

61-10 04

No. 1000
61/10/04
IN THE MATTER of the Town and Country Planning Act 1953

and

IN THE MATTER of an appeal under section 26(1) of the Act

BETWEEN THE PHYSICAL ENVIRONMENT ASSOCIATION OF COROMANDEL INC.

Appellant

AND THAMES-COROMANDEL DISTRICT COUNCIL

Respondent

BEFORE THE NUMBER ONE TOWN AND COUNTRY PLANNING APPEAL BOARD

Messrs A. R. Turner, S.M. (Chairman)
R. S. Martin
G. R. Tutt
A. E. Kennard (on 4th & 5th days of May 1976 only)

HEARING at THAMES on the 4th and 5th days of May 1976 and the 28th day of April 1977.

COUNSEL Mr L. J. Newhook for Appellant
Mr P. M. Salmon for Respondent (with Mr J.E.J. Jenkison on 4th and 5th days of May 1976)
Mr D.F.G. Sheppard for Kenwood Properties Ltd (pursuant to s.42(2))

DECISION

Introductory

On the northeastern coast of the Coromandel Peninsula, some 15 km north of Whitianga, there is a tongue of land known as the Omaro Spit (or Matarangi Peninsula), which encloses the eastern side of the Whangapoua Harbour. The peninsula extends westward from the Matarangi Bluff for about 4000 m. to the harbour entrance. That entrance is narrow and immediately opposite the tip of the peninsula is Te Rehutae Point. Beyond the point is the beach settlement of Whangapoua, where there are about 270 sections, about two-thirds of them built on.

The Matarangi Peninsula is essentially a sandspit which has formed over a long period of time. Its width averages about 1000m for a distance of about 3000m west of the Matarangi Bluff and then

of old, stabilised, sand dune formations. The crests of the dunes are about 4m above MHNM, but some of the crests are 7m or so above that mark. The balance of the peninsula on the harbour side, is a relatively flat and much lower lying area.

Tree growth on the peninsula is limited to some groups of trees, and some occasional manuka scrub and cabbage trees. Because of the gentle contour and lack of any substantial vegetative cover, the peninsula appears rather flat and featureless. The dominant character is one of openness. The peninsula has been grazed but the soil is of low fertility and the area has little value from a farming point of view. Recently extensive tree planting has been undertaken.

The ocean beach is firm and sandy and offers good swimming and surfing. The Whangapoua Harbour is a sheltered tidal estuary, eminently suitable for small boats, water sports and fishing.

The whole of the peninsula is part of the "coastal environment" as that term is used in s.2B of the Act, and it is an attractive place for holiday and recreational purposes.

The peninsula is served by a coast road from Kuaotunu, which skirts the Matarangi Bluff. The carriageway around the Bluff is of inadequate width and alignment and the terrain is such that the respondent claims that upgrading of the carriageway is not economically feasible. There is also an old road line, approximately 70 chains long, direct from S.H.25, but this cannot be used until that road is reconstructed and an old timber bridge replaced.

Except to the extent about to be mentioned, the peninsula is unsubdivided, and is owned by Kenwood Properties Ltd. In 1968 the then County Council approved the subdivision into 115 lots of approximately 48 acres situated on the beach front towards the eastern end of the peninsula. (It appears that that subdivision is set back little more, if any, than one chain from MHW.) For various reasons the physical work of subdividing was not completed in full, the subdivision was not promoted, only about 13 lots were sold (of which only about seven have been built on), and the remainder are still in the control of the company which owns the balance of the peninsula.

of approximately 13½ acres immediately to the east of it, are zoned Residential A; the balance of the peninsula (some 1043 acres) is zoned Rural B. In the Rural B zone, the "subdivision of land for residential uses" is a conditional use. We were informed that as a result of numerous objections lodged against the scheme, it became apparent to the Council that "further research would be beneficial for the purpose of identifying desirable objectives for the conservation and protection of the Coromandel coastline"; and that in the course of that further research "it became evident that the (proposed district scheme) had over-provided for future residential expansion adjacent to existing urban centres".

In due course the Council publicly notified a number of variations to its proposed district scheme, one of the objects being to reduce the total area provided for future residential expansion.

