

Proposed Thames Coromandel District Plan Hearings

The Proposed District Plan Hearings Panel

Hearings: 10 to 12 February 2015, Biodiversity

Submitter: K Vernon

Evidence

Submissions

1. I have made both primary and further submissions on biodiversity (Sections 6 and 29).

Section 29 Biodiversity Rules

Exotic Vegetation and Inconsistencies

2. My submission 182 (in particular point 182.8) was based on the clearance of exotic vegetation being permitted because it was not specifically excluded but sought to remove any doubt, or possibility of unusual interpretation, by inclusion of appropriate provisions confirming the permitted status as notified.
3. The Planner's response to expand the rules in Section 29 to cover all vegetation essentially making exotic vegetation subject to the same restrictions as indigenous vegetation and to present this as a "part allow" of my submission point 182.8 misrepresents my position on this issue.
4. The changes effectively increase the level of restriction while my submission sought to have more relaxed workable provisions with particular reference to residential areas that are not fully reticulated.
5. My submission sought the inclusion of a new rule confirming the as notified permitted clearance of exotic vegetation in all zones as follows - "In Section 29.3. Insert a new Rule 4A Exotic vegetation clearance, wording as follows: Rule 4A. The clearance of exotic vegetation is permitted in all zones."
6. I did not suggest deleting the word "indigenous" from the term "Indigenous Vegetation" as used in Rule 29.3.2 and elsewhere. In fact I suggested changing this to "areas of significant indigenous vegetation" for consistency with the Section 32 report.
7. The Planner should have simply considered whether the amendments I proposed were necessary or appropriate. Instead a complete change in direction has been instigated.
8. The Planner's approach if adopted would mean that exotic vegetation would be subject to the same restriction as indigenous vegetation. This is not consistent with the RMA and other statutory documents which place emphasis, importance and priority on the management of indigenous vegetation, and maintenance of indigenous biodiversity. This is normally reflected in District Plans by less restrictive provisions for exotics.

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- 8A The Planner seems to be suggesting that exotic vegetation is required in connection with significant habits of indigenous fauna. But surely the traditional habitat of indigenous fauna is indigenous vegetation, and therefore the intent of the RMA is to protect indigenous vegetation habitats of significance. Anything else would seem to corrupt the concept of indigenous biodiversity.
9. The extension to exotic vegetation would significantly increase the consent requirements and costs involved.
10. I am particularly concerned that this change will introduce additional unnecessary costs and complications for existing residential areas that do not meet the urban threshold criteria.
11. This issue could be addressed within the Council's rewrite by adding a further exemption to the rules in 29.3 to provide for clearance of exotic vegetation in at least the "outside of the rural area" section.
12. Including an exemption of this type would only affect a limited number of sites that do not meet the urbanised allotment criteria. These areas are generally developed and lie outside of any SNA's.
13. Council's new proposed treatment of exotic vegetation will also have significant implications in the Rural Area. In the Coastal Environment for instance clearing exotic vegetation, as well as indigenous vegetation, will be discretionary. With the Coastal Environment line drawn well inland (excessively so in many places) this is a significant and onerous change.
14. Surely the clearing of exotic vegetation within the Coastal Environment sections of the Rural Area should be at least be a Restrict Discretionary activity if not permitted or controlled.
15. In deed the same argument can be made for indigenous vegetation within the Coastal Environment sections of the Rural Area also. The Planner's report contends that this issue was not raised in submissions however this seems to overlook submissions that opposed or called for a rewrite of the whole of Section 29. For instance submission number 791 which I supported in one of my further submissions.
16. The change to include exotics creates a significant inconsistency with the Section 32 report which is based entirely round management of indigenous vegetation.
17. Further the Planners Section 32AA report does not in my view adequately evaluated the change. I do not see the consideration of options, efficiency and the cost/benefit analysis that is required for a significant change. It does not comply with the RMA section 32AA criteria.
18. The change also creates additional serious inconsistencies with the Objectives and Policies of section 6 which are very much focused on management of indigenous vegetation and in particular areas of significant indigenous vegetation based on the

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Regional Council's SNA report. The track change version of Section 6 is actually more strident on this point than the notified version.

19. The way in which Council now proposes to treat exotic vegetation is a fundamental change that goes well beyond the content of submissions. It seems that Council has decided to unilaterally revise the Proposed Plan.
20. The legal justification for this is questionable. It will open up the possibility of submitters also revisiting issues and there is now a case for requiring the biodiversity provisions to be re-notified.

