

Before the Environment Court

ENV-2018-AKL-000

In the Matter of the Resource Management Act 1991 (**Act**)

And

In the Matter of an appeal under Clause 14 of the First Schedule of the Act with respect to decisions on Plan Change 85D

Between Blue Moon Limited

Appellant

And Whangarei District Council

Respondent

**Notice of Appeal to Environment Court
against Decision of Whangarei District Council on Plan Change 85**

28 February 2018

To: the Registrar
Environment Court
Auckland

1. Blue Moon Limited (**Blue Moon**) appeals a decision of the Whangarei District Council (**WDC**) on Plan Change 85D (**PC85D**).
2. Blue Moon made a submission on PC85D.
3. Blue Moon is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

4. The decision was notified on 17 January 2018.
5. The decision was made by the WDC (consequent on consideration of recommendations made by Independent Hearing Commissioners (**Commissioners**)).
6. The part of the decision that Blue Moon is appealing is:
 - a) WDC's decision to decline that part of the relief sought by Blue Moon in its submission which sought that a new Rural Living Environment (**RLE**) zoning be applied to an identified 12 ha portion of Lot 3 DP 27812 and an identified 15 ha portion of Lot 2 DP 193435 at Langs Beach (**Subject Site**).
7. The reasons for the appeal are as follows:

The decision to decline the application:

- (a) Fails to promote the sustainable management of the natural and physical resources of the Respondent's District and does not achieve the purpose of the Resource Management Act 1991 (**Act**);
- (b) Is contrary to Part 2 and other provisions of the Act;
- (c) Does not provide for the reasonably foreseeable needs for future generations.

With respect to s74 of the Act, adoption of the relief sought by Blue Moon as part of PC85D would be appropriate because:

- (d) It would assist WDC to carry out its functions so as to achieve the purpose of the Act;
- (e) It would give effect to the Regional Policy Statement (**RPS**);
- (f) The rezoning proposed by Blue Moon would appropriately implement District Plan policies in an efficient and effective way;

- (g) The proposed rules in PC85D appropriately address any actual or potential effects on the environment of activities enabled by the rezoning sought by Blue Moon;
- (h) The rezoning sought by Blue Moon promotes the sustainable management of the natural and physical resources of the Subject Site and surrounding environment and does not offend any matters of importance in s6, s7 and s8 of the Act;

By reference to the findings of the Commissioners and the reasons for their recommendation to reject the relief sought in the Blue Moon submission, subsequently adopted by WDC in its decision;

- (i) The Commissioners advised in their decision¹ that the Blue Moon RLE submission is recommended to be rejected as:
 - i. it does not meet the inclusion/exclusion criteria;
 - ii. is not needed to 'legitimise' some pockets of residential development with a zoning appropriate to the existing environment (as some areas have been selected for);
 - iii. not being adjacent to a village or urban area; and
 - iv. would be a spot RLE zone.
- (j) The Blue Moon submission and supporting reports included an analysis by reference to the proposed rezoning of the Subject Site of:
 - i. the notified purpose and identified objectives of PC85D;
 - ii. the Council report supporting PC 85 D including the section 32 assessment incorporating criteria used to identify and rank potential RLE zones.

¹ Hearings Panel Report, Part 6, Proposed Plan Change 85 A, 85 C, 85 D and 86 A & B Zoning Submissions, at para [285].

- (k) The comprehensive assessment undertaken by Blue Moon demonstrates rezoning of the Subject Site meets the inclusion/exclusion criteria, and/or is appropriate. The Blue Moon assessment is underpinned by a comprehensive design-based approach informed by specific technical and professional investigations which identify capacity thresholds and constraints.
- (l) RLE zoning of the Subject Site would not legitimise existing pockets of residential development, however the objectives and policies applicable to the RLE zone considered as a whole do not dictate that such a zoning is only appropriate where existing pockets of residential development exist.
- (m) The section 32 analysis and the subsequent 42A report prepared for the plan change process acknowledge that the rationale in identifying land areas suitable for RLE should include meeting future demand for rural living by providing additional development capacity in appropriate areas. For example:
- i. Nevertheless it is recognised that there is demand for living opportunities outside the city and rural villages, and it is important that Council facilitates development of a range of housing choices for its residents. To this end the RLE is proposed, to legitimise pockets of existing rural living development in the rural environment, **and to meet the future demand for rural living by providing additional development capacity in the most appropriate areas.** (emphasis added)²
 - ii. PC85D proposes to introduce a new Rural Living Environment (RLE) to the Whangarei District Plan (WDP) to provide for rural lifestyle development in the Rural Area (RA). The purpose of PC85D is:

...

