

TRANSFERABLE RURAL LOT RIGHT RELATED INCENTIVES
INVESTIGATION AND OPTIONS
AUCKLAND COUNCIL UNITARY PLAN
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1. PROJECT PURPOSE

The Auckland Council project brief of 27 February 2012 states that the project purpose is *to develop provisions that enable the transfer of rural lot rights from areas identified for rural production to country living categories or suitable areas adjoining rural and coastal villages.*

The brief identifies that transferable rural lot rights are a tool currently available within a number of legacy district plans in Auckland and that there is a need to provide a consistent Auckland-wide approach to transferable rural lot rights. Any requirement for administration by Council to enable the transfer of development rights, including monitoring and compliance must be minimised. Clear eligibility criteria and map definition for both donor and receiver areas must be developed.

2. PROJECT METHODOLOGY

The methodology adopted for this assessment is as follows:

- a) Document the history and evolution of the use of transferable rural lot rights in New Zealand for the project purpose.*
- b) The identification of legacy plan provisions enabling the transfer of rural lot rights.*
- c) The identification of issues and limitations with the existing transferable rural lot right systems.*
- d) Identify options, including a preferred option, for the use of transferable rural lot rights.*
- e) Draft objectives, policies and rules for the unitary plan to give effect to the preferred option.*

3. DOCUMENT THE HISTORY & EVOLUTION OF THE USE OF TRLRs IN NZ FOR THE PROJECT PURPOSE

Transferable Rural Lot Rights is a term adopted to describe the mechanism whereby development rights attributed to a rural property are transferred between people and properties. The globally adopted descriptor for the mechanism is Transferable Development Rights (TDRs).

TDRs are used in a variety of forms around the world as an economic incentive to facilitate the conservation and maintenance of the environmental, heritage or agricultural values.

Examples include:

- The transfer of air rights whereby the right to develop to a certain building height can be transferred to protect heritage values.
- The transfer of fishing rights to stabilise fish stocks in particular areas.
- The transfer of emission rights between polluters.
- The transfer of development rights to implement and pay for development density and location decisions of local government.

The use of rural Transferable Development Right mechanisms in district plans in New Zealand has been limited. The Western Bay of Plenty District Council was the only council to adopt a TDR mechanism in its first district plan. The Waipa District and former Franklin and Rodney District Councils all adopted TDR mechanisms in subsequent district plan reviews and plan changes.

Typically these plans have defined a development right relative to vacant or existing rural capacity based on the lowest planning unit to which development rights are attributed e.g. a certificate of title *or Rural Lot* upon which a dwelling can be erected. The TDR system provides the ability to move development rights to another location where development would not normally be permitted (at all, or at a certain density), but where any adverse effects of the transfer are outweighed by achieving other objectives including avoiding those effects associated with the take up of development rights as they currently exist.

There is some commonality with the mechanisms adopted. Territorial authorities have used TDRs to move development rights from rural areas with particular productive capability, landscape, ecological values or adjacent state highways, airports or mineral extraction areas (donor sites) to environments (receiver sites) either as scattered elements and/or to support particular growth management objectives in defined areas.

The mechanisms adopted by the Western Bay of Plenty and Waipa District Councils are described below, with those legacy provisions of the Auckland Council District Plan (Rodney and Franklin Sections) provided in section 4.

3.1 Western Bay of Plenty District

In the Operative District Plan, natural features could be protected on a site in exchange for a subdivisional opportunity which could be transferred to another site. Any recipient lot, had to be a minimum of 12ha and been in existence prior to 22 November 1991. There were no requirements around where a recipient lot could be located and no cap on the number of *Transferable Protection Lots* that a recipient lot could import.

A review of the current operative plan commenced in 2009 and culminated in the public notification of the Western Bay of Plenty District Plan Proposed First Review. The proposed plan is subject to appeal but retains a TDR mechanism. TDR's are proposed as a growth management tool to redirect growth pressures from the Rural Zone to the Lifestyle Zone.

No subdivision is provided for in the Lifestyle Zone until a structure plan is developed. Upon completion of the Structure Plan, then subdivision can only occur by importing in subdivision rights. This can occur in three ways:

1. Transferable Protection Lot Subdivision: Ecological Features in the Rural Zone can be protected in exchange for a subdivision entitlement that can be transferred into the Lifestyle Zone.
2. Transferable Amalgamation Lot: Vacant titles in the Rural Zone can be amalgamated and the resultant subdivision right transferred to the Lifestyle Zone.
3. Transferable Rural Lot Entitlement: Lots in the Rural Zone that meet specific size, age and title requirements can be transferred into the Lifestyle Zone.

Transferable Rural Lot Entitlements can also be used to subdivide around existing additional dwellings in the Rural Zone.

3.2 Waipa District

The Waipa District Plan (operative 1997) provides for TDRs primarily as a mechanism to avoid potential conflict between competing land use activities and potential reverse sensitivity effects, as well as potential effects on ecologically or landscape sensitive areas.

Holdings from which an entitlement to create an additional allotment may be transferred are those which are located or have any part of the holding located:

- Within the Outer Noise Control Boundary at Hamilton Airport.
- Within a Special Landscape Character Area.
- Adjacent to a State Highway or a Primary Road.
- Within 500m of a boundary of a site used for mineral extraction.
- Within 500m, measured in a straight line, of an Industrial Zone.
- Within an Environment Lot buffer zone.
- Within or immediately adjacent to the Maungatautari Ecological Island.

