

**BEFORE THE ENVIRONMENT COURT
IN AUCKLAND**

ENV-2018-AKL-

UNDER the Resource Management Act 1991

IN THE MATTER of an appeal against the decision of the Whangarei District Council on Plan Changes 85A, 85C, 85D, to the Whangarei District Plan under Clause 14 (1) of the First Schedule of the Act

BETWEEN **RONALD NEIL DOBBS and MOIRA REDDOCK DOBBS**

Appellants

AND **WHANGAREI DISTRICT COUNCIL**

Respondent

NOTICE OF APPEAL

Dated this 1st day of March 2018

**Henderson Reeves Connell Rishworth
Lawyers**

Counsel: Colleen Prendergast

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Whangarei 0140
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To: The Registrar
Environment Court
DX CX10086
Auckland

1 We, **Ronald Neil Dobbs** and **Moira Reddock Dobbs**, appeal against parts of the decision of the Whangarei District Council (“**WDC**”) on the following plan changes:

(A) Plan Change 85 A (Rural Countryside Environment), (“**PC85A**”)

(B) Plan Change 85 C (Rural Village Environment) (“**PC85C**”)

(C) Plan Change 85 D (Rural Living Environment), (“**PC85D**”)

2 We made a submission on each of these plan changes.

3 We are not trade competitors for the purposes of section 308D of the Resource Management Act 1991.

4 We received notice of the decision on each of the plan changes on 17 January 2018. The decision was made as a package by WDC.

5 We oppose these parts of the WDC’s decision detailed below for the reasons given.

6 **The parts of the decision that we are appealing are:**

(A) As to PC85A, PC85C, PC85D the WDC decision to:

(a) the WDC decision to reject our submissions seeking rezoning of our property to Rural Village Residential Environment (“**RVRE**”) and/or Rural Living Environment (“**RLE**”);

For the reasons that:

(i) our property does not meet the **RVRE** criteria in that it is located within the Coastal Area and a

- portion of our property is identified as a high instability hazard area;
- (ii) our property is not identified for potential residential zoning in the Taurikura/Urquharts Bay Structure Plan
 - (iii) there is no identified need for additional residential development land within Taurikura/Urquharts Bay.
 - (iv) our property does not meet the RLE criteria in that it is not located within a cluster of lifestyle blocks; and
 - (v) spot zoning is inappropriate and would result in further fragmentation of rural land, increased reverse sensitivity effects on established primary producers and be contrary to the direction of the RPS, these plan changes and the Rural Development Strategy 2013

The reasons for our appeal are as follows:

- 7 The reasons for our appeal are that these WDC plan changes:
- (A) Will not promote sustainable management of our property which is not of a size or a soil quality to enable economically viable productive use.

We seek the following relief

- 8 That our property at 2487 Whangarei Heads Road, CFR NA91D/913, be rezoned Rural Living Environment zone and/or Rural Village Residential Environment zone.
- 9 Any consequential changes required to the text and the maps of the Proposed Plan to give effect to the relief sought.
- 10 Costs

Mediation

11 We are willing to engage in mediation or other alternative dispute resolution.

Attachments

12 The following documents are attached to this notice:

Appendix A a copy of the Dobb's original submissions dated 26 September 2016

Appendix B a copy of the relevant portions of the various parts of the decisions

Dated this 1st day of March 2018



Paula J. Wilson

Solicitor

on behalf of the appellant

This document is filed by **COLLEEN PRENDERGAST (counsel acting Paula Jane Wilson)** solicitor for the appellants, of the firm Henderson Reeves. The address for service of the appellants is 96 Bank Street, Whangarei 0110.

Documents for service on the filing party may be left at that address for service or may be:

- (a) posted to the solicitor at PO Box 11, Whangarei 0140; or
- (b) transmitted to the solicitor by fax to 09 438 6420; or
- (c) e-mailed to the solicitor at paulawilson@hendersonreeves.co.nz

Note to appellant

You may appeal only if—

- you referred in your submission or further submission to the provision or matter that is the subject of your appeal; and
- in the case of a decision relating to a proposed policy statement or plan (as opposed to a variation or change), your appeal does not seek withdrawal of the proposed policy statement or plan as a whole.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

The Environment Court, when hearing an appeal relating to a matter included in a document under section 55(2B), may consider only the question of law raised.

