BEFORE THE ENVIRONMENT COURT

ENV-2016-

IN THE MATTER	of the Resource Management Act 1991
AND	
IN THE MATTER	of a reference appeal under Clause 14 of the First Schedule of the Act
BETWEEN	**TASMAN BUILDINGS LIMITED**
	Appellants
AND	**THAMES COROMANDEL DISTRICT COUNCIL**
	Respondent

NOTICE OF APPEAL AGAINST DECISIONS ON PROPOSED PLAN

TO: The Registrar
Environment Court
WELLINGTON

1. **The Appellant** appeals against decisions made by the Thames Coromandel District Council ("**the Respondent**") on the proposed Thames Coromandel District Plan ("**Proposed Plan**") including in relation to Variation 1 to the Proposed Plan ("**Variation 1**").

2. The Appellant is a submitter to the Proposed Plan and Variation 1.

3. The Appellant is not a trade competitor for the purposes of s308D of the Resource Management Act 1991 ("**RMA**").

4. The Appellant received notice of the Decision on 29 April 2016.

5. The Appellant is appealing the decisions made by the Respondent (on the basis of recommendations to the Council by the District Plan Hearings Panel) in relation to the Appellant's submissions on the following sections of the Proposed Plan and Variation 1:

   (a) Section 7 – Coastal Environment – Objective 1;

   (b) Sections 6 and 29 – Biodiversity – Policy 1b, Rule 2 and Table 1 (Assessment Criteria);

   (c) Sections 24 and 56 – Rural Area and Rural Zone – Policy 1d, Objective 4, Policy 4d, and Rules 7 and 17;

   (d) Sections 16 and 38 – Subdivision, Objective 1, Policy 1c, Policy 4a and Rules 8, 9 and Item 12 of Table 2 (Subdivision Standards for Rural Zone);

   (e) Section 31 and Appendix 1 – Archaeological Sites, Rules 1 and 3 (along with relevant Proposed Plan maps);

   (f) Variation 1 – Mapping of Rangipukea Island, Sections 7A and 32A.

   ("**the Decisions**")

6. The reasons for the appeal are as follows:

   (a) The Council's overall decisions substantially improve the Proposed Plan and Variation 1 and address many of the issues raised by the Appellant in its submissions;

   (b) However, those aspects of the Proposed Plan and Variation 1 subject of the Decisions (set out in paragraph 5 above) remain inferior, and do not represent or comprise (as to objectives) the most appropriate way to achieve the purpose of the RMA, nor as to the other provisions at issue in the Decisions, the most appropriate way to achieve the objectives (s 32 of RMA);

(c) The amendments sought by the Appellant to those provisions of the Proposed Plan and Variation 1 subject of the Decisions represent better options to achieve the purpose of the Act (as to objectives), and in relation to the other provisions at issue, would be more efficient and effective to achieve the relevant objectives;

(d) For the specific reasons set out below, the relief sought by the Appellant in relation to those provisions of the Proposed Plan and Variation 1 subject of the Decisions should be adopted.

7. The relief sought in this appeal is as set out below (in Parts A to F of this appeal), along with all consequential, other or further relief necessary or considered appropriate by the Court to give effect to that relief.

PART A – COASTAL ENVIRONMENT

Reasons for Appeal

8. The Appellant's island properties subject of its submissions to the Proposed Plan and Variation 1 fall within the coastal environment as mapped under the Proposed Plan.

9. The Appellant made submissions regarding Objective 1 of Section 7 opposing its imperative of preservation of the natural character, natural features and landscape values of the coastal environment, which the Appellant submitted was too absolute and did not reflect s6(a) of RMA.

10. The Decisions amend Objective 1 by confining *protection* to outstanding natural features and landscape values, but the amended objective does not differentiate as to the level of natural character (high, outstanding or other) that must be *preserved*. This is inconsistent with the requirements of Policies 13 and 15 of the New Zealand Coastal Policy Statement 2010 ("**NZCPS 2010**").

11. The Appellant also submitted that what was previously the first bullet point of Objective 1 relating to the "integrity, form, functioning and resilience" of the coastal environment should be deleted.

12. The Decisions retain this element of the objective, but incorporate (by addition) reference to the long term projected effects of climate change.

13. The Appellant maintains its position that this aspect of the objective should be deleted entirely, with the long term effects of climate change better addressed in the bullet point of the objective regarding coastal hazard risks.

Relief Sought

14. The Appellant seeks the following relief in relation to Objective 1:

    (a) Delete what is now the second objective bullet point (as to maintaining, or restoring the integrity, form, functioning and resilience of the coastal environment etc); and

    (b) Amend the fourth and fifth bullet points of the objective by combining them to read as follows:

> "Avoids adverse effects on outstanding natural character, outstanding natural features, and outstanding natural landscape values of the coastal environment, and avoids significant adverse effects and remedies or mitigates other adverse effects on natural character and natural landscape values in other areas of the coastal environment."

PART B – BIODIVERSITY

Reasons for Appeal

15. In its submissions, the Appellant opposed Policy 1a (now Policy 1b) of Section 6 of the Proposed Plan for various reasons relating to the terminology employed throughout the policy, which the Appellant submitted was (among other things) unnecessary and unclear as to the intended scope and meaning of the provision.

16. The Decisions address many of the wording issues identified by the Appellant in its submissions on this policy, however the Decisions also reframe the policy to apply to areas of "non-significant" indigenous vegetation, with a new Policy 1a applying to areas of significant indigenous vegetation and significant habitats of indigenous fauna.

17. The Appellant does not oppose the new Policy 1a but opposes the reframed Policy 1b now directed at areas of non-significant indigenous vegetation and habitat. Revised Policy 1a effectively sets an "avoidance" approach that is neither appropriate nor warranted for 'non-significant' resources with reference to s6(c) of RMA and Policy 11 of NZCPS 2010 (which is given effect to through new Policy 1a in any event).

