

26 February 2018

Environmental Court
PO Box 7147
Wellesley Street
Auckland 1141

Attention Court Registrar

RE: APPEAL – REYBURN AND BRYANT 1999 LTD

1. We enclose for filing a Notice of Appeal to the Environmental Court and a cheque in the sum of \$600 for court filing fees.
2. We have attended to service on the Whangarei District Council.

Yours faithfully



Brett Hood
Director

cc. Whangarei District Council (by way of service)
Attention: Melissa McGrath
By Email: mailroom@wdc.govt.nz

IN THE MATTER OF

An appeal to the Environment
Court under clause 14 of the First
Schedule to the Resource
Management Act 1991

AND

IN THE MATTER OF

Plan Change 85A-D to the
Whangarei District Plan

BETWEEN

Reyburn and Bryant 1999 Ltd
Appellant

AND

Whangarei District Council
Respondent

**NOTICE OF APPEAL TO THE ENVIRONMENT COURT BY REYBURN AND
BRYANT**

Reyburn and Bryant 1999 Ltd ('Reyburn and Bryant') appeals against part of the decision of the Whangarei District Council ('Council') in respect of Plan Change 85A-D of the Operative Whangarei District Plan.

1. Reyburn and Bryant made a submission seeking, amongst other things, that RPE.3.3(2)(b) be reduced to 4,000m² to enable more of the residual land to be held in a large lot, and that RPE.3.3(2)(a) be amended to enable titles held together under Section 80 of the Building Act to be adjusted in accordance with the boundary adjustment rules in RPE.3.3(2).
3. Reyburn and Bryant is not a trade competitor for the purposes of section 308D of the RMA.
3. Reyburn and Bryant received notice of the Hearing Panel's recommendations and the subsequent notice of Council's decision on 17 January 2018.

Parts of the decision that Reyburn and Bryant is appealing

4. Reyburn and Bryant is appealing RCE.3.3(2).

Grounds for the appeal

5. The general grounds for appeal are:
 - (a) Will not promote the sustainable management of resources, will not achieve the purpose of the RMA, and is contrary to Part 2 and other provisions of the RMA;
 - (b) Will not meet the reasonably foreseeable needs of future generations;
 - (c) Does not manage the use of resources in a way that enables the community to provide for their social and economic well-being;
 - (d) Does not represent an efficient use and development of natural and physical resources;
 - (e) Does not avoid, remedy, or mitigate the adverse effects on the environment;
and
 - (f) Does not represent the most appropriate means of exercising the Respondents function, having regard to the efficiency and effectiveness of

other available means and is therefore not appropriate in terms of section 32 and other provisions of the RMA.

6. Without limiting the generality of the above, the specific grounds of appeal are set out below.
7. The notified version of Rule 3.3(2) included a minimum lot size of 4ha for relocated sites as a requisite for qualification as a controlled activity. It also contained the following requisite requirement:

Results in the ability to construct or locate residential units not exceeding a density of 1 residential unit per net site area of 20ha.

8. The section 32 report described the boundary adjustment rule as follows:

Option 3: Provide for boundary relocation as a controlled activity provided that it does not result in an increase in the number of allotments, create additional allotments less than 4ha in area, result in additional access points or result in the ability to construct or locate residential units exceeding the current existing rights.

9. The section 42 report (at paragraph 264) contained the following statement in respect to the boundary adjustment rule:

264. Rule RCE.3.3.2 does not specify a minimum allotment size, other than the ability to accommodate onsite disposal. Ms McGrath did not consider that RCE.3.3.2(b) and (e) are at odds. In her opinion each clause is seeking a different outcome. Clause (b) is about the number of small allotments seeking to ensure that the number stays the same. *Clause (e) is seeking to ensure that a balance allotment created when relocating a boundary does not result in additional residential density rights [my emphasis].*

10. It was clear in both the section 32 and 42 reports that Clause RCE3.3(2)(e) was not intended to be a de facto minimum lot size. Rather, its purpose was to ensure that the number of residential units that could be constructed as a permitted activity under the 'one dwelling per 20ha' density rule in RCE.2 did not exceed the number of dwellings that could be constructed under the status quo.
11. Notwithstanding the above, the Whangarei District Council resource consents department are now interpreting RCE.3.3(2)(e) as a minimum lot size. Specifically, if a relocated lot does not contain 20ha, it does not comply with this rule. This is an illogical outcome for the following reasons:
 1. The section 32 and 42 reports clearly demonstrate that this was not the intended outcome.

