

# **Proposed Private Plan Change 113 to the Whangarei District Plan – Ruakaka Racecourse.**

## **Recommendations from the Hearing Panel to the Council**

Date 20 February 2014

# 1. Summary of the Recommendation

The Commissioners have determined to recommend to the Council that:

- (a) Proposed Private Plan Change 113 (PC113) to the Operative Whangarei District Plan be **APPROVED** subject to the amendments as described below and in the Decisions Version of the Plan Change document [Attachment 1], and
- (b) That the submissions be accepted, accepted in part or rejected according to the reasons set out in this decision report.
- (c) In terms of the final wording of the text there was a substantial degree of agreement reached between the applicant and Ms McNeal, the Council's reporting planner, by the time we closed the hearing on 18 December 2013. We have generally adopted the agreed wording as amended by Ms McNeal's final recommendations

In summary the main changes from the plan change as notified are as follows:

- Requirement for any Management Plan or development resulting in more than 350 residential units in total in the REE to be a non-complying activity - new REE 1.2(1).
- Status of activities consented to by Management Plans, as detailed in revised Eligibility provisions.
- Amendment of provision relating to 350 residential units cap within Environment - REE 1.4.1(ii).
- Expansion of list of methods for the protection of adjacent ecological values– REE 1.4 (8).
- Expansion of Management Plan Requirements (REE 1.5) including several additional information requirements recommended in S42A report (but deletion of coastal hazard risk assessment requirement recommended in s42A report, off-set by a new General Policy (16) in Precinct D requiring very long term coastal hazard erosion risks to be taken into account).
- Deletion of former REE 1.5 (4) Management Plan Requirements provisions (relating to the need for a 'Habitat Protection Plan') and its replacement by a new, longer section (4) detailing 'Ecological Plan' provisions.
- The introduction of new Prohibited Activities sections (previously recommended by DOC) – REE.2.3A, REE.3.3A, REE.4.4A and REE.5.3A with the bringing in or keeping of cats, dogs and mustelids being a Prohibited Activity in all precincts. In addition, in precincts other than Precinct A, two additional Prohibited Activities are now listed – i.e the dumping of waste into adjoining Crown land and the construction of access points into Crown land except for entry points set out in approved Management Plans.
- Changes to Notification sections and associated references to requisite policies to require Management Plans prepared under REE. 1.5 to be subject to the RMA notification tests, notwithstanding their compliance with requisite policies.
- Re-sequencing of the Subdivision section provisions (REE.6) in line with the structure of the previous sections of the plan change (i.e REE.1 and Precincts).
- Amendment of Map REE 1 by the inclusion of a link between Precinct D and Precinct A, south of the racecourse buildings, in line with the survey plans by Reyburn and Bryant submitted in conjunction with the plan change.

## 2. Delegation

The Commissioners, Les Simmons (chair), Alan Withy and John Williamson, were delegated the responsibility by the Whangarei District Council to make recommendations to it on the decisions on submissions on the PC113 pursuant to section 34A of the Resource Management Act 1991 ("RMA").

## 3. Process Matters Relevant to PC113

Date of public notification of plan change for submissions	26 March 2013
Closing date for submissions	26 April 2013
Date of public notification for further submissions	28 May 2013
Closing date for further submissions	19 June
Pre-hearing meeting	31 July 2013

Hearing dates  
Hearing closed

18 to 20 November 2013  
18 December 2014

A total of 59 submissions and 8 further submissions were received.

A pre-hearing meeting was held in accordance with schedule 1 clause 8AA of the RMA. The pre-hearing was held with the intention of streamlining the hearing process and to clarify or facilitate the resolution of matters. The pre-hearing meeting was chaired and mediated by independent commissioner John Childs. The prehearing comments were provided to the Hearing Panel and we have considered them as part of the process to make recommendations to the Council.

## **Procedural Matters**

### **A: Request that the hearing not proceed**

At the beginning of the hearing on Monday 18 November 2013, Ms Kapua, Counsel for the Patuharakeke Te Iwi Trust Board (PTB) requested that the Hearings Panel not progress this private plan change until such time as the outcome of any Treaty Settlement and/or hearing was known. After hearing legal submissions from Ms Kapua, Mr Peters, Counsel for the Whangarei Racing Club and from Mr Mathias, Solicitor for the Whangarei District Council, the Hearings Panel advised orally that that the hearing would proceed and that a written decision on this procedural issue would be given no later than the week beginning 25 November. A written decision was issued on 22 November 2013 and the reasons for the decision were as follows.

*"The submissions of Mr Mathias and Mr Peters have been accepted, for the following reasons.*

- 1. That the provisions of the RMA seek to avoid any unreasonable delay in the processing of applications for resource consent and plan changes. The request from the PTB for a delay to the hearing was essentially open ended. No specific timeframes were put forward as the PTB could not be certain how long it would be until there was an outcome for them from the Waitangi Tribunal.*
- 2. We have also accepted the submissions that the issue of land ownership is not a relevant one in terms of the RMA.*
- 3. We have also accepted the submissions that to impose a condition on any acceptance of PC 113 that was not for an RMA purpose would be ultra vires. The type of condition proposed by Ms Kapua did not fairly and reasonably relate to the proposed plan change and was not for any resource management purpose.*
- 4. The Section 27B memorial is well understood by all parties to the hearing and in particular the Whangarei Racing Club as owners of the land. The owners wish to proceed with PC 113 in full knowledge of possibility that the land could be resumed by the Crown.*
- 5. In terms of the responsibilities delegated to the Hearings Panel by the Whangarei District Council we have accepted the submissions from Mr Mathias and Mr Peters that the hearing should proceed. We have now completed the hearing to the stage that the applicant and the submitters that asked to be heard, have been heard."*

As at the date we release our written recommendations to the Council on PC113 we have not been advised of any legal challenge to our decision dated 22 November 2013, therefore we have assumed our decision has been accepted by the PTB.

### **B: The Applicant's Final Track Change Version of the Plan Change**

Prior to the hearing being adjourned on 20 November 2013 the Hearing Panel requested that the applicant prepare a final track change version of the proposed plan change and submit a copy to the Council for the addition of comments by Council officers on the points of agreement or disagreement. Copies of the final track change version, including comments from Ms McNeal, the reporting planner, were circulated to the Hearings Panel and then forwarded to all parties that attended the hearing by way of a memorandum dated 13 December 2013.

We noted that there was considerable support for the final wording from Ms McNeal. She did however recommend some further amendments and we have accepted her recommendations for inclusion in the final version we have recommended to the Council.

### **C: Late Submission**

Ms McNeal in her section 42A report at paragraph 160 advised us that the submission from the Ngatiwai Trust Board had been received 4 working days after the close of submissions. Pursuant to section 37A (2) of the RMA we accepted this submission for the reasons that the delay was minimal, the submission was received in advance of the notification of the summary of submissions and was included in that summary

when it was notified. We have therefore concluded that no persons are adversely affected by the extension of time.

## 4. Introduction and Overview of the Plan Change

PC113 proposes a change in the zoning of the Ruakaka Racecourse land, 50 hectares in area, from Coastal Countryside Environment to a new Environment/zone called the Ruakaka Equine Environment (REE).

The reporting planner, Heather McNeal, in her section 42A report, described the reasons for the plan change, the features of the proposed REE and the required changes to the District Plan as follows.

### ***“Reasons for plan change***

1. *The WRC is a non-profit organisation with the stated aims of ‘promoting and assisting the sport of horse racing, as well as aiding other local organisations.’ The race club’s facilities, including grandstand, club rooms, and race day facilities are described in the request as being ‘not up to modern standards’ and in need of ‘substantial refurbishment’. A master plan for the racecourse was prepared in 2010 by the WRC in collaboration with the WDC and the design team for the purpose of looking at both short and longer term development to secure the viability of horse racing on the site. This anticipated that the form of development proposed could take 20 to 30 years to realise, given the uncertain development environment existing in the wider area.*
2. *The current plan change proposal evolved from the earlier master plan concept and centres on the Club’s primary objective of securing the long term viability of equine activities on the site. No actual development proposal has been advanced at this stage. The key reasons (drivers) of the plan change and anticipated expectations are fully detailed in the applicant’s request and summarised in an ‘executive summary’ provided for notification purposes, which states:*
3. *The objective of the Plan Change is to secure the long-term viability of equine activities on the site while enabling the expansion of training and horse racing-related activities and compatible commercial, residential and equine-education cluster development. The plan change also provides a framework for future, high quality residential and mixed use development, while respecting the values of the surrounding environment. The natural character of the coastline is to be protected, and any significant adverse effects of development, on the adjacent reserves, are to be avoided. There will be a stepped approach to redevelopment and the use of requisite policies and the preparation of management plans as discretionary activities prior to any large-scale non-equine development. This will include detailed amenity and effects consideration for the precinct planning stage, within the management plan. Such plans will be required for the whole of each precinct to secure integrated outcomes.*
4. *In providing for the outcomes sought, the application acknowledges that development will need to appropriately avoid and mitigate effects on adjacent natural and built environments, with the key tool seen as being the preparation and approval of detailed Management Plans prior to significant residential and commercial development occurring on the site.*

### **Features of proposed REE**

5. *The structure of the proposed Ruakaka Equine Environment (REE) contains the following features:*
  - (i) *Four objectives relating to the REE overall, being:*
    - *The long term viability of equine activities on the site is secured*
    - *The expansion of horse racing and training-related activities, and compatible commercial and equine education cluster development is enabled.*
    - *A framework for future residential and mixed use development is provided through a Management Plan approach that ensures the viability of ongoing equine-related activities; provides for a high quality environment within the site and respects the amenity of the surrounding environment.*
    - *The natural character of the coastline is protected, and any adverse effects of development, on the adjacent DOC reserves and their significant wildlife and dune lake, are avoided*
  - (ii) *Division of the site into four precincts (depicted on Map REE.1) of differing size, characteristics and functions, with different objectives applied to the individual precincts:*
    - *Precinct A - Infield and Racetrack (27.259 ha) allowing an equine and recreational cluster within infield, effective race day facilities, open space character;*
    - *Precinct B - Southern Precinct (7.7730 ha) allowing a range of residential accommodation, linkages to the coast, and some small scale commercial development;*

