

Western Bay of Plenty District Council

Change to the District Plan – First Review

Plan Change 77 Cleanfill Not Originating from the Site

Section 32 Report

Prepared by: Paula Golsby, Resource Management Planner – PMG Planning

1.0 Introduction

1.1. General Introduction and Background

The purpose of this report is to consider a plan change to clarify the permitted activity rules relating to the disposal of cleanfill not originating from the site where it is to be disposed.

2.0 Resource Management Act 1991

2.1. Section 32

Before a proposed plan change can be publicly notified the Council is required under section 32 ("s.32") of the Act to carry out an evaluation of alternatives, costs and benefits of the proposed review. With regard to the Council's assessment of the proposed plan change s.32 requires the following:

- 1) *An evaluation report required under this Act must—*
 - (a) *examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of this Act; and*
 - (b) *examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by—*
 - (i) *identifying other reasonably practicable options for achieving the objectives; and*
 - (ii) *assessing the efficiency and effectiveness of the provisions in achieving the objectives; and*
 - (iii) *summarising the reasons for deciding on the provisions; and*
 - (c) *contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.*
- 2) *An assessment under subsection (1)(b)(ii) must—*
 - (a) *identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*
 - (i) *economic growth that are anticipated to be provided or reduced; and*
 - (ii) *employment that are anticipated to be provided or reduced; and*
 - (b) *if practicable, quantify the benefits and costs referred to in paragraph (a); and*
 - (c) *assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.*
- 3) *If the proposal (an amending proposal) will amend a standard, statement, regulation, plan, or change that is already proposed or that already exists (an existing proposal), the examination under subsection (1)(b) must relate to—*
 - (a) *the provisions and objectives of the amending proposal; and*
 - (b) *the objectives of the existing proposal to the extent that those objectives—*
 - (i) *are relevant to the objectives of the amending proposal; and*
 - (ii) *would remain if the amending proposal were to take effect.*
- 4) *If the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibitions*

or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect.

2.2. Section 74

In accordance with Section 74(2A) of the Act, Council must take into account any relevant planning document recognised by an iwi authority lodged with Council.

None of the iwi/hapu management plans lodged with Council raise any issues of particular relevance to this Plan Change.

3.0 Consultation

Due to the minor and technical nature of this proposed change, and given the change is proposed to reflect the original intent of the rules (as set out within the s.32 Report of the "Amenity" chapter prepared for the District Plan Review), there has been no specific consultation with the public.

Internal consultation has been undertaken with the Consents Team and Compliance Officers.

4.0 Issue 1 – Cleanfill Rules

A review of section 4C.2 of the District Plan (2012) has identified that the rules relating to the disposal of cleanfill, organic waste, and solid waste are unclear. Amendments are required to ensure the intent of the rules is accurately reflected within the District Plan.

The District Plan includes the following rules relating to the disposal of solid waste:

4C.2.3.1 Permitted Activities

(a) Disposal on private land (i.e. not to an authorised landfill) of the following solid waste materials:

- (i) Cleanfill;*
- (ii) Organic waste (e.g. shelter trimmings, home composting) that originates from the site itself.*

4C.2.3.2 Discretionary Activities

Storage or disposal on private land (i.e. not to an authorised landfill) of solid waste that is not derived from the site on which it is located, whether man-made or natural.

Rules 4C.2.3.1(a)(i) and 4C.2.3.2 are contradictory and it is unclear whether the disposal of cleanfill is permitted if the material does not originate from the same site on which it is to be disposed. On one hand Rule 4C.2.3.1(a)(i) clearly identifies the disposal of cleanfill as a permitted activity regardless of where the material has originated. To the contrary, Rule 4C.2.3.2 identifies that all solid waste (which includes cleanfill) disposed of or stored on a site requires resource consent for a discretionary activity if

the material has not originated from the site where it is to be stored/disposed.

The permitted activity rules for the disposal of cleanfill and organic waste are also different in that the disposal of organic waste is only permitted if it originates from the site on which it is to be disposed. Cleanfill, however, is permitted no matter where it originates.

The key issue with the current rules is that there is confusion as to whether cleanfill can be transported from one site and disposed at different site without the need for resource consent.

To understand the context and reasons for the solid waste rules, a review of the previous Western Bay of Plenty District Plan (2002) and the s.32 report prepared for the "Amenity" section of the District Plan (First Review) has been undertaken. The s.32 report has a significant bearing on the intention behind the rules.

