

**BEFORE THE PROPOSED DISTRICT PLAN HEARINGS PANEL**

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

**AND**

**IN THE MATTER** the Proposed Thames Coromandel  
District Plan: Biodiversity, Subdivision  
and Earthworks Hearing

---

**STATEMENT OF EVIDENCE OF Peter Raymond Hall**

**On behalf of Whauwhau Environmental Group Limited (Submitter  
Number 825)**

30 January 2015

---

## **1.0 SUMMARY OF EVIDENCE**

- 1.1 This statement of planning evidence addresses the matters raised in the submission and further submissions to the Proposed District Plan by Whauwhau Environmental Group Limited (“WEGL”).
- 1.2 My evidence concludes that the Hearings Panel does not have sufficient analysis before it to justify the inclusion of a new policy and rules requiring an esplanade reserve or strip on subdivision of sites to greater than 4 hectares, as sought in the Council’s own submission on the Plan. In any event it is my opinion that the new policy and rule sought is unlikely to be the most appropriate way to achieve the Plan objectives. The costs will likely outweigh the benefits and, relying on subdivision of the coastal environment as it does, it will not achieve the objective of enhancing public access to the coast.
- 1.3 My evidence also concludes changes are required to the Conservation Lot Subdivision provisions to ensure these are the most appropriate way to achieve the relevant objectives of the Proposed Plan, including their efficiency and effectiveness in achieving these objectives.

## **2.0 QUALIFICATIONS AND EXPERTISE**

- 2.1 My name is Peter Raymond Hall. I am a Planner and Partner at Boffa Miskell Limited, a national firm of consulting planners, ecologists and landscape architects.
- 2.2 I hold the qualifications of Bachelor of Planning (Auckland) and am a full member of the New Zealand Planning Institute. I have over 20 years’ planning experience. During this time I have had positions in both local government and as a consultant planner.
- 2.3 I have undertaken a wide range of consenting and planning policy work throughout New Zealand, with a particular emphasis on Auckland and Northland.

- 2.4 I have a wide range of experience in planning policy matters and appeared before Council hearings, Environment Court hearings and two Boards of Inquiry.
- 2.5 I have been engaged by WEGL to present this planning evidence. I have provided planning advice to WEGL in relation to its landholding at Whauwhau north of Whitianga since 2012.

### **3.0 CODE OF CONDUCT**

- 3.1 I have read the Code of Conduct for Expert Witnesses issued as part of the Environment Court Practice Notes. I agree to comply with the code and am satisfied the matters I address in my evidence are within my expertise. I am not aware of any material facts that I have omitted that might alter or detract from the opinions I express in my evidence.
- 3.2 I have also read the 16 January direction of the Hearing Chairperson. I can confirm that the matters addressed in this evidence are within the scope of the submission and further submissions made by my client, and my evidence is limited to those matters where change is sought to the Proposed Plan with reasons provided.
- 3.3 I have read the relevant Council Section 42A Hearing and Section 32AA Further Evaluations reports (“Officer’s reports”).

### **4.0 WHAUWHAU ENVIRONMENTAL GROUP LIMITED**

- 4.1 A description of WEGL’s landholding is set out in its submission.
- 4.2 WEGL is a collective of families who have owned the 86ha property at Whauwhau beach for 20 years (legally described as Kuaotunu 3C Block, refer map at **Attachment A**). During this time the families have worked steadily to restore bush and beach quality through pine tree removal, weed control, predator trapping, rat and possum baiting and kiwi and dotterel specific programmes.