- Precinct C - Western Precinct (5.493 ha) allowing houses (stand-alone and terrace-type) and stabling facilities, stepped back from the dune lake; and
  - Precinct D - Eastern Precinct (9.479 ha): allowing the development of grandstand and function rooms, multiple uses (e.g watching racing, public open space, visitor accommodation, conference centre facilities and related commercial development, some low scale residential development.)
- (iii) Adoption of a policy-led approach to subdivision and development, (rather than reliance on traditional rules), including use of specified criteria ('requisite policies') to determine notification status, and policies guiding the desired scale, intensity, location and built form of residential development in particular. (These include a maximum quota of 350 dwelling units over the 50 ha site, height and setback provisions and adherence to urban design principles).
- (iv) Provision for racecourse-related activities across the whole of the new Environment, with 'compatible' commercial and residential activities (mixed use) in specific precincts, and use of 'no-complaint' covenants on residential development to protect the long term use of the track and infield as an equine-related activity area.
- (v) Classification of activity types within precincts as:
- Permitted activities (predominantly related to equine use);
  - Requiring resource consent as (unrestricted) discretionary activities;
  - Requiring a Management Plan to first be submitted to the Council and approved (as a discretionary activity) with the land use activity status as per approved Management Plan;
  - Controlled activity (subdivision in accordance with Management Plan);
  - Non-complying (Industrial activity in Precinct B, except as defined within equine-related activities, and any activity in Precinct A not equine-related or a discretionary activity); or
  - Prohibited (subdivision in Precinct A).
- (vi) A requirement for mandatory Management Plans, based on the District Plan Management Plan Technique ('MPT') for all precincts other than Precinct A (Infield and Racetrack), with minimum content requirements for such plans specified (including contextual analysis and assessments of environmental effects), and the listing of minimum development requirements for precinct Management Plans, including:
- Activities, and their activity status (permitted or discretionary)
  - Performance standards for activities, (including standards for noise, lighting, visual amenity, car parking, and traffic management, where necessary)
  - Building envelopes (footprints, height, separation, coverage)
  - Building design assessment matters and criteria
  - Proposed road layout and cross sections
  - Pedestrian and cycle facilities
  - Landscaping requirements
  - Staging / timing of development
  - Infrastructure funding
  - Stormwater management, including groundwater quality and dune lake re-charge
  - Identification and protection of areas of cultural heritage significance
  - A requirement for a Habitat Protection Plan (HPT) to be prepared in consultation with DOC and Iwi as part of the Management Plan ecological effects assessment.

### **Required changes to District Plan**

6. The proposal requires the following changes to the District Plan to give effect to the plan change request:
- The addition of a new section in the District Plan (termed 'Ruakaka Equine Environment' or 'REE') with associated objectives, policies, explanation and reasons and a precinct map indicating the precincts (Map REE 1).
  - Alterations to the District Plan Environments map (Map 56) to depict the area affected by the new Environment, replacing the current Coastal Countryside Environment zoning of the site by 'Ruakaka Equine Environment'.
  - Other consequential changes to integrate the plan change into the District Plan, including the new proposed definition of 'Equine related activities'.

7. *In addition, adoption of the Management Plan Technique for use in the REE as an approach to development design and consent necessitates Council consideration of matters specified under MPT.1.1 of the District Plan and the listing (under MPT.2.8) of particular assessment matters applying to REE. The Management Plan Technique can only be considered for use where provided for in the development eligibility statement for the relevant Environment and/or Policy Area. Currently only the Urban Transition Environment (UTE) utilises the technique although increased use is anticipated as part of Council's on-going rolling review of the District Plan."*

#### **Evidence presented by the Applicant, Submitters and the Reporting Planner's Section 42A report**

We received extensive evidence from the applicant and those submitters who attended the hearing. The majority of the evidence we received had been pre circulated to all parties prior to the hearing. This enabled all witnesses the opportunity to produce relatively brief final statements of evidence at the hearing that set out the matters where they agreed with the evidence of others or alternatively they could focus on the remaining points of difference on specific matters. This process greatly assisted the hearing process, for all participants, in our opinion. Ms McNeal's section 42A report, her closing statement after hearing all the evidence at the hearing, together with her comments of the final track change version of the plan change have also been of considerable assistance to us in our deliberations.

We have carefully assessed all of the evidence presented to us, including the written submissions from those submitters who did not attend the hearing. Instead of attempting to summarise the evidence presented the key aspects of the evidence, relevant to our determinations, is referred to in section 7 below

The principal issues that were in contention, or that need to be determined, have been identified by us as being:

1. Whether the plan change should proceed before the outcome of the Treaty of Waitangi claim of Patuharakeke Trust Board is known.
2. Whether there should be any change to the zoning of the Ruakaka racecourse land given its location and surrounding environment.
3. Whether the plan change will give effect to the NZ Coastal Policy Statement (NZCPS) 2010.
4. Whether the plan change will give effect to the relevant regional planning documents.
5. Whether the management plan approach is an appropriate method to guide the future development of the Ruakaka racecourse land.
6. What intensity of development should be provided for, if development is to occur?
7. The avoidance, mitigation and management of any adverse effects on the environment, including ecological effects, cultural values, coastal hazards, flooding and tsunami risk, archaeological effects, the scale, form and intensity of development, traffic and access issues, access to the coast, infrastructure, noise and light.
8. Whether the plan change will promote the sustainable management of natural and physical resources as contemplated by Part 2 of the Act.
9. The specific wording of the provisions in the plan change.

## **5. Statutory Considerations**

PC113 was notified on 26 March 2013 and has been considered under the provisions of the RMA as amended by the Resource Management (Simplifying and Streamlining) Amendment Act 2009 which came into effect on the 1<sup>st</sup> October 2009. The key provisions for consideration of a district plan change are sections 32, 72 to 76 of the Act, Part 2 and the second Part of the First Schedule to the Act. These are all addressed below.

Section 32, in summary, seeks to ensure that the costs and benefits of proposed plan provisions are considered and that the proposed controls are justified. Each objective proposed has to be examined with regard to the extent to which it is the most appropriate way to achieve the purpose of the RMA. This examination must take account of the benefits and costs of the proposed policies, rules or other methods and the risk of acting, or not acting, if there is uncertain or insufficient information about the subject matter of those policies, rules or other methods. Any rules or other methods should be aimed at achieving the objectives and policies.

To meet the section 32 requirements, an assessment report must be prepared on the content of the proposed plan change before the change is notified. This report must consider a number of matters,

including whether there has been sufficient consideration of alternative methods of achieving the plan change objectives. The hearing itself forms part of the section 32 process.

A section 32 assessment report was provided by the applicant. It was accompanied by specialist reports which examined the Plan Change in terms of the principal effects on the environment.

The decision of the Environment Court in *Long Bay-Okura Great Park Society Incorporated v North Shore City Council* provides a framework for conducting a section 32 analysis and also includes a detailed discussion of the requirements of the relevant sections.

The Environment Court in *Eldamos Investments Limited v Gisborne District Council* W047/05 summed up the relevant statutory matters as follows:

1. The objectives of the Plan are to be evaluated by the extent to which they:
  - a. Are the most appropriate way to achieve the purpose of the RMA – section 32(3)(a);
  - b. Assist the Council to carry out its functions in order to achieve the purpose of the Act – section 72; and
  - c. Are in accordance with the provisions of Part 2 – section 74(1).The policies, rules or other methods in the Plan are to be evaluated by the extent to which they:
  - a. Are the most appropriate way to achieve the objectives of the Plan;
  - b. Assist the Council to carry out its functions in order to achieve the purpose of the Act;
  - c. Are in accordance with the provisions of Part 2 of the RMA; and
  - d. (If a rule) achieves the objectives and policies of the Plan.

## 5.1 Summary of findings with respect to section 32

The applicant completed an evaluation of PC113 in accordance with section 32 of the RMA as part of the request to Council in relation to this plan change, together with a number of supporting reports.

We note that section 32 (3) states that an evaluation must examine:

- the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and
- whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

Evaluation in terms of section 32 is ongoing, and a further evaluation must be undertaken prior to any decision to confirm the appropriateness of PC113.

In her section 42A report Ms McNeal specifically addressed section 32 matters in her paragraphs 145 to 157, inclusive. We accept her analysis and note that subject to further amendments to respond to the concerns of submitters, she agreed in general terms with the applicant's section 32 findings.

The only section 32 matters raised by submitters were by Ms Crossen on behalf of the Department of Conservation. It was her submission from paragraph 39 of her legal submissions, under the heading "*Consideration of s32 RMA and whether the policies and rules are the most appropriate for achieving the objectives of the Plan,*" sought that the plan change "...be amended to provide for more appropriate ways to avoid and mitigate adverse effects on the environment."

In our view the Section 32 reports, and our findings having heard all of the evidence, have appropriately assessed the relevant provisions of section 32; in particular rules and their effectiveness in addressing the environmental effects. In terms of the *Long Bay-Okura* formula, as set out above, the Council's functions under section 31 are relevant in the sense that the evaluation of PC113 includes whether it would assist the Council to carry out these functions in order to achieve the purpose of the Act (as required under sections 72 and 74 of the RMA).

We accept the section 32 assessments that have been presented to us by the Applicant and which are the subject of the submissions and evidence before us, including Ms McNeal's section 42A report.

Subject to the changes we have recommended to the plan change provisions and for the reasons set out below, we find that the plan change satisfies the section 32 requirements, and we recommend that it be approved accordingly.

## 6. Who we heard from

The following people appeared at the hearing

<b>Council Officers:</b>	Heather McNeal	Reporting Planner
	Nick Williamson	Team Leader District Plan
	Graham Mathias	Council Solicitor
	Jane Murdoch	Support Assistant – District Plan
	Melanie Donaghy	Support Assistant – District Plan

<b>For the applicant:</b>	Wayne Peters (Legal Counsel)
	John Fairley (Past President of the Whangarei Racing Club)
	Geoff Vazey (Deputy Chairman of the Board of the Auckland Racing Club)
	David Mead (Planner)
	Rebecca Skidmore (Urban Designer and Landscape Architect)
	Nicholas Brandon (Property Consultant)
	Dr Timothy Martin (Ecologist)
	Trevor Mackie (Planner)

<b>Submitters:</b>	Prue Kapua (Solicitor - Patuharakeke Trust Board) Kelly Dixon (Solicitor - Patuharakeke Trust Board) Anna Pitman (Solicitor - Patuharakeke Trust Board) Luana Pirihi (Patuharakeke Trust Board) Juliane Chetham (Patuharakeke Trust Board)
	Teall Crossen (Solicitor - Department of Conservation) Shaughan Anderson (Department of Conservation) Dr Tony Beauchamp (Department of Conservation) Andrew Riddell (Department of Conservation)
In support	Donna Logan
In support	Garth Mortensen (Ruakaka Economic Development Group)
	Margaret Hicks
	Colleen Prendergast
	David Lourie (Bream Bay Coastal Care Trust)
	Warren Daniel (Ruakaka Parish Residents and Ratepayers Association Inc.)
	Trevor Smith
	Robyn Hembry

## 7. Consideration of Submissions

### 7.1 Recommendations on Submissions

The RMA does not require a Council to make individual decisions on each and every submission or relief sought. This is set out in Schedule 1 – Preparation, Change, and Review of policy statements and plans. Clause 10 states:

Decisions on provisions and matters raised in submissions

- (1) A local authority must give a decision on the provisions and matters raised in submissions, whether or not a hearing is held on the proposed policy statement or plan concerned.
- (2) The decision—
  - (a) must include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to—
    - (i) the provisions of the proposed statement or plan to which they relate; or
    - (ii) the matters to which they relate; and
  - (b) may include—
    - (i) matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and
    - (ii) any other matter relevant to the proposed statement or plan arising from the submissions.
- (3) **To avoid doubt, the local authority is not required to give a decision that addresses each submission individually.**

(Emphasis added)

On this basis we have addressed the submissions by topic as detailed below. We have divided the response to the submissions into nine sections:

1. Whether the plan change should proceed before the outcome of the Treaty of Waitangi claim of Patuharakeke Trust Board is known.
2. Whether there should be any change to the zoning of the Ruakaka racecourse land given its location and surrounding environment.
3. Whether the plan change will give effect to the NZ Coastal Policy Statement (NZCPS) 2010.
4. Whether the plan change will give effect to the relevant regional planning documents.
5. Whether the management plan approach is an appropriate method to guide the future development of the Ruakaka racecourse land.
6. What intensity of development should be provided for, if development is to occur?
7. The avoidance, mitigation and management of any adverse effects on the environment, including ecological effects, cultural values, coastal hazards, flooding and tsunami risk, archaeological effects, the scale, form and intensity of development, traffic and access issues, access to the coast, infrastructure, noise and light.
8. Whether the plan change will promote the sustainable management of natural and physical resources as contemplated by Part 2 of the Act.
9. The specific wording of the provisions in the plan change.