Holdings to which the entitlement to create an additional allotment may be transferred are those which are wholly:

- Within those parts of the District that are not within the areas from where the entitlement to create an additional allotment may be transferred.
- Onto holdings that are not within one kilometre, measured in a straight line, from the Residential and General zones in Cambridge, Te Awamutu, Kihikihi, Ohaupo, Karapiro, Pirongia, Temple View, Ngahinapouri, Hautapu.
- Not within one kilometre from the Hamilton City Boundary or within the Deferred Residential Zone.

3.3 Whangarei District

It is understood that the Whangarei District Council have undertaken preliminary work investigating TDR systems as noted in reported in the paper – *Rural Development Strategy*:

Subdivision and Land Use: Issues and Options February 2011. No known resulting plan change.

3.4 Waikato District

The Waikato District Council undertook a review of growth and rural subdivision rules in 2010. The Council commissioned a review of TDRs to support section 32 analyses for a proposed plan change. The Council did not pursue the use of a TDR system in subsequent Plan Change 2 addressing district wide growth and rural and coastal subdivision.

3.5 Papakura District

The former Papakura District Council undertook a review of rural subdivision and land use rules that culminated in the notification of Plan Change 13 in 2007. Through the review process, Council chose not to pursue TDR mechanisms as no significant rural capacity existed and the mechanism was not deemed necessary to support rural environment objectives.

3.6 Case Law

There does not appear to be any relevant case law associated with TDR subdivision in New Zealand, however there are a number of resource consent decisions made under delegated authority and by committee or hearing that will provide useful reference in the development of a transferable rural lot right subdivision method.

4. THE IDENTIFICATION OF LEGACY PLAN PROVISIONS ENABLING THE TRANSFER OF RURAL LOT RIGHTS

4.1 Auckland Council Regional Policy Statement

The value of a TDR method to address latent rural development potential is recognised in the operative Auckland Council Regional Policy Statement (ACRPS). Emphasis added.

Method 2.6.2 of the ACRPS states that Policy 2.6.1-3 (providing for Countryside Living) is to be implemented by each TA setting out within its District Plan issues, objectives, policies and methods for enabling countryside living including the possible provision of mechanisms aimed at achieving amalgamation of titles (e.g. transferable development rights) in surrounding rural areas.

In 2.6.5, Methods - Rural Areas, it is stated that:

TAs whose districts contain significant areas of rural land (Franklin, Papakura and Rodney District Councils, and Manukau, Waitakere and Auckland City Councils) will, in consultation with the ARC, identify rural locations in which the existing or potential (i.e. haven't yet gone to title) subdivisional pattern is likely to result in outcomes that fail to give effect to Part II of the Act, and are inconsistent with the Strategic Direction, and with the matters set out in Policy (2.6.4-1)

In the localities identified pursuant to Method (2.6.5-2) and in Countryside living areas, TAs shall, in consultation with the ARC, manage activities to avoid, remedy or mitigate the adverse effects which could stem from the existing or potential subdivision pattern. Such management may include:

- i. transferable development rights, including the transfer of rights between TA's, provided such measures will contribute to achieving outcomes consistent with the Strategic Direction and Policies (2.6.4-1)*
- iii. management of the erection of buildings (including dwellings) including where appropriate provision for the erection of buildings to be contingent upon the acquisition of TDRs;*

The reasons provided for the rural objectives, policies and methods state:

In some parts of the Region there is an underlying subdivision pattern of unoccupied titles which have not, to date, been built on. There may be a need in such areas to mitigate as far as possible the adverse effects of excessive fragmentation of land titles. Such adverse effects include impacts upon rural character and amenity and the reduction in the versatility of such lots for a range of productive activities. Mitigation may be achieved by a number of methods, one of which is by introducing a system of transferable development rights. This technique may take various forms, and generally involves establishing a regime in which subdivision to, for example, provide for countryside living or expansion of rural or coastal settlements is dependent on acquiring a development right created by the amalgamation of small lots in rural areas into lots of greater area. This approach is provided for by Method (2.6.5-3). To be effective, it will require co-operation between TAs.

The former Rodney and Franklin District Councils subsequently pursued TDR methods through changes to their district plans.

4.2 Auckland Council District Plan (Franklin Section)

The Franklin District investigated a TDR system through the preparation of the Proposed District Plan in the 1990's. Donor and Receiver locations were identified on land north and east of Pukekohe. The system was not included in the operative plan.

The system was investigated to address an historical subdivision legacy issue and demand for countryside living opportunities. At that time a significant rural capacity element was identified, the result of extensive horticultural lot subdivision under the Franklin County Council and undeveloped rural lots dating back to early settlement of the district.

The rural capacity issue remained unresolved through the 1990's and became somewhat exacerbated by Conservation Lot and General Propose Lot subdivision.

A Transferable Rural Lot Right mechanism was introduced through Auckland Council District Plan (Franklin Section: Plan Change 14 [PC14]), notified in 2003. PC14 is now partially operative but provisions concerning Transferable Rural Lot Right subdivision remain subject to appeal.

The plan change is based on a management area approach that defines rural and coastal management areas and sets overarching objectives and policies. Transferable Rural Lot Right subdivision is provided for within the same management area or between identified management areas.