By Variation No. 4, publicly notified in January 1975 the Council created a "Future Urban Development Zone", and included 900 acres of the unsubdivided land on the Matarangi Peninsula in that zone. The purpose of the Future Urban Development Zone is to define the lands which during the planning period will be developed for urban uses, subject to the Council being first satisfied that adequate services can be provided, and that development is in the public interest having regard to need. Development is to be authorised by a variation or change to the district scheme based upon a "structure plan" for the area concerned. The zoning indicates sequences of development; and the documents record that the Council has a general intention to bring about changes in the sequences indicated, but that the Council is not necessarily bound by those sequences.

Insofar as Matarangi is concerned, the Variation records that 350 acres is in Sequence 1, 300 acres in Sequence 2 and 250 acres in Sequence 3; and the Variation contains this notation:

"The figures for the development at Matarangi are misleading in that the actual area to be developed for urban uses is very much less than the figures indicated. The preliminary structure plan prepared for this area indicates substantial areas of open space occupying some 60% of this total area."

(No provision of the district scheme applying the Sequence 1 quota of 350 acres to any specific part of the Matarangi Peninsula was drawn to our attention.)

The Context of This Appeal

On 18 June 1975, the Council adopted by resolution a Development Structure Plan for the unsubdivided part of the Matarangi Peninsula. That plan had been prepared on behalf of, and submitted by, the owner. That document contained a conceptual plan for Stage 1 of the development. At the same time the Council resolved to initiate a variation to its proposed district scheme which would have the effect of authorising Stage 1 of the development as defined by the Development Structure Plan. In due course that variation was publicly notified as Variation No. 7.

Briefly the effect of Variation No.7 is as follows:

- (a) An area of approximately 50 acres adjacent to the existing Residential A zone at the eastern end of the peninsula is zoned Residential A;
- (b) Two areas towards the western end of the peninsula are zoned "Residential Cottage Cluster";
- (c) A smaller area further west again is zoned "Tourist Facilities";
- (d) The tip of the peninsula and a strip on the ocean side of the "Residential Cottage Cluster" zone is designated "Proposed Public Open Space";
- (e) A proposed sewage treatment site is designated and a "Service Commercial" zone identified.

A proposed access road to serve the zones at the western end of the peninsula is shown. Its position is near to, but north of, the southern edge of the "high dune" area.

For a better appreciation of the nature and effect of Variation No. 7 reference to a map is necessary. Annexed hereto is a copy of the relevant planning map which formed part of Variation No. 7.

The appellant objected to Variation No. 7, pursuant to the provisions of s.24(1). On its objection being disallowed by the respondent, it brought this appeal. The grounds of the appeal were:

- (a) That the zoning is unnecessary, having regard to the provisions of s.2B;
- (b) That the variation provides zoning to permit development of a large area of over 900 acres and with a stated potential population of over 10,000, without adequate investigation of the area's suitability for either catchment for

- (e) That the bulk and location provisions are contrary to the objectives of coastal planning.

The appeal seeks that Variation No. 7 be disallowed.

Development Structure Plan

This plan states that the areas on the peninsula defined for development are intended to provide recreational accommodation, and that such accommodation "can range from camping through to caravanning, small baches and cabins, seaside houses, horizontally and vertically attached multiple housing forms and including motels, hotels and residential clubs". It indicates the locations and approximate sizes of a number of "development areas" which overall would comprise the complete development of the peninsula. It says further:

- (a) That although residential uses will comprise virtually all of the development areas, they will not take up excessive amounts of land; densities within the development areas will be relatively high and a large proportion of the peninsula (as much as 65%) will remain in open-space type uses; and
- (b) That a total population at peak periods of the order of 8-10,000 people can be expected if the peninsula is developed as envisaged.

The plan does not define the uses intended for all development areas but it does specify that some will be devoted to "bach cluster development" i.e. development of the kind referred to as "cluster development" in the Report on Coastal Development issued by the Ministry of Works in 1972. The two areas proposed by Variation No. 7 to be zoned "Residential Cottage Cluster" are intended for this kind of development and the provisions of the Ordinances for that zone reflect that intention.

The plan says, however:

"A proportion of single lot development is necessary to provide the cash flow support to the as yet unproved economics of the small low-cost cluster forms of accommodation which are proposed. If the minimum outlay concepts are readily marketable, future development will provide for a greater proportion of these units. If not, the more conventional single-lot development may predominate. In any event, the residential forms will be confined to the developable

The uses defined by Variation No. 7 for the "Tourist Facilities Zone" are motels, hotels and restaurants.