You must lodge the original and 1 copy of this notice with the Environment Court within 30 working days of being served with notice of the decision to be appealed. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within 30 working days of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within 5 working days after the notice is lodged with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, 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).

Advice to recipients of copy of notice of appeal

How to become party to proceedings

If you wish to become a party to the appeal, you must,—

(a) 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

(b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

If you are a trade competitor of a party to the proceedings, your right to be a party to the proceedings in the Court may be limited (see 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 requirements (see form 38).

Advice

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

Mail Room

From: Neil Dobbs [wic@xtra.co.nz]
Sent: Monday, 26 September 2016 2:58 p.m.
To: Mail Room
Subject: Objection to Proposed District Plan Changes - 2016
Attachments: IMG_2884.jpg; IMG_2883.jpg; Notice of Formal Submission to the WDC Planning changes 2690916.pdf

I require a confirmation that this submission has been received and I will have permitted to make a personal submission on all proposed changes pertaining to my land. Please confirm by return email.

Neil Dobbs



This email has been checked for viruses by Avast antivirus software.
www.avast.com

Form 5 - Submission on a Change Proposed to the District Plan

All correspondence to the Policy and Monitoring Department
Submissions must be received by: **4:00pm Tuesday, 4 October 2016**

Plan Change Numbers: PC85, A-D, PC86A and B, PC87, PC102, PC114

Please indicate by ticking below which Plan Change(s) you are making a submission on

- | | |
|--|---|
| <input type="radio"/> PC85 Rural Area | <input type="radio"/> PC86A Rural (Urban Expansion) Environment |
| <input type="radio"/> PC85A Rural Production Environment | <input type="radio"/> PC86B Rural (Urban Expansion) - Living Environment Zoning |
| <input type="radio"/> PC85B Strategic Rural Industry Environment | <input type="radio"/> PC87 Coastal Area |
| <input type="radio"/> PC85C Rural Village Environment | <input type="radio"/> PC102 Minerals |
| <input type="radio"/> PC85D Rural Living Environment | <input type="radio"/> PC114 Landscapes |

Full name
Please print clearly

Neil + Moira Dobbs

Postal address

2487 McKenzie Bay (Mania Gardens)
R.O.4
Whangarei

Telephone no

09 4340168 021 657756

Email

wildcat.co.nz

Delete the option that does not apply:

- could/could not gain an advantage in trade competition through this submission
 ~~is not directly affected by an effect of the subject matter of the submission that~~
 adversely affects the environment, and
 ~~does not relate to trade competition or the effects of trade competition.~~ ?

Preferences for the Hearing:

I wish to be heard in support of my submission

Yes No

If others make a similar submission, I will consider presenting a joint case with them at a hearing.

Yes No



Signature of submitter or authorised agent

A signature is not required if you make your submission by electronic means

26/09/2016

Date

The specific provisions of the Plan Change(s) that my submission relates to are:

See "Notice of formal Submission to the Plan Changes" attached.

and
I ~~support~~ ~~oppose~~ ~~seek~~ amendment to the specific provision listed above. *(delete what's not applicable)*

My submission is:

See attached document.

My reasons are: *(attach additional pages if required)*

See attached document.

State the decision you wish Council to make to ensure the issues you raise can be dealt with: *(i.e. give precise details of what you would like included or deleted from the plan)*

See attached document.

2/1/91

Note to person making submission - If you are making a submission to the Environmental Protection Authority, you should use form 16B. If you are a person who could gain an advantage in trade competition through the submission, your right to make a submission may be limited by clause 6 (4) of Part 1 of Schedule of the Resource Management Act 1991

Notice of Formal Submission to the Plan Changes

General Objections & Proposals

This submission objects in the strongest terms to the current proposed changes listed as PC85, PC86, PC 87, PC102, PC114 and its application over our land at McKenzie Bay, Whangarei Heads.

We object to the notified proposed District Council Plan Changes applying Rural Production, Coastal Area, Outstanding Natural Landscape (ONL), High Natural Character (HNC) Area, and Coastal Area, as well as having effects from having land proposed as Rural Village Environment applied to the neighbouring property.

