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## **Session Two**

**SESSION CHAIR - Lyall Thurston, Bay of Plenty Regional Councillor**

### **WHERE ELSE HAVE TDRs BEEN APPLIED**

**Phillip Martelli**

*Phillip originally hails from Reporoa. His upbringing and living rurally in the Western Bay of Plenty District for many years, including developing his own orchard, gives him a strong appreciation of the rural environment. Phillip has been with the Western Bay of Plenty District Council for 23 years. As the policy planning manager he has been involved with the evolution of the Protection Lot Rule in district plans from the very beginning. Originally they were bush protection lots for on-site subdivision but now they are a tradable commodity allowing the rights to a title to be transferred to elsewhere in the district.*

#### **The Western Bay of Plenty District Council Protection Lots**

I originally came from Reporoa but I have been with the Western Bay of Plenty District Council for 23 years and involved with TDRs right from the very start. When I first arrived we already had a Protection Lot Rule, and by the way we use the name Protection Lots when we talk about TDRs. Protection Lot is the overall umbrella, the rule that we are talking about, TDRs are one version of that which is the transferable option versus the onsite option.

#### **1989 Bush Protection Lot**

In 1989 the original Bush Protection Lot rule was 10 hectares of bush that entitled the owner to an extra title and the house had to be associated with that bush area. If it was down the back of the farm you had to put in a long driveway. In 1994 we produced the first District Plan under the RMA. We changed the rules, more to refine the amount of area of land that was involved. We particularly distinguished between native forest versus regenerating forest. The minimum lot was 2 hectares, with multiple lots at 1 per 10 hectares.

We also introduced Protection Lots if there was a landscape or heritage feature that was of value and listed in the District Plan. It was not just about bush. The big change was that the new site, or new title created, could be anywhere on the property.

#### **1997 Protection Lot Rule**

In 1997 we moved on, expanding the Protection Lot Rule to include ecological features more than bush. We brought in riparian margins and wetlands. As you are aware here, it is about water quality and these margins and wetlands are far more valuable at protecting water than bush and they are under a greater threat than bush in our district.

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Our transferable option was introduced for the first time. Originally you could transfer your TDR to anywhere in the rural zone. There were no questions asked except that the recipient title being transferred to had to be bigger than 12 hectares and multiple lots were at 1 per 4 hectares. A 16 hectare property would have 1 additional title. 20 hectares could get 2 additional titles and a 50 hectare block could have 8 additional titles above what would have previously been allowed, which was only the 1. It became quite an incentive for recipients.

### **Expectation of the Recipient**

What was the expectation of the recipient? Firstly, it would cost money for someone to buy in, so they would go to the high valued sites. Probably places with views near the harbour or elevated with panoramic views. They would be close to towns because that is where lifestylers want to be, they are townies not farmers. They would be economically attractive to the donor, in other words, they would get good money out of it and make it worthwhile.

### **What was the reality?**

What we got was large farms cut up into lifestyle blocks. Often up the end of unsealed roads, which is not really where we wanted to have lifestyle people living. Interestingly many are still vacant. In 1994 when we produced the District Plan there were 2,000 vacant rural lots in our district. In 2009 when we reviewed the Plan there were 4,000 vacant lots in our district. The supply far outstripped the demand.

There was also a restricted return to the donor, and this is something that we may get to in the workshops later on. The price settled down initially to about \$20,000 per lot and has since moved up to around \$25,000. My personal view, and our view at the time, was it was too cheap; they should have been higher, around \$50,000 or more. We can probably come to the reasons for that later because it is how the market does not always work in the perfect sense.

The large blocks of non-threatened bush were protected. But we did not mind that because they were formally protected and removed from the threat of clearance in the future. There was also great value in bringing in the riparian margins and wetlands and in fact now people are planting out their riparian margins, their streams and replanting their wetlands with the idea of coming back to us in 4 or 5 years' time to get a Protection Lot.

### **2009 District Plan First Review of Protection Lots**

In 2009 we did our first review of the District Plan and made some significant changes. We put a limit on the onsite Protection Lots with a maximum of 5 and on unsealed roads a maximum of 2, or transferred them to the new Lifestyle Zone only. We changed from the recipient area being at large to a targeted recipient area that we now call Lifestyle Zones. There are 3 zones, the largest being the Minden just out of Tauranga.

We wanted to target recipient areas rather than pepper potting lifestyle blocks across the whole district. We needed to better meet lifestyle demands because

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they did not want 3 or 4 hectares; they wanted a small block, with views and close to town on sealed roads. It was also to reduce the fragmentation of good farm land.

### **Lessons learnt**

Firstly, it is how you sell it. When we first put it out people said, 'Huh, why do I have to buy one of those things to subdivide?' In reality the Protection Lot system is not about subdivision, it is about environmental protection. Subdivision just happens to be the vehicle used for protection. Once we worked that through with the community they were fairly accepting.