PC14 defines a Transferable Rural Lot as follows:

"TRANSFERRABLE RURAL LOT RIGHT means a right to transfer an existing RURAL LOT from a property in any Rural or Coastal Zone to a specified receiver area. It means a RURAL LOT is rescinded from a property and created as a new title or titles in a receiver area, and "title relocation LOT" has a corresponding meaning (i.e. it is the LOT that can be created by the exercise of this right)"

A Rural Lot is defined as:

RURAL LOT means a parcel of land, not being a closed road or ROAD SEVERANCE, which is held in a separate Certificate of Title and which satisfies one of the following criteria:

- i. is at least one hectare in area;*
- ii. is a lot approved or granted consent by a territorial local authority;*
- iii. was separately recorded on the Valuation Roll of the former Franklin County Council as at 22 September 1977;*
- iv. had the right to erect one dwelling as a Permitted activity as at 30 May 1994 in terms of the Transitional District Plan of the Franklin District Council.*

PC14 provides the following explanation on the Transferable Rural Lot Right mechanism:

“there are many properties in the District which have several titles not yet developed. In some areas these titles are on land that is highly valuable for rural production as the soil is very versatile or are held in large property holdings which rely on large land areas and accessibility. The existing titles, if developed, would introduce further rural residential living with an increase in reverse sensitivity issues, greater conflict and greater irreversible fragmentation.

Through the transfer titles system landowners are offered another option for the use of these titles. Many landowners would like to realise the financial benefits of selling vacant titles, and with no other option may eventually sell these titles in their current form and location. The ability to transfer titles provides an opportunity for people living on VERSATILE SOILS and productive agricultural units to gain better land management and use of good soil while still benefiting from the fragmentation and selling of land.

The transfer of titles to more environmentally sustainable locations enables the vacant lots to be used for countryside living opportunities. It is considered that the effects of transfer of titles within the same Management Area can be avoided, remedied or mitigated when appropriate performance standards and assessment criteria are met.

Transferable Rural Lot Right subdivision within the same management area is a Restricted Discretionary Activity with the explanation stating:

... It is likely that the transfer of titles within the same Management Area will have little or no adverse effect given that the Management Areas have been defined based on an assessment of the natural and physical resources at a local level.

Transferable Rural Lot Right subdivision between identified management areas (Hunua and Southern Rural Management Areas only) are a Discretionary Activity with the explanation stating:

...However the transfer of titles between identified Management Areas will require a more rigorous assessment given that the effects of this activity may be more significant.”

Transferable Rural Lot Right subdivision that does not comply with stated performance standards or which transfers an additional title(s) into one of the below management areas is a non-complying activity:

- A Coastal or Waikato River Management Area.
- Hunua Forestlands Management Area.
- Special Character Area.

Key performance standards applicable to Transferable Rural Lot Right subdivision are summarized as follows:

- *Both the lots to be subdivided (receiving lots) and the sites to be amalgamated (donor lots) must be RURAL LOTS.*
- *The site to be amalgamated (donor lot) has no dwelling house present.*

- The following Maximum Lot Number and Lot Size requirements apply:

Receiver Rural Lot Size	Maximum Lot Size of New Lots Created	Maximum Number of Transferable Lots To Any One Rural Lot
0.0 – 4.0 ha	8000m ²	1
> 4.0 ha	8000m ²	2

- No Lot shall be larger than the Balance Lot.
- The new lot must contain the same or lesser percentage of versatile soils (defined) than that contained on the lot used to create the Transferable Rural Lot Right.
- A Consent Notice will be registered against all new Certificates of Title to prohibit any further subdivision.

At notification, PC14 also provided for the transfer of rural lots to identified Village Countryside Living Zones. Bonus entitlements were available whereby for every one rural lot transferred two lots could be created, with a smaller minimum lot size than that otherwise permitted. This method was removed via consent order.

The Franklin system is still in development with consent orders and the partial operative status of the plan change resulting in a disjoint between the objectives, policies and methods. As described above, the current methods provide for scattered transfers within or between selected management areas. Now settled objectives and policies, encourage transfers into a defined Rural Countryside Living Zone north east of Pukekohe or a yet to be defined Rural Environmental Enhancement Policy Area. An Environment Court hearing is pending that will determine the final method arrangement.

4.3 Auckland Council District Plan (Rodney Section)

The Proposed Rodney District Plan was notified in November 2000 and replaced the Operative District Plan 1993. Auckland Council District Plan (Rodney Section) 2011 (concerning rural subdivision) is now operative. Changes to the district plan introduced a Transferable Title Right system that supports the transfer of titles out of the rural environment and into an identified Countryside Living Town Zone or to Rural Hamlets.

The Countryside Living Town Zone is described as:

“The land in this Zone represents the rural land close to existing settlements which is capable of being developed for countryside living activities without losing its essential rural character. The Zone exists in the immediate vicinity of:

- (a) Wellsford;
- (b) Matakana;
- (c) Warkworth;”

The operative plan provides the following explanation to the rural objectives and policies concerning the transfer of titles into the Countryside Living Town Zone:

...*"All subdivision and activities need to be undertaken in a manner which improves rather than erodes the character, amenity and environmental values of rural areas. That is not to say that the rural areas will not experience changes as further subdivision and activities take place. Change can be managed however so that the character associated with a particular locality are reinforced and enhanced rather than compromised or lost. Transferring titles from zones such as General Rural, East Coast Rural and the Landscape Protection Rural Zone to areas zoned as Countryside Living Town is one method provided for in the Plan to manage and enhance rural character whilst still providing subdivision opportunity in these zones."...*

...*"In order to avoid the adverse effects on rural character and amenities identified above, where extensive opportunities for countryside living are to be provided they need to be focused on specific locations (as opposed to widely dispersed) which have the characteristics and capacity to accommodate the effects on character and where the potential conflicts over amenity expectations can be minimised. Hence the Plan provides opportunity to transfer titles from the purely rural zones to areas zoned as Countryside Living Town."*...

