

IN THE MATTER OF

An appeal to the Environment
Court under clause 14 of the First
Schedule to the Resource
Management Act 1991

AND

IN THE MATTER OF

Plan Change 85A-D to the
Whangarei District Plan

BETWEEN

Malcolm Aylward
Appellant

AND

Whangarei District Council
Respondent

**NOTICE OF APPEAL TO THE ENVIRONMENT COURT BY MALCOLM
AYLWARD**

I, **Malcolm Aylward** appeals against part of the decision of the Whangarei District Council ('Council') in respect of Plan Change 85A-D of the Operative Whangarei District Plan.

1. I made a submission seeking that my property ('**the land**') be re-zoned 'Rural Living Environment' ('**RLE**') instead of 'Rural Production Environment' that was proposed in the notified version of PC85 (now 'Rural Countryside Environment'¹) ('**RCE**').
2. I am not a trade competitor for the purposes of section 308D of the RMA.
3. I received notice of the Hearing Panel's recommendations and the subsequent notice of Council's decision on 17 January 2018.

Parts of the decision that I am appealing

4. I am appealing the RCE zone being applied to part of the land as shown on the Hearings Panel Recommendations Map 7. I consider that all the land is more appropriately zoned RLE.

Grounds for the appeal

5. The general grounds for appeal are that zoning the land RCE:
 - (a) Will not promote the sustainable management of resources, will not achieve the purpose of the RMA, and is contrary to Part 2 and other provisions of the RMA;
 - (b) Will not meet the reasonably foreseeable needs of future generations;
 - (c) Does not manage the use of resources in a way that enables the community to provide for their social and economic well-being;
 - (d) Does not represent an efficient use and development of natural and physical resources;
 - (e) Does not avoid, remedy, or mitigate the adverse effects on the environment;and

¹ The 'Rural Production Environment' was renamed 'Rural Countryside Environment' in the decisions version of PC85.

- (f) Does not represent the most appropriate means of exercising the Respondents function, having regard to the efficiency and effectiveness of other available means and is therefore not appropriate in terms of section 32 and other provisions of the RMA.
6. Without limiting the generality of the above, the specific grounds of appeal are set out below.
 7. The hearing commissioners relied on previously circulated evidence by Fonterra in relation to reverse sensitivity concerns, despite that evidence being amended verbally at the hearing. Specifically, Fonterra explicitly stated at the hearing that they no longer had reverse sensitivity concerns in relation to my property. However, the hearing commissioner's decision (at paragraph 396) to rezone only part of my land RLE still refers to the original concerns raised by Fonterra.
 8. The hearing commissioners also relied on an opposing further submission made by Horticulture New Zealand ('HNZ'). However, HNZ's further submission was confined to the need to assess "the value of the land for production purposes" and not reverse sensitivity. HNZ is now aware that I have already developed my best land and that no "high value production land" is left. While HNZ also provided evidence at the hearing in relation to reverse sensitivity, this evidence was beyond the scope of their further submission. Furthermore, the neighbouring property whose horticultural operation was the basis for the later HNZ concern did not object to my original submission.
 9. Notwithstanding the lack of scope for HNZ raising reverse sensitivity concerns in their hearing evidence relating to the zoning of my property, the setbacks from the neighbouring horticulture operation created by moving the RLE/RCE boundary to the 160m contour line on my property are between 320m and 500m. This is inconsistent with typical sensitive activity setbacks in the PC85 (i.e. 20m from RCE or the special 250m from irrigation farms).
 10. All the land generally fits with the RLE inclusion criteria identified in the respondent's section 32 report prepared for the plan change, in many cases better than the RLE areas identified by the respondent in both the notified and decisions versions of PC85A-D. The proposed RLE represents the most effective and efficient use of the land relative to the RPE having considered the requirements of s 32 of the RMA.

11. Not rezoning all of the land RLE is contrary to many of the Rural Area objectives and policies in RA.1.

Relief sought

15. I seek:
- (a) that all of the land, being that shown on the plan in my original submission, be rezoned RLE; and
 - (b) such consequential or related relief as may be necessary to give effect to my concerns.

Service

16. An electronic and hardcopy of this notice is being served on the Whangarei District Council.
17. Fonterra and HNZ made a submission in respect to the land, these parties have been served with a copy of this notice.

Attachments

18. Copies of the following documents are attached to this notice:
- A. The original submission.
 - B. The relevant parts of the Hearing Panel Recommendation.
 - C. The relevant parts of the Decision (Map 7).
 - D. The list of parties served with this notice.



Signature of appellant

20 February 2018