Originally it was proposed that these uses be predominant uses, but their status was changed to that of conditional uses in the course of the proceedings.

Although the plan does not define the uses intended for all development areas, it does define "some specific types" which it says are "essential to structure the overall development" and intended for the first stage of construction. We take that to refer to the remaining provisions of Variation No. 7.

Appeal Hearing

The parties to this appeal were heard by the Board in May 1976. Counsel for the respondent submitted (inter alia):

- (a) that the zoning as "Future Urban Development" of the greater part of the Matarangi peninsula must be taken as effectively part of the district scheme and that the ultimate use of the peninsula for urban purposes cannot be questioned; and
- (b) that the only issue for the Board is whether the time is ripe for the development which would be authorised by Variation No. 7..

He called evidence from the consultant planner to the respondent and a planning officer employed by the Ministry of Works and Development. Both witnesses expressed the opinion that development should be allowed to commence in accordance with the development structure plan. The officer from the Ministry gave evidence of the rate of building on lots in existing coastal subdivisions in the former Coromandel and Thames county districts; the inference we take from the evidence is that there is or shortly will be the need to release for development for holiday settlement purposes some of the land contained within the Future Urban Development Zone of the proposed district scheme for the former Coromandel County. The inference we take from the evidence of both witnesses is that they are of the opinion that the ultimate overall development of the Matarangi peninsula in general accordance with the development structure plan should sufficiently balance the need for further subdivision in the respondent's district and the need to preserve the natural character of this particular part of the coastal environment.

It was given in evidence that the owner has undertaken in writing to the respondent that it will upgrade the old road line from S.H.25 so that the road is open and useable by the time any new lots (not already existing) are made available for sale at Matarangi.

For the appellant evidence was given by a member of the Association and by a distinguished member (and former Chairman) of the Nature Conservation Council. The first of those witnesses spoke of the character of the Matarangi peninsula and of the unobstructed view of it from S.H.25 on the high hills to the south of Whangapoua Harbour. He also spoke in general terms of coastal erosion and protection, of difficulties in providing water and sewerage services and "of the vast problems of road upgrading over many miles that would be required to meet the increased traffic generated by such development" - the last point relates to the present state of S.H.25 between Coromandel and Whitianga. The second of those witnesses said (inter alia):

"Not only does Matarangi Peninsula have unique features of natural value, but in its present form it is an essential feature of the remarkable view from the main road skirting Whangapoua Harbour. Without further development to change its character it would remain one of the few natural spit features to be found on the east coast of the North Island, avoiding the unsatisfactory land use problems which have occurred in Mangawai and the unmanageable situation at Ohiwa."

But he conceded that the development concept proposed by the owner for Matarangi Peninsula (as a concept) is attractive and acceptable and can work very well.

This Board gave consideration to the evidence and submissions and concluded that before it could give a decision upon the merits of the matters in issue on the appeal, it required evidence on the following points:

- "(a) The liability of the Matarangi Peninsula to wind, sea and river erosion, and whether any special steps should be taken before or during development to protect the Peninsula from the possibility of wind, sea or river erosion in the future.
- (b) The suitability of the Matarangi Peninsula land form for development in the manner proposed in the Matarangi Development Plan (Development

special precautions should be taken during development because of the nature of the land form."

Pursuant to s.40(8) and Regulation 26(2) it required the Chief Engineer, Hauraki Catchment Board to report upon those matters. In due course the Board conducted a further hearing of the appeal, when that officer gave his report in evidence, and evidence was given on those matters by witnesses called by the owner.

In summary, the Chief Engineer expressed the opinion that the Matarangi land form is suitable for development in the manner generally proposed by the Development Structure Plan subject to the following modifications to protect it from the possibility of sea and river erosion in the future:

- (a) a total ban on structures in a strip 100m wide inland from the seaward toe of the outer foredune (or the seaward limit of vegetation), extending along the ocean beach from Matarangi Bluff to the 2800m mark (the "Foredune Zone");
- (b) That relocatable structures only be permitted in a secondary zone 100m wide, immediately inland of the Foredune Zone;
- (c) West of the 2800m line the whole of the peninsula be a "Foredune Zone", except for a small secondary zone at the inner end of this area;
- (d) That on the harbour side of the peninsula there be a total ban on structures in a strip 120m wide inland from MHWM (a "Harbour Zone").