...*"The District has experienced significant subdivision in recent years with the greatest increase in rural rateable property numbers being in the 1 to 2, 2 to 4, and 4 to 20 hectare size range. At the same time the number of larger rateable properties is either static or declining marginally. The size of most of the new sites or properties created is relatively small for traditional rural activities such as sheep/beef dairy farming, horticulture and forestry. Given the general irreversibility of the subdivision process it is prudent to ensure that a number of larger sites do exist within the District so as to meet changing demands from various forms of rural production over time. The ability to be able to transfer sites from the purely rural zones to areas zoned as Countryside Living Town enables subdivision to occur but for the smaller sites to be located in Countryside Living Town zones and larger site sizes to be retained in the other rural zones. The retention of a range of site sizes provides flexibility for land use changes without the need to try and amalgamate smaller sites, with all the practical and legal processes and effects associated with this."*...

Key performance standards applicable to Transferable Title Right subdivision into the Countryside Living Town Zones are summarized as follows:

- *Sites in the Countryside Living Town Zone should be no smaller than 1.5 hectares unless Transferable Title Rights are obtained.*
- *Where TTRs are utilised the number of sites on the plan of subdivision may be increased above the number that would normally be permitted at the rate of up to two extra sites per Transferable Title Right utilised, but in no case may any site for Countryside Living have an area of less than 1 hectare.*

Example: This example assumes that all the 13.2 hectares is available for Countryside Living sites (ie. no land is required for roads, reserves, etc). Parent site area 13.2 hectares.

Maximum number of sites without TTRs = 6
Maximum number of sites with 1 TTR = 6 + 2 = 8
Maximum number of sites with 2 TTRs = 6 + 4 = 10
Maximum number of sites with 3 TTRs = 6 + 6 = 12
Maximum number of sites with 4 TTRs = 6 + 7 = 13
Maximum number of sites with TTRs = 13

- *The maximum number of TTRs that may be used to increase the number of sites in a subdivision of a parent site larger than 21.9999 hectares is seven.*
- *Every title used to gain an eligible Transferable Title Right shall be either an existing title or a site on a plan of subdivision for which consent has been given, provided that:*
 - (i) Where both titles and sites on a plan of subdivision as described above exist, then only the sites are eligible; and*
 - (ii) There is no household unit or valid consent to erect a household unit on the title or site.*
 - (iii) Where the property has a subdivision approval which affects only part of the property then those titles that are not affected by that subdivision approval are also eligible.*
- *The title nominated for transfer must be a title to a site that:*
 - (i) Complies with the general subdivision requirements and is capable of being developed with a dwelling.*
 - (ii) Is no larger than 20 hectares in area.*
 - (iii) Is located in a Rural Zone other than a Countryside Living Zone.*

In addition to the ability to transfer titles to the Countryside Living Town Zone on a rate of up to two extra sites per Transferable Title Right utilised, the ability to transfer titles to Rural Hamlets on a one to one ratio is provided.

A Hamlet is defined as:

“a compact cluster of houses, on housing sites and townhouse sites, and associated facilities in a rural setting designed to relate houses to one another, and designed in such a way as to conserve most of the parent site as rural land in perpetuity”

Opportunities are provided for Rural Hamlet Conservation Subdivision to provide a clustered rural living opportunity that achieves consolidation of rural settlement demand close to rural towns and villages, protection of rural production and the integrated management of effects through comprehensive management planning of large rural sites. Every new site within a hamlet is to be provided by way of sites qualifying as a *Transferable Title Right*.

5. THE IDENTIFICATION OF ISSUES & LIMITATIONS WITH EXISTING TRLR SCHEMES & PLAN PROVISIONS, INCLUDING OPERATIONAL CONSIDERATIONS.

5.1 The TRLR Market

Both the Franklin and Rodney TDR mechanisms are primarily a response to a rural capacity issue and concerns that the take up of existing development rights could compromise the rural landscape and rural productive capabilities.

To address the capacity issue, both districts have sought to limit further rural subdivision either through more restrictive subdivision rules e.g. the removal of Intensive Use Lot or General Purpose Lot subdivision, reliance on Bush Lot type rules that have become more difficult to achieve as qualifying unprotected bush becomes scarce, or directing or attracting countryside living to defined areas.

More restrictive rural subdivision regimes and growth have put pressure on the market to utilise the latent potential of rural development rights. The TDR systems have provided alternatives to this market pressure but no substantial decrease in rural capacity has resulted. In the case of the Franklin District there are concerns that the environmental outcomes achieved have not outweighed the costs at the receive locations.

The experiences in Rodney and Franklin suggest that donor sites have typically been sourced from larger multi title farming units, and new lots via bush lot options. Overtime these donor sites will become scarce and the market will be constrained or adjusted to source alternatives.

