

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

**A N D**

**IN THE MATTER** of an appeal pursuant to clause 14(1) of  
the First Schedule to the Resource  
Management Act 1991

**BETWEEN CARRUS CORPORATION LIMITED**

**Appellant**

**A N D WESTERN BAY OF PLENTY  
DISTRICT COUNCIL**

**Respondent**

---

**NOTICE OF APPEAL**

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

---

**TO:** The Registrar  
Environment Court  
**AUCKLAND**

- 1. CARRUS CORPORATION LIMITED (Appellant)** appeals against decisions of the **WESTERN BAY OF PLENTY DISTRICT COUNCIL (Respondent)** on Proposed Variation 2 / Plan Change 46 (**Plan Change**) to the Western Bay of Plenty District Plan (**District Plan**).
- 2.** The Appellant made submissions and further submissions on the Plan Change.
- 3.** The Appellant is not a trade competitor for the purposes of s308D of the Resource Management Act 1991.
- 4.** The Appellant received notice of the decision on 17 April 2014.

5. The decisions were made by the Respondent.

### **Decisions appealed**

6. The decisions that are being appealed are all the decisions relating to development intensity and development on Matakana Island, including particularly:
  - (a) The Respondent's decision to include provisions in the District Plan which restrict development intensity on the Matakana Island forested sand barrier by listing as a discretionary activity one dwelling per 40 ha; and
  - (b) The Respondent's decision to list as a prohibited activity, any development on the Matakana Island forested sand barrier that is over and above one dwelling per 40 ha; and
  - (c) The Respondent's decision to include differential rules for Matakana Island for activities which would otherwise be anticipated in the Rural zone of the Western Bay of Plenty district.

### **Reasons for appeal**

7. The Appellant is a land developer and the manager for Scorpions Limited (**Scorpions**). Scorpions are a joint venture partner with the Faulkner family who own two parcels of land on Matakana Island, a 149ha lot on the coastal side of the forested part of Matakana Island towards the southern end, and a 19ha lot on the harbour side of the forested part of Matakana Island.
8. The Appellant intends to undertake development on the 149ha lot which is modest and rural lifestyle in nature (for example, 20 – 30 dwellings in up to three clusters or a small scale eco-resort).

### **Development Intensity**

9. The Respondent's decisions in respect of development intensity on Matakana Island are appealed for the following reasons:

- (a) The Appellant supports the inclusion of new Objective 18.2.1.10 and also amended Policy 18.2.2.16, however considers that the rules to implement the Objective and Policy are too restrictive. The Appellant believes that Objective 18.2.1.10 can be achieved by a suite of provisions governing development intensity and development which are more permissive yet very robust. Such provisions can also align with the Matakana Island Plan which does not specify a development intensity for Matakana Island.
- (b) The plan change retains rule 18.3.1(d) which allows one dwelling per lot as a permitted activity. The appellant supports this, and understands that the existence of this rule is why the plan change (at rule 18.3.2(j)) excludes the Matakana Island forested sand barrier from controlled activity subdivision of general farming lots at a rate of one lot per 40ha. The plan change seeks to avoid subdivision that could subsequently give rise to scattered dwellings throughout the forested sand barrier. The appellant agrees with this intent but considers that subdivision for general farming lots should be enabled as a controlled activity provided there is no associated dwelling entitlement. This could be achieved by modifying permitted activity rule 18.3.1(d) to refer to lots existing at the date this plan change becomes operative.
- (c) The plan change inserts rule 18.3.3(f) which lists as a restricted discretionary activity: *“Dwellings and associated subdivision in addition to 18.3.1(d) on the Matakana Island forested sand barrier subject to compliance with the activity performance standards contained in Rules 18.4.1(d) and 18.4.2(i)”*. The referenced rule 18.4.1(d) contains a suite of performance standards, including standard (i) which provides for *“one dwelling or lot entitlement for every 40 ha of the combined total area of all existing lots on which the application is based”*. The appellant does not challenge this as an appropriate restricted discretionary activity standard.
- (d) The Plan Change also inserts rule 18.3.4(s) which lists as a discretionary activity: *“Subdivision, dwellings and development associated with the clustering of dwellings on the Matakana Island*

*forested sand barrier that fails to comply with the activity performance standards listed in 18.4, provided that in respect of rule 18.3.6 an overall density of one dwelling per 40ha is not exceeded*“. The appellant considers that the reference to rule 18.3.6 does not make sense in the context of this rule. Rule 18.3.6 is the prohibited activity rule. If anything, it seems that the reference should be to rule 18.4.1(d)(i) which, as noted above, is the performance standard relating to density. That said, the relief sought by the appellant would avoid the need for this reference at all.

