

**IN THE MATTER OF      Resource Management Act  
1991 (“RMA”)**

**AND**

**IN THE MATTER OF      Proposed Thames Coromandel  
District Plan**

**STATEMENT OF EVIDENCE OF MATTHEW FORBES NORWELL  
ON BEHALF OF GOLF (2012) LIMITED**

**1.    QUALIFICATIONS AND EXPERIENCE**

- 1.1 My name is Matthew Norwell and I am a resource management planner and director of Barker & Associates Limited, an independent, specialist planning consultancy based in Auckland. I hold the Degree of a Bachelor of Planning from the University of Auckland and I am a full member of the New Zealand Planning Institute. I have 21 years’ experience covering a wide range of land use planning matters on behalf of local authorities, government departments and private entities in New Zealand.
- 1.2 During that time I have been involved with many aspects of resource management including preparation and lodgement of resource consent applications, submissions and presentation of evidence to local authorities in respect of proposed plans and plan changes.
- 1.3 Today, I appear on behalf of Golf (2012) Limited to address the submission they prepared on the Proposed Thames Coromandel District Plan (PDP).
- 1.4 I have reviewed all of the submissions to the Matarangi Structure Plan provisions of the PDP and the Council’s agenda report and associated documentation. Therefore, I am familiar with the issues raised by the PDP provisions.

1.5 Whilst this is not a hearing before the Environment Court, I confirm that I have read and agree to comply with the Expert Witness Code of Conduct set out in Part 7 of the Environment Court Practice Note 2014. This evidence is within my area of expertise, except where I state otherwise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

## **2. BACKGROUND**

2.1 Golf (2012) Limited is the owner and operator of the Dunes Golf Resort located in the western portion of the Matarangi Peninsular. The plan in Appendix A shows the location and extent of the Dunes Golf Resort (the subject site) which incorporates an 18 hole golf course and ancillary buildings (including a club house and storage sheds).

2.2 The subject site is provided for in the Operative Thames Coromandel District Plan (“ODP”) as follows:

- The land occupied by Holes 1 and 2 of the golf course is zoned “recreation passive” and is not subject to the Matarangi Structure Plan;
- The land occupied by Holes 10-16 of the golf course is zoned “open space” and is not subject to the Matarangi Structure Plan;
- The land occupied by Holes 3-7 of the golf course is zoned recreation passive and is subject to the Matarangi Structure Plan; and
- Other development (such as buildings or dwellings) is a non-complying activity in both the open space and recreation passive zones.

2.3 The subject site is provided for as follows in the PDP as follows:

- All land is zoned “Open Space”;
- Holes 1 and 2 and 3-7 are subject to the Matarangi Structure Plan;
- Other development (such as dwellings) on land zoned open space is a non-complying activity regardless of whether it is included within the Matarangi Structure Plan; and
- Subdivision of land zoned open space in the Matarangi Structure Plan is a controlled activity where the new allotments are vested with Council as a reserve

and have a consent notice on their title to preserve public access and the open space character in perpetuity. Where this is not the case, the subdivision would be a non-complying activity.

2.4 The key differences between the Operative and Proposed District Plan is that within the PDP there is a clear requirement, through the policy framework and associated rules, that the subject site be retained as an area of publicly accessible open space. For example, Section 50.2 of the PDP states that:

*Eventually, a covenant or consent notice on the titles of the Matarangi Golf Course would keep the land as open space in perpetuity.*

2.5 This imposes a more stringent constraint on how the land can be used than any of the legacy planning documents. There is now a clear direction that the land must remain as publicly accessible open space even if the golf course is no longer operational on the site.

2.6 Golf (2012) Limited's submission to the PDP sought that the subject site be rezoned to "residential" and that:

- The site is removed from the Matarangi Structure Plan and consequently all references to the Matarangi Golf Course are removed from the Structure Plan;
- All references to the Matarangi Golf Course are removed from Section 50 – Open Space;
- The Planning Maps are amended to show the subject site zoned "residential" including any consequential amendments to the Residential Zone provisions and to Section 50 – Open Space; and
- The Residential zone provisions are amended to allow the continued operation of the golf course as a permitted activity on the subject site.

### **3. SECTION 42A REPORT**

3.1 The Reporting Planner has recommended that Golf (2012) Limited's submission be rejected on the basis that the relief sought in the submission is contrary to the historical background of the development of Matarangi. The Reporting Planner has also

recommended that all of the land owned by Golf (2012) Ltd, and occupied by the golf course, is included within the Matarangi Structure Plan.