Rural capacity is somewhat of a theoretical assessment and records the lowest development right unit in the rural environment (e.g. a Rural Lot), but does not consider the drivers or reasons why the latent potential exists.

The Franklin experience suggests that the introduction of a TDR system has created a market for latent potential that may not have been otherwise realised. Some Rural Lots have existed for over 100 years and valued for productive capabilities rather than development rights. Other more recent lots have been the result of Bush Lot subdivision in remote locations which may not have happened if the land owner had not been able to realise the economic incentive and move the development away from the property.

The plans do not provide donor options for the range of reverse sensitivity or land use conflict situations promoted by Waipa District. Notwithstanding this, approved applications in Franklin have moved rural lots away from adjoining mineral extraction zones and from land proposed to support urban greenfield growth objectives.

Both the Rodney and Franklin plans provide different reasons for their TDR systems and the donor and receiver sites/environments to reflect the different resource management issues applicable to the environments.

The Rodney method provides incentives to draw rural capacity from the Rural Zone into defined Countryside Living Town Zones. The system focuses on avoiding or mitigating the

effects of yet to be realised rural development potential on landscape values and using this rural capacity to support a specific urban settlement based countryside living lifestyle choice.

The current Franklin method provides for scattered transfers within or between selected management areas at lot sizes that provide for countryside living. The now settled objectives and policies put a focus on drawing rural capacity into a defined Rural Countryside Living Zone and a Rural Environmental Enhancement Policy Area with fewer scattered transferable title options. The system focuses on avoiding or mitigating the effects of yet to be realised rural development potential on the productive capabilities of land.

5.2 The Franklin Experience

A market for TDRs has established in Franklin that has seen a general trend of Rural Lots migrating north towards land north of Pukekohe and into Kingseat, Karaka and Ararimu. Land prices reflecting the proximity of these areas to metropolitan Auckland and State Highway access appear to have been a significant determinant in successful transfers.

Rule interpretation has been a challenging factor for those using the Franklin system. Given the non operative state of the Transferable Rural Lot Right subdivision rules under PC14 and no similar rule in the operative plan, applications have largely been assigned a non-complying activity status.

The Land Surveyor's and Consultants Experience

The transfers have generally been facilitated by real estate agents, local land surveying and consultant companies who have been able to put willing sellers and buyers in contact. Some private listing of titles for sale has appeared in local newspapers.

Generally titles have been coming out of multi title farms where the values attributed to the donor site by the landowners have in the past been different. In these situations existing titles have traditionally been viewed on a rural production 'dollar per hectare' value rather than for development values. Other entitlements have been generated from bush lot subdivision on larger holdings where landowners have traditionally not viewed an additional title on the balance farm as attractive and potentially compromising of productive land access (loss of land, additional countryside living conflicts).

Local practitioner's advice is that there needs to be a significant difference between the donor site purchase price and the money the receiving site is going to generate to make the transfer viable. This has generally supported the transfer from larger farming units in the south to land in the north that is attractive for countryside living.

There has tended to be more sellers than buyers given rural capacity but sufficient interest to make the deals happen. In the majority of cases buyers have carried the cost and risk of the subdivision process. Transferable title prices appear to have increased over the last 18 months as options have become more constrained. Indicative pricing has been \$60,000 for a title of low versatility, \$100,000-120,000 for moderate to high versatility, \$200,000 for coastal titles.

The market needs the least constraints as possible to encourage the transfers. Parties are entering sales and purchase agreements with timelines, costs and significant risks. Any

system needs certainty with Discretionary and Non Complying Activity categories too risky and notification too costly and uncertain.

In Franklin the system has been evolving through the plan change process which has made interpretation difficult. Policy changes have made determining appropriate receiver locations uncertain, however wherever a north/south line is drawn, this will likely remain the area of attraction for titles.

The Franklin system relies too heavily on versatile soil assessment. Other factors at the donor and receiver locations need to be considered if the principal is one of supporting productive use, i.e. lot sizes, access, availability of water, adjoining sensitive activities.

The 8000m² maximum lot size has not always been the best outcome or desired by the market and a range of lot sizes is preferred.

The Council Regulatory Experience

As with local practitioners, Council regulatory planners have found the plan change policy development process difficult, particularly with a long period of a non operative document, consent orders and non-aligned objectives, policies and methods.

There have been a number of administrative difficulties to work through.

One issue has been keeping track of incremental subdivisions and staged title transfers. This has been overcome through the use of registering encumbrances to parent lots to record the number of titles utilised.

A second issue has been determining a process to ensure parent lots at the donor location are amalgamated or held together in perpetuity. Amalgamation via resurvey has been the preference unless the property has been limited to parcels whereby an amalgamation condition has been imposed given the costs of resurvey. Conflicting advice has been received from LINZ on the use of amalgamation conditions and so Council have generally taken a conservative approach.

Council have required a notional lot to be demonstrated at donor sites.

The increase in protected areas as a result of combination bush lot and TRLR subdivision has put demands on monitoring and compliance.

Some difficulty in interpreting land use capability criteria. The adopted approach has been to assess to the capabilities of the donor and receiver lots only and not the balance land. Bush areas are not considered versatile land as they cannot be classified as such under the land use capability system. Building coverage areas and curtilage has also been excluded.

There have been boundary changes via separate application to change the versatile soil component of a title prior to transfer and work around the performance standards.