- (e) The above rules result in the ability to develop approximately 102 dwellings on the forested sand barrier. This is too low when viewed in conjunction with the prohibited activity status (as discussed below), and enables no room for potentially positive clustered developments (such as what the Appellant proposes) to be considered on its merits. Such developments could have benefits for the residents of Matakana Island including, for example, creating formalised access for tangata whenua to the coast. There should be some degree of flexibility when determining the scale of rural lifestyle clusters in suitable locations. Moreover, the Appellant's 149ha lot is located at the southern end of the forested sand barrier, which of the entire forested sand barrier arguably most lends itself to clustered development.
- (f) The Respondent did not carry out an objective assessment of development possibilities. The officer's report did not consider and does not mention research reports that were undertaken by the Appellant and other landowners, including particularly the Matakana Island Whole of Island Review, Preliminary Assessment of Economic Effects, Brown, Copeland & Co Ltd, 29 October 2012. There are also comments in the officer's report which are misleading of the Appellant's position and create an unfavourable view of their intentions.
- (g) The Appellant understands the historical context and need for the inclusion and encouragement of papakainga development rights in the District. However the disparity between papakainga development intensity and development intensity for land owners on the Matakana

Island forested sand barrier is polar and unfairly restricts development for the latter.

### **Prohibited Activity Status**

10. The Respondent's decisions in respect of the prohibited activity status for development greater than one lot per 40 ha on the Matakana Island forested sand barrier are appealed for the following reasons:
  - (a) Objective 18.2.1.10 of the Plan Change can be achieved without the use of a prohibited activity status for development greater than one lot per 40 ha on the Matakana Island forested sand barrier. For example the capping of number of dwellings (as proposed in the appellant's relief sought) will effectively recognise the "Matakana Island Plan", and the "Matakana and Rangiwea Island Hapū Management Plan" including ensuring the Island's way of life is maintained. In these circumstances, a non-complying activity status is more appropriate.
  - (b) The prohibition contained in rule 18.3.6 precludes the consideration of development that could have merit. This is inappropriate in the context of the lifespan of the District Plan, and is unnecessary in view of the framework of objectives and policies within the District Plan including particularly the objective and policies which have been developed as part of the Plan Change.
  - (c) The Respondent's use of prohibited activity status is unduly onerous. It is well established that prohibited activity status should only be used sparingly and due to its severity should only be used if it is indeed the most appropriate activity status. It is not necessary to use prohibited activity status given the overall framework of the Plan Change. Furthermore, avoiding the need to have to process resource consent applications is not a valid reason for imposing prohibited activity status.
  - (d) The Respondent has not properly considered the appropriateness of the prohibited activity status. In its section 32 report, the Respondent did not properly consider whether the prohibited activity status was the

most appropriate for achieving the objective. Specifically, the prohibited activity status is discussed only once in Planning report 1, section 9.3. Similarly, the officer's report does not analyse whether the prohibited activity status is the most appropriate provision to achieve the objectives.

## Development

11. The Plan Change imposes a number of restrictions on activities which would ordinarily be anticipated within the Rural zone of the Western Bay of Plenty district. This serves to highlight the Respondent's decision to sterilize the land uses which might be undertaken on Matakana Island and is not supported by the Appellant.
12. The restrictions include the Respondent's decisions on accommodation facilities, education facilities and places of assembly. While the Appellant accepts that the performance standards in rules 18.4.1(f) and (g) are appropriate for such activities as a restricted discretionary activity on Matakana Island, it questions why such activities would default to non-complying activity status beyond that. Discretionary activity status is appropriate in the remainder of the Rural zone, and given the suite of objective and policies in the Plan Change, should be abundantly sufficient on Matakana Island also.
13. In addition to the matters set out in paragraphs 7-12 above, the further reasons for the appeal are as follows:
  - (a) The s32 analysis that accompanied the Proposed Plan was deficient and did not properly consider the issues raised by the Appellant in its submissions and further submissions;
  - (b) The decision is not consistent with the Council's functions under section 31 RMA to establish a planning framework which achieves integrated management of natural and physical resources in the Western Bay of Plenty district;
  - (c) The decision does not reflect the enabling framework of the RMA;

- (d) The decision is not consistent with the purpose and principles of the RMA; and
- (e) The decision does not promote sound resource management practice.

### Relief sought

14. The Appellant seeks relief which, in general terms, provides for development intensity on the following basis:

Activity Status	Activity	Comment
Permitted	One dwelling per existing lot.	The Plan Change already provides for this.
Controlled	Subdivision to create farming lots (no dwellings).	Refer to paragraph 9(b) above.
Restricted discretionary	Dwellings and subdivision with clustered dwellings and a development intensity of 1/40ha.	The Plan Change already provides for this. Refer to paragraph 9(c) above.
Discretionary	Dwellings and subdivision with clustered dwellings and a development intensity which is greater than 1/40ha but less than 200 dwellings across the Matakana Island forested sand barrier overall.	Amended discretionary activity rule 18.3.4(s) proposed to achieve this.
Non-complying	Dwellings and subdivision where dwellings are not clustered and/or the number of dwellings across the Matakana Island forested sand barrier will exceed 200 overall.	Amended non-complying activity rule 18.3.5(g) proposed to achieve this.