- 4.3 WEGL currently has a resource consent application lodged with the Council that seeks subdivision of the site in order to rationalise the management of the site, by allowing 10 separate land holdings, one lot for each of the families. This application relies on the Operative Plan Conservation Lot provisions and proposes the protection of approximately 50 hectares of high quality native bush.
- 4.4 The Proposed Plan applies a Rural zoning to this land and Outstanding Landscape, Natural Character and Coastal Environment overlays. A priority areas for protection (second highest priority at 4ha) is identified over the property.
- 4.5 WEGL's submission seeks a number of changes to the Proposed Plan.
- 4.6 The Subdivision Rules and in particular the Conservation Lot subdivision approach is generally supported; however amendments are sought to make the provisions more workable and allow for better resource management outcomes. In particular, amendments to the Section 38 Subdivision Rules are sought to provide for the following outcomes:
- Removal of reference to previous conservation lot subdivisions and removing the two conservation lot maximum; and
  - Areas of bush not identified as priority areas on Figure 1, Section 38 to also qualify for Conservation Lots through a consent process and site by site assessment.
- 4.7 WEGL is also a further submitter opposing the Council's submission which seeks a new esplanade reserve/strip policy and rule.
- 4.8 This evidence addresses these matters.
- 4.9 I understand the April hearing will deal with submissions to the Outstanding Landscape and Natural Character Overlays including land use, subdivision and earthworks on land subject to these overlays. WEGL is also a submitter on these provisions.

4.10 I will be presenting evidence in support of these parts of WEGL's submission to the April hearing.

## **5.0 ESPLANADE RESERVE/STRIPS**

5.1 The Council's own submission on the Proposed Plan seeks new provisions to require esplanade reserves/strips to be established in the rural area for an allotment of any size, including lots in rural areas greater than 4ha.

5.2 As noted in the Officer's report<sup>1</sup>, under Section 230(5) of the RMA the Council is able to require an esplanade reserve on the subdivision of lots greater than 4ha but only where a rule in a District Plan requires it.

5.3 In response to this submission, the Officer's Report recommends a new Policy 8aa and new rules. These policies and rules require the provision of an esplanade reserve or esplanade strip to be set aside where allotments of 4ha or more are created along the mark of mean high water springs or along the bank of any river.

5.4 Requiring esplanade reserves and strips to be provided on lots created greater than 4ha is a significant policy change in the Proposed Plan that has only been introduced by way of a submission, with implications for land owners and agencies that have an interest in coastal resources.

5.5 In my opinion there is insufficient justification for the introduction of this new policy and associated rules and as I read, no analysis under Section 32AA of the RMA.

5.6 The costs of the policy approach for both the Council and landowners are potentially significant and the benefits and effectiveness questionable. There is however no analysis of these factors as required by Section 32AA. This is a major shortcoming given the significant implications of the new policy, leaving the

---

<sup>1</sup> Para 17, Officers Report on Section 38 Subdivision, Section 42A Report and Section 32AA Further Evaluations

Hearing Panel with insufficient evidential base to undertake its own Section 32AA analysis and make a balanced decision on the new policy and rules.

- 5.7 This new policy has only been introduced by way of a submission to the Plan by the Council. In my opinion, if it was contemplated by the Council at the time of notification it should have been included in the Proposed Plan as notified thereby allowing submitters the opportunity to submit on this point, rather than the current situation whereby only further submitters such as my client have scope on the matter.
- 5.8 Section 32(1)(b) of the RMA requires that an evaluation be made as to whether the provisions (in this case the new policy and rules) are the most appropriate way to achieve the objectives.
- 5.9 Section 32(2) of the RMA specifies that an assessment must identify the benefits and costs of the environmental, economic, social and cultural effects that are anticipated from the provisions, including opportunities for opportunities growth and employment. If practical it must quantify these benefits and costs. It must assess the risk of acting or not acting if there is uncertain or insufficient information about the subject matter.
- 5.10 Under Section 32(1)(c) of the RMA, the Section 32 report must contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.
- 5.11 I would anticipate that a proper Section 32 evaluation of the new esplanade reserve/strip provision sought would evaluate (and where practical quantify) as a minimum factors such as the following:
- The anticipated costs to landowners in vesting esplanade reserves or foregoing use of esplanade reserves;
  - The effectiveness of the regime for determining compensation to landowners and what that regime is;

