

BEFORE THE WHANGAREI DISTRICT COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Submissions and Further Submissions lodged
by GBC Winstone to Proposed Whangarei
District Plan Changes (PC)
PC 85 Rural Areas
PC85A Rural Production Environment
PC85B Strategic Rural Industry Environment
PC85D Rural Living Environment
PC86A Rural (Urban Expansion) Environment
PC86B Rural (Urban Expansion) Living
Environment
PC87 Coastal Area and
PC102 Minerals

**SUBMISSIONS OF SUSAN RHODES
ON BEHALF OF GBC WINSTONE**

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This Memorandum is filed on behalf of Golden Bay Cement and Winstone Aggregates (GBC Winstone) which is a submitter and further submitter on the subject Plan Changes.

1. Introduction

1.1 GBC Winstone owns and operates four significant industrial operations in Whangarei:

- the Otaika Quarry;
- the Portland Quarry;
- the Portland Cement Works; and
- the Wilsonville Quarry.

1.2 The location and extent of the respective landholdings and business operations are described in the evidence of Ian Wallace, Theda Hall and Catherine Clarke. This Memorandum addresses two discrete issues, Restricted Discretionary Activity status and Notification, which are raised by the subject Plan Changes, and are the subject of submissions by GBC Winstone. I reserve the right to make further submissions at the time allocated for hearing of the GBC Winstone Submissions and Further Submissions.

2. Restricted Discretionary Activity Status

2.1 The Council has adopted a policy of not utilising the Restricted Discretionary Activity (RDA) status in the Rural chapters. GBC Winstone sought in its submission that the RDA status continue to be used in the new plan provisions¹. The reasoning contained in the Section 32 and 42A reports to justify the Council's approach is not consistent.

2.2 The section 32 Report² discusses Activity Status in two sections. In the first section, the author of the report suggests, from experience, that the desire by applicants for certainty in relation to standards they must meet and notification requirements drives development to be rule driven rather than design driven. The author does not offer any evidence to support this view. The section 32 Report proposes the deletion from the WDC Plan, through the rolling review process, of both Controlled and RDA status, so that for all proposals the emphasis is on design rather than compliance. Proposals that do not fall within the framework for permitted activities will default to Discretionary (or non-complying).

2.3 In the second section, the author proposes that in the Rural Plan change there will be controlled activities but no RDA. It is stated that the intention is to reduce the size and complexity of the Plan³. The Evaluation suggests an economic benefit of fewer resource consent applications. It is not clear how that view has been arrived at. Matters which were previously RDA will now become full discretionary activities without the benefit of the discretion being restricted in any way. It is not explained how that will reduce the number of resource consent applications. The same approach to RDA status is adopted in PC 102 in respect of Minerals⁴.

¹ (Submission 250/1)

² Technical Information Part 1 at Section 4.2 para 79 to 85 and again in Section 6 Evaluation at para 105 to 108

³ Ibid para 106

⁴ Section 32 Report Minerals para 33

- 2.4 The section 42A report shifts from that position. In the discussion on Activity Status⁵ the author of the report states:

“The use of activity status rules have (sic) been explained and evaluated within the s32 Report 12. WDC has taken a deliberate approach to the rolling review to create a stronger policy driven plan. This approach includes the use of notification rules and the limited use of controlled and restricted discretionary Activities”. (my emphasis added)

- 2.5 The balance, and bulk, of the discussion relates to the use of Prohibited Activities which GBC Winstone is not concerned with. The position therefore shifts from no use of RDA, to limited use of RDA, but in fact the RDA status is not utilised at all in the Rural Plan Changes.

- 2.6 In response to the approach set out in the Reports and the Plan Changes the following arguments are advanced on behalf of GBC Winstone.