15. The Appellant also seeks relief which, in general terms, provides for development on the following basis:
- (a) Accommodation facilities, education facilities and places of assembly as discretionary activities.
16. The Appellant suggests the following relief to give effect to the above:
- (a) Amend rule 18.3.2(j) to provide for subdivision to create farming lots (no dwellings) on the Matakana Island forested sand barrier as a controlled activity.
  - (b) Amend rule 18.3.4(c), (d) and (e) to delete the specified exclusion of Matakana Island so as to provide for accommodation facilities, education facilities and places of assembly to be considered as a discretionary activity on Matakana Island. (The Appellant notes that the current exclusion is for the whole of Matakana Island, not just the forested sand barrier. The appellant considers that such proposals should be able to be considered on their merits given the robust objective and policy framework).
  - (c) Amend rule 18.3.4(s) to enable as a discretionary activity rural subdivision and development that may exceed the overall density of one dwelling per 40ha provided an overall cap of 200 lots / dwellings is not exceeded.
  - (d) Amend rule 18.3.5(g) so that subdivision and development not associated with the clustering of dwellings is a non-complying activity (as per existing rule) and so is subdivision and development on the Matakana Island forested sand barrier beyond a total of 200 lots / dwellings.
  - (e) Delete rules 18.3.5(f).
  - (f) Delete rules 18.3.6(a) and (b).



- (g) Any similar or consequential relief arising from the reasons for the appeal or the relief sought, including the need to undertake a further evaluation in accordance with ss 32 and 32AA of the Act.
- (h) Costs of and incidental to this appeal.

**Attachments**

17. The Appellant attaches the following documents to this notice:
- (a) A copy of the Appellant's submission and further submission (Attachment "A");
  - (b) A copy of the Respondent's decisions on the Plan Change (Attachment "B"); and
  - (c) A list of the names and addresses of the persons to be served with a copy of this Notice of Appeal.

**Signature:**

**CARRUS CORPORATION LIMITED** by its authorised agent:



---

Vanessa Jane Hamm  
Counsel for the Appellants

**Date: 3 June 2014**

**Address for service of appellant:**

Holland Beckett  
Private Bag 12011  
DX HP 40014  
TAURANGA

Tel: 07 578 2199  
DDI: 07 927 2754  
Fax: 07 578 8055

Email: [vanessa.hamm@hobec.co.nz](mailto:vanessa.hamm@hobec.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 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 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 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 in Auckland, Wellington or Christchurch.

**Annexure A**

**A copy of the Appellant's submission and further submission**

**Annexure B**

**A copy of the relevant parts of the Respondent's decision**

**Names and addresses of the persons to be served with a copy of this appeal**

Western Bay of Plenty District Council Andries Cloete Private Bag 12803 Tauranga Mail Centre Tauranga 3143	Peter Axelrad PO Box 5566 Mt. Maunganui 3150	Bay of Plenty Regional Council C/- Fiona McTavish PO Box 364 Whakatane 3158
Blakely Pacific Ltd C/- Simpson Grierson Private Bag 92518 Auckland 1141	Department of Conservation Helen Neale Private Bag 3072 Waikato Mail Centre Hamilton 3240	Bill Duvall PO Box 155104 Wellesley Street Auckland 1141
Cathryn Faulkner 16 Graham Place Bellevue Tauranga 3110	Federated Farmers of NZ PO Box 447 Hamilton 3240	Heritage New Zealand PO Box 13339 Tauranga Central Tauranga 3141
Donna Poka Counter Delivery Matakana Island Postcentre Tauranga 3136	Rangiwaea Marae Trust C/- John Koning Koning Webster Lawyers PO Box 11120 Palm Beach Papamoa 3151	Malcolm Smith Opureora Road Matakana Island Tauranga 3136
Easton Taikato 6E Somerset Grove Parkvale Tauranga 3112	Taingahue Family Trust C/- John Koning Koning Webster Lawyers PO Box 11120 Palm Beach Papamoa 3151	Tauwhao Te Ngare Trust C/- John Koning Koning Webster Lawyers PO Box 11120 Palm Beach Papamoa 3151
Nessie Te Kuka Counter Delivery Matakana Island Postcentre Tauranga 3136	Te Runanga o Ngai Te Rangi Iwi Trust PO Box 4369 Mt. Maunganui South Mt. Maunganui 3149	Te Umuhapuku 3B Trust C/- Koning Webster Lawyers PO Box 13309 Tauranga Central Tauranga 3141
TKC Holdings Ltd C/- Land Matters Ltd 20 Addington Road RD 1 Otaki 5581		