The rules would be easier to administer if the donor and receiver areas were better defined.

The Council Policy Experience

Significant concern with environmental impacts in the receiver environments as a result of resource consent approvals under the current proposed methods. Refer Mark Tolemache Evidence in Chief Auckland Council v ... Auckland Council District Plan (Franklin Section: Plan Change 14) available week starting Monday 26 March 2012.

The impacts were not sufficiently quantified when the system was proposed nor other methods to achieve the same outcomes. E.g. new Bush Lot subdivision in remote locations where development would not likely have happened has been a significant TRLR donor source. If protection of indigenous vegetation was a priority, the other methods could have been considered e.g. Significant Natural Area rules, vegetation clearance rules, earthwork controls, rates relief.

5.3 The Rodney Experience

The market in Rodney has been constrained by limitations on the receiving environment to the Countryside Living Town Zones. There appears to be significant capacity but reduced demand. The system is not based on principals of land use capability but more to address rural landscape, character and amenity values and as a growth management function.

The Land Surveyor's and Consultants Experience

The Countryside Living Town Zones were particularly attractive to the market and transferable title subdivision was rapidly taken up and the system appears to no longer be particularly active. Again local surveyors and consultants have acted as agents to facilitate the system.

The Zone boundaries and density has been held, however a plan change (63) proposes an extension to the Matakana Countryside Living Town Zone.

The higher density incentives provided were attractive to the market. Price seemed to be \$60,000 - \$100,000 for a title but this may have changed in recent times given market conditions.

Similar to the Franklin experience the titles appear to have been primarily sourced from farms or large holdings and commonly from Bush Lot subdivision. One of the difficulties with reliance on Bush Lot subdivision was Councils requirement for the identification of nominal lots at the donor site. This could include going to the expense of providing geotechnical reports for a lot that would never be developed.

Proposed rules required titles to be located in one of the two closest Countryside Living Town Zones but this was not attractive or impossible when capacity had already been utilised.

A question as to whether the 1ha minimum lot size in the Countryside Living Town Zones is the most appropriate lot size or would a higher density (4000m²) be better use of the land. These areas are more urban than rural.

The Council Regulatory Experience

Council is still processing TDR applications but they are not common. Appears to be a good option to support bush/wetland protection.

The Countryside Living Town Zone boundaries and density have been defensible through clear rules and strong objectives and policies in the district plan. The areas are more urban than rural, relying on and supporting the settlements.

Some boundary adjustments in the Countryside Living Town Zones to support successive subdivision applications. Controlled through consent notices.

Some concerns have been raised in regards to the movement of lower value titles to more attractive countryside Living areas when the development rights may never have been realised in the donor sites.

6. IDENTIFY OPTIONS, INCLUDING A PREFERRED OPTION, FOR THE USE OF TRLR'S

The project brief is *to develop provisions that enable the transfer of rural lot rights from areas identified for rural production to country living categories or suitable areas adjoining rural and coastal villages.*

The brief provides the parameters around which donor and receiver environments can be defined which are consistent with and will give effect to the strategic direction provided in Chapter 7 of the draft Auckland Plan for Rural Auckland.

Donor Environment

Map 7.1 and Schedule 1 *Rural Activity Categories* of the draft Auckland Plan, categorise rural areas as a means of indicating future functions, activity and use. Rural production is generally represented in a variety of forms across all of the rural activity categories.

Those areas within which rural production is identified as a future outcome and which could form donor environments for a TRLR system include the:

- Rural Production Area
- Mixed Rural Area
- Rural Coast (East) Area
- Rural Coastal (West) Area

The primary assumption is that there is existing development capacity within these areas to support a TRLR system to transfer rural lot rights from areas of rural production. Defining the qualifying donor unit (rural lot right) will determine the capacity and viability of the system.

The development right is established by the provisions of the district plan and the opportunities for use and developed afforded to landowners. Long established district plan definitions have generated an expectation with landowners that certain development rights exist. In preparing the Auckland Unitary Plan there is need for Council and the community to revisit the extent of these entitlements.

Receiver Environment

The draft Auckland Plan also provides the parameters for identifying country living categories or suitable areas adjoining rural and coastal villages as receiving environments for a TRLR system.

Areas within which country living is identified as a future outcome and which could form receiver environments for a TRLR system include the:

- Country Living Area
- Bush Living Area

The Country Living Area is described as an area able to absorb subdivision of less appropriate areas (i.e. areas of rural production). It must be noted that countryside living environments and definitions vary across Auckland and tend to reflect the local landscape, current and

historical land use and legacy plan provisions. Some are more rural than urban in context and support intensive land use, others display a degree of urban formality. The pattern and intensification of countryside living in these areas may need to vary and be reflected in any TRLR method.

The Bush Living Areas accommodate a form of countryside living, however the future outcomes focus on lifestyle opportunities that do not impact on native vegetation, habitat and the natural qualities of these places.

Given the geographic size of these environments, a TRLR system that utilises the Country Living and Bush Living Areas as receiver environments will likely be promoting a scattered type approach with less certainty on the location environmental effects of the transferred elements.

Rural settlements are classified into three categories in the draft Auckland Plan being, satellites, rural and coastal settlements and rural and coastal villages.