² PC85D RLE Section 32 Evaluation Report, at para [12].

To rezone areas of the CE to provide limited future rural living opportunities for rural residential development in appropriate locations. (emphasis added)³

- (n) While the Subject Site is adjacent to land now zoned RVRE through this plan change process (in other words the balance of Lot 3 DP 27812 and Lot 2 DP 193435, which land will become urban), the analysis and evidence on behalf of Blue Moon demonstrates that the Subject Site is not suitable for urban development. Accordingly zoning the Subject Site RLE does not result in any potential for future growth areas to be impeded or constrained by development, and/or otherwise prevent or constrain the orderly expansion of urban communities.
- (o) In the context of determining the most appropriate zoning site-specific analysis is required. Giving effect to relevant objectives and policies does not require that no RLE zone may be established next to an urban zone. That proposition is not the proper conclusion to draw from an accurate analysis of relevant Plan provisions. RLE zoning has been established next to urban zones through decisions issued in this plan change process.⁴
- (p) The RLE zoning sought for the Subject Site is not properly described as a “spot zone”. The Act does not employ the term “spot zone”. The term in effect refers to areas where different rules or other provisions from the generality apply (in other words an amended bespoke zoning solution). That would not be the case here – a standard RLE zone is sought.
- (q) In some circumstances a spot zone may be intended to refer to a small pocket of land. The Subject Site is not small or inappropriately sized. Blue Moon seeks approximately 27ha of land to be zoned RLE.⁵ That land sits comfortably within the

³ RPC 85D RLE Section 42A Hearing Report, Part 10, at para [9].

⁴ for example, areas of RLE have been established next to the Urban Transition Environment (UTE) at Three Mile Bush Road and at the south end of Crane Road.

⁵ the size of the Subject Site is directly comparable to areas rezoned RLE such as the 20.6ha at Newton Road, Maungatapere.

surrounding Environments and the effects of potential development enabled by RLE provisions can be appropriately managed.

- (r) The evidence put forward on behalf of Blue Moon properly assessed the relief sought with reference to alternatives, benefits and costs and concluded that the changes to the District Plan sought would assist Council in carrying out its function so as to meet the purpose of the Act with regard to effects on the environment, and would be consistent with and give effect to relevant planning documents;
- (s) The evidence in support of the rezoning sought by Blue Moon including analysis of the Subject Site's topography, geography, ecological and landscape attributes as well as the economic analysis supplied all support the conclusion that a RLE zoning is a more appropriate zoning for the land than the Rural Countryside Zone.

8. Blue Moon seeks the following relief:

- (a) The decision to decline a RLE zoning for the Subject Site (as sought by Blue Moon) be cancelled;
- (b) That the RLE zoning for the Subject Site as sought by Blue Moon in its submission be accepted;
- (c) Such further or other relief or consequential amendments, changes or deletions to the Plan provisions that will give effect to the relief sought in this appeal.

9. I attach the following documents to this notice:

- a. A copy of Blue Moon's submission (**Annexure A**);
- b. A copy of the decision of WDC including a copy of the recommendation decision (**Annexure B**); and

- c. A list of names and addresses of persons to be served with a copy of this notice (**Annexure C**).

Signature:

Blue Moon Limited by their authorised agent:



Jeremy Brabant

Date: 28 February 2018

Address for Service PO Box 1502, Shortland Street, Auckland CBD

Phone: 021 494 506

Email: jeremy@brabant.co.nz

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in [form 33](#)) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in [section 274\(1\)](#) and [Part 11A](#) of the Resource Management Act 1991.

You may apply to the Environment Court under [section 281](#) of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see [form 38](#)).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission and the part of the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Annexure "A"

Annexure "B"

Annexure "C"