3.2 I accept that the historical planning documents sought to retain the subject site as an area of publicly accessible open space. However, I note that this was an outcome promoted by the original land owners, Matarangi Beach Estates Limited (MBEL) as part of their initial development plan for Matarangi. It is my understanding that the intention to keep the land for publicly accessible open space was never formalised (e.g through an encumbrance on the title, designation or land acquisition) between the then land owner and the Council. Consequently, Council has relied upon the good will of the previous land owners and the open space zoning of the land in the planning documents for its protection as publicly accessible open space. MBEL has subsequently sold the land and it remains in private ownership. Golf (2012) Limited, as the current owner of the site, does not support the subject site being zoned open space and in particular the intention in the PDP that the subject site remain as open space and publicly open space, even if a golf course no longer operates at the site.

3.3 In my opinion, it is unreasonable to impose such restrictions on the use of privately owned land. I understand that open space zoning is usually reserved for land owned by the Council or the Crown which set aside for public use. This is the approach taken by the Council as confirmed in Part III A of the Section 32 Analysis which states:

*The Draft Plan preserves development rights on private property and only applies Recreation Zones (Active and Passive) to Council land that is managed as a reserve and Conservation Zone to Department of Conservation owned land.*

3.4 In Section 7.3.2 of Part III A of the Section 32 Analysis, the Council identifies that there are many examples throughout the Thames Coromandel District where private land is used for public recreation activities but is zoned for private use. This approach acknowledges that while this land is generally treated as public land, as time progresses and situations change, land owners, for a variety of reasons, are not always able to continue providing these facilities and uses change, or land is redeveloped.

3.5 Further, in section 7.4 -Key Resolutions the Council states that it will continue its practice of only zoning Council and DoC owned land as recreational zones. Ironically, the Council has indicated that the one exception to this is the Matarangi Golf Club land which has been zoned Open Space.

3.6 In Section 6.2 of Part III C of the Section 32 Analysis, the Council has considered that:

*Releasing the golf course land would be inconsistent with the original intent of the Matarangi Structure Plan. Residents would have good reasons for believing that this approach would deny the purpose of the Structure Plan. The rezoning appears to be the most efficient and effective way of implementing the original intent of the Structure Plan.*

3.7 In my opinion this Section 32 Analysis fails to consider all possible alternatives for the protection of the land, the most appropriate being through the designation/land acquisition process. I consider that the responsibility for providing public open space should not sit with private landowners regardless of the intended unrealised purpose for the land. If the Council wishes to reserve the subject site for public purposes and to protect the underlying intent of the Matarangi Structure Plan then it should utilise the designation or land acquisition processes. I am not aware of any proposal by the Council to designate or acquire the subject site and therefore I consider that it is appropriate to zone the entire site "residential". This is consistent with the approach taken in the rest of the PDP where only publicly zoned land is zone Open Space. As already identified by Council, there are numerous other golf courses throughout the Thames-Coromandel District that are in private ownership and have been zoned accordingly in the PDP. For example the Pauanui Golf Course is owned and operated by the Pauanui Sports and Recreation Club (Incorporated) and is zoned "Residential" in both the ODP and PDP Plans. There is no requirement in the PDP for this land to remain publicly accessible open space even if a golf course is no longer operational at the site.

- 3.8 Section 85 of the Act allows persons having an interest in the land to oppose a plan change that imposes restrictions on land that render it incapable of reasonable use.
- 3.9 In my opinion, the provisions of the PDP render the site incapable of reasonable use as the plan clearly anticipates that the entire site will remain as publicly accessible open space in perpetuity. This requirement restricts any further development of the site and does not allow consideration of other potential uses for the site, including potential development opportunities. Given the size of the site, and its proximity to the coastal environment, I consider that it is entirely possible for the subject site to be developed in accordance with the residential zone provisions of the PDP in a manner that retains the existing character of the surrounding environment, while retaining some areas of the site for public access – this achieved via the esplanade reserve requirements. However the current provisions of the Proposed Plan do not provide for such consideration and the Plan clearly anticipates that the site will remain publicly accessible open space in perpetuity.
- 3.10 In summary, I consider that is entirely inappropriate to require privately owned land to be retained in perpetuity as open space land for public use. The Proposed District Plan is effectively imposing rules on privately owned land which, in the future, may render the land incapable of reasonable use.