- The costs to the Council anticipated in the maintenance of new esplanade reserves, including over what might be a reasonable time period before gaps in coastal esplanades are joined if they are at all and during which time access is limited;
- An analysis of whether other coastal resources including those of significance to tangata whenua and those of heritage and conservation values are able to be adequately protected with either esplanade reserves or strips and the potential costs and benefits to such resources;
- The overall effectiveness and efficiency of the new policy in achieving the objective of enhancing public access to and along the coastline, particularly where as a general statement, there are limited opportunities for subdivision in the coastal rural environment under the Proposed Plan as notified.
- An analysis of the effectiveness of other methods to achieve the objectives, including acquisition or access by way of negotiation with landowners.

## 6.0 SECTION 38 RULE 8 CONSERVATION LOT SUBDIVISION

6.1 I have made amendments to the revised rule 8 as attached to the Officer's report consistent with the changes I have recommended on behalf of Northern Land Property Limited (NLPL) (my changes are shaded and numbered<sup>(1)</sup> for reference):

*“ Rule 8 Subdivision creating one or more conservation lots*

*1. Subdivision creating one or more conservation lots in the Rural Zone is a **restricted discretionary activity** provided:*

- a) The ~~lot to be subdivided~~ site ~~site~~<sup>(1)</sup> has not been the subject or result of a previous subdivision under this rule ~~or any previous conservation lot provisions since the date of the~~*

~~Proposed District Plan Decision Version dated 7 October  
1998; and~~

b) ~~The lot site site<sup>(1)</sup> to be subdivided contains a priority is  
within an area identified on Figure 1 Priority Areas Locations  
for Indigenous Ecosystem Restoration or and Enhancement,  
and Protection by Conservation Lot or is an area outside a  
priority area<sup>(2)</sup>; and~~

c) ~~The priority area identified on Figure Map 1 or area outside  
a priority area<sup>(2)</sup> to be restored or enhanced, and protected,  
set aside for protection meets the following standards; and~~

....

d) ~~The application is accompanied by a report by a suitably  
qualified ecologists that:~~

....

e) ~~No more than two conservation lots are created per lot;  
and<sup>(4)</sup>~~

~~f) Where an allotment of 4ha or more is created along the  
mark of mean high water springs of the sea or along the  
bank of any river an esplanade reserve or esplanade strip is  
set aside.<sup>(4)</sup>~~

2. ~~The Council restricts its discretion to all matters in table 5 at the  
Section 39.~~

3. ~~Subdivision creating one or more conservation lots in the Rural  
Zone that does not meet the standards in Rule 8.1b or c) or f)<sup>(4)</sup>  
is a **discretionary activity**. Subdivision creating up to two  
conservation lots that does not meet the standards in Rule 8.1  
a), ~~b)~~, d) or e) is a **non-complying activity**".~~

4. ~~Conservation lot subdivision that includes both the creation of  
one or more additional lots under Rule 9 and the creation of one  
or more conservation lots under Rule 8 as part of a single~~

**comprehensive application shall be a restricted discretionary activity<sup>(3)</sup>.**

6.2 I have addressed below those particular matters within the scope of the WEGL submission.

**Change 2: Conservation Lot Subdivision for Areas Outside of Priority Areas**

6.3 The submission by WEGL sought to provide opportunities for subdivision of areas outside of identified priority areas as a restricted discretionary activity.

6.4 On close examination of Figure 1 the whole of the WEGL land holding is identified as a Priority Area (at 4ha Internationally to Regionally Significant of medium high to medium priority), and so therefore this issue is not as acute for WEGL as it is for NLPL. Notwithstanding this, WEGL still support the principle of areas outside of those identified as being capable of qualifying for conservation lots as a means of securing biodiversity gains.

6.5 The Officer's report recommends changing the activity status for such applications from non-complying to discretionary and I consider this a step in the right direction.

