52 – Protection Lot Rule

1.0 Introduction

1.1 The purpose of this report is to provide recommendations on submissions and further submissions to Plan Change 52 – Protection Lot Rule.

1.2 Plan Change 52 addresses the following matters;

- Introduction of restricted discretionary activity status (RDA) and related matters of discretion, including default activity status for proposals which fail to meet the standards and terms for RDA's;
- Limiting qualifying landscape features to viewshafts only;
- Clarification of the number of protection lots allowed in respect of viewshafts, heritage features and expansions of reserves;
- Clarification of the provisions relating to "land for expansion of and access to reserves", including minimum size criteria;
- Amendments to the layout and wording of the rules to make them more understandable.

1.3 Responses have been provided to all submission points and further submission points based in their merits regardless of whether they fall within the above matters or not.

1.4 For a full background to the Plan Change and the proposed provisions please refer to the Section 32 Report. For a list of the proposed provisions only, please refer to the document titled 'Summary of Recommendations – All Section 32 Reports'.

1.5 Any recommended amendments to rules in this report will be shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and recommendations as a result of this Planning Report in blue.

2.0 Topic 1: Activity Lists

2.1 Background

The activity lists set out the activity statuses given to protection lot subdivision depending on the number of lots being created off a sealed road and on the type of "feature of value to the community" being used.

2.2 Submission Points

- 2.2.1** Bay of Plenty Regional Council support the activity lists and request that they be retained as notified.
- 2.2.2** Brian Flegg requests that any applications for expansion of or access to reserves be restricted discretionary activities but that it is unclear from the wording whether this is the case.
- 2.2.3** D155 Limited request more enabling provisions to provide for features regardless of whether they are currently scheduled or not. They have since clarified to staff that they seek the following;
- Scheduled sites should be a controlled activity and any non-compliance with the relevant standards should make them restricted discretionary with council having discretion around the matter of the values of the feature concerned, public access, linkages etc.
 - Non-scheduled sites should be provided for as discretionary activities as opposed to non-complying activities (as they are at present).

2.3 Discussion

Brian Flegg

- 2.3.1** For clarification, protection lot subdivision for expansion of or access to reserves (that complies with relevant standards) is a restricted discretionary activity for up to as many as five lots off a sealed road. No changes are required.

D155 Limited

- 2.3.2** Scheduled site protection lots (ecological, viewshafts, cultural heritage, esplanade reserves) are already a controlled activity for **two** lots off a sealed road. No reasons are given by the submitter as to why non-compliance with standards (failing to comply with size and quality) should default this to a restricted discretionary activity. 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).
- 2.3.3** Scheduled site protection lots (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.

2.3.4 Non-scheduled site protection lots 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.

Minor edits for clarity

2.3.5 A specific non-complying activity status for other features not classed as "features of value to the community" should be added rather than these defaulting to non-complying through not being listed as they currently do. Otherwise, it is not immediately obvious.

2.3.6 Discretionary activity status (m) needs to make specific reference to "features of value to the community". This is consistent with other activity listings and will also make it clear that it does not apply to "other features".

2.3.7 Other minor edits are also needed to clarify the meaning of "up to five lots" which is used in the activity lists. In one case it means "three to five" lots and in another cases it means "one to five" lots.

2.4 Recommendation

2.4.1 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).

2.4.2 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).

2.4.3 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

2.5 Reason

2.5.1 Scheduled site protection lots (ecological, viewshafts, cultural heritage, esplanade reserves) are already a controlled activity for **two** lots off a sealed road. It was also intended that any non-compliance with relevant standards would default these to a restricted discretionary activity. This requires an amendment to the activity lists.

2.5.2 Scheduled site protection lots (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.

2.5.3 Non-scheduled site protection lots 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.

2.5.4 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 Background

Proposed rule 18.4.2 (h) (i) sets out the "features of value to the community" which are provided for in terms of protection lot subdivision. These are summarised as follows;

- Ecological features (scheduled and non-scheduled)
- Landscape features (scheduled viewshafts only)
- Cultural heritage features (scheduled and non-scheduled)

- Expansion of and access to reserves (non-scheduled only)
- Esplanade reserves (scheduled in Appendix 4A only)

3.2 Submission Points

3.2.1 D155 Limited opposes the use of protection lots being restricted to just those features identified in the District Plan (including cultural heritage features). They also suggest the consideration of land which may be of community benefit but not necessarily vested as a reserve.

3.3 Discussion

3.3.1 The protection lot rules do already specifically provide for non-scheduled ecological features, cultural heritage features and expansion and access to reserves. 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 Topic 4 (landscape) and the Planning Report for Plan Change 53 (esplanade reserves) respectively.

