25 October 2013

Cc:

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Application MCU 12/0184 & ERA 12/0087 - 136 Top Forestry Road, Ridgewood

I refer to correspondence from P&E Law dated 22 October 2013 (copy **enclosed**).

While the Council may, pursuant to section 305(3) of the Sustainable Planning Act 2009 ("the Act") accept a written submission even if the submission is not a properly made submission, such acceptance does not render the submission "properly made".

A "submitter" for a development application who may exercise appeal rights under the Act, is defined in Schedule 3 of the Act to mean *"... a person who makes a properly made submission about the application*.".

It is only a "submitter" who has a right to appeal or to elect to become a co-respondent in an applicant appeal.

A person whose submission is accepted under s305 despite not being "properly made" is nevertheless not a "submitter" as defined. The person or persons making that submission will not have third party appeal rights under s462 of the Act, are not entitled to be given notice of the institution of an appeal under s482 of the Act and have no entitlement to elect to respond to an appeal.

There is no power in the Act for a Council (or an applicant) to agree to treat a submission that is not properly made as if it were properly made for the purpose of obtaining third party appeal rights.

In relation to alleged non-compliance with public notification requirements, neither of the two paragraphs cited by P&E Law from their clients' correspondence to the Council justifies a conclusion that public notification has not been properly carried out.

The complaint from P&E Law regarding the public notification process, although not entirely clear, seems to be a lack of public notification signs on the land the subject of the development application and the assertion that Deborah Hookham was not informed by letter of the proposed development application.

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The owners of premises opposite the land the subject of a development application are not required to be notified under the Act about a development application.

Notice of a development application is only required to be given to an adjoining "*owner*" as defined in s297(4) of the Act.

Deborah Hookham is not an adjoining owner.

The land owned by Deborah Hookham and Hugh Hookham (namely 215 Top Forestry Road, Ridgewood and more properly described as Lot 2 RP170382) is separated from the land the subject of the development application by Top Forestry Road, Ridgewood. This answers the complaint by Deborah Hookham.

Public notices were placed on the land the subject of the development application in the way prescribed under section 16 of the *Sustainable Planning Regulation 2009*.

I am informed by Max Watterson of Max Watterson and Associates, that four (4) public notices were placed on the land the subject of the development application.

The notice of compliance dated 10 June 2013 prepared by Max Watterson and Associates (copy **enclosed**) contains photographs of the 4 public notification signs. That document is freely available for inspection on the Council's planning and development online service.

I also **enclose** a SmartMap of the land the subject of the development application which Max Watterson has marked to show where each of the 4 public notification signs were placed.

Max Watterson inspected the public notification signs twice during the public notification period to ensure they were maintained in accordance with the requirements of section 16 of the *Sustainable Planning Regulation 2009* and remained clearly visible. Max Watterson has advised me that the public notification signs were maintained as required and were clearly visible on both occasions.

David Milligan (the sole director of the applicant) resides on the land the subject of the development application and has confirmed that the public notification signs were maintained and clearly visible during the public notification period.

If a person has missed the signs, this does not justify a conclusion that public notification has not been properly carried out. This answers the complaint by James Bird.

Public notification has been properly carried out.

In the absence of any proper particularisation by P&E Law on behalf of their clients about why public notification has not been properly carried out, then the threat of taking proceedings in the Planning and Environment Court alleging non-compliance is disingenuous and malicious.

If P&E Law, on behalf of their clients, wish to pursue that threat without proper justification, then there is the real likelihood that our client will seek not only an indemnity costs Order against P&E Law's clients at the conclusion of the proceedings, but against P&E Law directly as well.

Our client will not, and nor should the Council, agree to a course of action that the Act does not recognise.

Yours faithfully

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