Rural and coastal villages identified in the Draft Auckland Plan which could form receiver environments for a TRLR system include:

Ararimu	Ardmore	Bombay	Brookby	Buckland*
Claris	Coatesville	Clevedon*	Glenbrook Beach	Grahams Beach
Herald Island	Huia	Hunua	Kaipara Flats*	Karaka
Kaukapakapa	Kawakawa Bay*	Laingholm	Leigh	Maraetai*
Matakana*	Muriwai	Omaha	Onetangi	Parakai
Parau	Patumahoe*	Piha	Point Wells*	Orere Point
Onetangi	Palm Beach	Paremoremo	Puhoi*	Sandspit
Surfdale	Stillwater	Te Hana	Wainui	Waiau Pa
Waimauku*	Weiti*	Waiwera	Whenuapai*	Whangateau
Whitford*				

*These settlements and village centres have proposals for growth and development in various stages of planning and implementation, subject to infrastructure provision and other constraints.

There are a number of factors that need to be considered in determining if areas adjoining rural or coastal villages are to be receiver environments as set out below:

- The form of growth needs to be determined.
- Whether the TRLR subdivision is an appropriate method to support the growth outcomes.
- Whether particular areas are attractive as receiver locations.
- Environmental and community considerations as to whether these areas should grow.
- The cost of growth.
- Whether receiver areas already have a subdivision opportunity such that the take up of TRLR is not needed to be able to subdivide.

Countryside living areas and large lot Rural Residential land use adjacent villages have typically been used as a buffer or green belt between urban and rural activities as well as a lifestyle choice. The subdivision pattern, infrastructure and built elements often result in

land being committed in perpetuity for that purpose. Depending on the location this may not be a problem but as villages grow this can constrain potential growth options and provide difficulties for intensification or result in greenbelt jumping.

Any TRLR system that utilises areas adjacent Rural and Coastal Villages as receiver environments can promote a clustered type approach with more certainty on the location environmental effects of the transferred elements, the final form of development and costs.

The viability of a TRLR system with some longevity appears dependent on the provision of incentives and choices for transfers. Locational options for receiving environments around which incentive measures and choice could be established include:

1. Scattered receiver lots in Country Living and Bush Living Areas.
2. Clustered receiver lots in defined areas adjoining Rural and Coastal Villages.
3. A mix of both techniques.

One of the primary incentives is the economic benefit accrued to private parties involved in the transfer. Where the attributes of the donor and receiver environments are similar there may not be a market incentive. Council can influence the market through strategic choice of receiver environments. Given the trade-off function of TRLR systems there may be a need to compromise other environmental outcomes to provide the incentives.

Where there are easier and more cost effective rural subdivision and development opportunities to pursue, the market is likely to utilise these first. Where there are fewer choices available the economic benefits will adapt in response to supply and demand.

6.1 Draft Recommended Option

Define a Development Right

For administration and interpretation purposes the definition must be clear. Matters to consider include:

- A certificate of title date.
- A certificate of title of a land area size.
- Being vacant of development but having the right to erect one dwelling as a permitted activity.

Define the Donor Unit Qualifying Criteria

This is dictated by the directive of the draft Auckland Plan to support rural production and improve the economic contribution of the rural sector. The qualifying criteria are best determined locally to reflect the differing rural environments of Auckland. Matters to include:

- Development right definition.
- Relevant recent subdivision activity.
- Other subdivision opportunities.
- Other subdivision or land use methods to achieve the same outcomes.
- Land Use Capability.

- Other factors that affect land use capability (availability of water, access, proximity of sensitive activities)
- Other situations where TRLR system would improve the economic contribution of the rural sector i.e. mineral resources.
- Sites that can add to achieving other outcomes in the Draft Auckland Plan e.g. requiring natural feature protection or only sites with natural features to qualify.

Identify the Capacity

This needs to be considered relative to the determination on donor unit qualifying criteria and the donor environment from within which the units can be sourced and any other methods (subdivision or land use) that are to be imposed to achieve the same outcome.

Identify the Receiving Environments

Market choice and the incentives to support a TRLR system can be provided through the provision of a combination of scattered and clustered receiver environments and a range of receiver site density options. However there must be certainty in the environment outcomes to be achieved.

There needs to be a clear understanding on where the rural lot rights will be transferred to and the level of development that could result. Without this understanding the adverse effects may outweigh the positive outcomes achieved to support rural production. Effects include those on the landscape and character of the receiving environment, traffic effects and reverse sensitivity or conflicts between competing land use expectations. Depending on form and density, there may also be increased demands for services and facilities in the receiver environment such as reticulated water and wastewater, better roads, recreational resources and community facilities with resulting financial demands on Council.

The draft Auckland Plan has identified areas as suitable for country living. These areas will adjoin the new Rural Urban Boundary. The areas generally represent existing countryside living environments as a result of legacy plan provisions and established subdivision and land use patterns. There are existing landowner expectations on the form of development, density and land use in many of these areas. Any changes that would affect those expectations are likely to result in rapid take up of existing development rights.

Matters to include in any receiver environment identification:

- The distinction of rural-urban interface should remain to avoid the demand and cost of urban services and amenities and urban creep.
- Avoid areas identified or potentially available for future urban land use based on accessibility, land form.
- Avoid areas adjacent sensitive activities.
- Focus on landscape outcomes and maintaining country living landscape and amenity values.
- Require landscape restoration and enhancement.
- Exclude sensitive environments within Country living and Bush Living Areas and the Coastal Areas from further intensification.
- Define the form of development, density and land use expectations locally.