3.3.2 There may be instances where land providing for community benefit (but not a reserve) would be acceptable to Council. No examples are given by the submitter so it is unclear under which circumstances such land would be given to Council without it needing to be vested as a reserve. Such a proposal would be a non-complying activity which is suitable because it is not an anticipated activity in terms of protection lot rules.

3.4 Recommendation

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

3.5 Reason

3.5.1 The protection lot rules do already specifically provide for non-scheduled ecological features, cultural heritage features and expansion and access to reserves.

3.5.2 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 Topic 4 (landscape) and the Planning Report for Plan Change 53 (esplanade reserves) respectively.

- 3.5.3** 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 Background

- 4.1.1** In 2014, as part of an agreement made with D155 Limited to resolve their appeal against Plan Change 39 (Protection Lots), Council staff investigated a separate Plan Change to allow protection lots to encourage the reversal of harbour reclamations. This investigation identified a number of constraints with such an approach.
- 4.1.2** Many reclamations involve infrastructure e.g. roads, railways and wastewater plants and cannot be reversed. Of those remaining on general farmland, a large number are undersize and would not qualify (based on 0.5ha for wetlands). Many other reclamations fall outside of any legal title i.e. those titles that are below MHWS (when last surveyed) and hence are currently not within the District boundary. For this land, there appears to be no legal mechanism available to incorporate these into a title for protection lot purposes. There are also many reclamations that are held within multiple titles so it is not a straight forward matter of dealing with one landowner. There are also question marks over how much dry land would be left over to develop (an on-site protection lot) in some instances. As a result, there were only a small number of reclamations that could possibly be reversed.
- 4.1.3** For these reasons, it was recommended to the Council Committee not to proceed with such a Plan Change. However, the Committee decided that they wished for this topic to be further pursued. Because this was not a straight forward matter, there was not enough time to review it before the notification of Plan Changes 47-68.

4.2 Submission Points

- 4.2.1** D155 Limited point out that as part of their appeal settlement Council had approved the investigation of this Plan Change to allow protection lots for reversing harbour reclamations and claim that this hasn't yet been done. They say the current rules are inadequate and the quality of the environment remains degraded. They request that the words "above MHWS" be deleted from the minimum feature size table for ecological

features to allow protection lots for the reversal of harbour reclamations below MHWS.

- 4.2.2** Brian Flegg also seeks more enabling provisions relating to the enhancement and creation of further wetland areas around the margins of the Tauranga Harbour. The submitter says that Council's interpretation of MHWS which implies that such land is outside of the jurisdiction of the District Plan is incorrect as MHWS is only assessed at the time of survey under s223 of the RMA. They also seek that the words "above MHWS" be deleted from the minimum feature size table for ecological features.

4.3 Discussion

- 4.3.1** As mentioned in the background above, this Plan Change was investigated in 2014 and will be further investigated. Efforts were also made to inform D155 Limited of the outcome of the investigation before it went to the Committee.
- 4.3.2** Council staff have also met with the submitters to discuss the issue of MHWS and have carried out some further research since. 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.

4.4 Recommendations

- 4.4.1** That no changes be made under Plan Change 52 with respect to the issue of deleting the words "above MHWS".
- 4.4.2** 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

4.5 Reasons

- 4.5.1** 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.

- 4.5.2** 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 Background

It is proposed that scheduled landscape features (other than viewshafts) be removed from the list of “features of value to the community” eligible for protection lot subdivision. This is not because landscape features are deemed unworthy of protection but rather because their protection is problematic under the protection lot mechanism.

5.2 Submission Points

- 5.2.1** Bay of Plenty Regional Council oppose the removal of provisions allowing protection lots for landscape features on the grounds that such provisions create opportunities to protect and enhance landscape features such as the Kaimai Ranges, Tauranga Harbour and Wairoa River. They request the development of new provisions to allow protection lots for “Natural Character, Natural Features and Landscape Values” with assessment based on Sets 1 and 2 of Appendix F of the Regional Policy Statement.

5.3 Discussion

Landscape Features

- 5.3.1** The protection of landscape features is problematic under the protection lot mechanism because of how they differ in nature from other features.
- 5.3.2** 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.

5.3.3 Despite these issues, there may be a possibility of awarding subdivision opportunities for the protection of smaller landscapes or prominent features of larger landscapes that fall within a single title or smaller number of titles. The latter will take time to specifically identify.