2. There was no scope to increase the minimum lot size from 4ha to 20ha in the Reyburn and Bryant submission, which was the only submission made in respect to this rule.
 3. The notified version of the rule would have contained two minimum lot sizes.
 4. At a 20ha minimum lot size, there would be no point in having a boundary adjustment rule because compliance could be achieved under Rule 3.3(1)(a).
12. RCE.3.3(2)(e) should be amended to properly reflect the clear intent of the rule that was originally notified, and subsequently amended through the submission process, and to avoid subsequent interpretation issues for those charged with administering the District Plan.
 13. RCE.3.3(2)(a) should be amended to clarify the intent of the rule in relation to titles held together under section 80 of the Building Act, 2004. As currently worded there is ambiguity, creating the potential for alternative

Relief sought

15. Reyburn and Bryant seeks:
 - (a) that RCE.3.3(2) be amended as follows:
 2. Boundary relocation subdivision of sites which are existing at [Operative Date] that:
 - a. Results in the same number of sites, except where sites are made of up of separate titles held together under section 80 of the Building Act 2004, where those titles are to be considered as separate sites for the purposes of interpreting this rule.
 - b. Results in no additional vehicle accesses.
 - c. Results in every proposed allotment being able to accommodate a minimum 100m² building area on which a residential unit can be built so that there is compliance as a permitted activity with the relevant rules in the District Plan.
 - d. Demonstrate that management of water supply, stormwater and wastewater can be achieved within the proposed allotments in accordance with Whangarei District Council's Environmental Engineering Standards 2010.
 - e. Results in the ability to construct or locate additional residential units beyond the overall permitted number of residential units able to be constructed on the parent titles.
 - (b) or such consequential or related relief as may be necessary to give effect to its concerns.

Service

16. An electronic and hardcopy of this notice is being served on the Whangarei District Council.

17. No other persons made a submission in respect to the land, and so no other persons have been served with a copy of this notice.

Attachments

18. Copies of the following documents are attached to this notice:
 - A. The original submission.
 - B. The relevant parts of the Hearing Panel Recommendation.

To: Policy Department – Attention: Policy and Monitoring Department

Whangarei District Council
Private Bag 9023
Whangarei 0148
Email: mailroom@wdc.govt.nz

RE: Submission on Plan Change 85A-D, 86, 87

1. Details of persons making submission

Reyburn and Bryant 1999 Ltd ('RB')
Ref: 14228
C/- Reyburn and Bryant
Attention: Brett Hood
PO Box 191
WHANGAREI

2. General Statement

RB cannot gain an advantage in trade competition through this submission. They are directly affected by the plan change. The effects are not related to trade competition.

3. The specific provisions of the Plan Change that this submission relates to are:

All of the provisions being introduced under PC85 'Rural Area', PC85A 'Rural Production Environment', PC85D 'Rural Living Environment', PC86A 'Rural (Urban Expansion) Environment', the overall rule framework for the various zones under PC85A-D, 86A, and 87, and the consequential amendments to the definitions section of the District Plan, but particularly:

- The provisions under RA.1-RA.4.
- The provisions under RPE.1 and RPE .3.
- The provisions under RLE.1, RLE.2, and RLE.3.
- The provisions under RUEE.3.1 (1).
- RPE.3.3 'Boundary relocations'.

4. RB opposes the plan change in part, and seeks a number of amendments/clarifications to the provisions (discussed in section 6 below).