He recommended:

- (e) That no levelling be permitted in the "high dune" area other than what is unavoidable for roading and structures, that no sand be taken away, and that steps be taken to preserve ground elevations and surface stability;
- (f) That the respondent assume the financial and administrative responsibility for ensuring the maintenance in safe condition of the Foredune Zone and the Harbour Zone; and
- (g) " If it is possible, that reconsideration be given to the position of the area already approved for residential purposes which lies almost wholly within the proposed "Foredune Zone" and as such is totally at variance with the recommendations

against all reasonable erosion risks within the next 100 years:

- (a) A buffer zone (a ban on structures) in the strip 60m wide inland from the seaward toe of the outer foredune extending along the ocean beach for 3300m from the Bluff;
- (b) westward of the 3300m mark a widening of the buffer zone and a turn of its inner boundary southward so that the zone extends not less than 160m east of the tip of the peninsula; and
- (c) a buffer zone 40m to 50m wide on the harbour side of the peninsula.

(One of the owner's expert witnesses, Mr R. R. Carter, recommended that the buffer zone at the spit head should extend a greater distance. On his plan the distance from the 1976 position of the spit-head to the eastern boundary of the buffer zone recommended by him scales off at 350m. The buffer suggested by him appears to eliminate a portion of the proposed Tourist Facilities Zone and a portion of a Residential Cottage Cluster Zone.)

(Variation No. 7, as publicly notified, provides that in the Tourist Facilities Zone and Residential Cottage Cluster Zone, the "minimum distance of any structure from the crest of the foredune being the sand dune closest to the sea shall be not less than 100 feet". But for a substantial distance along the ocean front the foredune was levelled and grassed before this appeal was heard.)

Decision

By accepting the former Coromandel County Council's decision to zone the bulk of the Matarangi Peninsula as "Future Urban Development" the community accepted that the peninsula will not be maintained in its present almost wholly natural state and that in due course human settlement, in some form, will take place upon it. In the determination of this appeal, this Board must start from that point.

Next, it is self-evident that although the name of the zone given to Matarangi by Variation No. 4 speaks of future urban development, what is anticipated by the zoning is not the growth of a town with permanent inhabitants and a wide range of employment opportunities, but the growth of a holiday and recreation settlement having few permanent residents and few employment opportunities. And

then development would tend to destroy some of the essential attributes which make the locality attractive for holiday and recreational purposes. Section 2B requires the preservation of the natural character of the coastal environment. Development must necessarily affect natural character to some degree; and in an area which is to be developed, the more land that can be preserved in "open space", the more will natural character be preserved.

That leads us on to say that on the evidence on this appeal we are unable to rule on the general question of the extent to which further development on the Coromandel coast for holiday and recreation purposes is necessary. But having regard to the evidence given by the officer of the Ministry, we hold that the progressive development of the Matarangi peninsula, for holiday and recreation purposes is not necessarily contrary to the public interest, nor to the requirements of s.2B nor to the objectives of the proposed district scheme, provided that development is in such a form as will be in sympathy with the environment, will preserve a substantial measure of the existing natural character and will not cause or accelerate erosion. It is in the public interest and consistent with good planning to concentrate holiday and recreation settlements at specific locations on the Coromandel coast rather than to have development scattered along the coast.

In general terms, but subject to the specific comments we make later, the concepts proposed by the Development Structure Plan for the form of overall development of Matarangi should produce a settlement in sympathy with the environment and preserve a substantial measure of the existing natural character of the locality. Indeed given that there will be development at Matarangi in some form, that aspect of the matter was not seriously challenged by the appellant. In particular we accept that the techniques of the Development Structure Plan enable a unified approach to be taken to the planning of the whole area, that there are advantages to the public in providing a range of holiday accommodation, and that it is desirable to promote the novel form of holiday accommodation proposed by the Residential Cottage Cluster Zoning.

But further development at Matarangi is not justified or

agencies concerned must have accepted or be deemed to have accepted the obligations and costs which flow from that and which cannot be imposed on the developer.