We consider this is the most efficient way of reporting and making our recommendation to the Council, and for submitters to understand how we reached our recommendations.

In relation to our recommended changes to PC113 they are attached to this report [Attachment 1].

**Whether the plan change should proceed before the outcome of the Treaty of Waitangi claim of Patuharakeke Trust Board (PTB) is known.**

The PTB, as a preliminary matter, opposed the hearing proceeding before the outcome of the Treaty of Waitangi claim is known and we responded to that specific request orally on 18 November and in writing on 22 November.

When presenting legal submissions on behalf of the PTB during the hearing on the merits of PC113, Ms Dixon stated that, *"The fundamental issue of the section 27B memorial ... underpins the entire case for Patuharakeke."* As we understood the position of the PTB having failed in their request to prevent the hearing proceeding, their primary request was that the plan change be *"refused or set aside"* in the words of Ms Chetham, because they wanted, also in her words, *"to get the property in the state that it is in now."* As a fall-back position PTB supported the approach of the Department of Conservation that the intensity of future development should be limited to 100 residential units.

We address the fall-back position below, however it is appropriate they we address PTB's primary relief at the outset.

From the perspective of the PTB it is their expectation that their Treaty claim will be successful, the Crown would resume the land currently owned by the Whangarei Racing Club and that the Ruakaka racecourse will be returned to them, via the section 27B memorial process. If PC 113 is approved, the PTB submitted that the value of the racecourse land will increase and as stated in Ms Kapua's legal submissions at paragraph 4.17, *"...it will likely create a situation where the land is irretrievable for Patuharakeke."*

For the reasons we set out above when we decided to proceed with the hearing, we do not accept the PTB's primary relief that we should either refuse, or alternatively set aside PC 113 until the outcome of the Treaty claim is known.

### **Whether there should be any change to the zoning of the Ruakaka racecourse land given its location and surrounding environment.**

Although there was considerable support for PC 113, or a less intensive development of the racecourse land, there were a number of submitters that were requesting that there should be no rezoning of this land because of its coastal dune location and the sensitive nature of the surrounding environment, particularly with respect to the Department of Conservation land.

Of the submitters that we heard at the hearing, the Bream Bay Coastal Care Trust, Margaret Hicks and Robyn Hembry opposed any change of zoning from the operative Coastal Countryside Environment zoning. For completeness we note that the PTB adopted Ms Hick's evidence in its entirety. We also note that the Director-General of Conservation did not oppose PC 113, instead a number of amendments were sought. Ms Crossen in her legal submissions on behalf of the Department of Conservation stated this relief *"...is based on the national significance of the values at risk, and the experience of the Department in managing adverse impacts of people in sensitive environments, including at Bream Bay."*

Essentially these submitters opposed the proposed rezoning on the grounds that, in Ms Hick's words it *"...breaches the New Zealand Coastal Policy Statement 2010...breaches Part 2 especially section 6 ... It is a text book example of inappropriate subdivision and development in the coastal environment."*

Mr Lourie on behalf of the Bream Bay Coastal Care Trust stated that the proposal *"... understates the vulnerability of the site to coastal hazards and understates environmental impacts. Particularly proximity to wildlife refuge, proximity to dune lake, human impacts on dunes, competition between horse training and other recreational beach activities, stormwater disposal."*

We will address more specifically below the NZ Coastal Policy Statement and the actual and potential adverse effects on the environment in relation to PC 113, however it is appropriate to respond in general terms to the submissions that oppose the rezoning in principle.

In order to address the "bigger picture," "opposition in principle" and whether or not this proposal is "inappropriate subdivision and development in the coastal environment" concerns raised by these submitters we have looked at the racecourse land within its wider context.

There was considerable focus on the fact the racecourse is surrounded on three sides by the Ruakaka Bream Bay Scenic Reserve. In addition the estuarine area to the south and west of the racecourse, approximately 300 metres from its nearest boundary is a Wildlife Refuge. The Wildlife Refuge was declared in 1958. Mr Anderson in his evidence on behalf of the Department of Conservation referred us to the Department of Conservation's Bream Bay Strategic Plan (2006) and tabled a copy of this document. Approximately 686 hectares of coastal land in the Bream Bay area is administered by the Department and this public conservation land extends continuously from Ruakaka in the north of Bream Bay to Waipu Cove in the south. The width of this coastal conservation estate varies considerably along the length of Bream Bay. There is also a variety of activities that abut this conservation coastal dune land, that range from the Marsden Point oil refinery, to the coastal settlements of Ruakaka and Waipu and rural farmland.

Ms McNeal described the site and locality at paragraph 55 of her section 42A report as follows.

*“The racecourse is located within an area bordered by the Ruakaka River to the south and the coast (Bream Bay) to the east, forming the northern part of the coastal settlement of Ruakaka. It lies to the east of Marsden Point Road which links State Highway 1 in the south with the settlements of Marsden Point and One Tree Point to the north. Collectively these small settlements contribute to the Marsden Point/Ruakaka ‘node’, envisaged as a future Satellite Town under the Whangarei District Growth Strategy Sustainable Futures 30/50. This document describes the area as follows:*

*“The Marsden Point/Ruakaka node is a substantial area encompassing a number of settlements, each having a character of its own. Distinct settlement areas include One Tree Point, Ruakaka, Marsden Point and Takahiwai. The main built-up areas include the settlement of Ruakaka with accompanying commercial area/recreational facilities near the Ruakaka River mouth; homes and holiday houses located at One Tree Point; the marine village development between One Tree Point and Marsden Point; and the industrial area centred on the Marsden Point Oil Refinery and Northport’s deep water port. Takahiwai contains a large area of farmland and multiple scattered dwellings near a major local marae. Ruakaka Primary School and some services are located outside of the node, on the other side of State Highway 1.”*

The current zoning of land that abuts the conservation land at Ruakaka includes residential land to the north and south of the racecourse that is set back from Bream Bay a similar distance to the land being considered for rezoning under this plan change. In the context of the immediately surrounding environment the current Coastal Countryside Environment zoning sits between the conservation land and the urban residential zonings that have been applied at Ruakaka.

Ms McNeal from paragraph 123 in her section 42A report described the Council’s longer term strategic planning approach for the Marsden Point-Ruakaka area as follows.

*“Marsden Point-Ruakaka Structure Plan*

123. *The WRC’s input into the Marsden Point-Ruakaka Structure Plan (2000) which led to the drafting of a plan change for the racecourse is described in section 4 of this report.*
124. *In broad terms, structure plans are non-statutory, ‘ideas-based’ documents in the form of a physical land use plans, intended to provide some guidance to service providers. They typically cover a time period of 30 years although the Marsden Point-Ruakaka Structure Plan was intended to be ‘events based’ (rather than ‘time based’) with reliance placed on regular monitoring. Formulation of the structure plan considered the overarching policies, objectives and guidelines of many higher order documents such as the previous NZCPS, the Regional Policy Statement for Northland and the Regional Coastal Plan. The proposals contained in the Marsden Point-Ruakaka Structure Plan are indicative only and designed to guide future actions in the area.*
125. *A key development issue identified in the structure plan and relevant to the plan change’s emphasis on achieving a high quality environment was ‘land use patterning and planning’. Limitations in residential opportunities/options were noted, with the nature of residential development described as being almost exclusively single-residential medium intensity housing, largely based on the historical target market and demand for second homes and retirement living. Residential areas were described as comprising ‘relatively bland traditional suburban environments, having a low level of urban activity mix, and in terms of design, have a low capability to absorb other residentially-based urban land use activities (e.g schools) and be more diverse in the future.’*
126. *In terms of effects on the coastline, higher value landscapes, and ecologically sensitive areas, the structure plan noted:*
  - *Given the rich natural character of the coastline and the study area’s potential for mass urban development, there is potential for large scale impact on the natural realm. It is important that such impacts be avoided by appropriate land use interface planning between the urban area and adjacent protection/conservation areas.*
  - *In order to protect higher value landscape features and ecologically sensitive areas from being gradually eroded by incremental mass urban development, it is appropriate and necessary to plan for the ultimate spatial extent of urban development, and define and establish strong and permanent urban edges.*
127. *In terms of land capability and availability the structure plan document noted that there is ‘extensive land available for urban growth, and even under the most optimistic development scenario, the full capacity for urban growth will not be reached in the next 30 years. Efficiencies attributable to selective programming of spatial growth and the staged release of land are therefore important.’ While several*

*submitters claim that there is sufficient land available for development beyond the racecourse site, PC113 provides for managed staged development in line with the above provisions.”*

In the context of the local and the wider coastal environment we find that it is appropriate to consider the merits of the proposed change to the current zoning. We do not accept that in principle the current zoning should remain unchanged as was requested by the above submitters.

### **Whether the plan change will give effect to the NZ Coastal Policy Statement (NZCPS) 2010.**

The submissions and evidence presented by the Department of Conservation, the Bream Bay Coastal Care Trust, Margaret Hicks and Robyn Hembry was that PC 113 would not give effect to the NZCPS. We acknowledge however that it was the case for the Department of Conservation that subject to the amendments being sought the plan change would give effect to the NZCPS.

Ms McNeal addressed the NZCPS from paragraph 110 in her section 42A report as follows.