#### **4. RELIEF SOUGHT**

- 4.1 I have prepared an annotated version of the Proposed Plan text for the Matarangi Structure Plan provisions and this is appended to my evidence as Annexure B. I summarise the key aspects of the relief as follows:
- Rezone the subject site “residential” and amend the residential zone provisions to allow for the continued operation of the golf course as a permitted activity in the residential zone;
  - Remove all references to the Matarangi Golf Course from Section 50 – Open Space, including reference to an encumbrance being placed on the title to ensure the land remains as open space.

- Delete Objective 2 and Policy 2b from Section 27.3 – Matarangi Structure Plan.
- Removal all references to the Matarangi Golf Course from Section 27.3 – Matarangi Structure Plan.

4.2 In this regard, I accept that the site be included within the Matarangi Structure Plan provided that the entire site is zoned “residential”. Any future use or development would be subject to the Matarangi Structure Plan which means that the Council still retains control over the way in which the land is developed in the future and ensures that any future development is consistent with that already established within Matarangi but does not restrict the land to be solely for the purposes of providing publicly accessible open space. This allows the land owner to consider other reasonable uses for their land.

4.3 Consequential amendments are required to the Policy Framework of both the Open Space Zone and the Matarangi Structure Plan to remove references to the Matarangi Golf Course. In particular, Policy 1F of the Matarangi Structure Plan should be deleted. This policy requires the proportion of open space to residential land within the structure plan area to be at least 40% open space to 60% residential land. It is unclear whether this policy is intended to apply to the Matarangi Peninsular as a whole or whether it is site specific and implies that the land is to be developed on a first come, first served basis.

## **5. STATUTORY ANALYSIS FRAMEWORK**

5.1 Having considered the background to the subject site and Council’s response to zoning of the site for open space purposes, as required by the Act, an evaluation is needed in terms of the relief proposed by Golf (2012) Ltd and that included in the PDP for the purposes of determining which provisions are the most effect and efficient to achieve the purpose of Act. In my opinion, underpinning this analysis, there needs to be an acknowledgement of the tension between the site being privately owned yet Council seeking to effectively make it suitable only for public use. This broad concept does not sit comfortably with me as I have already explained.

5.2 In undertaking the required statutory analysis, I understand that in Long Bay Okura Great Park Society Inc v North Shore City Council (A078/2008), the Environment Court

established what it described as a “relatively comprehensive summary of the mandatory requirements for district plans or plan changes” which emphasises the different statutory tests.

5.3 I also understand that more recently in *Reiher v Tauranga City Council* [2012] NZEnvC 121, the Court provided a succinct summary as follows:

*[10] In examining a provision under the Act, including section 32, we must consider:*

- [a] whether it assist the territorial authority to carry out its function in order to achieve the purpose of the Act;*
- [b] whether it is in accordance with Part 2 of the Act;*
- [c] if a rule, whether it achieves the objectives and implements the policies of the Plan; and*
- [d] whether having regard to efficiency and effectiveness, the provision are the most appropriate way to achieve the objectives of the proposed plan, having regard to the benefits, the costs and the risks of not acting.*

*[11] In doing so the Court must take into account the actual and potential environmental effects that are being addressed to consider the most appropriate provisions, if any, to respond to this.*

5.4 In summary, I consider that when evaluating the changes to the proposed plan provisions that I have suggested against those as notified, regard must be given to which is the most effective and efficient option for giving effect to the relevant objectives of the Proposed Plan. Specifically, section 32(2)(a) requires that the assessment must:

*“identify and assess the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*  
*(i) economic growth that are anticipated to be provided or reduced; and*  
*(ii) employment that are anticipated to be provided or reduced; and...”*

5.5 On the basis of the above, I will set out below what I consider to be the relevant considerations in terms of the provisions proposed by the Proposed Plan and the relief sought in this evidence using the following headings:

- A. Regional Policy Statement
- B. District Plan Objectives
- C. District Plan Rules
- D. Effects.

A. Regional Policy Statement

5.6 Of relevance when considering the proposed relief, is its ability to achieve outcomes that are consistent with the relevant regional planning provisions, and in particular whether it will give effect to the relevant provisions of any operative Regional Policy Statement. I have reviewed the provisions of the Appeals Version of the Waikato Regional Policy Statement (WRPS) and I consider that the proposed relief does give effect to the overarching approach contained in it with regard to the development of the built environment in the coastal environment.

5.7 The WRPS requires Council to have regard to the principles in section 6A of the WRPS when preparing, reviewing or changing regional plans, district plans and development planning mechanisms such as structure plans, town plans and growth strategies.