- Where appropriate, provide incentives in legacy countryside living areas to make TRLR subdivision more attractive than current density options.

The draft recommended option does not include the provision of receiver environments adjacent rural and coastal villages.

The rural Auckland strategic direction of the draft Auckland Plan states as follows:

“rural and coastal villages – these villages of varying sizes are not a focus for significant growth. They provide for dormitory residential, rural residential, holiday and retirement living on varying scales with some low-key service or tourist development functions. Villages located in sensitive natural settings with poor accessibility and constrained infrastructure have limited potential to assimilate significant residential, business and employment needs.”

Some of these villages have proposals for growth and development in various stages of planning and implementation. Without technical assessment and canvassing community views it is not reasonable to now require those villages already in growth management processes to require TRLRs as a requirement for growth or to ‘tack on’ additional country living areas.

It is possible to define the ultimate form of development and costs, density and land use expectations in TRLR receiver areas adjacent rural and coastal villages, however this type of growth is not consistent with the draft Auckland Plan. A receiver environment of any density strategically located adjacent a rural or coastal village is essentially an extension of that village. Demand for village services and facilities will result, with associated effects and costs. Furthermore, without extensive assessment and consultation to define the final form of growth, inappropriately located and structure receiver environment could compromise future growth options.

6.2 Administrative Requirements

Transferable Rural Lot Right subdivision is a subdivision pursuant to the Resource Management Act 1991. Subsequently there are standard procedural administrative requirements on Council. These administrative requirements need not be more onerous than any other subdivision process.

There is a need for Council to monitor a TRLR system to ensure the viability of the market is maintained and to ensure anticipated environmental outcomes are achieved.

6.3 Alternative Methods for Incentivising Consolidation of Rural Development Potential and Amalgamation of Rural Lots

As previously identified Council can incentivise the TRLR system through the decisions it makes in regards to donor and receiver site locations. It can restrict supply and provide attractive environments for receiver sites to manipulate the market. Supply restrictions can be achieved through limiting or restricting alternative subdivision and development options e.g. fewer alternative subdivision methods or removing development rights.

The Rural Production Areas are potential donor environments, and consistent with the project brief, the Mixed Rural and Coastal Areas also contain areas of rural production and potential donor sites. There are other options outside of supporting rural production that could be considered for a TRLR system and provide incentives for the consolidation of rural development potential and amalgamation of rural lots.

The Mixed Rural Area also encompasses quarry resources, aerodromes and crucial access links around which reverse sensitivity is an issue. The Rural Coastal Areas have particular natural character, cultural and ecological issues. Notably there are likely to be large areas of land in the Rural Production Areas that are valued more for the rural landscape and character reasons than productive use. In this regard the current TDR method in Rodney may no longer be consistent with the draft Auckland Plan.

Other methods to be investigated to incentivise the TRLR system or as alternative methods for incentivising consolidation of rural development potential and amalgamation of rural lots, could include rates relief on particular areas or the waiver of Development Contributions.

6.4 The Costs and Benefits of the Preferred Option

There is a need to clearly identify and justify the donor and receiver sites/environments and reasons underpinning the TDR system. There is invariably a trade-off that needs to be considered when introducing the system with effects in both the donor and receiver locations. The potential costs and benefits of the preferred option are as follows:

Potential Costs	Potential Benefits
Loss of a range of rural lot sizes already forming the permitted baseline and capable of supporting a range of rural activities.	Removal or redistribution of development rights from sensitive rural locations.
Limitations inhibiting a viable long term transferable title market.	The amalgamation of land titles to support rural activities that require access to large areas of the rural land resource.
Potential transfer of adverse effects on rural values from one location to another or the exacerbation of these effects.	An economic incentive for rural land users to reinvest into the rural economy.
Reliance on transferable titles to achieve growth management outcomes adjacent settlements with undefined timeframes.	Residential development can be directed to locations where the environmental effects are not as significant or can be managed more effectively
	The provision of lifestyle choice options in proximity to the RUB and associated amenities and infrastructure but where the distinction of the RUB can be maintained and urban creep avoided.

6.5 The Extent to which Council should be Involved in Facilitating the Transfer of Lot Rights or acquiring them.

Given the system proposed, there is no requirement or apparent advantage in Council acting as a bank for entitlements.

Council could look at maintaining a register of donor and receiver properties to facilitate transfers and buyer/seller contact but this looks to have no significant advantage to the services provided by the private sector.

There is also no apparent advantage and potentially significant cost to Council of acquiring entitlements.

6.6 The Types of Plan Provisions (Especially Mapping) and the Advantages/Disadvantages of Using Management Areas such as those used in Franklin to Limit the Transfer of Rural Lot Rights.

The recommended option identifies a need to accurately define the donor and receiver environments. The Management Area approach is a method by which this can be achieved.

The significant advantage of this approach is that it provides limitations to the extent of the system and also provides the ability to control and define environmental outcomes. Management Areas are a useful planning method through which specific objectives, policies and methods can be imposed over which broader objectives and the resource management strategy can be applied.

A significant disadvantage of the Management Area approach is the need for boundary accuracy. This cannot always be achieved given the scale of these areas. The Franklin Management Areas were defined through multidiscipline input which included overlaying expertise in:

- Ecology
- Landscape
- Planning
- Coastal Science
- Water Resources

Despite the input, there are still disputes along interface boundaries.