5. **The reasons for opposing the parts of the plan change are as follows:**

In respect to commercial and industrial activities being non-complying activities in the RPE:

1. There is no clear evidence based rationale for controlling commercial activities in rural areas to the extent proposed by the Plan Change.
2. The various provisions will have a significant adverse effect on the Northland and Whangarei economy.
3. The various provisions do not give effect to the Regional Policy Statement for Northland, particularly objective 3.5:

Objective 3.5 Enabling Economic Wellbeing

Northland's natural and physical resources are sustainably managed in a way that is attractive for business and investment that will improve the economic wellbeing of Northland and its communities.

4. The provisions in relation to commercial and industrial activities in the RPE do not achieve sustainable management in accordance with Part 2 of the RMA.

In respect to in-situ environmental benefit subdivision in the RPE and RLE:

5. The absence of any environmental benefit subdivision provisions does not give effect to the Regional Policy Statement for Northland, particularly Objective 3.15, Policy 4.7.1, or Method 4.7.4.
6. The absence of any subdivision incentives for the protection and enhancement of bush and wetland areas does not achieve sustainable management in accordance with Part 2 of the RMA.

In respect to the RUEE subdivision provisions (RUEE.3.1):

7. While the overall intent of the RUEE is supported, RUEE.3.1 (1) (b) will have the effect of defaulting a subdivision designed under the Living 1 provisions to a non-complying activity under RUEE.3.1 (4) should it infringe one or more of the Living 1 subdivision rules. For example, a residential subdivision that does not comply with say Rule 71.3.8 'Property Access', cannot therefore comply with RUEE.3.1 (1), and subsequently defaults to a non-complying activity under RUEE.3.1 (4).

In respect to boundary relocations (RPE.3.3 (2)):

8. RPE.3.3 (2) (a) should refer to titles rather than allotments.
9. The minimum lot size in RPE.3.3 (2) (b) should be reduced to 4,000 m² to enable more of the residual land to be held in a large lot, therefore increasing the potential for productive rural land use.

10. A minimum lot size of 4 ha under RPE.3.3 (2) (b) fragments the rural land resource to a greater extent than a 4,000 m² allotment.

11. RB supports the "relocation" terminology as opposed "adjustment".

6. RB wishes the Whangarei District Council's decision to address the above issues by:

1. Including a new objective in RA.1.2 and RPE.1.2 as follows:

To enable the establishment and continued operation of commercial and industrial activities where, for efficiency and practicality, those activities need to be located in close proximity to the natural and/or physical resource.

Or words to similar effect.

2. Adding a new policy in RA.1.3 and RPE.1.3 as follows:

To enable the establishment and continued operation of commercial and industrial activities where it can be demonstrated that activities:

- a. Contribute positively to the economy of the District.*
- b. Provide local employment opportunities.*
- c. Can meet and fund local infrastructure requirements.*
- d. Incorporate appropriate mitigation and management methods designed to ensure environmental effects are acceptable in the area in which the activities are proposed to be located.*

Or words to similar effect.

3. Amending rule RPE.2.1(1) so that commercial and industrial activities are permitted activities subject to compliance with RDA criteria (as opposed to non-complying).

Or alternative relief with similar effect.

4. Deleting RPE.2.1(5) and instead including it as a restricted discretionary activity qualification criterion under RPE.2.3.

Or alternative relief with similar effect.

5. Restructuring RA.2.1, 2.2, 2.3, RPE.2.1, RPE.2.2, RPE.2.3, and RLE.2.1, RLE.2.2, and RLE.2.3 to include restricted discretionary activities and specific assessment criteria, as an alternative to full discretionary status, particularly in respect to effects based rules (i.e. those relating to building bulk and location, traffic movements, signage).

Or alternative relief with similar effect, including changes to other parts of PC85A-D, 86, and 87 to provide a consistent format.

6. Including in-situ environmental benefit subdivision rules in the RPE and the RLE, where bush and wetland is to be protected and the feature(s) meet specified significance

criteria, and/or where significant environmental enhancement works are proposed and those works meet specified criteria.