Mania Gardens has been run as a business which has operated as a accommodation experience for more than 50 years. The property is not a productive farm and should not be zoned such. Our property and immediate land holders (to the east and west) have at least 8 habitable structures along a thin grass coastal strip. Our property and buildings are part of the coastal rural village living in the Whangarei Heads for more than 100 years.

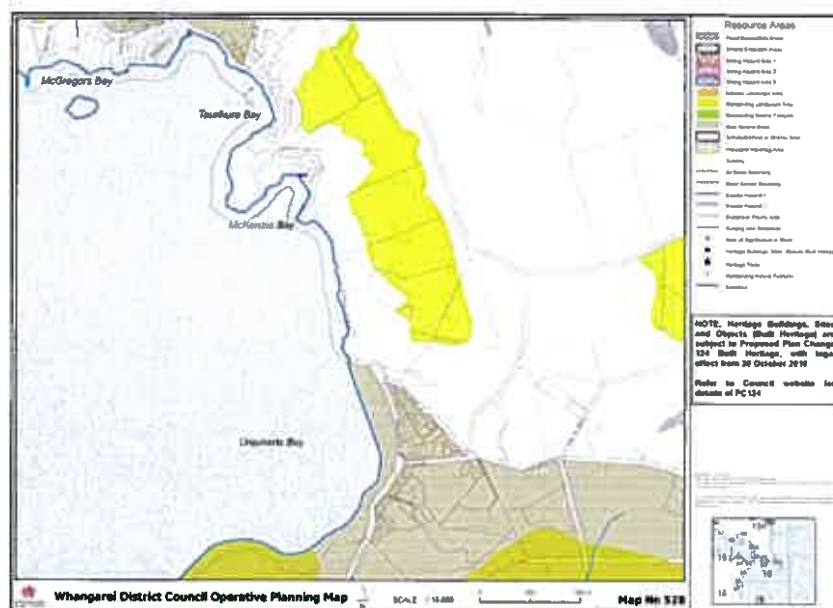


Mania Gardens built in 1914, providing 50 years of accommodation, currently used as a private home and being re-established as a predominate attraction in the area.

The proposed Plan effectively “layer-cakes” five separate restrictive areas rules on areas of our land. The plan makes no provision for our existing and future land use or rights. The proposed Plan in its current form significantly adversely affects what has been historical land use, current land use, proposed land use and will almost certainly significantly adversely affect land value.

The enormous number of restrictions is almost impossible to quantify within a single submission. In total the proposed Plan Areas changes to our land is covered within more than 52 pages of Area Objectives, Polices, Eligibility Rules Discretionary Activities, Non-complying Activities, Controlled Activities, Assessment Criteria. If the sum of these restrictions are proposed as the plan is to be applied, collectively the controls prevent almost all reasonable living and land use activities over our 17 hectares.

We seek the proposed Resource Areas be removed, except for the “High Natural Character” on those boundaries described within the WDC Operative Planning Map 52B March 2016 pertaining to “Outstanding Landscape Area”.



Previously agreed area of “Outstanding Landscape Area”.

We require “Rural Production” to be removed from all our land. That this be replaced with “Rural Village Environments” in the very front of the property which has power supplied, access to District Council water and sewage articulation and foot paths along its front boundary.



Frontage of Mania Gardens and previously consented land for subdivision, showing foot paths, power, water and sewage services (evidence of ongoing housing in the area to the East).

We seek the remainder of our property be zoned “Rural Living Environment” (as this zone is proposed within the current Plan) as this land best meets this criteria within the proposed Plan, and will create a “Buffer Zone” that the current proposed “Rural Production” does not.



Currently proposed Rural Village Environment

Proposed extension to the current proposed "Rural Village Environment"

We seek the area of our land that has been previously approved for the subdivision of eight, ¼ acre sections and the area covering "Mania Gardens" accommodation buildings be included into the area immediately abutting that land currently proposed to be "Rural Village Environment".

The proposed restrictions over land we have preserved in addition to that previously agreed to be preserved as "Outstanding Natural Area" is destroying our trust and relationship with the District Councils, this has occurred with the Regional Council. As such we are now faced with destroying vegetation and restricting further regeneration of areas to maintain ongoing basic land rights in the future.