5.3.4 Ultimately, landscape features are already protected by the District Plan under Section 6 (Landscape). The protection lot rules are not effective in that they do not add much extra value to the protection of landscape features because of the issues discussed. They are also inefficient due to the issues discussed. Landowners can still build within landscape features without having a major impact on the feature provided they comply with landscape controls. This is different to features such as bush, viewshafts or pa where one building or activity within that feature can often have a significant individual effect.

Natural Character

5.3.5 Areas of natural character within the coastal environment have been identified in the Regional Policy Statement to give effect to the New Zealand Coastal Policy Statement. Council must also give effect to the protection of natural character. The protection of natural character through the protection lot rules however raises many of the same issues discussed above. The Regional Council have not provided reasons as to why the protection lot mechanism would be suitable for the protection of natural character.

5.4 Recommendation

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

5.5 Reasons

5.5.1 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.

5.5.2 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 Background

Proposed Rule 18.4.2 (h) (vi) provides that where a cultural heritage feature is being used as the basis for a protection lot subdivision "the whole of the cultural heritage feature falling within the subject site shall be protected".

6.2 Submission Points

6.2.1 Heritage New Zealand support allowing protection lots for cultural heritage features. They however seek clarification on the wording "the whole of the cultural heritage feature falling within the subject existing lot shall be protected". They believe the wording may preclude the possibility of improved protection at the time of subdivision by only referring to the portion of the feature within the existing lot (being subdivided). They request the wording be changed to read "the cultural heritage feature shall be protected in one lot".

6.3 Discussion

6.3.1 It is considered that the proposed wording clearly shows the intention of the rule. If it requires further explanation, the intention is to ensure that a single landowner protects what they can i.e. the feature that is on their property which is subject to the application. Whether this is the whole feature, or a portion of a feature, they still must protect all that is on their property.

6.3.2 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) as implied by the wording suggested by Heritage New Zealand.

6.4 Recommendation

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

6.5 Reason

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

6.5.2 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 Background

7.1.1 Rule 18.4.2 (h) (viii) provides for “expansion of or access to reserves”. Clarification is needed however surrounding what reserves are intended to be provided for under this rule.

7.2 Submission Points

7.2.1 Brian Flegg supports the provisions in general but opposes the provisions only applying to reserves “not otherwise shown in the district plan”. The submitter contends that this wording is irrelevant and there should be no disadvantage to landowners who have access ways or proposed reserves already identified on the planning maps.

7.2.2 It is also apparent from other submissions that there is confusion over whether “expansion” of reserves is intended to include the obtaining of new esplanade reserves, or whether expansion can be of an existing esplanade reserve.

7.3 Discussion

7.3.1 Protection lots for expansion of an existing reserve or access to an existing or proposed reserve or esplanade reserve is currently provided for but only for those expansions or accesses not shown in the District Plan. The only proposed reserves shown on the planning maps are an expansion to Moore Park in Katikati (Maps U44 and U47) and a proposed reserve off Whitehead Avenue within the Te Puke Structure Plan (Map U129). Both are in the residential zone where the protection lot rules don't apply anyway. No specific accesses to reserves on rural land are shown on the planning maps either. Because there are no proposed reserves or accesses in the Rural Zone, it appears

there is no need for the wording “not otherwise shown in the District Plan”.

- 7.3.2** For clarification, “expansion” 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.

7.4 Recommendation

- 7.4.1** 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

7.5 Reason

- 7.5.1** 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”.
- 7.5.2** 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 Background

- 8.1.1** The current District Plan already provides for protection lot subdivision for expansion of and access to reserves based on the following minimum feature sizes;

- Expansion – 0.5ha (equivalent of wetland)

- Access – 500m (equivalent of riparian margins)

8.1.2 The minimum feature sizes were reviewed as part of the agreement made with D155 Limited to resolve their appeal against Plan Change 39 (Protection Lots). D155 Limited specifically requested that Council review the minimum feature size approach to ensure that Council had discretion to decline applications that meet the criteria but which do not actually provide expansion or access to an anticipated level of community benefit.

8.1.3 As a result, matters of discretion were added to allow Council to consider the following matters;

- Whether the reserve is in a strategic location and there would be a clear public benefit resulting from the additional land or provision of access;
- The extent to which the proposal is consistent with any existing reserve management plan or other related Council reserves plan or strategy.

8.2 Submission Points

8.2.1 D155 Limited say that as part of the settlement of their appeal to Plan Change 39 (Protection Lots) it was agreed that the minimum size criteria for gaining a protection lot (500m for access of reserves and 0.5ha for expansion of reserves) needed to be reviewed to ensure the provisions were workable and practicable. They do not consider that this has been reassessed and request that the strategic value of reserves should also be assessed rather than just their length and width attributes.