5.8 I am of the opinion that the current rules for residential subdivision and development in the Matarangi Structure Plan will ensure any future development on the subject site in terms of the residential zoning that I support, can be undertaken in a manner that is consistent with Policy 6.2 (Planning for development in the coastal environment) and the principles in Section 6A of the WRPS. While this will not be to the level of the site being used for the purposes of a public reserve, nevertheless, a high degree of coastal amenity can be maintained with any future development. This is most obviously seen in existing examples of development within the surrounding environment, with residential development and the natural coastal environment working comfortably together.

B. District Plan Objectives

5.9 Section 32(3)(a) of the RMA requires an assessment as to the extent to which each objective is the most appropriate way to achieve the purpose of the RMA. I have considered the objectives and policies of the district plan applicable to the subject site.

- 5.10 The Proposed District Plan seeks to clarify that the land occupied by the golf course is intended to remain an area of publicly accessible open space and this is reinforced through the policy framework. In particular, Objective 2 and Policy 2a require the Matarangi Golf Course to remain a publicly accessible open space area for recreation, views, residential amenity and stormwater management. The relief sought in my evidence is seeking the deletion of these policies, along with the subject site being rezoned to “residential”.
- 5.11 The land owner wishes to have the option of being able to reasonably use the subject site in the event that a golf course is no longer viable on the site. The changes to the policy framework and the zoning of the land, would allow the landowner to consider alternative uses for the land other than open space.
- 5.12 The overall intent of the Policy Framework of the District Plan is to ensure that Matarangi remains a high amenity settlement with residential areas defined by areas of publicly accessible open space. Objective 1 and Policies 1a-1e guide future development with the Matarangi Structure Plan. Any future development on the subject site would be guided by these objectives and policies and would require the creation of publicly accessible open space areas within the development to preserve access to the coastal environment which meets the overall policy intent of the Matarangi Structure Plan with regard to future residential development.

C. District Plan Rules

- 5.13 The relief sought in this evidence does not propose any fundamental changes to the residential zone provisions of the general residential zone (Section 54) and the activities in the Residential Zone of the Matarangi Structure Plan (Section 27.3). The only consequential amendment required is to ensure that the operation of the golf course remains a permitted activity in the Residential Zone. I consider that the existing rule framework of the District Plan is sufficient to control any future use or development of the subject site, particularly with regard to the provision of services, open space areas and design and layout of new allotments.

D. Effects

- 5.14 Any subdivision with the Residential zone would require consent as either a restricted discretionary or discretionary activity in accordance with Rule 4 in Section 27.3 and therefore an assessment of the potential effects of the development would need to accompany any application for consent. The applicant would need to consider the effects on the amenity and character of the area, including the effects associated with the reduction of open space.
- 5.15 It is my expectation that if Council concludes that significant adverse effects will result from the proposal then they can refuse consent. Therefore, I consider that the relief sought in this evidence provides sufficient scope to deal with the potential adverse effects arising from the change in use or development of the land.

Conclusion

- 5.16 The key s32 consideration in my opinion is whether, on balance, the proposed relief better achieves the purpose of the Act as opposed to the provisions proposed by Council. For the reasons outlined above, I consider that the proposed relief is the most appropriate method of achieving the relevant objectives and the purpose of the Act.
- 5.17 Firstly, the relief proposed acknowledges that the land is privately owned and has no encumbrance or restriction to require it to be used only for the purposes of open space. Secondly, the proposed relief would not afford the current or future owner the ability to develop the site in an ad hoc manner. Rather, the "Residential" provisions in the PDP would ensure that only a planned development could occur, one that reflects the amenity of the surrounding environment. And, overarching the Residential zone provisions, any proposed development of the site would need to be considered in the context of the Matarangi Structure Plan. These factors in my mind indicate that a sporadic, unplanned development of the site could not occur. Quite the opposite.

5.18 Thirdly, open space would still be retained on portions of the site that was subject to any future development by virtue of the esplanade reserve requirements of the Act.

5.19 In summary, Golf (2012) Ltd are, in my view, only seeking to be treated equitably as other land owners in similar situations are. The most relevant example of this is the Pauanui Golf Course. Privately owned and zoned for Residential purposes.

5.20 It is therefore my opinion that the proposed relief will assist Council to carry out its functions and achieves the requirement of integrated management for the purpose of the Act.

A handwritten signature in black ink, appearing to read 'M Norwell', with a stylized flourish at the end.