6.6 Notwithstanding the process which the Council has undertaken to identify these priority areas (as explained in the Officer's reports), in my opinion a consent path should still be made available to ensure the protection of areas not yet identified. This allows for the opportunity for site by site assessment of the values and benefits of protection of non-identified areas, at the same time as the subdivision.

6.7 The protection of the priority areas identified relies on the assumption that such areas can in fact be subdivided. There are a range of factors including access, suitability etc that of course mean that they may not be able to be. In my opinion, a more effective way to achieve the subdivision and biodiversity objectives of the Plan is to also provide for the protection of areas not identified.

- 6.8 A restricted discretionary consent status is appropriate to achieve this outcome. Section 6 Biodiversity Policy 1c matters b) – i) sets out a clear prescription of the circumstances where subdivision resulting in the restoration or enhancement of indigenous biodiversity shall be considered in Rural areas. In doing so the outcomes sought to be achieved are clear and limited and do not warrant a full range of discretion for other matters (for example such areas in policy 1c f) must maintain or enhance habitat of nationally threatened or at risk indigenous species and at h) establish self-sustaining pest free areas). This sets the assessment bar high. In the changes I have recommended I have proposed to convert these matters into Table 5 assessment criteria for the assessment of areas outside of priority.
- 6.9 This approach recognises the reality of subdivision that opportunities for protecting areas of biodiversity significance through Conservation Lots should be able to be taken up where subdivision is proposed, which may not necessarily be in the identified priority areas. It also recognises that it is through the very process of site specific analysis of constraints and opportunities that occur with subdivision that can identify further areas of biodiversity value that may not be already identified on Figure 1 as a priority area.

Change (4) Esplanade Reserve/Strips

- 6.10 This matter is discussed in my evidence above, with changes required to delete the requirement elsewhere also.

**Peter Raymond Hall**

On behalf of Whauwhau Environmental Group Limited

30 January 2015



**Attachment Two: Revisions to Table 5 Restricted Discretionary Activity Matters (shown underlined):**

Matter	Assessment Criteria
11. Ecosystem restoration and enhancement	a) Whether the part of the area/feature that has been identified for protection on a site will provide the greatest biodiversity gains for the
	b) Whether the area/feature is part of a larger natural area that is not protected and whether the area to be protected is able to be successfully managed to ensure its ability to be ecologically functional and self-sustaining.
	c) Whether the management plan is adequate to: ii) ensure the restoration or enhancement of the area/feature; and iii) Ensure ongoing management requirements are identified and able to be achieved.
	d) Whether the protected area/feature can be successfully monitored to ensure that the management requirements are being met.
	e) Whether the dwelling platforms and vehicle access are located outside of the area to be protected.
	f) Whether rural amenity values and character are maintained and able to be enhanced.
	g) Whether the method of legal protection is appropriate.
	h) <u>Whether the protection and management of an area outside of the Priority Areas shown in Figure 1 would lead to the restoration or enhancement of rare, under represented or threatened ecosystems.</u>
	i) <u>Whether the protection and management of an area outside of the Priority Areas shown in Figure 1 will establish or enhance mountain to sea corridors of terrestrial and aquatic ecosystems.</u>
	j) <u>Whether the protection and management of an area outside of the Priority Areas shown in Figure 1 would reconnect fragmented ecosystems (on land and via waterways).</u>
	k) <u>Whether the protection and management of an area outside of the Priority Areas shown in Figure 1 creates an ecological stepping stone or corridor linking indigenous vegetation.</u>
	l) <u>Whether the protection and management of an area outside of the Priority Areas shown in Figure 1 maintains or enhances habitat for nationally at risk and threatened flora and fauna.</u>
	m) <u>Whether the protection and management of an area outside of the Priority Areas shown in Figure 1 restores or enhances indigenous habitats adjoining wetlands, rivers, springs, coastal cliffs, dunes, estuaries and fragmented forests.</u>
	n) <u>Whether the protection and management of an area outside of the Priority Areas shown in Figure 1 would establish self-sustaining pest free areas.</u>