Urban Lot Exemption Criteria

21. My submission took issue with the threshold criteria used in 29.3 Rule "outside of the rural area" as an indicator of urbanised development for application of exemptions. In particular, the inclusion of the reticulated water supply requirement.
22. In my view this leads to an inconsistent and unfair treatment of some urbanised areas within the District.
23. This issue arises because of the fragmented approach and changing attitudes to the provision of reticulated water supplies in the District. The fact is that there are urbanised communities that do not want a reticulated water supply because of cost, reliability and water additive issues, and others within reticulated areas that want to opt out.
24. The result is that connection to a reticulated water supply is not a good indicator of urbanisation in this District and using it as an indicator only creates unhelpful anomalies.
25. For instance Cooks Beach which has a reticulated wastewater system but no water supply will be treated differently to a number of other very similar sized communities that for historic reasons do have reticulated water supply but are otherwise essential the same.
26. To ensure a fair and consistent treatment of people living in similar communities within the Resident Area of the District the "reticulated water supply" qualifier should be deleted.
27. The new point (c) that has been inserted by Council although not requested by any submission should be excluded also. This reads "The lot contains a building used for industrial or commercial purposes or as a dwelling house". It adds an unnecessary complication for land that may be vacant from time to time but otherwise meets the urban criteria.
28. This will leave the threshold indicator as a lot size of 4000sqm connected to a reticulated wastewater system, which is adequate to achieve the intended purpose of this provision, that is, to distinguish between established medium density urban development and low density rural / fringe areas.

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29. The Section 32 report analysis (Part IV A page 20) is actually based on a 4000sqm lot size threshold indicator only (see the marked up extract in Attachment 1). The inclusion of additional criteria in the Proposed Plan increases the consent requirements at a cost and creates a serious inconsistency with the Section 32 report that invalidates the evaluation and cost/benefit analysis. The section 32AA report does not address this discrepancy.
30. A strong legal argument can be made that the Proposed Plan should be amended to bring it back into compliance with the section 32 report. That is a 4000sqm threshold indicator only would apply.
31. The Planner's report suggests Council is simply following the definition of allotment in section 76 4C of the RMA. But there is no legal compulsion to use this definition in full. The wording in the section 32 report "in line with section 76.4c RMA.." actually suggests that there was never any intention to adopt the full definition but only to ensure there was no inconsistency with this requirement of the Act. Deleting the reticulate water supply and vacant land criteria will lead to a less restrictive result and is therefore consistent with section 76 of the Act.
32. The Planner's report does not support my views on this subject but I would hope that the Panel would have a better appreciation of the importance of a Council treating its residents in a fair and consistent manner, and the advantages of reducing consent requirements where possible in the interest of financial efficiency.

Specific Comment on the Section 29 track change version (clause references are to the track change version numbers)

Paragraph 29.1 Background

33. In response to my submission the Waikato Regional council SNA technical report 2010/36 has been referenced in section 29.1 Background as a means of determining whether an area is potentially significant or not and hence whether ground-truthing is required. However, the change necessary elsewhere to give effect to this provision, in particular Table 2, has not been made.
34. To give effect to this provision Table 2 Restricted Discretionary Matters should be divided into two categories as follows:
 1. Not Potentially Significant under the WRC SNA technical report 2010/36 with ground-truthing not required, and
 2. Potentially Significant under the WRC SNA technical report 2010/36 with ground-truthing required.
35. The intent of my submission actually went somewhat further than this. What I was suggesting was that the Regional Council SNA report should be used as a cost effective tool for determining whether a resource consent was required or not. I am still of the view this should be done for at least sites in the "Outside of the Rural Area" category. These

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sites are primarily existing residential sites that do not meet the urban threshold category. An amendment giving effect to this should be included in exemption section of rule 29.3.1

Clearing vegetation Outside of the Rural Area, Rule 29.3.1 Amendments required

36. In Rule 1 (b) delete “..water supply and ..”. Also delete all of Rule1 (c). These changes give effect to my comments on exemption criteria discussed above.
37. Add a new exemption for exotic vegetation worded “It is exotic vegetation; or”. See the discussion above. This ensures that residential areas that do not meet the urban allotment criteria are not disadvantaged by Council’s proposed change from “Indigenous Vegetation” to “Vegetation”.
38. Add a new exemption for vegetation outside potential SNA’s as follows “it is vegetation outside the boundaries of potential SNA’s as identified by WRC SNA technical report 2010/36; or”. This provides an efficient way to determine whether a resource consent is required in existing residential areas that do not meet the urban allotment criteria.
39. The wording of rule 1(h) is rather strange as it implies that clearance is only permitted within the footprint of a proposed building. Surely it should also be up to 10m away from the footprint as per an existing building. This is necessary to construct the building and complete site works to the standard of an existing building. To correct this oversight add “and up to 10m away from..” after “within”.
40. The wording of rule 1(i) provides for a driveway of 3.5m wide but this is quite narrow for the type of vehicle and boat trailers that can be expected these days and allowing for gutters/kerb. A width of 5m should be allowed to ensure safe vehicular access.
41. Also in rule 1(i) there is no allowance for parking and manoeuvring areas that are also inevitably required. To correct this oversight add to the end of the clause “.. and an additional area of up to 100 square metres for parking and vehicle manoeuvring”.
42. The quantities in rule 1 (l) are not adequate particularly if exotic clearance is included. These should be increased significantly.
43. There is also no provision for a separate garage / boat locker. Add a new exemption for a separate double garage large enough to accommodate covered secure boat storage including say 3m clearance away from the structure footprint.
44. The Plan allows for accessory buildings in residential areas and these can be constructed as the only building on site and to same size as the primary dwelling permitted. The exemptions should therefore allow the same clearance for an accessory building as it does for a dwelling. The Plan also allows for minor unit and clearance should be provided for this. To correct this oversight add “and accessory building and minor unit” after the word dwelling throughout the exemption section.

