IN THE HIGH COURT OF NEW ZEALAND **CIV-2014-**
WHANGAREI REGISTRY

UNDER THE	Resource Management Act 1991
IN THE MATTER	of an appeal from a decision of the Environment Court pursuant to section 299 of the Resource Management Act 1991
BETWEEN	**TW Reed Estate** (Trustees JM Cropper, KE McGill, VDL Reed and ED Aickin) **Daling Investments Limited** (J and M Zazulak)
	Appellants
AND	**Far North District Council,** a territorial authority constituted as a Body Corporate under section 12 of the Local Government Act 2002
	Respondent

NOTICE OF APPEAL FROM A DECISION OF THE ENVIRONMENT COURT

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To: The Registrar of the High Court at Whangarei

TAKE NOTICE that at the first available sitting after the expiration of 15 working days from the service of this notice or as soon as counsel may be heard, counsel for the appellants will move the High Court at Whangarei on appeal from the decision of the Environment Court at Paihia (**Environment Court**) *Guyco Holdings Limited & Ors v Far North District Council* [2014] NZEnvC 129 (**Decision**).

ON THE GROUNDS THAT:

- The decision has been made on the basis of errors of law.

- As to the errors of law, the Environment Court applied the wrong legal test and/or took into account irrelevant considerations in confirming Plan Change 12 (PC12) of the Far North District Plan creating the Paihia Mission Heritage Area (PMHA) over the appellants' land. In particular:

    - The Environment Court was required to consider whether the objectives of PC12 were the most appropriate way to achieve the purposes of the Resource Management Act (**RMA**) as set out in Part 2 of the RMA; and whether having regard to efficiency and effectiveness, the policies, rules or other objectives in PC12 are the most appropriate for achieving the objectives.

    - The Environment Court erred in concluding that PC12 was appropriate to protect the historic heritage contained in the PMHA. In particular the Environment Court erred in law by:

        - improperly applying a "heritage landscape" construct under s 6(f) of the RMA;

        - as a consequence of using a "heritage landscape" construct, improperly double-counted the matters of protection of landscapes (s 6(b)) and amenity values (s 7(c));

        - finding that PC12 was appropriate to protect the heritage values of the PMHA, despite finding as fact that "the built heritage in the area is minimal" (at [22]) and despite the fact that none of the "heritage elements" listed at [2] are on the appellants' land;

- finding that PC12 was appropriate to protect the heritage values of the PMHA, despite finding that "apart from the already protected items the most significant features are the topography and setting" and that any landscape values had been "significantly altered over the last century and a half," such that "under any scenario the experience of the person on site will be remote from the experience of people in the 19th century" (at [74]).

- The Environment Court erred in finding that the policies and rules of PC12 were the most appropriate to give effect to the objectives of PC12, having regard to efficiency and effectiveness. In particular the Environment Court erred by:

  - failing to consider the impact of PC12 on the ability of the appellants and the Paihia community to provide for their economic wellbeing (s 5(2));

  - failing to reach a conclusion on the economic effects of PC12.

- The Environment Court erred in concluding that the 15 metre building line restriction imposed by PC12 was a permissible planning restriction under the RMA. In particular, the Environment Court erred by (at [98]–[100]):

  - finding that the 15 metre set-back was not "private open space" that should be designated so that the landowners are entitled to compensation;

  - failing to consider whether PC12 in substance transformed privately held land into public reserve land;

  - finding that the 15 metre set-back was for a proper resource management purpose.

THE ERRORS OF LAW TO BE RESOLVED ARE:

- Did the Environment Court err in law by applying a "heritage landscape" construct under s 6(f) of the RMA? In particular:

  - Did the Environment Court err in finding that the objectives of PC12 were appropriate to protect the heritage value of the PMHA despite finding that there was no remaining building heritage on the appellants' land?

- Did the Environment Court err in finding that the objectives of PC12 were appropriate to protect the landscape of the PMHA, despite the objectives of PC12 being solely for the protection of heritage values within the PMHA and the finding of fact that the landscape had significantly altered since the historic period in issue?

- Did the Environment Court err in applying a "heritage landscape" construct despite the lack of rigorous evaluation required to demonstrate the existence of a heritage landscape (as required by the Environment Court in *Clevedon Cares Inc v Manukau City Council* [2010] NZEnvC 211 at [183]–[193] and *Gavin H Wallace Ltd v Auckland Council* [2012] NZEnvC 120 at [65]–[67])?

- Did the Environment Court err in law by "double-counting" the matters of landscape and amenity value in its analysis of Part 2 of the RMA? In particular:

  - Did the Environment Court err by conflating the landscape features and amenity values of the PMHA with historic heritage?

  - Did the Environment Court err in considering whether PC12 was appropriate for the protection of landscape and amenity values when the objectives of PC12 are directed solely to the protection of heritage values?

  - Did the Environment Court err by failing to properly consider the economic effects of the PMHA on the landowners and the Paihia community when having regard to the efficiency and effectiveness of the policies and rules in PC12?

  - Could a reasonable Court, properly applying the legal tests under Part 2 of the RMA, have reached the conclusion that the objectives of PC12 were the most appropriate way to achieve the purposes of the RMA?

- Did the Environment Court err in law by holding the 15 metre set-back was not required to be designated? In particular:

  - Did the Environment Court err in finding that the 15 metre set-back was a reasonable planning restriction, rather than a taking of property for public reserve purposes?

  - Did the Environment Court err in applying *Cornwall Park Trust Board v Auckland City Council* EC Auckland A58/97, 29 April 1997, which concerned the zoning of land held on trust as parkland, rather than privately

held, commercially zoned, land?

SOUGHT:

- The appellants seek the following relief:

  - an order quashing that part of the Environment Court decision that confirmed PC12 over the appellants' land;

  - an order directing the respondent to withdraw PC12

  - any further or other order as the Court thinks fit; and

  - costs of and incidental to this proceeding.

A copy of the Environment Court decision is attached to this notice of appeal.
This notice is filed in reliance on section 299 and 300 of the Resource Management Act 1991 and Part 20 of the High Court Rules.

DATED at Auckland this day of July 2014

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R C Mark
Solicitor for the Appellant

This document is filed by Richard Charles Mark, solicitor for the appellants, whose postal address is PO Box 172 Kerikeri 0245. The address for service of the appellants is Level 1, John Bumper Centre, 60 Kerikeri Road, Kerikeri 0245. Documents for service on the party may be left at that address for service or may be —

(a) posted to the solicitor at PO Box 172 Kerikeri 0245 or

(b) transmitted to the solicitor by fax to (09) 407 5207 or

(d) emailed to the solicitor at rcmark@xtra.co.nz