8.3 Discussion

8.3.1 It is important to note that Council has already reviewed the minimum size criteria in accordance with what was requested by D155 Limited and has given them exactly what they initially requested. The request to make the rules more workable and practical is additional to any previous agreement. Council staff have since met with the submitter to discuss their concerns with the minimum feature sizes. The submitter feels that perhaps minimum feature sizes are irrelevant and that strategic value should be the only consideration.

8.3.2 The reason why minimum feature sizes are in place is to set 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.

8.3.3 The effect of minimum feature sizes on applicants is that a number of expansions of or accesses to reserves which may actually be acceptable to Council will default from a restricted discretionary activity to a discretionary activity. This provides less certainty to applicants, as it allows Council to take matters into account beyond those restricted matters listed. However, from Council's point of view this still allows the ability to accept such applications taking into account their strategic value to Council.

8.4 Recommendation

That the minimum feature sizes are retained as notified.

The following submissions are therefore:

Rejected

Submission	Point Number	Name
22	3	D155 Limited

8.5 Reason

8.5.1 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).

8.5.2 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 Background

9.1.1 At present, there is no rule exempting applications for protection lot subdivision from having to be notified.

9.2 Submission Points

9.2.1 Brian Flegg asks that where complying applications are made in accordance with the District Plan's standards, there should be a specific non-notification rule which enables such applications to

be processed on a non-notified basis without the approval of other parties. The submission applies specifically to expansion of and access to reserves.

9.3 Discussion

9.3.1 The submitter hasn't explained why there is no need for notification. Expansion of and access to reserves is proposed to be a restricted discretionary activity so is not only limited to "complying" with standards. Matters of discretion such as amenity values and traffic effects may be relevant considerations for example. If applications have the potential to affect other parties, then notification should be required. Without further information from the submitter, it is best to take a precautionary approach and not make any changes.

9.4 Recommendation

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

9.5 Reason

9.5.1 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 Background

10.1.1 Within the standards for each "feature of value to the community", it is now made clear what features qualify for a single protection lot or multiple protection lots.

10.2 Submission Points

10.2.1 Bay of Plenty Regional Council support the amendments to the rules clarifying the situations where multiple or single protection lots can be created based on the type of feature being protected.

10.3 Recommendation

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

10.4 Reason

10.4.1 The submitter supports the proposed changes.

11.0 Topic 10: General - Certification of Features

11.1 Background

For scheduled ecological features, viewshafts and cultural heritage features to qualify to be used for a protection lot subdivision, there is a requirement that they be certified by a suitably qualified expert. This certification is to ensure they meet relevant quality standards and to ensure they still exist in terms of their descriptions if they are scheduled in the District Plan.

11.2 Submission Points

11.2.1 D155 Limited challenges the need to certify features which have already had their significance assessed and been identified in the District Plan. They seek that the provisions are simplified to instead focus on ongoing management and maintenance measures to be recommended at resource consent stage.

11.3 Discussion

11.3.1 Although these features have already had their significance assessed in order to be scheduled as the submitter highlights, 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.

11.4 Recommendation

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

11.5 Reason

11.5.1 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 Background

Proposed Rule 18.5.11 sets out the following matters of discretion for restricted discretionary protection lot subdivision. 18.5.11 (a) relates to all features of value to the community while (b) also relates to expansion of and access to reserves.

(a) With respect to on-site Protection Lot subdivision, 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, 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 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 related Council reserves plan or strategy.

12.2 Submission Points

12.2.1 Bay of Plenty Regional Council seek the following amendments;

- Amend 18.5.11 (a) (i) 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."

- Insert a new definition in Section 3 'Definitions' for 'Rural production activities' to read:

"**Rural production activities** means rural land use activities that rely on the productive capacity of land or have a functional need for a rural location such as agriculture, pastoral farming, dairying, poultry farming, pig farming, horticulture, forestry, quarrying and mining. Also included in this definition are processing and research facilities that directly service or support those rural land use activities."

12.2.2 Horticulture NZ and NZ Kiwifruit Grower's further submission supports the Regional Council.

12.2.3 Brian Flegg submits that;

- 18.5.11 (a) should not apply to expansion of, or access to, reserves, because these are irrelevant.
- 18.5.11 (b) should be reworded 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 or strategies or policies".
- Further matters should be added under 18.5.11 to consider whether access to future reserves is necessary to service future urban growth requirements.

12.3 Discussion

Regional Council

12.3.1 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.