The process undertaken by the Northland Regional Council (NRC) in creating mapping that this proposed Plan has been based on have been seriously flawed. The zones that have been created are not supported by the physical nature of the property.

The NRC in our case accepted a specific request by us to be permitted to attend decision making meeting regarding our land. They then prevented us from doing so. During the consultation process we were told, "the ONL area will have no effect on your land". They also failed to notify us of changes to ONL boundaries as required and limiting our ability to object. Specific questions relating to ONL within our submission were not addressed despite stating they would be. No agreement has ever been reached between us with regard the Northland Regional Council mapping boundaries.

The application of so many restrictions under the proposed Plans has left us asking ourselves the question "what is there left that we can do". We object to the application of a land zoning designation such as "rural production" while others are also applied "Outstanding Natural Landscape" over that same land making it unable to be land used for farming.

I consider the current proposal amounts to the stealing of my native land rights and as such I object to these changes as a person of Maori decent and a person with rights under the Treaty of Waitangi. If our land is so special as to require such a level of protection within the proposed Plan, why does the District Council not simply negotiated directly with us in a fair and reasonable manner, removing the need to create such a complex and un-enforceable Plan changes.

The changes sought by the District Council planners within our property the ONL amounts to an Anti-environmental Policy that will promote the denuding and limiting of regenerating native bush areas

for fear that this process will at regular intervals in the future remove the owners land rights as we are having it applied to us as part of this process.

Despite the enormous amount of documented material provided to restrict land use the proposed Plan does not adequately highlight or protect current land use and rights. We propose that a specific section be created within the District Plan that ensures current land use and that all other restrictions be subservient to those rights and not require consents to continue to be enjoyed by the owner of that land.

We propose that the District Plan create a ruling within the Proposed Plan that in cases that an ONL, HNC and ONF is designated over more an 20% of the total land area of any property the District Council be required to consult individually with that land owner. That they be required to gain the land owners consent to having that designation applied and agree to what the remaining property's Area be designated. The cost of such consultation should be met by the District Council and include access to an independent mediated service in the event of disagreement.

We submit that if the level of controls proposed with this Plan is adopted we must receive financial compensation from the District Council for the immediate and long term adverse economic and social effects it will have on ourselves.

Additional Area - Objections and Proposals

PC85 Rural Production –

- PC85 1.0.0 We strongly object to the application of “Rural Production” on our land. This land usage is completely inappropriate on multi levels.
- 1.1 The land while once farmed has been allowed to regenerate into scrub and tea tree. The immediate landholders, like ourselves are small with little or no real agricultural productive value, unless intensively farmed.
 - 1.2 The proposed application and restrictions of Outstanding Natural Landscape and High Natural Character Area over more than 80% of what will be designated farm land prevents that land from being farmed. Restricting
 - 1.2.1 Maintaining of current fences up both boundaries and across the property at two different levels.
 - 1.2.2 Water supply – currently only natural
 - 1.2.3 Re-establish the historical stock access tracks
 - 1.2.4 Weed Control and Pasture Improvement



The land proposed as “Rural Production”.

PC85 2.0.0

Our property has been historically granted a subdivision by the Whangarei District Council for eight 1/4 acre sections along its water frontage.

2.1.0 This subdivision was not deposited by the then land owner. Land immediately to the west is being designated "Rural Village Environment". We propose this area which has been previously subdivided be included within the "Rural Village Environment" Area that is being proposed on our boundary.

2.2 The land we propose should be "Rural Village Environment" has power, sewage and water supplies, as well as concrete foot paving along its road boundary. This meets the requirements of "Rural Village and Rural Living Environment" and not that of "Rural Production" as proposed. The land is in grass and as suited for "Rural Village Environment". The remaining area of grass suits Rural Living Environment if not protected by the "High Natural Character" proposed by our submission.



Location of the District Council's previous consent to Subdivide land abutting a proposed "Rural Village Environment".



Pictured is a strip of grass land proposed as "Rural Production" previously consented to be subdivided into eight 1/4 acre sections. (the house in view is in the proposed "Rural Village Environment" area).