7. Deleting RUEE.3.1 (1)(b).

8. Amend RPE.3.3 (2) (a) so that it refers to titles rather than allotments.

9. Amend RPE.3.3 (2) (b) so that the minimum lot size is 4,000 m². Most boundary adjustments will be carried out by farmers who do not want to dispose of 4 ha or more of farmland.

10. A copy of a suggested rule framework for land use in the RA and RPE is provided in **Attachment 3**.

7. RB wishes to be heard in support of their submission at a hearing if one is held.



Brett Hood

Planning Consultant

On behalf of Reyburn and Bryant 1999 Ltd

Dated this 4th day of October 2016.

Attachment: 1. Suggested RA and RPE land use rules

RA.2

Rural Area Land Use Performance Standards

RA.2.1 Eligibility Rules

1. Any land use activity using, storing or disposal of radioactive material with an activity exceeding 1000 terabequerels is a prohibited activity.
2. Any activity not requiring consent as a restricted discretionary, or discretionary activity is a permitted activity.
3. Any activity where exposures do not comply with NZS 2772.1: 1999 Radiofrequency fields Part 1: Maximum Exposure Levels 3kHz – 300 GHz.

RA.2.2 Notification Rules

1. All land use activities are subject to the notification test of the RMA.

RA.2.3 Restricted Discretionary Activities

The following activities are restricted discretionary activities in every rural environment unless otherwise stated:

1. The use storage or on-site movement of hazardous substances that does not comply with the conditions will permitted activities in Appendix 8 the District plan.
2. The movement of hazardous substances between sites by means of an aboveground pipeline.
3. Any sign which is visible from a public place or neighbouring property(s) (except if required under health and safety legislation, or as directed by a road controlling authority for traffic control or public safety) if the sign:
 - i. Is not a property name sign, a sign relating to goods and services on site, or a community sign.
 - ii. Is not the only sign displayed per site (except within the SRIE).
 - iii. Obscures any official signs or traffic signals.

- iv. It is not static.
- v. Is flashing.
- vi. Is illuminated.
- vii. Is higher than 3 m from the ground including its support structure (except within the SRIE).
- viii. Is larger than 3 m² (except within the SRIE)
- ix. Does not provide an unrestricted view to motorists for a minimum distance of 250 m where the road has a speed limit of 70 km/h or greater.

Note: Council Bylaws regular signs within the legal road boundary, road verges and road reserves, election signs, real estate signs, temporary signs, signs on vehicles & is located in public places.

4. Outdoor storage areas or stockpiles that:

- i. Exceed the building height, setbacks and height in relation to boundary rules for the Environment they are located in (except within Mineral Extraction Areas).
- ii. Are within the RVRE and are open areas of storage or stockpiles of materials which are not screened from view from public places and surrounding sites, except where such materials or equipment:
 - (a) Are accessory to agricultural, horticultural or forestry activities; or
 - (b) Include functioning machinery, stockpiles of mineral resources, or construction materials.

5. Any artificial lighting (except if required under health and safety legislation, street lighting, navigation light or a traffic signal) that does not comply with the following standards:

- i. The added illuminance onto any other site measured at the boundary does not exceed 10 lux at any receiving property boundary, or 15 lux at any road reserve boundary.
- ii. The artificial light is shielded in such a manner that light emitted by the fixture is projected below a horizontal plane running through the lowest point on the fixture.

- iii. The light is static, and is not flashing (except lighting on vehicles associated with mineral extraction and related activities, or flashing beacons in accordance with the Land Transport Road Use Rule 2004).
- iv. The artificial lighting complies with AS/NZS 1158/1996.