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45. I have to say it seems to me that it would be simpler and more cost efficient to just exempt Residential Areas from the biodiversity provisions under the “Outside of the Rural Area”.
46. Most are already exempt by the urban allotment criteria anyway. Why not just exclude the residual ones as well, after all Council has given approval for development of these areas and they are generally outside potential SNA's. I ask that the Panel consider this option as the most cost efficient and sensible solution.

Clearing Vegetation in the Rural Area, Rule 29.3.2

47. Make the equivalent changes to those described in 38 to 44 above where relevant.
48. Make clearance of exotic vegetation that does not meet the permitted standards a controlled activity in all areas including the Coastal Environment.
49. Make clearance of indigenous vegetation that does not meet the permitted standards a restricted discretionary activity in all areas including the Coastal Environment.

Table 2 Restricted Discretionary Matters

50. As discussed above the table should be reformatted to give effect to the referencing of the Waikato Regional council SNA technical report 2010/36 in section 29.1 Background as a means of determining whether an area is potentially significant or not and hence whether ground-truthing is required.
51. As currently proposed the table requires ground-truthing in all cases and this contradicts the amendments Council proposes be made in the Background section.
52. Table 2 Restricted Discretionary Matters should be divided into two categories as follows:
 1. Not Potentially Significant under the WRC SNA technical report 2010/36 with ground-truthing not required, and
 2. Potentially Significant under the WRC SNA technical report 2010/36 with ground-truthing required.
53. The Category 1 criteria (a) dealing with ground-truthing would then be deleted and move to Category 2.

Section 6, Objectives and Policies

54. The track change proposed version has significantly strengthened the indigenous biodiversity provisions particularly in the Coastal Environment overly area.

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55. These provisions particularly target subdivision in new areas of development but are unworkable in existing residential areas not already exempt unless additional and broader exemptions along the lines I have proposed are included.
56. I will oppose the proposed Section 6 unless a satisfactory balance can be achieved.

Conclusion

57. The above evidence identifies and addresses a number of important issues for the Panel to consider and to act on. It also recommends various amendments to Council's proposed track change version.

The issues covered include the following:

- Objection to Council's proposed changes affecting the treatment of exotic vegetation;
- Amendments required to the urban lot exemption criteria;
- Use of the Regional Council SNA report to determine consent and ground-truthing requirements (efficient methods);
- Efficient and cost effective methods in the existing residential areas;
- Further amendments required to the track change proposed version section 29;
- Inconsistencies with the Section 32 report;
- Inadequacy of Section 32AA report;
- Impact of proposed amendments to Section 6

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Date: 9 February 2015

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Attachment 1: Marked up extract from the Section 32 report. Part IV A page 20.

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Attachment 1: Marked up extract from the Section 32 report. Part IV A page 20.

Section 32 Part IV A

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| <p>Implements Policy 11.1. Implementation Method 11.1.10 of the RPS.</p> <p>Can efficiently and effectively prioritise Council resources towards areas most in need of proactive management intervention.</p> <p>Can raise awareness of most 'burning' issues and help stage resourcing.</p> <p>Can complement the District Plan by providing funding for biodiversity protection.</p> | <p>Council resources in developing strategy</p> <p>A strategy that is not backed up by statutory tools can be ineffective if it does not have sufficient buy-in.</p> |
| Evaluation-Efficiency and Effectiveness | |
| Overall the benefits outweigh the costs. | |

2.6 Regulatory Methods – Section 29 Biodiversity Rules ←

| <i>Rules and Methods most appropriate to achieve the purpose of the Act</i> | |
|---|--|
| <i>Method</i> | <i>Benefits Costs Effectiveness Efficiency</i> |
| <p>29.3 Rules 1 – 3</p> | <p>Benefits</p> <p>Provision is made for permitted clearance of vegetation in the Conservation Zone where this is consistent with the Waikato Conservation Management Strategy.</p> <p>This is consistent with the cross-boundary chapter's required outcomes and processes.</p> <p><u>Rule 2 manages clearance of vegetation outside the Rural Area, this kind of clearance will only be permitted when it happens on a lot that is smaller than 4000 m2 and which is not adjacent to a permanent waterbody.</u></p> <p><u>The 4000 m2 threshold is in line with section 76 4C RMA which defines urban type allotments to be a maximum of 4000 m2.</u></p> <p>The Rule caters for maintenance work in private gardens and only applies to land that has not been set aside for legal protection.</p> <p>To enable day to day rural activities Rule 3 sets out a number of situations where vegetation clearance will be permitted in the Rural Area.</p> |