- PC85 3.0.0 The only land suitable for economic agricultural production (intensive) is proposed to be directly adjacent to an area designated as (PC85C) "Rural Village Environment" which makes that land unusable for this purpose.
- 3.1 Despite having access to water, flat land and sufficient room to undertake highly productive farming practices the neighbouring "Rural Village Environment" proposal would not allow us to do so.
 - 3.2 Other restrictions (which are too numerous to list (52 Pages) restrict site and agricultural production, including but not limited to
 - 3.2.1 Site preparation restrictions,
 - 3.2.2 Vegetation removal,
 - 3.2.3 Roading development,
 - 3.2.4 Restricted farm shed and building size
 - 3.2.5 Lighting and Noise issues.
- PC85 4.0.0 The application of "Rural Production" next to a "Rural Village Environment" does not meet the stated outcomes or aims and objectives of the proposed changes to the District Plan. The Plan states it will create buffer zones between rural production areas and living areas to minimising conflict. The designation on our land as "Rural Production" immediately next to "Rural Village Environment" is clearly in conflict to these desired outcomes.

PC87 Coastal Area

- PC87 1.0.0 While our land is within the "Coastal Area" this designation conflicts with that of "Rural Production". The "Coastal Area" establishes no less than 23 separate policy requirements to be applied.
- 1.1 We object to our land having multi-designations applied on it and that the most restrictive controls always be then required to be complied with. When controls for all the areas being applied to our land (Rural Production, Outstanding Natural Landscape, High Natural Charter and Coastal Area, and effects from Rural Village Environment) are all applied the restrictions are both overwhelming and almost impossible to determine.
 - 1.2 The rules provided within the "Coastal Area" are nondescript and open to significant variation in interpretations. The effect being this will allow the District Council and its staff to apply their own personal views when considering our land use.
 - 1.3 We strongly object to the application of any Plan and Areas that cannot specifically describe restrictions over our land as a single document. Included in this objection is a need for any rules applied within the proposed changes be able to be applied evenly across the enter District without variation.

PC114 (Part 1 Outstanding Natural Landscape)

- PC114 ONL 1.0.0 The designation of Outstanding Natural Landscape (ONL) which is being applied to 80% of our land is challenged in the strongest way.
- 1.1 The current proposal takes no consideration of previous mapping of our land that was created within a process of cooperation with both land owners and environmental protection planning.
 - 1.2 The current process has not taken into consideration our efforts to improve and expand the environmental value of our land and is effectively penalising ourselves for doing so.

- 1.3 In imposing the high level of restrictions as described within PC 114 it has generated resentment and distrust of the Whangarei District Council and planning process.
- 1.4 As a result of the current proposal relating to ONL all our cooperation with land care groups, pest control, regeneration plans we once had will now cease.
- 1.5 We object to ONL restrictions being applied to areas currently in grass or gorse and other noxious weeds. The placement of such a designation shows just how bad the NRC mapping process was to begin with.



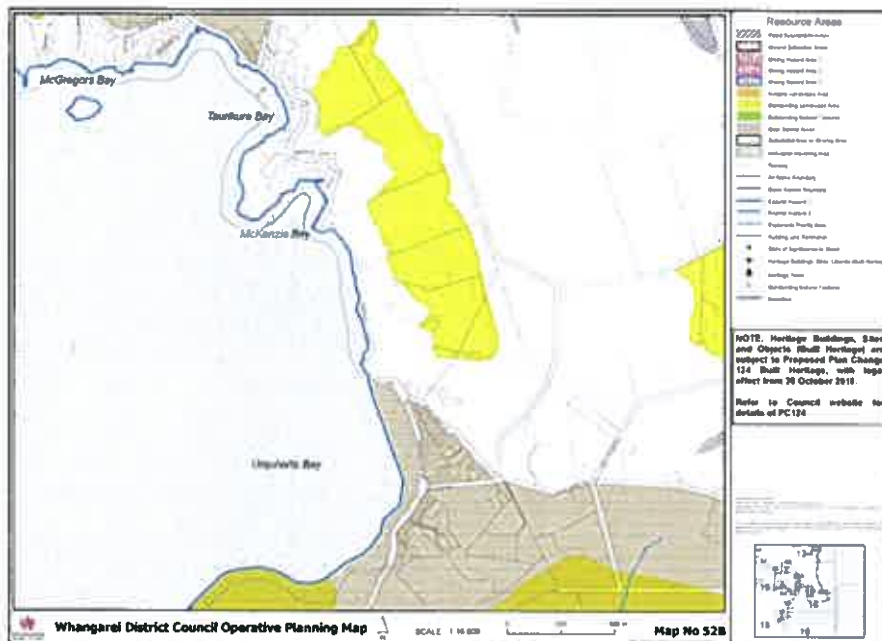
Pastoral land designated "Outstanding Natural Landscape" on the northern boundary