#### **“New Zealand Coastal Policy Statement 2010**

110. *The New Zealand Coastal Policy Statement 2010 (‘NZCPS’) which became effective on 3 December 2010 takes a spatial approach to planning for coastal development, directing councils to identify areas within the coastal environment that are ‘appropriate’ or ‘inappropriate’ for development in order to protect outstanding landscapes, important habitats or areas with high biodiversity values, or to avoid areas subject to natural hazards. The NZCPS (2010) does not preclude use and development in appropriate places and appropriate forms and within appropriate limits and it seeks to consolidate existing coastal settlements and urban areas where this will contribute to the avoidance or mitigation of sprawling or sporadic patterns of settlement.*
111. *The NZCPS (2010) contains 7 objectives relating to:*
- 1. Safeguarding and sustaining the coastal environment*
  - 2. Preserving natural character and protecting natural features and landscapes*
  - 3. Taking into account the principles of the Treaty of Waitangi and recognising tangata whenua*
  - 4. Maintaining and enhancing public open space qualities and recreation opportunities*
  - 5. Managing coastal hazard risks*
  - 6. Enabling people and communities to provide for their social, economic, and cultural wellbeing through subdivision, use and development in the coastal environment*
  - 7. Ensuring management of the coastal environment provides for New Zealand’s international obligations.*
112. *Associated policies of relevance to PC113 relate to:*
- The extent and characteristics of the coastal environment (Policy 1)*
  - The Treaty of Waitangi, tangata whenua and Maori heritage (Policy 2)*
  - Adopting a precautionary approach towards activities whose effects are uncertain, unknown or little understood, but potentially significantly adverse (Policy 3)*
  - Integrated management of natural and physical resources (Policy 4)*
  - Land or waters managed or held under other Acts (e.g Conservation Act) – (Policy 5)*
  - Activities in the coastal environment, including the importance of infrastructure, energy, and mineral extraction; encouragement for consolidation of existing coastal settlements, recognition of tangata whenua needs, and built development considerations (Policy 6)*
  - Protection of indigenous biological diversity (biodiversity) – (Policy 11)*
  - Preservation and protection of natural character (including clarification of components of ‘natural character’) – (Policy 13)*
  - Promotion of restoration or rehabilitation of natural character through a range of approaches (Policy 14)*
  - Protection of natural features and natural landscapes, with identification and assessment based on a range of listed factors (Policy 15)*
  - Historic heritage identification and protection from inappropriate subdivision, use and development, with 9 methods specified (Policy 17)*
  - Public open space for public use and appreciation including active and passive recreation, compatible with the coastal environment (Policy 18)*
  - Walking access, recognising public expectations regarding practical, free and safe walking access to and along the coast, with restrictions imposed only in specified circumstances (Policy 19)*

- *Control of vehicle access where damage, disturbance or danger might result (Policy 20)*
- *Assessment and monitoring of sedimentation levels and impacts (Policy 22)*
- *Management of discharge of contaminants (Policy 23)*
- *Identification of areas potentially affected by coastal hazards (including tsunamis), giving priority to 'areas at high risk' (>100 years), based on listed assessment criteria (Policy 24)*
- *Provisions relating to subdivision, use and development in areas potentially affected by coastal hazards over at least the next 100 years, including avoidance of risk, avoidance of redevelopment or change of use; redevelopment (including managed retreat by removal or relocation); alternatives to hard protection structures; and consideration of potential effects of tsunamis and how to avoid or mitigate them. (Policy 25)*
- *Natural defences against coastal hazards (including beaches, estuaries, dunes etc) – (Policy 26)*

113. *The PC113 application (Appendix D 'Additional Assessment against NZ Coastal Policy Statement 2010') confirms that all objectives and policies were considered. In assessing the NZCPS (2010) objectives and policies, the s32 report concludes that due to the extent of existing development in the area, the main NZCPS test for the plan change is: Policy 13.1(b): 'To avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment.' Another common theme throughout the NZCPS (2010) is the need for protection against 'inappropriate subdivision, use and development, continuing the focus of s6 of the RMA.*

114. *NZCPS (2010) policies referred to in submissions as being contravened by the proposal include Policies 1, 11, 13, 15, 16, 19, 20, 24, 25 relating to issues of biodiversity, natural character, natural features and landscape, activities, walking and vehicular access, coastal hazards and subdivision/use/development."*

Ms Hicks considered that PC 113 would breach policies 1, 3, 6, 11, 13, 15, 19, 20, 23, 24, and 25 of the NZCPS. The Bream Bay Coastal Care Trust raised issues in relation to Objectives 1, 2, 4, 5 and 7 as well as the policies identified by Ms Hicks. Both Ms Hicks (Geography) and Mr Lourie (Horticultural Science) had university degrees, however their main 'qualifications' were their observation and monitoring of the Ruakaka area and their local knowledge and experience, rather than any particular expertise relevant to the NZCPS. We did not doubt their knowledge and experience, especially that of Ms Hicks.

With respect to the NZCPS we also had the benefit of the evidence from Ms McNeal, Mr Mead and Mr Riddell. All three are experienced qualified planners, with 36, 25 and 24 years' experience respectively. In addition we had the benefit of Ms Skidmore's urban design and landscape architecture evidence in relation to the NZCPS. Her qualifications and extensive experience added a different expert perspective to the evidence of the three planners.

Mr Riddell was employed by the Department of Conservation for 15 years until June 2013 and of the three planners would appear to have worked more regularly on coastal planning matters that involved analysis of proposals and planning documents against the NZCPS, including the previous 1994 version.

With respect to all three planners they all have had considerable experience that has included the analysis of planning documents and determining whether or not proposals are consistent with, or contrary to, objectives and policies. In determining if this plan change will give effect to the NZCPS, as required by section 75 of the Act, we have placed greater weight on the evidence of the three planning witnesses when compared to the evidence of Ms Hicks, Mr Lourie and Ms Hembry. While these three submitters have identified the same key objectives and policies that are relevant to our findings, as the three planners have identified, we have preferred the analysis of the expert planning witnesses in terms of the relationship of the relevant provisions of the NZCPS with the provisions of the Resource Management Act.

Mr Riddell after identifying essentially the same objectives and policies as the other submitters, reached a significantly different conclusion. Ms Crossen in her submissions at paragraph 65, relying on Mr Riddell's evidence stated that, *"In summary, the D-G considers that enabling development in this sensitive coastal environment can be provided for in PPC113, however only where appropriate safeguards are built in, for example as set out in the amendments proposed by the D-G. Absent those safeguards, PPC113 would not give effect to the NZCPS."*

Mr Riddell at his paragraphs 58 and 59 concluded that.

*"I have identified above several themes from the Coastal Policy Statement that, in my opinion, underline the need for the proposed plan change to include effective and certain provisions to address and, in some instances, avoid actual and potential off-site effects of built form and from the scale of development proposed (people pressure).*

*In this regard I consider that a clear limit to the overall scale of development, limits on public access points and tracks, and long term off-site ecological management are important measures if the Whangarei District Plan with the plan change included is to give effect to the Coastal Policy Statement.”*

In his Supplementary Statement of evidence dated 19 November 2013, at paragraph 12, Mr Riddell stated that;

*“In my opinion what is proposed is consolidation of built development, not expansion of it. At paragraphs 25, 52 and 107 of my evidence I refer to the race course as an urban boundary. I also point to the need to carefully manage consolidation of that urban boundary, especially along the southern boundary, if ecological and natural character adverse effects are to be avoided.”*

As we understood Mr Riddell’s evidence, the NZCPS would not in his opinion prevent the change in zoning, instead he was more concerned about the management of the scale of the proposed development and any effects on the environment.

Mr Mead relied upon the section 32 assessment of the NZCPS that accompanied the December 2012 request to the Council in support of the plan change. The conclusion under the heading 4.3.2 NZCPS Policies stated as follows.

*“The proposed plan change is required to give effect to the National Coastal Policy Statement, so all of the objectives and policies have been considered.*

*The racecourse, with all of its land modification, structures, open space and public events, lies within the coastal environment. Protection of the surrounding areas in their more natural or less modified state, and enhancement of the public connections with the coast, is part of the unique character of this location, and requires integrated management of the resource present. However this does not foreclose development of the racecourse site, as identified in Objective 6, which refers to “the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits.*

*In particular, given the extent of existing development in the area, the main policy test for the plan change is considered to be Policy 13.1(b), namely to avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment.”*

Ms Skidmore, after considering the relevant provisions of the NZCPS, concluded that;

*“The proposed plan change seeks to create a site specific Environment (or zone) with a suite of provisions that are tailored to the specific characteristics of the Site. It seeks to consolidate development and enable a range of activities to establish that are compatible with the primary function of horse racing. The proposed plan change recognises the sensitivities of the surrounding context and in particular the natural character values of the surrounding coastal environment.*

*In my opinion, with the amendments recommended above, the suite of provisions are appropriate to ensure the natural character of the coastal environment is suitably maintained. In particular, I consider the management plan for the various precincts enables a comprehensive design led approach to ensuring building mass and configuration creates a suitable interface with adjoining sensitive environments.”*

Overall, after carefully considering all of the evidence in relation to the NZCPS, we find that the expert planning and landscape evidence generally agrees that the rezoning of the racecourse land to enable redevelopment is not prevented by the NZCPS. The only real point of difference in the expert planning and landscape evidence comes down to the scale of the proposed development and the management of adverse effects. This is in contrast to the evidence of the submitters who essentially concluded that the proposal to change the current zoning was contrary to the NZCPS and therefore should not be consented to.

We have therefore accepted the expert planning and landscape evidence and agree that subject to appropriate management measures PC 113 will give effect to the NZCPS.

### **Whether the plan change will give effect to the relevant regional planning documents.**

With respect to the Northland Regional Policy Statement and the Proposed Regional Policy Statement we received no evidence that would suggest that the plan change would not give effect to these regional planning documents.

Ms McNeal’s evidence was that;

#### ***“Northland Regional Policy Statement / Proposed Regional Policy Statement (PRPS)***

116. *Under the RMA Council is required to give effect to the Northland Regional Policy Statement (operative 31 March 1999). This has been superseded by the Proposed Regional Policy Statement*

notified in September 2012, with decisions released in September 2013 and appeals closing in mid-November. The PRPS gives effect to the NZCPS (2010).

117. *The plan change application (section 4.4) lists the key sections/outcomes of the PRPS (as notified), while commenting on their implications for the plan change, particularly in terms of effects on indigenous ecosystems and species (including the dune lake) and the value of the racecourse as 'regionally significant infrastructure' given that it is now the only full-scale racecourse remaining in Northland.*
118. *Provisions within the PRPS (as amended by decisions) of particular relevance to PC113 are the amended objectives and policies applying to coastal hazards, (copies of which are included in Part 5 of the agenda and are also available on the NRC website). No changes have yet been made to the notified map applying to the racecourse vicinity which indicates the racecourse site as not being affected by 100 year or 10 year flooding events. Although located within the NRC defined 'coastal environment' the site is not identified as containing areas or features of outstanding or high natural character within the PRPS.*

### **Regional Plans**

119. *Regional plans for Northland developed under the RMA include the Regional Water and Soil Plan, Air Quality Plan and the Northland Regional Coastal Plan 2004 with the latter covering the region's 'coastal marine area'. This represents the area from mean high water springs (MHWS) to the 12 nautical mile limit of New Zealand's territorial seas. Subdivision and development on the landward side of the coastal environment is managed by the Operative District Plan but must not be inconsistent with the Regional Coastal Plan regarding the maintenance and enhancement of water quality and ecosystems in water bodies and coastal waters."*

In addition to Ms McNeal's evidence the section 32 assessment at section 4.4 set out and discussed all the relevant provisions under the heading Northland Regional Policy Statement.