RPE.2.4 Restricted Discretionary Assessment Criteria

Discretion is restricted to the following matters:

1. In relation to RA.2.3 (1) and RA.2.3 (2):
 - a. *Human safety.*
 - b. *Soil contamination.*
 - c. *Contamination of water bodies.*
 - d. *The general quality of the natural environment.*
2. In relation to RA.2.3 (3):
 - a. *Traffic safety.*
 - b. *The scale and appearance of the sign relative to other signs in the vicinity.*
 - c. *Rural and residential amenity values (including visual effects).*
3. In relation to RA.2.4 (4):
 - a. *The extent to which the visual effects of the stockpile can be mitigated to avoid adverse effects on amenity values.*
 - b. *Access to sunlight and related effects on amenity values.*
 - c. *The extent to which the visual effects of the stockpile can be mitigated to avoid adverse effects on natural character and landscape values (including those pertaining to the coastal environment).*
4. In relation to RA.2.4 (5):
 - a. *Orientation, strength, intensity, colour, frequency of flashing of the light;*
 - b. *Effects on traffic safety;*
 - c. *Positive effects on pedestrian safety;*
 - d. *Effect on amenity values.*

RLE.2

Landuse

RLE.2.1 Eligibility Rules

1. Commercial activities located within 100 m of a sensitive activity (excluding non-habitable buildings) are discretionary activities.
2. Mineral extraction activities within the Mining Area of a Mineral Extraction Area are exempt from RPE.2.1.3, RPE.2.3.3 (a) and (b) and will be assessed by applying Mineral Extraction Area chapter.
3. Mineral extraction activities are a discretionary activity if the activity:
 - a. Extracts over 5,000 m³ in any 12-month period on the site.
 - b. Undertakes blasting.
 - c. Establishes within 500 m of an existing sensitive activity on any adjacent site.
4. The construction of more than 1 residential unit per site is a discretionary activity.
5. Any place of assembly is a discretionary activity.
6. The destruction or clearance of an area exceeding 500 m² of predominantly indigenous vegetation that forms a contiguous area of 1 ha or more is a discretionary activity.
7. Any activity ancillary to farming or plantation forestry that operates within 250 m of an existing sensitive activity (excluding non-habitable buildings) on a separate site is a discretionary activity.
8. The construction of minor residential units:
 - a. Resulting in more than one minor residential unit per site;
 - b. That has a separate access/driveway from the principle residential unit;is a discretionary activity.

9. Home occupations that:
 - a. Generate more than 20 traffic movements per day
 - b. Do not provide the required parking spaces;
 - i. 1 in addition to that of the residential unit.
 - ii. Plus 1 per employee.
 - iii. Plus 1 in circumstances where clients visit the site.
 - c. In addition to the principal operator, have more than 2 other persons engaged in the activity.
 - d. Use more than 15% of the total GFA of all buildings on site.
 - e. Have a total signage area greater than 0.25 m².
 - f. Have illuminated or moving signage.
10. Industrial activities are a non-complying activity.
11. Any other activities not requiring consent as a restricted discretionary, discretionary, or non-complying activity are permitted activities.

RLE.2.2 Notification Rules

1. All land use activities are subject to the notification test of the RMA.

RLE.2.3 Restricted Discretionary Activities

The following activities are restricted discretionary activities:

1. Any sensitive activity (excluding non-habitable buildings) within:
 - a. 500 m of The Mining Area of a Mineral Extraction Area, a Strategic Rural Industry or a Business Environment.
 - b. 100 m of an unsealed metal road.
 - c. 30 m of the Rural Production Environment.
 - d. 30 m of production forestry.
2. Any building:
 - a. That exceeds a height equal to 3 m plus the shortest horizontal distance between that part of the building and the site boundary.
 - b. That exceeds a maximum height of 8 m.

- c. Within 10 m of any road boundary or within 3 m of any other boundary.
 - d. That results in site coverage exceeding 500 m².
 - e. Within 27 m of Mean High Water Springs (excluding bridges, culverts and fences).
 - f. Within 27 m of the top of the bank of any river that has a width exceeding 3 m (excluding bridges, culverts and fences).
- 3. Impervious areas greater than 15% of the net site area.
 - 4. Commercial activities that generate more than 30 traffic movements in a 24-hour period.