The owner has agreed to reinstate the old road line which gives a direct connection to S.H.25. Indeed it could hardly avoid that obligation if it is to sustain rights to undertake any substantial development at Matarangi.

We are satisfied that it will be possible to provide water and sewerage services to development at Matarangi and to dispose of sewage effluent. The most appropriate means of doing so has not yet been established, but it is not necessary that they be finally established at this stage. The respondent has sufficient powers under the Counties Amendment Act 1961 to require those services to be provided and to specify the time at which they shall be provided and the disposal of effluent is subject to the provisions of the Water and Soil Conservation Act 1967. However, we record that in view of the scale of development proposed for Matarangi, we are of the opinion that those services should be provided and available as from the commencement of development.

We turn now to the questions of the liability of the Matarangi Peninsula to sea and river erosion and the safeguards which should be adopted because of the possibility of erosion in future.

We find from the evidence:

- (a) That as far as the ocean beach is concerned the records over the last 80 years indicate that it has been relatively stable, the range of movement in that period being perhaps 10 to 15 metres, (but it must be noted that there was no survey between 1893 and 1945, so there is no certainty as to the range of movement in that period);
- (b) That as far as the spit-head is concerned, the records over that period indicate that it may have retreated about 200m in that time, though it is difficult to establish what can be called "land" at some of the times for which records are available.
- (c) That as far as the harbour-side is concerned, the low lying nature of the land makes it difficult to discern

From the evidence of the expert witnesses, we take the following general propositions:

- (a) That no ocean beach can be regarded as being immune from foredune movement; short term to and fro movements usually occur with all beaches, occasionally a long-term trend can be discerned and sometimes a major change can occur relatively suddenly.
- (b) That the tip of a sandspit is always the most mobile part of the sandspit; but its movements do not necessarily mean that the spit-head is unstable or eroding; they can manifest the fact that dynamic equilibrium conditions at the spit-head have a larger amplitude of movements.
- (c) That artificial structures designed to prevent the movement of a beach or spit-head are expensive and of uncertain efficiency; buildings should, therefore, be kept a sufficient distance back from these natural features to allow for natural changes without damage to property; what will be a sufficient distance will depend upon the circumstances of the particular case.

The evidence does not give grounds to suspect that there is a long term erosion trend on the ocean beach. The inference we draw is that the beach should continue in a relatively stable state, provided no sand is removed from the beach, the spit-head or the ocean nearby; though the possibility of a sudden major change cannot be excluded. Notwithstanding the evidence of the retreat of the spit-head over the last 80 years, we are satisfied that it must not necessarily be inferred that the spit-head will continue to retreat. The inference we draw is that the retreat so far is part of the larger amplitude of movements referred to earlier, but at this stage no-one can judge what the full extent of that amplitude is likely to be.

Clearly a "buffer-zone" must be provided to allow for the cyclic changes which will occur and any sudden major changes which might occur on the ocean beach front and at the spit-head. But the definition of the extent of such a zone must, necessarily proceed on an empirical basis and finally must be to some extent arbitrary. That there is room for wide differences of

extent to which subdivision and building should be set back from the coast, the environmental consideration required by s.2B are equally as important as provision in case of erosion. Furthermore, we must also take into account that once Matarangi is developed, the form of that development is likely to remain indefinitely - we cannot limit ourselves to provision for the needs only of the next 100 years, as the owner's witnesses suggested.

Because of the environmental considerations we would prefer the extent of a "foredune zone" to be defined on the ground rather than crudely in a decision such as this. But it is necessary that there be a definition. Therefore, having considered the evidence and submissions, we hold:

- (a) That on the oceanfront, subdivision and building should be prohibited in the strip 100m wide inland from the seaward toe of the outer foredune (or the seaward limit of vegetation), extending along the ocean beach from the bluff on the east to the 3300m mark on the west;
- (b) That subdivision and building should be prohibited on the spit-head, which in this subparagraph is the whole of the area west of a line drawn across the peninsula at the 3300m mark hereinbefore referred to; and
- (c) That on the harbour side, subdivision and building should be prohibited within 40m of MHW, from the eastern end of the peninsula to the 3300m line.
(We have concluded that there is no need for the Secondary Zone recommended by the Chief Engineer of the Catchment Board.)

