

**IN THE MATTER** of the Resource Management Act 1991

**AND** of an appeal under Clause 14(1) of First Schedule to the Resource Management Act 1991

**BETWEEN** TKC HOLDINGS LIMITED  
**Appellant**

**AND** WESTERN BAY OF PLENTY DISTRICT COUNCIL  
**Respondent**

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**NOTICE OF APPEAL**

**Clause 14(1) of the First Schedule Resource Management Act 1991**

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**To:** The Registrar  
Environment Court  
**AUCKLAND**

1. **TKC HOLDINGS LIMITED (the Appellant)** appeals against decisions of the Western Bay of Plenty District Council (**the Respondent**) on Proposed Plan Changes 4, 11 and 12 (Proposed Plan Changes) to the Western Bay of Plenty District Plan.
2. The Appellant made submissions on the Proposed Plan Changes.
3. The Appellants received notice of the decisions on 13 August 2012.
4. The decisions were made by the Respondent. The Appellants are not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.

Decision being appealed

5. The decisions that are being appealed are the Respondent's decisions to decline to amend Proposed Plan Changes in accordance with the Appellant's submissions in relation to Proposed Plan Changes 4, 11 and 12 and including associated maps. The decisions made in relation to the Appellants submissions were to reject or accept only in part its submissions.

Reasons for Appeals

6. The Appellant owns land on Matakana Island. The Appellants consider, in a general sense, that the decisions on its submissions do not promote sustainable management of their lands and are inconsistent with the purpose of the Act. The more particular reasons for the appeal are:

#### **Plan Change 4 – Natural Hazards**

- 6.1 This plan change seeks to clarify the District Plans provisions around natural hazards and has introduced some new methods about coastal hazards. A hazard line has been introduced over the Appellants land on Matakana Island. A new assessment guide has been introduced at part 8.5.2(b) of the plan. Part (v) states:

*“The impact that the proposal will have on the natural character of the coastal environment, recognizing the ecological values of the dune area, and dune restoration”.*

- 6.2 The Appellant considers the hazard line over its land is not an effective method to address potential coastal hazards that have not been adequately assessed in terms of the susceptibility and degree of potential hazard. It is a blunt tool not necessarily leading to innovative responses to potential hazards. The Appellant considers the maps should be amended to delete the hazard line from its lands. In addition provisions 8.5.2 (b) should also be removed from the plan, and in particular the provision covered in 6.1 above which has little to do with hazard risk minimisation. Similar issues arise with objective 8.2.1.2 which would benefit from amendment.

#### **Plan Change 11 – Ecological Features**

- 6.3 The Appellants have land that is shown on the planning maps as Ecological Areas. Many of these areas may well be subject to new rule 5.4.1(g) which permits activities in areas shown on the planning maps but do not contain the scheduled ecological values (incorrect or out-dated maps for example). The decisions on the rule have concluded the following:

*“5.4.1(g) All activities that would otherwise be permitted by the District Plan shall be permitted where evidence is provided to the satisfaction of Council that demonstrates that an area(s) (or part of an area) identified on the District Planning Maps as an ecological feature does not contain any ecological values and has not contained the ecological values since 1994”.*

- 6.4 The Appellant considers the rule is subjective with wide discretion on the part of the Council. Effective and efficient rules are preferably more clear cut than the one proposed. In addition the plan change now includes an error that will need to be remedied. The maps released with the decision report (see maps C04 and C05 in particular) appear to show the Appellants land (Lot 1 DP 17218 and contained in Certificate of Title SA389/253) as *Reserve, Department of Conservation*. That land is an estate in fee simple and is not a reserve.

#### **Plan Change 12 – Protection Lots for Community Benefit**

- 6.5 This plan change increases the scope under which protection lots can be created. The current provisions in the Proposed District Plan are only available where a

proposal includes protection of an ecological area shown on the Planning Maps. The amendments to this rule are **opposed** by the Appellant because they are currently unavailable to Matakana Island. The sand barrier part of the Island in particular has a number of areas identified for natural values and would be suitable for consideration for protection lots. The rule needs to be amended to delete the exclusion of the Island, and provisions need to be broadened to include vesting as a means of Legal protection.

7. In addition to the matters set out in part 6. above, the general reasons for the appeal are as follows:
  - 7.1 The section 32 analysis that accompanied the Proposed Plan Changes were deficient and did not adequately consider the issues raised in the Appellant's submissions. In addition to the mapping errors explained in this document, there are also questions around whether the plan changes were variations to a Proposed Plan or changes to an Operative Plan. The Appellant would like clarification from the Respondent about how and when the Proposed Plan became Operative;
  - 7.2 The decisions do not reflect the enabling framework set out in the Act;
  - 7.3 The decisions are not consistent with the purpose and principles of the Act;
  - 7.4 The decisions do not promote sound resource management practice.

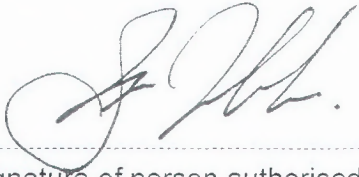
#### Relief sought

8. The appellant seeks the following relief:
  - 8.1 That the Proposed Plan Changes are amended in accordance with the Appellant's submissions;
  - 8.2 Any similar or consequential relief;
  - 8.3 Costs.

9. Documents attached to this notice

Copies of the following documents are attached to this notice of appeal.

- (a) A copy of the Appellants submissions.
- (b) A copy of the Respondent's decision.
- (c) A list of the names and addresses of persons to be served with a copy of this notice.



Signature of person authorised to sign  
on behalf of the Appellants

20 September 2012

Date

Address for service: Land Matters Limited  
20 Addington Road, RD1  
Otaki 5581

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Contact person: Bryce Holmes – Principal Planner – MNZPI (Full)

## **Annexures**

- A A copy of the appellant's submissions.
- B A copy of the respondent's decisions.
- C A list of the names and addresses of persons to be served with a copy of this notice.

## **Advice to recipients of copy of notice of appeal**

### *How to become a party to proceedings*

You may be a party to the appeal if you made a submission or further submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

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 requirements (see form 38).

### *How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach copies of the appellant's submissions or the decisions appealed. These documents may be obtained, on request, from the appellant.

### *Advice*

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington or Christchurch.