There were benefits all round. The subdivider got additional lots that they were not otherwise entitled to and happy to make more money than they otherwise could. The feature owner was able to get money out too because they were getting cash that they otherwise would not get. There was an environmental gain to the community at no cost to the rate payer. Advantages all around.

In terms of the terminology used about TDRs, Protection Lots are one tool in the tool box. We have a number of others as they do not suit everybody. Do not expect every farmer to pick it up. It will be personal, it could be for production changes, or a whole range of other reasons. But it is one of a number of tools available.

Another lesson learnt was that everything has to be certified by a suitably qualified person. You cannot take just anybody along and say, 'Oh yeah, that's a good bit of bush, it meets the requirements of what your plan says'. We have an acceptable list of certifiers that we know, trust and audit. The surveyors and subdividers know if they go to that person it will be a good job and we are not going to peer review and cost more money. We do from time to time audit those certifiers and they are aware of that. It is part of ensuring that our system is working. It also means that the certifiers know at the end of the day they are working for the Council, not for the land owner who is trying to make a profit.

It is important to get the physical and legal protection of the feature sorted out. In the earlier days we found that when the title was about to be issued (s224 of the RMA) the person was not ready. We took a bond or did something else on a promise that they would do it one day. Then we had a devil's job of enforcement to get them to fix it; fencing being the biggest issue. Now if it is not up to scratch by the time s224 is applied for, that person will not get the s224 to allow the title to be issued. That is the best incentive you can ever have.

Monitoring is very important. These areas need to be monitored on an on-going basis to ensure compliance and follow-up with new owners. Our system starts with visiting every year and then once we see the owners doing a good job, maintaining the fences, controlling the weeds and doing everything required, we move to a 2, 3 or 4 year return basis; others we review yearly and keep on their case. At the end of the day Protection Lots make money and we want to ensure we are getting

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value for that money. They cannot just walk away, let the fences fall and allow stock back in. That is not acceptable.

One of the debates to come will be about feature criteria from the donor point of view. We learnt that this must be clear and certain so people understand what the council are talking about.

There are a lot of figures around nutrient levels which need to be worked through. It is important to understand how much fertiliser is put on a certain amount of land, what is going to meet the measure and what wont? This has to be easy to monitor so when the Council checks in a couple of years' time it is still correct. Retired land planted in trees is easy to figure out, but with fertiliser application we have to be more careful.

The important question on the recipient side is, 'Is there a market and how big is that market?' How big is the demand for lifestyle and rural residential type developments? We have far more bush than we could ever produce lifestyle blocks but we are not worried because we know that not everyone is going to want such blocks. The question of 'Is there a market?' is something to balance in the mind, because if there is not a demand it will suppress prices and the farmers will not be happy to meet their end of the deal.

Following on from that, is the need to be clear on where the new development should be located. Infrastructure, roading and water supply are big issues. Then there is also the reverse sensitivity issue. Does the community want a lot of lifestyle blocks in amongst farms? We certainly did not want them amongst our orchards and farms which is why we went to the lifestyle zone alternative. In fact as an important part of our lifestyle zones the only way people can subdivide is by getting a TDR. They do not have any subdivision rights as of right, partly because most of them have already subdivided over the years and have no rights left. Those that could were relatively relaxed about it because we put some other rules in place to get around that. That adds value. Those people in the lifestyle zones had no expectations before the District Plan review that they were able to subdivide. They now have a huge bonus that they were not previously entitled to.

Lifestyle blocks are in identified places of high demand; they command high prices and the expectations on a bare block of land of 3,000 square metres to a hectare should be at least \$200,000 to \$300,000 for a title with good views. One should be able to pay a good price for a TDR and still make a profit. Technically people could afford to pay up to \$100,000 for a TDR and still make \$100,000 profit. This was the case in 2009 when we notified our District Plan with these rules, but then the global financial crisis came along and everything has been flat for a while. The markets have only just started to pick up again.

It is important to be clear around the use of criteria versus defined areas for the recipient and what suits the district. We went from district wide to specific areas to manage other effects. It is something to toss around in Rotorua in terms of where that is and where the best demand is. Where are the recipient areas, are they the

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best places, are there other effects in those recipient areas? It could be reverse sensitivity, and are you going to command higher prices than you might get if you go somewhere else?

The recording system has to be a good one. It is important to be able to keep track on where all these things are going. We do not keep a register of potential donors; it is up to the market to make that work. We have one or two surveyors and real estate agents that know where these blocks are and what is happening. They do the trading, we just pick them up on our system when a subdivision comes in and we manage the way through the process. We know who has used it, where the recipients are and so on.

So these are our lessons learnt.