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**Matthew Norwell**

Barker & Associates Ltd

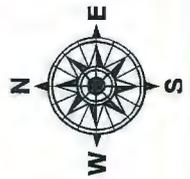
18 February 2015

**APPENDIX A – LOCATION MAP**



**Matarangi Golf Course**

Produced by:	anonymous
Date Created:	19/02/2015
Scale @ A4:	1:8610
Projection:	New Zealand Transverse Mercator



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## APPENDIX B – RELIEF SOUGHT

1. Rezone the subject site “residential” and amend Planning Maps 12C and 12B accordingly.
2. Amend the residential zone provisions to allow for the continued operation of the golf course as a permitted activity in the residential zone. This can be achieved by adding the following permitted activity rule to Section 54.4 – Permitted Activities:

Rule X

The ongoing maintenance and operation of the Matarangi Golf Course

3. Remove all references to the Matarangi Golf Course from Section 50 – Open Space, including reference to an encumbrance being placed on the title to ensure the land remains as open space. This can be achieved as follows:

- 3.1 Amend Section 50.1 – Zone Description as follows:

.....

~~The Open Space Zone also covers the existing Matarangi Golf Course as set out in the Matarangi Structure Plan (see Section 27.3).~~

- 3.2 Amend Section 50.2 – Zone Purpose as follows:

.....

~~The Zone also gives effect to the Matarangi Structure Plan's intention to keep the identified Matarangi Golf Course area as open space. Eventually, a covenant or consent notice on the titles of the Matarangi Golf Course would keep the land as open space in perpetuity. The Matarangi Open Space Zone does not mean that the area must remain a golf course, but that any change in use does not include buildings. For discretionary and non-complying consent applications and plan changes within the Matarangi~~

*Structure Plan, Plan users should refer to the objectives and policies in the Matarangi Structure Plan rather than Section 10 Natural Hazards.*

4. Removal all references to the Matarangi Golf Course from Section 27.3 – Matarangi Structure Plan. This can be achieved as follows:

4.1 Amend Section 27.3.1 Description as follows:

.....

*The land within the Structure Plan is Residential Zone to enable residential development and Open Space to maintain the original structure plan's vision of an open space area for recreation, views and amenity. In the Structure Plan, the term "open space" includes the Open Space Zone and any of the following that are publicly owned, or privately owned but publicly accessible through a consent notice:*

- *Road*
- *Lake*
- *Wetland*
- *Stormwater management feature (e.g. swale)*
- *View corridor*
- *Re-vegetation area*
- *Pedestrian walkway or link*
- ~~*Golf course*~~
- *Recreation facility*
- *General open space for informal recreation.*

4.2 Amend Policy 1b as follows:

*Existing land zoned open space shall be retained and new open space established to:*

- a) Protect the configuration and amenity of existing development; and*
- b) Define boundaries of areas for residential development and contain smaller neighbourhood cells; and*

- c) *Provide strong links between open space areas within and outside the Structure Plan area, particularly the Whangapoua Harbour; and*
- d) *Create walkways and edges around open spaces that enhance the amenity of adjacent dwellings; and*
- e) *Provide opportunities for a range of recreational activities; and*
- f) *Provide linkages from the coastal edge into the internal 'open' space network; and*
- g) *Restore appropriate indigenous coastal vegetation.*

4.3 Delete Policy 1F as follows:

~~*To maintain the existing character within the structure plan area, the proportion of open space to residential land shall be at least 40% open space to 60% residential land.*~~

4.4 Delete Objective 2 and Policy 2b from Section 27.3 – Matarangi Structure Plan as follows:

~~*Objective 2*~~

~~*The current Matarangi golf course remains a publicly accessible open space area for recreation, views, residential amenity and stormwater management.*~~

~~*Policy 2a*~~

~~*Activities within the golf course area shall:*~~

- ~~*a) Maximise the area free from buildings and structures; and*~~
- ~~*b) Provide clearly defined space between development cells and future subdivision;*~~  
~~*and*~~
- ~~*c) Extend the character of the Council's coastal reserves into and form part of the internal open space network; and*~~
- ~~*d) Maintain pedestrian and visual connectivity of open spaces; and*~~
- ~~*e) Provide an opportunity for recreational activities that do not involve buildings, structures (other than those associated with the golf course) or vehicles (other than golf carts and maintenance vehicles); and*~~

~~f) Maintain the strong natural, physical, visual and cultural connection between the ocean, Whangapoua Harbour, Motutere/Castle Rock and the Coromandel Ranges.~~

4.5 Amend Policy 2b as follows:

*Policy 2b*

*The ponds and associated stormwater infrastructure within [insert legal description] ~~the golf course~~ shall remain an integral part of the open space area and its stormwater capacity shall not be reduced.*

5. Any consequential relief to give effect to the relief sought.