The application of the foregoing conclusions to Variation No. 7 requires that the Tourist Facilities Zone be eliminated and that part of the Residential Cottage Cluster Zones and part of the Service Commercial Zone be eliminated. Those consequences are such that it is clear that the form of the first stage of development at Matarangi must be changed. And although the existing Residential Zone on Matarangi is not the subject of Variation No. 7, or of this appeal, we agree with the Chief Engineer of the Catchment Board that because of the possibility of erosion, it would be prudent to reconsider the zoning of so much of that land as is within 100m of the seaward limit of vegetation.

The identification of the effects of the conclusions to which we

development should be proposed for the western end of the peninsula, leaving the centre of the peninsula undeveloped. The only explanation the Board can find for that order of development is contained in the following extract from the report on the objections to Variation No. 7: . . .

"The Omaro Spit has an area of over 900 acres and is some 2 miles long. The end of the spit is a very desirable area for recreational purposes, and has been designated as a public reserve. There is already pressure on the land owner to provide public access to this end of the spit and in order that unrestricted public access can be provided a road must be created the full length of the peninsula. Such a road will service all future development of the peninsula and should be undertaken by the Developer at no cost to Council."

Furthermore, the Board is not satisfied with the answer it received to its inquiry as to the manner in which the respondent will ensure that a substantial part of the peninsula will in fact be given over to open space uses. It appears to the Board that in order to achieve that object not only must the owner vest certain areas as reserve but also that as and when defined areas are zoned in a way which permits the development thereof, the intermediate areas should be rezoned Rural.

It appears to the Board that the public interest and the orderly development of Matarangi require:

- (a) That before any of the present Future Urban Development Zone is rezoned in such a way as to permit development, those parts of Matarangi which will be essential as public open space in the overall development of Matarangi, if it is to maintain the character of a holiday and recreation resort should be identified and defined and that they should be vested as public land at that stage;
- (b) That the staged development of Matarangi should proceed from east to west - among other things that order of staging will keep as much of the peninsula in its natural state as long as possible; and
- (c) That at each stage of rezoning from Future Urban Development, the land surrounding and between the development areas be rezoned Rural.

(At this point it is relevant for us to say that Variation No. 7

Finally, we record that our experience as a Board leads us to doubt the wisdom in the circumstances of giving a plain Residential A zoning to a block of 50 acres adjoining the existing Residential A zone of approximately 61 acres. Because those 111 acres are situated in the coastal environment, in what is intended to be a holiday and recreation settlement, it is most important that the layout and form of subdivision be appropriate to the environment and to the character intended for the settlement. Simply to zone a block as large as 111 acres Residential A is likely to lead to amorphous development of a suburban kind, notwithstanding the respondent's powers under Part II of the Counties Amendment Act 1961.

In all the circumstances the Board has concluded that the proper order to make is an order allowing the appeal in order that the owner and the respondent may give further consideration to all aspects of the first stage of further development at Matarangi and in particular to the matters touched on in the latter part of this decision. But that order is on the basis that the respondent may in due course bring down a further variation or change with the object of authorising a first stage of development.

For the foregoing reasons the appeal is allowed. It is directed that the respondent does not proceed further with Variation No. 7 to the proposed district scheme for the former Coromandel County.

The question of the costs of the Chief Engineer, Hauraki Catchment Board, who prepared a report and gave it in evidence at the direction of this Board, is reserved.

DATED this

16th

day of

September

1977.



Chairman



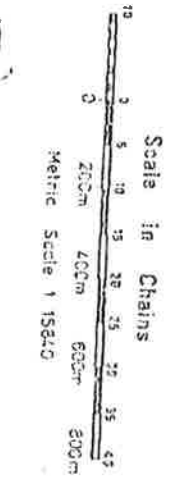
For Conceptual Plan see Appendix VII

Conceptual Plan to be prepared



- RESIDENTIAL A
- RESIDENTIAL COTTAGE CLUSTER
- TOURIST FACILITIES
- SERVICE COMMERCIAL
- FUTURE URBAN DEVELOPMENT

PROPOSED PUBLIC OPEN SPACE (U.Z. Res.)
PROPOSED SEWAGE TREATMENT SITE
(U.Z. Future Urban Development)



27/11/2000