- 1.6 A review of our ONL designated land against other land shows that the NRC mapping is inconstant and has either incorrectly allocated our land as ONL or failed to designate equally significant areas. Unless consistency can be applied to the designation of ONL restrictions it is completely inappropriate to apply such a designation within what is a District Planning process.



Pastoral land designated "Outstanding Natural Landscape" on the southern boundary

- 1.7 The notification provided on the 30 August 2016 by the WDC supports our view that the ONL boundary requires changing. We however object to the proposed District Council changes to ONL on our land for the following reasons.
 - 1.7.1 The map provide by the WDC will be out of date by the time this submission is considered as a result of current land clearing.
 - 1.7.2 The adjacent land owner has grass land still included within the ONL boundary and ONL continues to be inconsistently applied to what are highly modified productive land areas.
- 1.8 The ONL restrictions on land does not protect the environment unless supported by land owners. If the area currently identified as ONL is applied to our land the WDC will no longer have our support in maintaining that lands environmental value.
- 1.9 If the current proposal forces ONL restriction on land it will have a significant adverse economic effect on that land. As a result it is both possible and likely that actions could be taken to decrease the environmental value (within the loop holes of the plans) to allow challenges to its designation at subsequent planning processes in the future, to regain the rights and values lost.
- 2.0 The application of ONL on our land will most certainly reduce (stop) the amount of land permitted to regenerate into a potentially high value environmental status.



This map shows the current agreed area (in yellow) of the historical Outstanding Natural Area which has been voluntarily supported by us within the District Councils plan for many years. Our submission is that no change is required to ONL boundaries on our land and they should remain unchanged.

PC114 (Part 2 High Natural Character Area)

PC114 HNC 1.0.0

The designation of High Natural Character (HNC) Area is objected to as it provides for yet another layer of restrictions without any apparent planning or environmental protection benefits.

- 1.1 The area proposed as High Natural Character is 100% covered by that of ONL which has a greater default restriction on land use, effectively making the HNC designation worthless.

- 1.2 The HNC is yet another example of the excessive planning behaviours of the District Council planners to impose restrictions on landowners.
- 1.3 The applying of both ONL and HNC shows a lack of overall consideration for land users and owners when applying multi layers of restrictions. Had consideration between different areas being applied to a single property occurred, the mindless need to apply HNC should have been identified. We request this be removed.

Consultation Process

- CP C 1.0.1 The consultation process has not met minimum standards. The District Council has not provided sufficient detailed information regarding the specific decision making process to us as land owners.
- 1.1 The way maps are both generated and presented have made obtaining an accurate and detailed picture of the proposed plan changes almost impossible.
 - 1.2 We believe the providing of a single document outlining the specific changes proposed to land owners is a minimum requirement of consultation. The current process appears designed to confuse, discourage and hide the restrictions from those mostly affected.
 - 1.3 Our immediate land owner has not been informed in the process and are largely unaware of the rule changes proposed.
 - 1.4 We seek to be involved directly in meetings at which our land is discussed and decisions that affect the use of our land are made and be included in the future planning process to ensure full and proper consultation occurs under the Treaty of Waitangi.

In conclusion we do not accept the proposed changes affecting our land. We accept our property is significant and of importance to the District. We do not accept that any organisation including the District Council has the right to limit our current activities to farm and operate Mania Gardens.

As environmentally aware New Zealanders that have invested heavily in the conservation and community that makes up what is Whangarei Heads we find this proposed Plan both stressful and offensive in its implementation and controls.



Neil Dobbs
Moirā Dobbs
Lewis Dobbs

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26/09/2016