In the absence of any contrary evidence we adopt the evidence of Ms McNeal and the section 32 assessment on behalf of the Whangarei Racing Club that PC 113 will give effect to the relevant provisions of the Northland Regional Policy Statement and the Proposed Regional Policy Statement.

### **Whether the management plan approach is an appropriate method to guide the future development of the Ruakaka racecourse land.**

There was general agreement between the expert witnesses that the management plan technique was an appropriate method to guide the future development of the racecourse land. Mr Riddell and Ms Prendergast had some reservations in relation to the use of the management plan technique and their concerns are discussed below.

The management plan technique was described in Ms McNeal's section 42A report from paragraph 27, as set out below.

#### ***"The Management Plan Technique ('MPT')***

27. *On 26 October 2011 Plan Change 103 Management Plan Technique became operative but was not available at the time that the earlier Master Plan exercise was initiated. The technique, based in part on the Far North District Council's Management Plan approach was aimed at enabling a more flexible, site specific and integrated approach to subdivision and development as an alternative to traditional methods in specified Environments. Initially, the technique has been applied only to the Urban Transition Environment (UTE) with the REE being only the second Environment to seek to utilise it, although two other private plan changes (Port Nikau and Marsden Town Centre) initiated prior to PC103 becoming operative have adopted different master plan and management plan approaches.*
28. *The formal inclusion of the 'Management Plan Technique' in the District Plan is attributed to direction provided by the Environment Court in its ruling on Variation 5 of the District Plan (Director General of Conservation v Whangarei District Council (A024/06) issued on 28 February 2006. Variation 5 had proposed changes to traditional minimum allotment sizes, due to difficulties experienced in establishing appropriate minimum allotment sizes in the rural and coastal areas, with these having evolved from 4ha to 1ha to 20ha. The following excerpts from the Court's decision were seen as providing clear guidance on the direction Council needed to take regarding the rural and coastal environment and subdivision:*

*The approach taken by the Council did not meet the purpose of the Act by a considerable margin;*

- *The s32 studies were totally inadequate;*
- *The solutions offered in Variation 5 were broad-brush, even crude, and the relief sought by the parties almost equally so;*
- *We were advised by the council that studies are on-going and that Variation 5 is merely intended as some sort of a stop-gap and for administration convenience’;*
- *The council considered it quite urgent that it make a proposed district plan operative, and it would be loath to initiate a further variation.*

and

*This [20ha minimum lot size] will provide a platform, if a rather crude one, that will keep the environment reasonably safe from harm until the council can conclude its current studies and initiate plan change(s) that encapsulate approaches to subdivision in these sensitive areas that better address the purpose and principles of the Act, for instance through design-based or integrated catchment analysis/management techniques.*

29. *As addressed in detail in the s42A report on Plan Change 103, the Management Plan Technique was introduced in response to the Environment Court’s directive, and was considered to be the most appropriate of several alternative methods explored. It was recognised as providing ‘the opportunity to design a subdivision layout or development activity, site specifically without being ‘constrained’ by the District Plan minimum or average lot size or bulk and location rules,’ with applicants needing to consider the environmental outcomes of their proposed development and to design appropriately. To maintain flexibility for design led development, management plan provisions reliant on objectives and policies, rather than development controls through rules, were advocated.*
30. *The Management Plan Technique is detailed in two parts - Management Plan Technique (MPT.1) provides direction on the release of MPT to other areas (such as the new REE) and Council considerations in preparing an associated plan change while Management Plan Application (MPT.2) provides direction on assessment and consideration of resource consents using the technique.*
31. *MPT objectives are:*
  - *Opportunities are provided for flexible and innovative subdivision and development to achieve holistic outcomes.*
  - *Integrated management of effects between subdivision and land use to result in superior outcomes to more traditional forms of subdivision, use and development.*
32. *MPT.1 includes the following list designed to assist in achieving the requirements of section 6 of the RMA in rural and coastal areas:*

*In rural and coastal areas subdivision, use and development shall preserve and where possible enhance, restore and rehabilitate the character of the applicable Environment (zone) in regard to Section 6 matters of the Resource Management Act 1991, and shall avoid adverse effects as far as practicable by using techniques including:*

  - a. clustering or grouping development within areas where there is the least impact on natural character and its elements such as indigenous vegetation, landforms, rivers, streams and wetlands, and coherent natural patterns;*
  - b. minimising the visual impact of buildings, development, and associated vegetation clearance and earthworks, particularly as seen from public land and the coastal marine area;*
  - c. providing for, through siting of buildings and development and design of subdivisions, legal public right of access to and use of the foreshore and any esplanade areas;*
  - d. through siting of buildings and development, design of subdivisions, and provision of access that recognise and provide for the relationship of Maori with their culture, traditions and taonga including concepts of mauri, tapu, mana, wehi and karakia and the important contribution Maori culture makes to the character of the District;*
  - e. providing planting of indigenous vegetation in a way that links existing habitats of indigenous fauna and provides the opportunity for the extension, enhancement or creation of habitats for indigenous fauna, including mechanisms to exclude pests;*
  - f. protecting historic heritage through the siting of buildings and development and design of subdivisions.*
33. *Additional techniques advocated for urban areas and built environments within Chapter that are also relevant to the type of development proposed for the REE include urban design principles and use of planning infrastructure incorporating alternative engineering solutions where practicable.”*

Mr Mead supported the management plan approach and discussed it in paragraphs 35 to 37 of his primary statement of evidence dated 25 October 2013.

35. *This Environment uses the council's "requisite policy" and "management plan approach" as important organisational tools. The use of these techniques was on request of the council, to be consistent with its emerging approach as explained in the section 42a report, paragraphs 27 to 33.*
36. *I do think that the requisite and generally policy approach will work, and some submitters' concerns about the degree of certainty associated with this approach should recede as they get used to the new format. Having said that, I would also see no problem in restructuring the plan change into a more traditional format if the Commissioners considered that this provided a better format.*
37. *As for the management plan approach, many district plans are moving towards encouraging place-based management frameworks to be prepared, and away from the broad brush zones, objectives and policies. Management plans do allow for more calibrated, up-to-date management requirements to be put in place. By calibrated, I mean more targeted to the particular activity and resources present in relevant precincts and sub areas. The main issue from a resource management point of view is ensuring that the outcomes that management plans should achieve are spelt out in District Plans."*

Mr Riddell in his Supplementary Statement of evidence at paragraph 4 stated that;

*"My starting point is that this is a site surrounded by areas of high natural values that can be significantly adversely affected by development on the site, and that the management plan technique is an appropriate means to manage this."*

As we understood Mr Riddell's evidence he supported the use of the management plan approach, but sought changes to the contents of proposed provisions. We shall discuss the specific wording of the provisions later in our decision.

Ms Prendergast, who has qualifications and had considerable experience in both planning and law, had more fundamental concerns with the management plan approach. She concluded her written submissions by stating that;

*"I acknowledge that my submissions relate as much to the approach being taken to the review of the district as to the plan change currently being considered. For the avoidance of doubt, I consider a comprehensive approach to the future uses to be made of what is a unique facility is to be preferred to ad hoc development as the need or opportunity arises. The requirement for Management Plans setting out the details of the proposed uses for each precinct will allow for better sustainable management and avoidance of effects overall and is endorsed."*

At paragraph 3 of her submissions she stated that she agreed with Mr Riddell that the management plans be mandatory, required before development occurs and that they be publicly notified.

We note that in Ms McNeal's Closing Statement in paragraphs 19 to 21 inclusive, she and Mr Williamson responded specifically to the fundamental concerns Ms Prendergast had raised with respect to the approach being taken to the review of the District Plan. We do not intend to comment further with respect to the approach being taken by the Council, however we accept Mr Williamson's and Ms McNeal's explanation. We also accept Ms Prendergast's concluding comments that the management plan approach can be used to effect with respect to this plan change. With respect to PC 113 we have concluded that both Ms Prendergast and Mr Riddell accept the management plan approach, but have reservations about the wording of the proposed provisions. We will deal with the specifics of the provisions under a separate heading below, however we note that during the course of the hearing the wording of the provisions has evolved and that the applicant has made concessions with respect to a number of the key areas that were in contention.

We have concluded with respect to Ms Prendergast's submission that the management plan approach is ultra vires, that any challenge she has in this regard should be made in a different forum, if anywhere, and we have concluded that the technique is appropriate here and was accepted by her in this situation.

Overall we find that based on the expert evidence we received that the management plan approach is an appropriate method to guide the future development of the Ruakaka racecourse, for the reasons stated by Ms McNeal and Mr Mead, together with the conditional support for this approach from Mr Riddell and the conditional support for this approach on this specific site from Ms Prendergast.

### **What intensity of development should be provided for, if development is to occur?**

Apart from those submitters who were seeking no further development on the racecourse site, the evidence presented to us essentially put forward two options with respect to the proposed limits on the number of residential units. For the applicant the evidence supported a maximum of 350 dwelling units, as provided for

in PC 113 as notified. For the Department of Conservation the evidence, particularly that of Mr Riddell, supported a maximum of 100 residential units. The PTB supported the maximum of 100 residential units.

In her section 42A report Ms McNeal, from paragraph 259 to 267 inclusive, set out a discussion on the 100 and the 350 maximum limits at issue between the applicant and the submitters. She offered no specific opinion at that stage on the merits of the two limits being proposed. In her Opening Comments presented at the beginning of the hearing, in her paragraphs 3 to 16 inclusive, she provided additional comments. In summary she maintained that, "...determining an appropriate level of development within the REE is essential to the entire plan change and that further discussion is still required, given the differing 'bottom lines' proposed by the applicant and the submitters and the basis on which these have been established."