The previous District Plan included the following permitted activity rule relating to cleanfill and organic waste:

"The following solid waste materials are permitted to be disposed of on private land (i.e. not to a community solid waste management site):

- *cleanfill (subject to Regional Council control).*
- *organic waste (e.g. shelter trimmings, home composting) that originates from the site itself."*

Under the previous District Plan, the disposal of all other solid waste required resource consent for a non-complying activity under Rule 8.1 (unless specifically identified within the relevant land use zone).

The s.32 report for the "Amenity" section of the District Plan Review included a specific topic and issue to consider '*Solid Waste (dumping of cars on private property)*'. The issue appears to have been raised by compliance staff at the time who could not determine a definition of "solid waste" and therefore could not distinguish between the disposal of waste and the collection of property for personal use. As a result, a new discretionary activity rule was proposed (as an option) which read as follows (and which was later refined through the District Plan Review process):

"Storage and disposal on private land (i.e. not to a community solid waste management site) of solid waste that is not derived from the site on which it is located, whether man-made or natural."

The s.32 report evaluated this option as the preferred method as it *"...will give Council the greatest ability to control unsightly solid waste dumps on private property. It will be explicitly clear that cleanfill and organic waste are permitted to be disposed of on private land, and that any other disposal requires Discretionary Resource Consent."*¹

¹ Section 3.1.1 of the s.32 analysis

It is clear from the s.32 report that the purpose of the discretionary rule is to control unsightly solid waste dumps on private land and that cleanfill and organic waste disposed of on private land are to be permitted. The key focus of the rules is the location of the disposal site (private land or public dump) rather than the transportation or origin of the waste material. This is supported by the location of the rules within the "Amenity" section of the Plan.

4.1. Option 1 – Status Quo

Costs	<ul style="list-style-type: none"> ▪ Unclear rules which result in confusion for the community, consent applicants, and Council in terms of consent requirements. ▪ Lack of clarity results in additional and unnecessary financial costs for the community, the Council, and consent applicants due to the time spent resolving disputes regarding rule interpretation and in preparing and processing resource consent applications.
Benefits	<ul style="list-style-type: none"> ▪ No identified benefits.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Not effective in addressing the identified issue. ▪ Lack of clarity regarding application of rules results in inefficient use of resources and unnecessary financial costs for the community, Council, and consent applicants.
Risks of Acting/ Not Acting if there is uncertain or insufficient information about the subject matter	<ul style="list-style-type: none"> ▪ N/A – Sufficient information is available.

4.2. Option 2 – Amend Rules 4C.2.3.1 and 4C.2.3.2 to Clarify the Disposal of Cleanfill is Permitted Regardless of Origin

Costs	<ul style="list-style-type: none"> ▪ No identified costs
Benefits	<ul style="list-style-type: none"> ▪ Will ensure rules are clear and reduce time/cost for the community, Council and consent applicants in terms of clarifying rules and preparing and processing resource consent applications.
Effectiveness/ Efficiency	<ul style="list-style-type: none"> ▪ Amending the rules is effective in addressing the identified issue, reflects the intent of the rules as set out in the s.32 Report for the "Amenity Chapter", and would achieve the relevant objective of the District Plan which is: <i>"Protecting the environment from the adverse effects of the storage and disposal of solid waste."</i> ▪ Amending the rules is considered to be the most efficient method to address the identified issue.
Risks of Acting/ Not Acting if there is	<ul style="list-style-type: none"> ▪ N/A – Sufficient information is available.

uncertain or insufficient information about the subject matter	
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4.3. Preferred Option

The preferred option is:

Option 2 – Amend Rules 4C.2.3.1(a) and 4C.2.3.2 to clarify cleanfill is permitted regardless of origin as follows:

4C.2.3.1 Permitted Activities

(a) Disposal on private land (i.e. not to an authorised landfill) of the following solid waste materials:

- (iii) Cleanfill, whether originating from the site on which it is disposed or not;*
- (iv) Organic waste (e.g. shelter trimmings, home composting) that originates from the site itself.*

4C.2.3.2 Discretionary Activities

Storage or disposal on private land (i.e. not to an authorised landfill) of solid waste (excluding cleanfill) that is does not ~~derived~~ originate from the site on which it is located, whether man-made or natural.

4.4. Reasons

The preferred option is considered to be the most effective and efficient method to address the lack of clarity and conflicts between Rules 4C.2.3.1(a) and 4C.2.3.2. It also reflects the intent of the solid waste rules as set out within the s.32 Report for the “Amenity” section prepared for the District Plan Review and ensures consistency of terminology between the rules.