

In the Matter of

**The Resource Management Act
1991**

And

In the Matter of

**Proposed Whangarei District
Council Plan Changes 85 A-D, 86
A-B, 87, 102 and 114.**

HEARD BY

**Whangarei District Council
03 July 2017**

STATEMENT OF EVIDENCE OF MICHAEL DAY
On behalf of the Northland Regional Council

Dated: 23 June 2017

Introduction

- (i) My name is Michael Day. I am a qualified planner, holding the qualifications of a Bachelor of Arts from Otago University and a Masters in Regional and Resource Planning, also from Otago University. I have approximately 13 years planning experience in local government. I have been employed by the Northland Regional Council (the council) since September 2008. My current position is Resource Management Manager (Policy and Planning). Part of this role involves co-ordinating submissions on National Policy Statements and National Environmental Standards and other national legislative and policy initiatives. It also involves preparing submissions on district plan changes (both council initiated and private) and resource consent applications of interest to the council. The purpose of these submissions is to promote sustainable management as well as effective and efficient planning processes in Northland.

- (ii) I would also like to introduce Jon Trewin and Michael Payne, Policy Analysts, who are here to assist with this evidence and answer questions. They have worked for the council since October 2009 and August 2011 respectively. All three of us were involved in the 10 year review of the previous Regional Policy Statement for Northland (RPS) and subsequently, development of the new RPS, which was made operative (except GMO provisions) in May 2016. A number of the plan changes subject to this hearing implement the RPS and are therefore of significant interest to council.

- (iii) I will present evidence on Proposed Plan Change 87 (Coastal Areas) in support of the submission by council. Jon Trewin will present evidence on Proposed Plan Change 114 (Landscapes) and Michael Payne will present evidence on the suite of rural Plan Changes. The evidence is presented on behalf of the council under delegated authority. We have read the Section 42A reports and associated material and the following evidence is in response to the conclusions and recommendations therein.

Proposed Plan Change 87 (Coastal Areas) Discussion

- (iv) The intent of the plan change is generally consistent with the RPS as well as higher level national policy direction through the New Zealand Coastal Policy Statement (NZCPS). Therefore, council generally supports this proposed plan change, in

particular the suite of objectives and policies that seek to protect high and outstanding natural character areas.

- (v) The council's original submission sought, that for reasons of consistency with mapping of outstanding and high natural character areas in the RPS, areas of 'outstanding' natural character in the Whangarei district planning maps be identified with an orange colour (they were green) and 'high' natural character areas be identified with a green colour (they were orange). I note that paragraph 287 of the reporting officers Section 42A Report has recommended that councils relief be accepted and that the colours on the Whangarei district planning maps are amended to match the RPS. I support this recommendation and believe it will ensure there is no confusion with regards to mapping of outstanding/high natural character areas.
- (vi) The council provided a further submission in support of the Department of Conservation's primary submission relating to Policy CA 1.3.3. Council believes that the suggested amendments by the Department of Conservation will ensure that the plan change gives effect to the NZCPS and the RPS, whilst still allowing landowners to provide for their social and economic wellbeing.
- (vii) I note that paragraph 113 of the reporting officers Section 42A report has recommended amending Policy CA 1.3.3 and that the proposed (new) wording better reflects the requirements of the RPS. This recommended amendment is therefore supported.
- (viii) Council also provided a further submission in support of Far North District Council's (FNDC) primary submission relating to Rule CA 4.2.1. Council believes that including a control over the frequency of earthworks (inserting 'in any 12 month period') will help to ensure a limit/restriction on the total amount of earthworks and therefore limit the risk of adverse effects on the values and characteristics of the outstanding natural character area as well as minimise the risk of cumulative effects occurring. The same issue arises in all earthworks and vegetation clearance rules in Plan Change 87 (i.e. there are no per site or per annum restrictions on volumes).
- (ix) The reporting officers Section 42A report has recommended rejecting this relief because the amendment sought by FNDC would allow the opportunity to undertake up to 150m³ annually as a permitted activity for the life of the district plan. This is correct. However, I consider that by not having a timebound restriction (such as within any 12 month period), there is a real risk that technically, up to 150m³ of

earthworks could be undertaken each day as a permitted activity. A permissive interpretation of this rule could also mean that multiple but separate earthwork 'activities' could occur over a site at any one time provided they were less than 150m³ each.