12.3.2 However, adding a definition of "rural production activities" just to explain the proposed sentence is not necessary. The District Plan already refers to "rural production" and "primary production" on a number of occasions. These are well understood terms that have never required a definition. If a new definition of "rural production activities" is added just to explain one sentence, it may require all other similar references to be changed to avoid confusion. The definition is already within the Regional Policy Statement so can be referred to if needed.

Brian Flegg

12.3.3 For clarification, 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). It allows Council to take into account potential adverse effects from the larger number of lots that may be created. 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.

12.3.4 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 other relevant policies such as national or regional ones.

12.3.5 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.

12.4 Recommendations

12.4.1 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.

12.4.2 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."

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

12.4.4 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;"

12.4.5 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

12.5 Reasons

12.5.1 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.

12.5.2 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.

12.5.3 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.

12.5.4 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 Background

Proposed rule 18.4.2 (h) (iii) sets out standards that relate to the transfer of protection lot credits into the Lifestyle Zone.

13.2 Submission Points

13.2.1 Stratum Consultants Ltd request that the provisions allow the transfer of subdivision entitlements into areas other than the Minden Lifestyle Zone, in particular Te Puke. They say that the Te Puke Lifestyle Zone is unfeasible and provides a monopoly for development in the Minden.

13.3 Discussion

13.3.1 This submission point is requesting the addition of a new Lifestyle Zone which would then require the preparation of a Structure Plan. Such a request is not within the scope of the Plan Change. Notwithstanding this, such an investigation would be a major project in its own right and is not possible to be investigated through Plan Change 52.

13.4 Recommendation

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

13.5 Reason

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

14.0 Plan Change 52 - Recommended Changes to the District Plan First Review

- 14.1** The purpose of this part of the report is to show the Proposed Plan Change in full including any recommended changes in response to the submissions and further submissions.
- 14.2** Recommended changes to the District Plan First Review are shown as follows; existing District Plan text in black, proposed changes as included in the Section 32 Report in red, and recommendations as a result of this Planning Report in blue.
- 14.3 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;

From Section 32 Report

New rules

~~Deletion of existing rules~~

Existing rules (unchanged) in a new location

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

From this Planning Report

New rules

~~Deletion of existing rules or proposed rules from Section 32 Report~~

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 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).~~

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 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).

- ~~(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
Esplanade Reserves/Strips In Appendix 4A	500m-130m in length 20m wide	1km 20m	2km 20m	3km 20m	4km 20m	5km 20m
<p>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></p>						

~~2. Any esplanade reserve or strip identified in Appendix 4A is able to be combined with any other esplanade reserve or strip identified in Appendix 4A with the express intention of combining their lengths to meet the specified minimum feature size for a single on-site Protection Lot or Transferable Protection Lot credit.~~

~~3. Where esplanade reserves or strips have been combined to meet the minimum feature size in accordance with the above, all of the esplanade reserves or strips will be protected and the single on-site Protection Lot or Transferable Protection Lot credit shall only benefit one of the contributing lots.~~

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

Advice Note: Esplanade reserves and esplanade strips created through this rule will not receive compensation in accordance with section 237E(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
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.						

~~(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
<i>Tall Forest</i>	6ha
<i>Regenerating Forest</i>	8ha
<i>Secondary Shrubland</i>	10ha
<i>Riparian Margins</i>	1km
<i>Wetlands</i>	1ha

Multiple Lots for Features not listed as significant in the District Plan:

Feature Type	Feature Size Requirement per lot
<i>Tall Forest</i>	10ha
<i>Regenerating Forest</i>	16ha
<i>Secondary Shrubland</i>	20ha
<i>Riparian Margins</i>	1km
<i>Wetlands</i>	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.X Matters of Control

18.X.X Protection lot subdivisions based on the provision of land for esplanade reserves and strips

Council shall exercise control over the following;

- a) The landowner has waived the right to compensation under s237E(2) under the RMA.

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 ~~related Council reserves plan or strategy~~ 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
<p>Note The creation of further Transferable Protection Lot credits shall be allowed in accordance with the average specified for the particular feature type.</p>						

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

Advice Note: Esplanade reserves and esplanade strips created through this rule will not receive compensation in accordance with section 237E(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
<p>Note The creation of further Transferable Protection Lot credits shall be allowed in accordance with the average specified for the particular feature type.</p>						

(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.X Matters of Control

18.X.X Protection lot subdivisions based on the provision of land for esplanade reserves and strips

Council shall exercise control over the following;

- a) The landowner has waived the right to compensation under s237E(2) under the RMA.

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, 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 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 related *Council* reserves plan or strategy.