RLE.2.4 Restricted Discretionary Assessment Criteria

Discretion is restricted to the following matters:

- 1. In relation to RLE.2.3 (1):
 - a. *Avoiding, remedying, or mitigating reverse sensitivity effects.*
 - b. *Enabling the rural industry to continue to operate in an unconstrained manner.*
 - c. *Enabling activities in business zones to operate in an unconstrained manner.*
 - d. *Dust nuisance.*
- 2. In relation to RLE.2.3 (2):
 - a. *The scale and bulk of the building relative to the scale and bulk of buildings in the surrounding environment.*
 - b. *The extent to which the visual effects of the building can be mitigated to avoid adverse effects on amenity values.*
 - c. *The extent to which the effects of the building can be mitigated to avoid adverse effects on natural character and landscape values (including those pertaining to the coastal environment).*
 - d. *Access to sunlight and related effects on amenity values.*
 - e. *The future provision of esplanade reserves.*
 - f. *The ecological values of fresh and coastal water bodies.*
- 3. In relation to RLE.2.3 (3):

- a. *The need for attenuation.*
 - b. *Effects on upstream and downstream properties.*
4. In relation to RLE.2.3 (4):
- a. *Traffic noise.*
 - b. *Timing of movements, including hours of operation.*
 - c. *Traffic safety.*
 - d. *The existing traffic environment.*
 - e. *Effects on rural amenity.*

RPE.2

Landuse

RPE.2.1 Eligibility Rules

1. Commercial and industrial activities located within 100 m of a sensitive activity (excluding non-habitable buildings) are discretionary activities.
2. Mineral extraction activities within the Mining Area of a Mineral Extraction Area are exempt from RPE.2.1.3, RPE.2.3.3 (a) and (b) and will be assessed by applying Mineral Extraction Area chapter.
3. Mineral extraction activities are a discretionary activity if the activity:
 - a. Extracts over 5,000 m³ in any 12-month period on the site.
 - b. Undertakes blasting.
 - c. Establishes within 500 m of an existing sensitive activity on any adjacent site.
4. The construction of more than 1 residential unit per site, or 1 residential unit per 20 ha of net site area, is a discretionary activity.
5. Any place of assembly located within 100 m of a sensitive activity (excluding non-habitable buildings) are discretionary activities.
6. The destruction or clearance of an area exceeding 500 m² of predominantly indigenous vegetation that forms a contiguous area of 1 ha or more is a discretionary activity.
7. Any activity ancillary to farming or plantation forestry that operates within 250 m of an existing sensitive activity (excluding non-habitable buildings) on a separate site is a discretionary activity.
8. The destruction of an indigenous wetland is a non-complying activity.
9. Any other activity not requiring consent as a restricted discretionary, discretionary, or non-complying activity is a permitted activity.

RPE.2.2 Notification Rules

1. All land use activities are subject to the notification test of the RMA.

RPE.2.3 Restricted Discretionary Activities

The following activities are restricted discretionary activities:

1. Any sensitive activity (excluding non-habitable buildings):
 - a. Within 500 m of:
 - i. The Mining Area of a Mineral Extraction Area;
 - ii. A strategic Rural Industry Environment or a Business Environment.
 - b. Within 100 m of an unsealed metal road.
 - c. Within 30 m of existing production forestry on a separate site.
 - d. Within 250 m of:
 - i. An existing intensive livestock activity on a separate site.
 - ii. An existing activity ancillary to farming or plantation forestry on a separate site.
2. Any building:
 - a. That exceeds a maximum height of 10 m.
 - b. Within 8 m of a site boundary.
 - c. That results in site coverage exceeding 5% of the net site area, or 500 m² whichever is the greater.
 - d. Within 27 m of Mean High Water Springs (excluding bridges, culverts and fences).
 - e. Within 27 m of the top of the bank of any river that has a width exceeding 3 m (excluding bridges, culverts and fences).
3. Commercial and industrial activities that generate more than 30 traffic movements in a 24-hour period.