In her Closing Statement Ms McNeal stated that;

6. *"Both the applicant and DOC's planning witnesses have continued to differ on the means of establishing an appropriate level of development for the Rural Equine Environment, with the particular policy in contention being REE.1.4.1(ii) which reads:*

*'There will be a maximum of 350 dwelling units across the Environment. Units in visitor accommodation developments and retirement villages or similar may be in addition to this.'*

7. *At the other end of the spectrum, DOC has continued to promote an optimum figure of 100 units.*
8. *In addressing an appropriate level of development, evidence presented at the hearing focused on a number of issues such as:*
  - *Does the 350 quota represent a 'cap' (i.e a maximum limit) or a 'trigger', beyond which more stringent provisions apply to additional development (e.g non complying or prohibited activity status)?*
  - *What is the difference between 'residential units' and 'dwelling units' and should a quota be inclusive or exclusive of units for retirement living purposes (e.g retirement villages)?*
  - *What is the relevance of the previously granted subdivision consents in respect of land to the west of the racecourse in determining an appropriate level of development, and should the density of the development applicable in those subdivisions be considered in conjunction with the conditions and restrictions applied to them in assessing the appropriate level of development for the racecourse?*
9. *Further clarification was provided by the applicant at the hearing as to how the 350 figure had been derived, citing economic viability reasons (as inferred by from the opening wording of Policy REE 1.4.1) and urban design origins, based on what was considered appropriate during the earlier Master Planning exercise, taking into account an appropriate form and layout and scope for a range of housing types.*
10. *By comparison, DOC continued to maintain that the proposed level of development was 'inappropriate' due to the 'people pressure' expected to result, and the level of intensity of development proposed on two adjoining consented subdivisions to the west. No modification to the 100 unit maximum was advanced by DOC during the hearing and as Andrew Riddell has acknowledged, he and David Mead continue to differ over 'the 100 v 350 plus limit on residential units', whilst conceding that setting a residential unit limit on development as a non complying activity (rather than as a prohibited activity as originally submitted) would be appropriate. As outlined in my s42A report and opening statement, in principle I disagree with the use of prohibited activities as advocated by DOC, therefore requiring development in excess of an agreed limit to be classed as a non complying activity is preferred.*
11. *Some clarification of the difference between the terms 'dwelling units' and 'residential units' and other forms of accommodation in the context of the plan change generally and Policy REE.1.4.1(ii) in particular is provided here since this may potentially have some bearing if an alternative figure is adopted for PC113. In terms of the Operative Whangarei District Plan, the definitions of 'residential activity' and 'residential unit' are relevant. These are included in a schedule of relevant definitions in Attachment 1 to this statement.*
12. *Based on the above definitions, 'dwelling units' as referred to in Policy REE.1.4.1(ii) would come within the definition of 'residential unit' as would other types of housing such as self-contained apartment units envisaged by PC113. Duplex units would be classed as two (joined) residential*

units. Motels or hotels; backpackers, bed and breakfast, farmstay or homestay accommodation, for more than six people are classed as 'commercial activities'. A separate definition applies to 'retirement villages'.

13. Andrew Riddell has recommended that subclause (ii) be amended by deleting the reference to units in visitor accommodation and retirement villages or similar being additional to the 100 unit maximum sought by DOC. At the hearing Geoff Vasey (for WRC) expressed the view that retirement villages needed to be close to populated villages and would work at Ruakaka but at a smaller scale than at Ellerslie. Given the relatively small scale of retirement villages at Waipu, I also consider that a complex similar in scale to the Ryman Jane Mander retirement village at Whangarei is unlikely to eventuate in this location therefore it may be more appropriate to incorporate such retirement units within the maximum unit figure established, if a figure of 350 residential units is agreed upon. I concur with Andrew Riddell (paragraph 117) that deletion of the 2<sup>nd</sup> sentence would remove the open-ended nature of the current provision and provide increased certainty and consistency of interpretation.
14. In terms of DOC's maximum residential unit figure of 100, I remain unconvinced that the figure proposed by DOC reflects an appropriate, soundly-based level and that its method of assessing the REE's potential intensity is preferable to a figure based on the REE as a whole. As outlined in my s42A report, a vacant 50 ha site with a Living 1 Environment zoning (comparable to that of the 2 adjacent Future Living Environment sites) could potentially generate a total of 700 lots. Allowing for the proposed extensive boundary setbacks and other generally more restrictive bulk and location controls than Living 1 (e.g building coverage) and clustering of development unique to the REE, the level of development that could theoretically be achieved within the racecourse site would be significantly greater than either the 100 unit maximum proposed by DOC or the 350 units proposed by the applicant."

We accept Ms McNeal's summary of the evidence presented at the hearing as being accurate.

In his Closing Submissions Mr Peters included the following submissions at his paragraphs 11 to 13 and 50 to 52.

- "11. The second key philosophical difference relates to whether it is possible to manage the effects of the plan change in light of the causal/correlative relationship between the number of people living on the site and the level of potential adverse effects on the adjoining land; further explained:
  - a. is stated by Mrs Hicks and those others supporting her evidence (Patuharakeke Trust Board ("PTB"), Bream Bay Coastal Care Trust and Ms Hembry) that there is a causative relationship. They argue that the number of people is the trigger to adverse environmental impact and essentially assert that the adverse effects are not capable of being managed.
  - b. DOC states that the relationship is correlative.
  - c. The evidence of the Applicant is that the main determinant of the level of adverse effects comes from management of people's behaviour and can be managed. The 350 unit level has been submitted as an appropriate level of residential development under the "envelope" of the management plan technique. The Applicant having now considered the evidence produced by the Submitters will now amend the REE to state that any residential development above 350 residential units will be a noncomplying activity.
12. The Applicant respectfully submits that the views of the Submitters outlined in paragraph 11(a) above are incorrect and that it is the precinct based Management Plan(s) and an area wide Ecological Management Plan and the parameters thereof which will be determinative of the level of effects that development on this site will have on adjoining land. Mr Mead and notably Mr Anderson provided evidence that the management of people determines the level of adverse effects on the environment.
13. The Applicant submits that if the views of Mrs Hicks and those supporting her were to be accepted, the following conclusions could be drawn:
  - a. There could not now or ever be development on this site or on any site adjoining the Bream Bay coast;
  - b. Existing developments ought to be scaled back; and

- c. *The level of environmental damage to the coast and the DOC estate would nonetheless increase exponentially as a direct result of people moving to the Ruakaka area albeit into subdivisions (including those already consented) which are situated near but not adjacent to the coast."*

**"Scale, Form and Intensity of Development**

50. *Without doubt, the subject matter under this heading represents the most contentious and indeed time consuming aspect of the hearing. Reference to the relevant comparative table (table 8) of the appendix sets out competing evidence. Counsel for the Applicant has addressed the philosophical differences in viewing the relationship between the number of people in an area and the environmental impact that area has on those surrounding it at paragraphs 11 to 13 above. What is critical to understand however, is that the subject site and indeed the surrounding DOC estate should be viewed as part of the wider environs of Ruakaka. Against that background there are a number of salient facts:*
  - a. *Ruakaka is the fastest growing area in the Whangarei District in representing 21% of the district's total predicted growth.*
  - b. *The latest statistics show that the population increase expected in that area to increase at a rate exceeding 6.7% per annum and a total growth of 369% by 2061.*
  - c. *The proposal for the Applicant, the former scale of intensity reflects are achievable within the subject site.*
  - d. *leaving aside the issues of views from those on the western boundary, the scale and intensity of the development viewed by the other opponents of the application impact primarily on the DOC estate/beach.*
51. *The Applicant submits that in evaluating the PC113 application from a number of "vantage points" one still arrives at the same conclusion, namely:*
  - a. *effects on the DOC estate that would remain unmitigated? If the answer is yes and in the context of DOC's acceptance that they are not in a position to manage the estate better than that they are currently able to manage, then anything that the WRC does to reverse that scenario must be an improvement.*
  - b. *If PC113 is approved and nothing occurs by way of development on the WRC land the issues of environmental impact are somewhat neutral in the sense that no blame could be attached to WRC for any consequential damage to the DOC estate.*
  - c. *If PC113 is approved and development occurs, it can only do so against the background of Management Plans and Ecological Management Plans being the subject of a public process in the first instance and remains continually subject to scrutiny by the prevailing territorial authority. That being the case any steps in the form of having adjoining landowners taking a degree of responsibility for the DOC estate must be seen to be positive. Reference to the comparative table will also show that any fears as to the level of intensity ignores the fundamental fact that the bulk of the WRC land is in fact going to remain non-residential in character.*
52. *The Applicant thereby submits that PC113 represents potential development of an appropriate scale, form and intensity."*

We accept and adopt Ms McNeal's evidence with respect to Mr Riddell's maximum of figure of 100 residential units. We also remain unconvinced that Mr Riddell's approach "*reflects an appropriate, soundly-based level.*"

A key difference between Mr Riddell's approach and that of Mr Mead and Ms McNeal is that Mr Riddell considered that the approach of calculating intensity across the whole site as if the race course did not exist is flawed in his opinion. He concluded that the proposed level of development for the race course is similar in intensity to the most intensive residential and mixed development Environments provided for in the District Plan. A crucial difference, in his opinion, is that the race course site is on the edge of the Ruakaka urban residential area, whereas the other Environments providing for this intensity of development are 'within' developed or planned urban areas.

Mr Riddell, then went on to discuss at paragraphs 104 to 115 of his statement of evidence why he supported an intensity of development based on the intensity of development that had been granted consent in close proximity to the race course. After considering two subdivisions that involved 190 new lots he calculated the

intensity of these residential developments to be an average of 1 residential unit per 1,450 square metres. He then concluded at his paragraphs 114 and 115 that;

*“That average can be used as an indication of the appropriate level of development on the racecourse site, because the race course site adjoins the same sensitive public conservation land. Precincts B and C, where the residential development is primarily intended to occur, has a combine dare of 13.266 ha. A level of development at 1 lot per 1,450 square metres in these precincts would equate to 91 residential units.*

*Therefore I consider that 100 residential units would provide an appropriate upper level for residential development at the race course site.”*

While understanding the basis for his conclusion, Mr Riddell does not appear to have taken into account all of the factors considered by Mr Mead and Ms Skidmore when they concluded a higher intensity is appropriate on the race course site.

Mr Mead at his paragraph 32 stated that;

*“... the opportunity to offer a diversity of housing, and not replicate the same form of residential development as is occurring over the rest of the peninsula. The coastal proximity and prominent race course facilities with their recreational and community focus encourage more consolidated development, with the race course and infield as open space. A range of stand-alone houses, attached town houses and terraced housing and low-rise apartments would provide a mix across the different precincts of the racecourse land, including some associated directly with the horse-related activities.”*

Ms Skidmore in her paragraphs 5.2 and 6.3 stated that;

*“In my opinion, the differing intensity and bulk and location controls specified for the different precincts, together with the additional management plan analysis requirements, will result in the creation of a built environment that is more responsive to its context than would be achieved by a more traditional residential subdivision pattern (such as enabled by a Living 1 zone). I consider the clustering of density will result in a superior outcome in terms of landscape and visual effects.*

*In particular, I consider the management plan for the various precincts enables a comprehensive design led approach to ensuring building mass and configuration creates a suitable interface with adjoining sensitive environments.”*

Mr Peters' submissions quoted above summarise the issues in relation to the actual and potential effects of the increased numbers of people would have on the surrounding sensitive environment. In this regard we note that the submitters in opposition identified the nature of the existing adverse effects on the conservation land and the coastal environment. In their opinion the existing adverse effects would be worsened if PC 113 was consented to.

