BEFORE THE ENVIRONMENT COURT

ENV-2013-AKL-

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of an appeal under clause 14 of schedule 1 of the Act
BETWEEN	Colleen Prendergast **Appellant**
AND	Whangarei District Council **Respondent**

NOTICE OF APPEAL AGAINST DECISION ON PROPOSED PRIVATE PLAN CHANGE 113

Dated this 30th day of April 2014

Henderson Reeves Connell Rishworth Lawyers

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To: The Registrar
Environment Court
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AUCKLAND

I, **Colleen Prendergast**, appeal against parts of the decision of the Whangarei District Council on the following plan change: **Proposed Private Plan Change 113** – Ruakaka Racecourse.

I made a submission on that plan change.

I am not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

I received notice of the decision made by the Whangarei District Council on 18 March 2014.

The parts of the decision that I am appealing are:

Format and structure

(i) the lack of a clear provision requiring the mandatory use of the Management Plan technique prior to development occurring, as offered and agreed by the applicant;

(ii) the specification only of discretionary and prohibited activities in each precinct;

(iii) retention of the nomenclature "Requisite Policies" for provisions which are in effect rules;

(iv) the omission of provisions specifying the matters against which applications are to be assessed.

Notification

(i) retention of notification test on basis of "not contrary to requisite policies";

(ii) amendment to REE 3.5, 4.5 and 5.5 by the addition of the "notification tests of the RMA";

(iii) failure to require notification of the first management and ecological plans, as offered and agreed by the applicant.

The reasons for my appeal are as follows:

Format and structure

1. For the lay reader, the plan change does not provide the clarity and certainty required.

2. There is no clear statement requiring Management Plans as a mandatory first step towards development of the Environment. REE 1.2 continues to state that the Management Plan technique is available (not required) in the Environment as a discretionary activity notwithstanding the Commissioners recommendation, accepted by the applicant and adopted by the Council, that the Management Plan approach was an appropriate method to guide future development of the Ruakaka Racecourse.

3. At the hearing, the applicant offered and agreed to provisions requiring approval to management plans and an ecological plan before development could occur. This is confirmed in its written closing submissions. Closing submissions for the Whangarei Racing Club, Section A para 17; Section D paras 51c, 61 and 62).

4. There is a lack of certainty as to those activities permitted in each precinct, including the status of activities provided for in an approved Management Plan. The provisions of a district plan should be clear and certain; members of the public should be able to decide what is permitted on their, or their neighbour's property without first having to analyse or evaluate the requirements for a discretionary activity;

5. The activity status of activities provided for in an approved Management Plan is unclear and inconsistent throughout the various precincts. Not all discretionary activities make reference to the effect of an approved Management Plan on the status of the activity.

6. Provisions which incorporate thresholds and standards are rules, not policies (Quality Planning Guidance Notes). The term "Requisite Policies" is a misnomer;

7. The RMA requires local authorities to monitor and administer compliance with the rules of the district plan; compliance with policies cannot be enforced;

Notification

1. The applicant offered and agreed to public notification of the first management and ecological plans for each precinct (Closing submissions for the Whangarei Racing Club, Section A para 17; Section B para 22; Section D paras 51c, 61 and 62).

2. The basis for the test for notification is not provided for within the RMA and is ultra vires. Sections 95A - 95E of the RMA set out the notification tests, based on the level of adverse effects of the proposed activity, not on whether the activity may be contrary/not contrary to the objectives and policies.

3. "Contrary" has a specific meaning in the RMA; it means more than just mere non-compliance or inconsistency.

4. Even if it could be shown to be vires, the rule is uncertain and difficult to administer. To be non-notified does an activity have to be not contrary to all of the requisite policies or just one or two? What if it is not contrary to the requisite policies, but because of the particular circumstances the activity will have more than minor effects?

5. The justification for the technique of using the requisite policies to determine notification – that it is consistent with Parliamentary intention - is flawed. It relies on a misinterpretation of proposed changes to the notification process included in the document setting out the <u>next</u> stage of the reforms proposed to be incorporated into the next Resource Management Reform Bill which I believe has yet to be introduced into Parliament. The proposed change to the notification provisions may or may not ever

become incorporated into the RMA; in any case it is not the current requirement.

I seek the following relief:

A. Amendment to REE 1.2 to clarify that the Management Plan technique is mandatory, and required prior to any development of the Environment occurring;

B. Amendment to REE 1.2.3 to insert reference to MPT 2.7, and any other parts of the MPT section of the district plan considered necessary to clarify the Management Plan process;

C. That those Requisite Policies not containing thresholds or standards be incorporated into the General Policies, and the General Policies be renamed Policies;

D. That those Requisite Policies containing thresholds or standards be renamed Rules;

E. Insertion of a rule in REE 1 referring to the matters against which discretionary activities will be assessed;

F. The insertion into REE 2, REE 3, REE 4 and REE 5 of a rule clearly identifying the status of activities in accordance with an approved management plan;

G. Deletion of notification rules REE 2.5 and REE 6.2 and replacement with rules based on the level of adverse effects considered appropriate to preclude notification;

H. Amendment of notification rules REE 3.5, REE 4.5 and REE 5.5 by:

   (i) Deletion of reference to "not contrary to the requisite policies" and replacement with a phrase based on the level of adverse effects considered appropriate;

   (ii) inserting a requirement for notification of the first management and ecological plans for each precinct;

I. Alternatively, means of relief to the same effect as above;

J. Consequential amendments as required.

I attach the following documents to this notice:

(a) a copy of my submission;

(b) a copy of the decision;

(c) a copy of my submissions to the hearing;

(d) a copy of the relevant portions of the closing submissions for the applicant

(e) a list of names and addresses of persons to be served with a copy of this notice.

Dated this 30th day of April 2014

Colleen Prendergast

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