- (a) If matters for discretion are properly developed it becomes apparent what issues an applicant should focus on to align with the objectives and policies contained in the Plan. This helps to strengthen adherence to policy as desired by the Council. It also achieves the benefits of better design and planning outcomes as well as greater certainty for all parties and greater efficiency for applicants.
- (b) GBC Winstone understand that the intention of Council is to effectively “roll-over” the operative Minerals provisions into the new plan, subject to formatting to fit the new structure. The removal of the RDA undermines that intention as the RDA is used in the operative plan provisions. Any move to change activities from RDA to fully discretionary activities results in a more onerous consenting regime. Where this affects mineral extraction activities it is effectively making those activities more difficult, which runs counter to preserving the status quo and recognising their strategic regional and national significance. The section 32 Report does not advance any comprehensive reasoning to support this change in approach.
- (c) There is a concern that the removal of the RDA status from the Minerals Chapter is based on a purist view of consent status. Although the status has changed from RDA to Discretionary the section 32 report records:

Many of the matters discretion was restricted to in the WDP are proposed to now be included in the assessment criteria for discretionary activities (MEA.2.8) ⁶

Thus, it is difficult to see what has really been achieved by removing the RDA status.

- (d) It appears from the proposed Plan changes that the Council has opted to transfer more activities from RD to full Discretionary than from RD to Controlled. It is not apparent why this is the case. The Section 42A report refers to limited use of the RDA category. Preservation of the status quo for strategic minerals, and giving effect to the intended “roll-over” of provisions would appear to justify the use of the RDA in this limited context.

⁵ Part 1 General Report; section E Activity Status and Eligibility Rules para 92

⁶ Section 32 Report Minerals Para 33

- (e) The operative parts of the Plan which predate the rolling review process provide for RDA status. There is therefore inconsistency between different parts of the Plan which is not helpful to users of the Plan. Although this may be addressed over time, the period of overlap is in fact very lengthy. By the time the reviews have been completed a different policy towards RDA status may have been adopted. This is not helpful and does not aid coherence of the Plan.
- (f) The RDA status is a useful tool provided by the RMA. It gives the applicant a greater level of certainty than the Discretionary category and Councils a greater degree of control than the Controlled category. It is part of the suite of consents that have been developed over time under the RMA to provide both flexibility and certainty. It is widely utilised by Councils. The section 32 and 42A reports do not put forward compelling arguments to abandon its utilisation.
- (g) GBC Winstone considers that the full range of options provided by the RMA should be utilised to achieve the greatest degree of flexibility and efficiency. This is consistent with public policy in law-making.

3. Notification

- 3.1 GBC Winstone in its submission⁷ sought that the Council adopt the statutory tests for notification of applications as set out in the RMA. The section 32 and 42A reports couple the discussion of notification with activity status. This is consistent with the view initially adopted by the author of the section 32 report that consent status and notification requirements drive compliance with rules rather than good design.
- 3.2 The plan changes adopt an approach of specifying mandatory public notification of specific activities. With respect, this appears to cut across good design objectives. If an application is going to be publicly notified, however good the design is, there is no apparent incentive for an applicant to go the extra mile in design terms.
- 3.3 In any event the approach appears flawed. The proposal is for public notification, no limited notification and no allowance for potentially affected parties who have signed off on a proposal. While there is greater certainty that an application will be notified, the inevitable outcome must be that more applications will be fully notified with the attendant cost, delay and uncertainty that imposes. It is very difficult to understand how the section 32 evaluation treats this as more efficient and effective⁸.
- 3.4 In relation to the section 42A report the GBC Winstone submission is acknowledged but not discussed, other than to state that the WDC has taken a deliberate approach to create a stronger policy driven plan, including the use of notification rules. The bulk of the discussion relates to the use of the prohibited activity status which GBC Winstone is not concerned with⁹.
- 3.5 The report acknowledges¹⁰ the recent changes to sections 95-95F of the RMA to limit notification. This is an important point. The RMA has been amended numerous times to address notification. The statutory tests and requirements continue to evolve to meet changing circumstances, policies and the public interest. With

⁷ 250/18, 250/29

⁸ Technical Information Part 1 see para 109 -111

⁹ Section 42A Part 1 General Report paras 84,85

¹⁰ Ibid para 38

respect, there is a good argument to be made that the statutory approach offers the best tested and most up to date way to deal with notification. Clearly the RMA allows for Councils to make rules around notification but in my submission, this is best applied to situations where there is a critical need for special rules.

Susan Rhodes

6 July 2017