Of particular relevance to these concerns were the following matters. Firstly, that Ms Crossen on behalf of the Department of Conservation stated that under the Wildlife Act 1953, the public have a right of entry to the Ruakaka Wildlife Refuge, but it is unlawful to disturb wildlife or bird nests within the boundaries of the refuge. Secondly, The Whangarei Racing Club has an easement over the conservation land to gain access from the race course land to Ruakaka Beach. Thirdly, the Whangarei Racing Club is permitted by a Council Bylaw to use two portions of Ruakaka Beach for training purposes. One portion of the beach is restricted as to the hours it can be used, the other is unrestricted.

Overall we find that the approach taken by Mr Mead and Ms Skidmore is more balanced and comprehensive, whereas Mr Riddell has focussed too narrowly on drawing a comparison with the intensity of existing approved residential development near the racecourse. Mr Mead and Ms Skidmore recognise the different characteristics of the race course land to the nearby residential subdivisions, support a clustering of new development on the race course land because of the design outcomes that can be achieved and the range of different residential outcomes that can be provided. With respect to the nature and scale of adverse effects on the surrounding sensitive environment Mr Mead and the other witnesses for the applicant have put forward a basis for the management of any adverse effects, irrespective of the number of people who may live on this site in the future.

For all of the reasons we have preferred the evidence that supports the 350 maximum number of residential units over the evidence of Mr Riddell and those submissions that sought less intensive development on this site.

**The avoidance, mitigation and management of any adverse effects on the environment, including ecological effects, cultural values, coastal hazards, flooding and tsunami risk, archaeological effects, the scale, form and intensity of development, traffic and access issues, access to the coast, infrastructure, noise and light.**

The expert evidence presented in relation to the adverse effects on the environment either supported PC 113 or alternatively sought a reduction in the intensity of the proposed residential development.

The evidence presented on behalf of the submitters that opposed PC 113 was comprehensive and related to all of the adverse effects identified in Ms McNeal's section 42A report, as summarised in the above heading we have used. Ms Hicks, in particular commented on what she described as the "threats" PC 113 would have to landscape and natural character, birdlife in the Ruakaka Wildlife Refuge and the adjoining conservation land, the Dune Lake, coastal erosion and sea level rise, river erosion, tsunami and archaeological values. A number of other submitters supported and/or adopted Ms Hick's evidence on these matters.

We recognise that the existing environment is subject to coastal hazards such as potential sea level rise and tsunami risk, as well the challenge of managing the future use and development of the wider locality which has a sensitive coastal ecological environment that includes extensive areas of conservation land. The Northland Regional Council and the Whangarei District Council planning documents have recognised all of the environmental constraints in this locality and taken them into account in managing existing and future activities. These planning documents include objectives, policies and rules that enable the future development of the wider locality for urban purposes, subject to appropriate mitigation measures that will avoid, remedy or mitigate adverse effects on the environment.

The primary difference in opinion between those who support PC 113 and those who oppose it, related to the management of the actual and potential adverse effects on the environment. Those in support concluded that any adverse effects arising from the future development of the Ruakaka racecourse can be appropriately managed. Those in opposition concluded that they could not be appropriately managed. Those in opposition essentially took the view that the adverse effects of the existing and likely future urban development on the surrounding environment were not being effectively managed, particularly with respect on the coastal, ecological and conservation values. Although the Department of Conservation supported limited development opportunities on the Ruakaka racecourse land, a number of the other submitters in opposition did not support any further development, because of the alleged adverse effects on the coastal, ecological and conservation values.

A number of changes to the notified version of PC 113 were recommended by Ms McNeal in her section 42A report were accepted by the applicant. In addition the applicant agreed to provide an ecological plan for the entire site at the time the first Management Plan is prepared. The applicant also agreed to the Management Plan and ecological plan to be subject to the normal RMA notification process. These amendments to the original PC 113 provisions will enable the adverse effects on the environment to be more appropriately assessed and responded to in the context of the actual details of the development proposed for the site and/or individual precincts. These amendments to the original version of PC 113 have strengthened the provisions of the plan change and we have concluded that the provisions we recommend to the Council for approval, will appropriately managed any actual or potential adverse effects that may arise from the future development of the Ruakaka racecourse land. We find the amended version is consistent with the outcomes envisaged by the RMA and the NZCPS with respect to the management of this site, in this sensitive environment, and the adverse effects associated with the intended development of this site, in the context of the existing environment and the need to balance development and conservation outcomes in the wider Ruakaka environment.

In this regard we have accepted the evidence of Mr Mead and Ms McNeal, Ms Skidmore and Dr Martin, together with the supporting reports prepared by the applicant. We have accepted in part the evidence presented on behalf of the Department of Conservation, however we have not accepted this evidence with respect to the reduction in the intensity of the proposed development, for the reasons we have set out above.

We find overall that the plan change in its final form, in Attachment 1, will appropriately avoid, remedy or mitigate any actual or potential adverse effects associated with the future development of the Ruakaka race course land.

### **Whether the plan change will promote the sustainable management of natural and physical resources as contemplated by Part 2 of the Act.**

The Ruakaka race course has been operating from this site since 1976 and its sand based track was described to us by Mr Fairley as being the "*best natural winter racing surface in New Zealand, and provides a year-round racing and training facility.*" The site itself has been highly modified and is primarily in pasture and contains significant infrastructure related to its usage for racing and training purposes.

The race course is sited in a sensitive coastal environment which Ms McNeal described in paragraph 60 of her section 42A report as follows.

*“Ecological features of the area are fully documented in the applicant’s specialist ecological report and comprise significant natural areas on the coastal dunes and within the river estuary, including the Ruakaka Dunelands and wildlife reserve, and a dune lake. These natural areas are recognised as having high wildlife values as they provide important nesting and feeding habitat for a wide range of indigenous avifauna, including many Threatened, At Risk and regionally significant species.”*

She also described the site and the locality at paragraph 55 as follows.

*“The racecourse is located within an area bordered by the Ruakaka River to the south and the coast (Bream Bay) to the east, forming the northern part of the coastal settlement of Ruakaka. It lies to the east of Marsden Point Road which links State Highway 1 in the south with the settlements of Marsden Point and One Tree Point to the north. Collectively these small settlements contribute to the Marsden Point/Ruakaka ‘node’, envisaged as a future Satellite Town under the Whangarei District Growth Strategy Sustainable Futures 30/50. This document describes the area as follows:*

*“The Marsden Point/Ruakaka node is a substantial area encompassing a number of settlements, each having a character of its own. Distinct settlement areas include One Tree Point, Ruakaka, Marsden Point and Takahiwai. The main built-up areas include the settlement of Ruakaka with accompanying commercial area/recreational facilities near the Ruakaka River mouth; homes and holiday houses located at One Tree Point; the marine village development between One Tree Point and Marsden Point; and the industrial area centred on the Marsden Point Oil Refinery and Northport’s deep water port. Takahiwai contains a large area of farmland and multiple scattered dwellings near a major local marae. Ruakaka Primary School and some services are located outside of the node, on the other side of State Highway 1.”*

In terms of Part 2 of the RMA she stated at paragraph 80 that.

*“To establish whether the proposal promotes sustainable management of natural and physical resources, it is necessary to assess the extent to which the proposal addresses the needs of the community (including its social, economic and cultural wellbeing needs) in relation to these resources and the extent to which it avoids, remedies or mitigates adverse effects on the environment.”*

The context in which we have considered Part 2 matters is one where a 50 hectare site, currently used for horse racing and training purposes, is located in a sensitive coastal environment, however it is also located within an area of coastal settlement that has been identified as being a ‘future satellite town’ under the Council’s Growth Strategy for this part of the District. Ruakaka is currently the main settlement area and recently approved residential subdivisions to the west of the race course are in the process of being developed. The race course land sits at the eastern edge of the existing and future settlement of Ruakaka, with Department of Conservation land separating it from the Bream Bay coastline.

The following matters of national importance under section 6 of the RMA are matters that need to be recognised and provided for as part of our overall judgement under Part 2 of the RMA.

- (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development;*
- (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use and development;*
- (c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;*
- (d) The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers;*
- (e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;*
- (f) The protection of historic heritage from inappropriate subdivision, use and development;*
- (g) The protection of recognised customary activities.”*

Ms McNeal identified and commented at paragraphs 85 to 90, on what she considered to be the relevant clauses of section 6.

*“85. In terms of section 6(a) and (b), although forming part of the coastal environment, the site has been modified by earthworks and racecourse facilities established since the 1970s. With the exception of the SE corner of the site being classed as a ‘notable landscape area’, the site is not formally recognised as having notable or outstanding landscape features, although features beyond the site have higher landscape values. Measures proposed in PC113 to protect these include policies aimed at controlling the height and scale of buildings.*

86. *In terms of section 6(c) the site is not recognised as having ecological significance although the applicant's specialist ecological report has identified the range of significant indigenous vegetation and significant habitats of indigenous fauna on adjoining conservation land. Recommended methods for addressing the potential effects of increased human presence on these adjacent resources are outlined in the ecological report.*
87. *In terms of section 6(d), provisions are included in PC113 aimed at maintaining and enhancing public access to and along the coast, although their success will to some extent be dependent upon ongoing collaboration with other interested parties such as the Department of Conservation, WDC, NRC and tangata whenua including through non-statutory agreements or Memoranda of Encumbrance.*
88. *In terms of section 6(e) and (f) relating to the relationship of Maori, their culture, traditions and customary activities, PC113 has had the benefit of a Cultural Effects Assessment and recommendations prepared by Patuharakeke and endorsed by the Ngatiwai Trust Board.*
89. *In terms of section 6(f) a recent specialist archaeological assessment prepared for the applicant has concluded that 'In general there is no archaeological impediment to the proposed Private Plan Change 113 as most of the racecourse property is highly modified by extensive earthworks and the racecourse facilities since the 1970s.' Adherence to the report's recommendations (particularly in respect of two observed archaeological sites in the SE corner of the site) and inclusion of 'archaeological assessment' in the list of Management Plan requirements should further satisfy section 6(f).*
90. *Taking into account the above considerations it is concluded that PC113 recognises and provides for matters of national significance in accordance with Section 6 of the RMA."*

Mr Riddell concluded that section 6(b) was not relevant because of the *"very limited visibility that built development on the race course will have from the beach."* In terms of the natural character of the coastal environment, section 6(a), he considered the degree of adverse impact would depend on *"...primarily the overall scale of development, the location of taller buildings, and the adequacy of visual screening along the southern boundary and from the dune lake."* In terms of the areas of significant indigenous vegetation and habitats of indigenous fauna, section 6(c), he considered that *"Recognising and providing for the protection of these areas from the increased people pressure arising with this proposed development is a key consideration..."* Overall he concluded that *"...this proposal will, once fully developed, result in increased public access to the beach, closer to the habitats to the south of the site than currently is available. The actual and potential adverse effects of that will need to be managed."*

It was Ms Crossen's legal submission that the additional mitigation measures sought by the Department of Conservation are required to recognise and provide for section 6(a), (c) and (d) matters.