- (x) This runs the risk that adverse effects on natural character values could occur, which is contrary to Policy 13 of the NZCPS.
- (xi) I also note that inserting the words 'in any 12 month period' will ensure that earthworks within Outstanding Natural Character areas are consistent with earthworks within Outstanding Natural Features and Landscapes – as outlined in Proposed Plan Change 114. Earthworks within these area are subject to the 'in any 12 month period' restriction (see Rule LAN 3.1.3 1.a and Rule LAN 5 Table 1).

Relief Sought

- (xii) Amend Rule CA 4.2.1 to include the words 'in any 12 month period' after 150m³. We also suggest that if there is scope in other submissions, that this limitation be applied to all earthworks and vegetation clearance rules in PC87 relating to high or outstanding natural character areas. An alternative would be to include permitted activity rules that limit the scale of earthworks and vegetation clearance available per annum (I.e. up to the thresholds in discretionary / non-complying rules).

Proposed Plan Change 114 (Landscapes)

Discussion

- (xiii) Council supports the intent of the proposed plan change on the grounds that it is generally consistent with Policies 4.5.1, 4.5.2 and 4.6.1 of the RPS as well as direction provided under Policy 15 of the NZCPS.
- (xiv) Council undertook a robust and thorough consultation process in developing a regional approach to the mapping of outstanding natural landscapes ('ONL') and outstanding natural features ('ONF') as well as mapping areas of outstanding and high natural character and the extent of the coastal environment as part of the new RPS. Both the ONL's and ONF's were mapped according to robust criteria; the former using the established 'Amended Pigeon Bay' criteria and the latter using accepted criteria developed to identify features in the NZ Geopreservation Inventory. To support this process, two rounds of consultation were held with affected landowners:

- a. a targeted pre-notification stage in mid-2012 with letters sent to the most affected landowners (those with mapped ONL, ONF or areas of high or outstanding natural character on their property). From this, 800 responses were received and 200 site visits conducted. These were used to make subsequent refinements to the draft maps.
 - b. the notification of the maps in October 2012 with a wider mailout to 23,000 landowners, including all those properties within the newly mapped coastal environment line. During this process, further site visits were undertaken and additional refinements were recommended to the maps.
- (xv) The policy approach in the RPS provides the flexibility to make further amendments to the maps at an individual (property) scale (RPS Policy 4.5.2). We therefore support the consultation that Whangarei District Council has undertaken through notifying Proposed Plan Change 114 as an appropriate further opportunity to refine the boundaries of ONL and ONF's without wholesale re-litigation of the maps themselves. I note that the extent of this consultation has been significant with letters to 1600 landowners and 200 follow-up enquiries with 90 site visits. I consider that, combined with the regional council's consultation, this has been an extensive and fair process.
- (xvi) I note that the points we have made, and relief asked for, in our submission has been accepted by the reporting officer through their recommendations to the hearing committee. As such we ask that these recommendations and the proposed amended text be accepted.
- (xvii) I would like to point out a couple of minor issues that have arisen as a result of recommended changes to the text by the reporting officer:
- a. I query the need to have so many thresholds for earthworks for ONF's outside of the coastal area (*page 15 of 40, Part 1 Attachment 2A, recommended WDP text*). There is no discernible difference in the activity status for earthworks up to 50m³ and between 50-150m³ and I would suggest that they be combined for clarity's sake. This point is based on a further submission made in opposition to the Geoscience Society of NZ (points 3 and 9 of their submission) opposing rules that would restrict the reasonable use of land. This position is supported by RPS Method 4.6.3(4) which states that in

implementing the RPS regional and district plans shall not render land incapable of reasonable use (a similar intent is expressed in s85 RMA).

- b. I do not understand why farm quarries are treated differently to other earthwork activities in ONF's (*page 16 and 18 of 40, Part 1 Attachment 2A, recommended WDP text*), noting that for ONL's, farm quarries are proposed to be bundled into the permitted earthwork rule where they are under 150m³ earth movement per year (LAN.3.1.3). I also note that PC87 includes specific rules for farm quarries, including a non-complying activity rule for such in Outstanding Natural Character areas (CA4.2.3) which also match earthworks volumes. I would suggest that the category of farm quarries is similarly bundled into an appropriate earthwork category for ONF's rather than be a blanket prohibited activity. This point is based on based on our original submission made on Plan Changes 85, 85 A-D, 86 A-B (but applicable here) on the careful use of prohibited activity status. It is unreasonable in our view to require any and all new farm quarries in ONF's to undertake a plan change – this is particularly so if farm quarries (and mineral extraction) can be treated as non-complying in an Outstanding Natural Character Area that is subject to the 'avoid adverse effects' test – surely the same status could apply to the same activity in ONF (as opposed to prohibited).