RPE.2.4 Restricted Discretionary Assessment Criteria

Discretion is restricted to the following matters:

1. In relation to RPE.2.3 (1):
 - a. *Avoiding, remedying, or mitigating reverse sensitivity effects.*
 - b. *Enabling the rural industry to continue to operate in an unconstrained manner.*
 - c. *Dust nuisance.*
2. In relation to RPE.2.3 (2):
 - a. *The scale and bulk of the building relative to the scale and bulk of buildings in the surrounding environment.*
 - b. *The extent to which the visual effects of the building can be mitigated to avoid adverse effects on amenity values.*
 - c. *The extent to which the effects of the building can be mitigated to avoid adverse effects on natural character and landscape values (including those pertaining to the coastal environment).*
 - d. *The future provision of esplanade reserves.*
 - e. *The ecological values of fresh and coastal water bodies.*
3. In relation to RPE.2.3 (3):
 - a. *Traffic noise.*
 - b. *Timing of movements, including hours of operation.*
 - c. *Traffic safety.*
 - d. *The existing traffic environment.*
 - e. *Effects on rural amenity.*

opinion, the most effective and efficient means to do this is to provide new provisions which align with the new format of the WDP and are up to date with criteria within the RPS. The Hearings Panel agrees.

256. Ms McGrath undertook a review to ensure that the provisions in Attachment 1 of Part 7 of her s42A ROR report could mitigate identified risks and costs to an acceptable degree. In doing so, she conditionally agreed in part with Ms Nathan's evidence that proportionally incrementing environment benefit lots awarded with value or scale of protected land will provide an effective incentive. Mr Wright, a qualified Ecologist, provided a technical review of the submissions and recommended provisions. Mr Wright supported the approach of proportionally incrementing environment benefit lots (a written statement was attached to the ROR Part 7, Attachment ROR.1). Ms McGrath also considered however, that allotments granted under environment benefit provisions need to be limited so that the character of the RCE (including ecological values) is not compromised and so that the potential to use land for rural production activities is not materially compromised.
257. The Hearings Panel finds that new recommended provisions addressing environmental benefit subdivision are appropriate. However, while we have included the Environmental Benefit Lot subdivision into the PC85A provisions, we consider a more detailed and specific s32 consideration of this type of subdivision option be completed as part of the forthcoming biodiversity plan change. This may further refine or improve the provisions, as well as consideration of the option of transferable titles.

Environmental Benefit Lot and Transferable Title Rights- Recommendation

258. The Hearings Panel recommends to Council to:

- **Accept in part** the relief sought by submission points 195/5, 196/2, 413/4, 309/8 and 9 and 311/1 and 2, 336/12, 382/1, 382/2, 428/2, 447/1, and 394/1 357/1 and 357/2.
- **Insert new provisions** as set out in the revised provisions for PC85A.

Boundary Relocation- Submission Information

259. Terrence Hailes⁹⁵, Reyburn and Bryant 1999 Ltd⁹⁶ and FNDC⁹⁷ stated the following:

- RCE.3.3(2) (a) should refer to titles rather than allotments.
- Rule RCE.3.3(2) Boundary Adjustment should be amended, Clauses (b) and (e) are at odds with each other.
- The minimum lot size in RCE.3.3(2) should be reduced to 4000m² to enable more of the residual land to be held in a large lot, therefore increasing the potential for productive rural land use. A minimum lot size of 4ha under RCE.3.3.2(b) fragments the rural land resource to a greater extent than a 4000m² allotment.

⁹⁵ 249/8

⁹⁶ 309/12

⁹⁷ 410/43

- Supports the 'relocation' terminology as opposed to 'adjustment'.
- The boundary adjustment rule is inflexible and should not be contingent on resultant allotment size, particularly if no additional development rights ensue, or a boundary adjustment is to facilitate "enhanced" rural production (through amassed landholdings).

260. FFNZ⁹⁸ supported RCE.3.3.2.

261. Mr Hood on behalf of Reyburn and Bryant provided a written statement supporting the amendments recommended in the s42A report.