While the legal submissions and evidence presented on behalf of the PTB did not specifically refer to Part 2 matters, we have had regard to the resource management matters raised on behalf of the PTB and taken into account Ms McNeal's assessment as set out above in relation to sections 6 (e) and (f).

We have also taken into account the submissions and evidence presented by Mr Lourie on behalf of the Bream Bay Coastal Care Trust, Ms Hicks and Ms Hembry because their concerns related to section 6 matters even if they were not always specifically identified in terms of Part 2 of the RMA. These submitters focussed on the objectives and policies of the NZCPS which to a considerable degree are closely related to the matters of national importance identified above.

Section 6 requires that the relevant matters of national importance are recognised and provided for in a decision on PC 113. The expert planning and landscape witnesses were generally agreed that PC 113 appropriately recognises and provides for the preservation of the natural character of the coastal environment and protects them from inappropriate use and development. While Mr Riddell had reservations over the scale of the development, we have preferred the evidence of Ms Skidmore and adopt that in relation to section 6(a).

With respect to section 6 (c) and (d) Mr Riddell was primarily concerned that appropriate management measures be in place to protect the adjacent areas of significant indigenous vegetation and significant habits of indigenous fauna and manage the increased public access through the conservation land to the coastal marine areas. We note that the Department of Conservation is primarily responsible for the management of these matters in relation to their land and that they do not prevent public access through these areas.

Taking into account all of the management measures that have been incorporated into PC 113 and that will be provided through the future Management Plans and Ecological Plan we have concluded that the plan change in its amended form gives appropriate recognition and provides for the matters of national importance identified above. We have reached this conclusion in the context of the existing Ruakaka environment, the activities that are currently permitted and take place in this locality, the likely future development planned for this locality, together with the fact that this plan change is not about managing the

existing pressures on the environment. We agree with Mr Mead that this plan change needs to manage the impact of the proposed development of the Ruakaka race course land. Based on the evidence presented at the hearing we find that PC 113 recognises and provides for the relevant matters of national importance as contemplated by the RMA.

With respect to sections 5, 7 and 8 of Part 2 we adopt the evidence of Ms McNeal and Mr Mead in particular, as well as the supporting evidence of Messrs Fairley, Vazey, Brandon, Dr Martin and Ms Skidmore. Additionally we have taken into account the submissions and evidence that supported PC 113 from local residents, people who work or use the race course, the Ruakaka Economic Development Group and the Ruakaka Parish Residents and Ratepayers Association.

We have carefully considered and taken into account the submissions opposing PC 113. With respect to the PTB we have found that the ownership issues go beyond our jurisdiction in terms of the RMA. With respect to those submissions that oppose any further residential development of the Ruakaka race course, based on all the evidence presented to us, we find no evidential basis to effectively prevent development of this land when the wider Ruakaka area is experiencing growth and development at present and is planned for further growth and development in the future.

In reaching a balanced overall judgement we have concluded that the positive benefits and outcomes of proceeding with PC 113 must be considered in the context of both the existing and foreseeable future natural and built environment. In this context we find that in terms of a Part 2 the appropriate assessment is of the nature and scale of the proposed development, together with how the impact of this development is to be managed, rather than a prohibition of development on this land in order to avoid, overcome or remedy the wider environmental impact arising from the changes in land use and activities that have already occurred, or are planned to take place in the foreseeable future.

Our overall judgement is that PC 113 will promote the sustainable management of the race course, the surrounding sensitive coastal and conservation land and the wider Ruakaka community as contemplated by Part 2 of the RMA. Appropriate management measures have been provided for to avoid, remedy or mitigate any adverse effects on the environment that will arise from the future development that will be enabled by the plan change.

### **The specific wording of the provisions in the plan change.**

On 13 December 2013 Ms McNeal circulated the applicant's final track change version of the proposed plan change to those parties who attended the hearing. She had annotated this version with her comments on matters of agreement or disagreement. She also recommended some further amendments where she had concluded they were required.

We have used this version of the proposed plan change as the starting point for our comments on the specific wording of the provisions in the plan change.

In general terms we note the substantial degree of agreement between the applicant and Ms McNeal on the wording after having heard all the evidence presented during the hearing. While not intending to comment on every wording amendment we provide comments on the major amendments we are recommending under the following headings. Readers of our recommendations will need to compare our version of the proposed plan change with the version circulated by Ms McNeal on 13 December to identify all of the amendments that we have made. As a general rule however we have accepted the majority of the applicant's main changes from the plan change as it was notified and also the majority of the further amendments recommended by Ms McNeal, many of which were 'housekeeping' in their nature.

### **The Maximum Number of Residential Units and the Requirement for any Development Resulting in more than 350 Residential Units to be a Non-complying Activity**

We have accepted the proposed wording at REE.1.2.2 that introduces a non-complying activity status for residential units that would exceed the 350 unit 'cap.' We also agree with Ms McNeal that REE.1.4.1 (ii) that the 350 unit 'cap' is a maximum without exceptions. We have therefore deleted the second sentence in REE.1.4.1 (ii) as proposed by the applicant. The deleted wording was that, "*Units in visitor accommodation developments and those parts of retirement villages which are not independent household units may be in addition to this.*"

We adopt Ms McNeal's reasons in support of these amendments.

## Management Plan Requirements

In REE.1.5.2 the information to be provided as part of a Management Plan is proposed to be limited in terms of its 'relevance' to *"the development and activities that are to be enabled by the Management Plan and to a level of detail that is commensurate with the anticipated effects associated with this development."*

Ms McNeal commented that there could be some dispute over what is 'relevant' and it is unclear who would determine relevancy. We agree with the intent of the proposed wording, which in Mr Mead's words is *"to clarify the extent of analysis required to support the management plan and the contents of the plan be commensurate with the scale of effects to be generated by that plan."*

We also note that REE.1.5.3 is worded in a similar manner in that the matters setting out how the precinct is to be developed as listed and in brackets it is stated that *"(as relevant to each Precinct):"*

We accept that it is entirely reasonable for the information to be provided as part of a management plan to be relevant to the particular precinct, the development proposed and the effects associated with this development. We note that Ms McNeal did not recommend any revised wording to overcome her concerns. In accepting the intent of the proposed wording as supported by Mr Mead's evidence, we also accept that there needs to be a limitation in terms of the relevance of information being provided. When specific management plans are being prepared it will be, in our opinion, relatively straightforward to determine what matters are relevant, and which ones are not. We have therefore accepted the wording as proposed by Mr Mead and adopt his reasoning in support of this wording.

## Introduction of Prohibited Activities

Ms McNeal in her Memorandum dated 13 December 2013 stated that;

*"The introduction of new Prohibited Activities sections (previously recommended by DOC) – REE.2.3A, REE.3.3A, REE.4.4A and REE.5.3A with the bringing in or keeping of cats, dogs and mustelids being a Prohibited Activity in all precincts. In addition, in precincts other than Precinct A, two additional Prohibited Activities are now listed – i.e the dumping of waste into adjoining Crown land and the construction of access points into Crown land except for entry points set out in approved Management Plans – WDC confirms that while not strongly opposed to the use of Prohibited Activities per se, concerns still remain over the enforcement of such Prohibited Activities, and that alternative measures exist under listed Management Plan and Ecological Plan Requirements including fencing and access restrictions."*

The applicant has proposed the new 'Prohibited Activities' in response to the evidence of Mr Riddell on behalf of the Department of Conservation. We acknowledge Ms McNeal's concern in relation to the enforcement of these provisions, however we also accept Mr Peters closing submission at paragraph 40 where he stated that;

*"However, prohibited activity status in the District Plan on its own would be unlikely to be effective in controlling these activities, and would need to be supported by further controls such as covenants or consent notices, and possibly by-laws."*

Given the sensitive nature of the surrounding environment we have concluded that the prohibited activity status for these activities is appropriate, in conjunction with other controls such as those identified by Mr Peters. In other words we recognise that these provisions are part of a package of provisions that are designed to respond to the particular circumstances that exist in this locality.

## Changes to Notification Provisions

In REE 3.5, 4.5 and 5.5 additional wording was proposed by the applicant to require Management Plans prepared under REE.1.5 to be subject to the normal RMA notification tests. This was in response to concerns raised by many submitters during the hearing that there would be no opportunity for any public participation in the Management Plan process. At issue was the concern that it would be at the Management Plan stage that the actual details of any proposed development of the Southern, Western and Eastern Precincts would be actually known, and would only be at that stage that the actual and potential adverse effects of a specific development could be appropriately assessed.

Given the widespread support from submitters for the normal RMA notification tests to apply, together with Ms McNeal's support for this approach, we have accepted the amended wording and adopt the evidence of Mr Mead and Ms McNeal in support of this wording.

## Ecological Plan

The applicant, in response to the evidence presented at the hearing, proposed to delete the former REE 1.5(4) provisions which required a 'Habitat Protection Plan' to be prepared. The replacement provisions REE

1.6 now require a comprehensive 'Ecological Plan' to be prepared for the entire REE at the time the first Management Plan is prepared. The first Management Plan may relate to the entire REE or just a single precinct, however the Ecological Plan will relate to the entire REE. The latest proposed wording by the applicant, while somewhat different from what was requested by Mr Riddell on behalf of the Department of Conservation, does in our opinion appropriately respond to the issues that Mr Riddell had raised. The more comprehensive approach to managing ecological effects, the fact that the Ecological Plan will be prepared and reviewed in consultation with the Department and tangata whenua, together with the requirement that the Ecological Plan will relate to the entire REE from the outset, will provide a management approach that will address and sustainably manage any actual and potential adverse effects on the surrounding important and sensitive environment.

In addition to the specific Ecological Plan provisions the fact that the Management Plan and the Ecological Plan will be subject to the normal RMA notification tests, as outlined above, will enable the possibility of wider public participation, once the detailed development and ecological management outcomes have been identified.

Given the widespread support for a more comprehensive and fully detailed approach to the management of any actual and potential adverse effects on the surrounding environment, we have accepted the amended wording of REE 1.6 and adopted the evidence of Mr Mead and Ms McNeal in support of this wording.

## 8. Conclusion and Recommendations

Our overall conclusion is that PC113, subject to the amendments we have recommended, appropriately promotes the sustainable management of the Ruakaka race course site, the surrounding coastal and conservation land, and the surrounding coastal settlement of Ruakaka, as contemplated by the Resource Management Act 1991.

The approach taken by the Whangarei Racing Club with respect to PC113 has generally been accepted by the Commissioners and the amendments we recommend do not substantially deviate from the final recommendations from the reporting planner Ms McNeal.

The reasons for our decisions/recommendations are set out under the headings in section 7 of our report.

Our overall recommendation is that:

- (a) Proposed Plan Change 113 to the Operative Whangarei District Plan be **APPROVED** subject to the amendments as described above and in the Decisions Version of the Plan Change document [Attachment 1], and
- (b) That the submissions be accepted, accepted in part or rejected according to the reasons set out above in this decision report



**L J Simmons**

Signed on behalf of the Commissioners

John Williamson, Alan Withy and Les Simmons