Relief sought

- (xviii) Combine the 50m³ and 50-150m³ earthwork thresholds for ONF outside coastal areas.
- (xix) Bundle farm quarries into an appropriate earthwork category for ONF's, consistent with the approach for ONL and the Coastal area, rather than be a blanket prohibited activity.

Rural Plan Changes – 85, 85A – D and 86A and B

Biodiversity in wetlands

- (xx) I note that that the reporting officer recommends removing policy RPE.2.3.4 and rule RUEE.2.3.7¹, which sought to manage the destruction of indigenous vegetation in wetlands. This recommendation is consistent with the *Statement of Regional and District Council Responsibilities* specified in Regional Policy Statement for Northland². It is also consistent with s30(1)(c) of the Resource Management Act 1991

¹ Whangarei District Council, 2017, *Part 1 Proposed Plan Changes 85, 85A – D, 86 A&B , 87, 102 and 114 General Topics, Section 42A Hearing Report*.

² Northland Regional Council, 2016, *Regional Policy Statement for Northland, p 9*.

(RMA), which states the control of land for the purposes of maintaining water quality, water quantity and aquatic ecosystems is a regional function. There appears no need to duplicate this in a district plan and therefore the officer's recommendations are supported by the council.

Commercial Activities

(xxi) The proposed plan changes³ take a restrictive approach to commercial activities in the Rural Production Environment and Rural Living Environment. Council sought amendments to provide for small scale commercial enterprises that compliment rural production activities in the Rural Production Environment. In paragraph 168 of the reporting officers Section 42 A Hearing Report⁴, amendments are recommended that go some way toward granting the relief sought. In my opinion, the recommended amendments are positive and are likely to contribute to rural economy and viability of some rural businesses while providing some rigour around the type and scale of activities that can establish in the Rural Production Environment. The officers recommended amendments to Policy RPE.1.3(1) ⁵are therefore supported.

Minor residential units

(xxii) In our original submission, council commented on the use of prohibited activities. We would like to draw the commissioner's attention to the status of erecting a minor residential unit within the Rural Village Environment (RVE). The proposed plan change states that the erection of a minor residential unit without access to reticulated services is a prohibited activity (RVE.2.1(5)). The level of control exercised on minor residential units in this instance is significantly more restrictive than elsewhere in the proposed plan changes.

(xxiii) In those parts of the RVE that have access to reticulated waste water a minor residential unit is a discretionary activity. In other environments, regardless of the availability of reticulated waste water, the construction of a minor residential unit is either permitted or discretionary activity. The environmental effect of a minor residential unit on a site with reticulated waste water or the appropriate onsite waste water treatment system does not appear to be significant and the reasons for utilising a prohibited activity status in this instance appear unclear.

(xxiv) The rule is however silent on primary residential units on un-serviced sites in the RVE, which essentially means the primary unit would be a permitted activity but a minor unit prohibited on the basis there is no reticulation. The justification for this is

³ Plan Change 85 – Rural Area, Plan Change 85 A – Rural Production Environment , Plan Change 85 D – Rural Living Environment.

⁴ Whangarei District Council, 2017, *Part 1 Proposed Plan Changes 85, 85A – D, 86 A&B , 87, 102 and 114 General Topics, Section 42A Hearing Report.*

⁵ Whangarei District Council, 2017, *Attachment 2G – Recommended WDP Text.*

unclear and does not appear based on potential adverse effects, noting the Regional Water and Soil Plan for Northland regulates the discharge of primary and secondary treated waste water from sewage treatment systems (typically domestic on-site systems are a permitted activity). The proposed plan change therefore has the potential to be inconsistent with the Regional Water and Soil Plan for no apparent reason.

- (xxv) Where a minor residential unit can be served by on-site infrastructure (where reticulated services are not available), it is our view that land owners should have the opportunity to apply for resource consent and allow each application to be assessed against the objectives of the plan on its own merits.

Relief sought

- (xxvi) That the activity status for minor residential units in the Rural Village Residential Sub-Environment is amended to a 'discretionary' activity.

At risk aquifers

- (xxvii) It is noted that several areas proposed to be re-zoned Rural Living Environment are located above aquifers, which have been identified by Northland Regional Council as being 'at risk' due to demand for water abstraction. Development in these areas has the potential to reduce aquifer recharge, exacerbating the existing issues. For that reason, we support the inclusion of Policy RLE 1.3.9, which seeks to manage the effects of stormwater runoff by utilising the principles of low impact design.

- (xxviii) We also support rule RLE2.3.5, which requires resource consent for impervious areas greater than 15 percent of the net site area.

Michael Day
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Northland Regional Council