Boundary Relocation- Discussion

262. The s32 report demonstrates that the purpose of RCE.3.3.2a was to ensure that the boundary relocation did not result in the ability to construct additional residential units. We understood from Reyburn and Bryant that they were concerned that the reference to 'allotment' will not achieve this purpose because an application could potentially involve multiple 'allotments' with amalgamation conditions, potentially technically increasing the number of allotments but not increasing development potential. Ms McGrath in her s42A report expressed concern with the particular relief sought is that 'title' is not defined within the WDP, while "site" is defined:

Site

means an area of land or volume of space, shown on a plan with defined boundaries, and includes:

1) a) Land which is:

- i. Comprised in a single allotment or other legally defined parcel of land, and held in a single certificate of title; or
- ii. Comprised in a single allotment or legally defined parcel of land for which separate title cannot be issued without further consent of the council; or

b) An area of land which is comprised of two or more adjoining certificates of title where such titles are:

- i. Subject to a condition imposed under Section 80 of the Building Act 2004; or
- ii. Held together in such a way that they cannot be dealt with separately without the prior consent of the council; or

2) In the case of land subdivided under the cross lease or company lease systems (other than strata titles), an area of land containing:

- a) A building for residential or business purposes with any accessory building, plus any land exclusively restricted to the users of those buildings; or
- b) A remaining share or shares in the fee simple creating a vacant part of the whole for future cross lease or company lease purposes; or

3) In the case of land subdivided under the Unit Titles Act 1972 (other than strata titles), site shall mean an area of land containing a principal unit or proposed unit on a unit plan, together with its accessory units; or

4) In the case of strata titles, site shall mean the underlying certificates of title, immediately prior to subdivision.

Site shall also include the access to the site.

263. To ensure consistency and avoid confusion Ms McGrath supported the rule being amended to refer to 'site'.

264. Rule RCE.3.3.2 does not specify a minimum allotment size, other than the ability to accommodate onsite disposal. Ms McGrath did not consider that RCE.3.3.2(b) and (e) are at odds. In her opinion each clause is seeking a different outcome. Clause (b) is about the number of small allotments seeking to ensure that the number stays the same. Clause (e) is

⁹⁸ 253/23

seeking to ensure that a balance allotment created when relocating a boundary does not result in additional residential density rights.

265. The Hearings Panel finds that there is a risk that an applicant may hold multiple large allotments and relocate boundaries to create numerous 4ha allotments and a medium balance allotment because the rule does not specify a maximum number of resultant allotments being created.

Boundary Relocation Recommendation

266. The Hearings Panel recommends to Council to:

- **Accept in part** submission point 249/8,309/12 and 410/43.
- **Accept** submission point 249/6 and that the notified provisions be amended as set out in the revised plan provisions for PC85A.

M. Minor Amendments

Submission Information

267. FNDC⁹⁹ requested that the word “dairy” be replaced with “pastoral” in RCE.1.1 paragraph 2, to include sheep and beef farming as well as dairying. FNDC also requested the amendment of RCE.2.1 to clarify the status of home occupations.
268. Trevor Shaw¹⁰⁰ stated that the name ‘Rural Production Environment’ is not appropriate. RCE.2.1.1 Many small properties are caught in this Environment and will never be a productive rural property. Many of these are suited to rural lifestyle.
269. Numerous submissions¹⁰¹ requested that RCE.1.1 refers to rural production activities “as dairy farming, horticulture and forestry”, however throughout the document there are separate references to farming, horticulture and intensive farming.
270. Jennifer Hudson¹⁰² sought the addition of land fill, managed fill and clean fill activities as non-complying activities to RCE.2.1 Eligibility Rules.
271. Sarndra Rotherham¹⁰³ requested the exclusion of avocado orchards from sensitive activity, and to protect daily operation of avocado orchards to be maintained as currently.

Discussion

272. We agree with submitters that clear use of terminology is important and recommend that the consistent use of ‘rural production activities’ is applied consistent with the recommended definition (refer to Part 1 of the s42A report, Topic O).

⁹⁹ 410/32

¹⁰⁰ 469/1

¹⁰¹ 181/1, 186/1, 191/1, 203/1, 219/1, 233/1, 244/1, 260/1, 261/1, 277/1, 235/1, 85/1, 314/1, 406/1, 426/1 250/8

¹⁰² 53/1

¹⁰³ 84/1