18. Aspects of the reframed Policy 1b of particular concern relate to the requirements to "retain" the viability etc of any area of non-significant vegetation; to provide buffers around such vegetation, and to not increase the threat from plant and animal pests in any such areas. The Appellant considers that these requirements are not only unnecessary and inappropriate, but may be counterproductive and difficult if not impossible to achieve.

19. The Appellant also submitted against Rule 2 of Section 29 on the basis that better provision is needed for the clearance of indigenous vegetation associated with pasture management on existing farms (as at the date of plan notification).

20. The Decisions amend Rule 2.1 d) to provide for the clearance of pasture that was established prior to notification of the District Plan on 13 December 2013.

21. Pasture management may however need to involve clearance of vegetation on land within an existing farm that is not (or may not be considered to be) "pasture" as at 13 December 2013.

22. This aspect of the Appellant's submissions is not addressed in the Decisions.

23. It is also unclear within the rule structure (with reference to Rule 1.5 of the Proposed Plan) what if any provision is made for the clearance of exotic vegetation associated with pasture management, and this needs to be expressly provided for (the Hearings Panel reversing an amendment to the rule proposed by Council Reporting Staff whereby Rule 2 would be directed at the clearance of any vegetation, not just indigenous vegetation).

24. The Appellant submitted that the assessment criteria in Table 1 (Section 29) needed to be amended to refer to "the extent to which" rather than "whether" the various matters were addressed in respect of any vegetation clearance requiring resource consent.

25. The assessment criteria under the Decisions do not address that issue, but now differentiate between vegetation clearance of significant and non-significant vegetation, with some of the criteria just applying to one category, and some to both.

26. The Appellant opposes the new criteria relating to vegetation clearance of non-significant areas in items 1b) to 1e) and 3a) to c) of Table 1 as being unnecessary, and inappropriate, including for the reasons stated above (at paragraph 18) in relation to Policy 1b of Section 6 of the Proposed Plan.

Relief Sought

27. The Appellant seeks that the provisions of Sections 6 and 29 of the Proposed Plan be amended as follows:

    (a) Delete Policy 1b (Section 6); and

    (b) Amend Rule 2 (Section 29) to expressly provide for vegetation clearance associated with pasture management on existing farms (as at the date of plan notification) as a permitted activity; and

    (c) Delete assessment criteria (Table 1) items 1b) to 1e) and 3a) to c), and replace the wording "whether" with "the extent to which" throughout Table 2.

PART C –RURAL AREA AND ZONE

Reasons for Appeal

28. The Appellant opposed Policy 1d (Section 24) on the basis that the issue of public access is more appropriately addressed in the context of subdivision and adequately addressed in Section 16 (Objective 8 and associated policies) of the Proposed Plan.

29. The Decisions amend Policy 1d to state that use and development in the Rural Area *should secure* public access to and along the coast where this does not already exist.

30. While no longer being a mandatory requirement (the words *should secure*, replacing the previous wording “shall”) there is no statutory basis including under RMA upon which the Council can direct provision of public access associated with use and development in the Rural Area (as opposed to subdivision) and the policy should be deleted accordingly.

31. The Appellant also opposed Objective 4 and associated Policy 4d to the extent that these provisions seek to “maintain” the rural character and amenity of the Rural Zone, as well as “maintain” open space character and amenity values through the siting and design (scale, density and height) of buildings and structures within the Rural Area.

32. The Appellant opposes these provisions in the absence of a clear definition of rural character and amenity that appropriately reflects the range of activities taking place within rural areas, including buildings and accommodation for farm owners and their staff or employees.

33. Buildings and structures of that kind are necessary in the Rural Area, but would inevitably have an impact in terms of the degree of open space remaining, and perceived amenity values (to some).

34. The Appellant therefore sought that Policy 4d a) refer to the “sense of spaciousness” of the Rural Area (rather than “open space

character") and that the policy require that buildings and structures be "in keeping" with (or complement) rather than "maintain" the amenity values of the Rural Area.

35. The Decisions do not make any of these requested changes sought in the Appellant's submissions on Section 24.

36. In relation to Section 56, the Appellant sought better provision for earthworks than set through Rule 7, i.e. to include express provision for earthworks associated with farm tracks, roads and landings, stock races, silage pits, farm drains, farm effluent ponds, feeding lots, fencing and sediment control measures.

37. The Appellant also opposed (with reference to its further submissions on Section 56) a proposal by the Reporting Officer whereby resource consent as a restricted discretionary activity would be needed for any new dwelling within the coastal environment. The Appellant gave evidence to the Hearings Panel that sufficient control on building height, scale, colour etc could be achieved with permitted activity performance standards as proposed by the Appellant through its expert witnesses.

38. The Decisions do not amend Rule 7 in the manner sought, but amend Rule 17 such that a restricted discretionary consent is required for all dwellings in the Rural Zone on any site within the coastal environment.

Relief Sought

39. The Appellant seeks the following relief in relation to Sections 24 and 56 of the Proposed Plan:

    (a) Delete Policy 1d

    (b) Delete Objective 4 or amend it in the manner described at paragraph 32 above through addition of an appropriate definition of rural character into the Proposed Plan; and

(c) Amend Policy 4d such that buildings and structures be "in keeping" with or "complement" amenity values etc., and replace the words "open space character" within Policy 4d a) with the words "sense of spaciousness";

(d) Amend Rule 7 (Section 29) so as to provide for earthworks associated with farm tracks, roads and landings, stock races, silage pits, farm drains, farm effluent ponds, feeding lots, fencing and sediment control measures as a permitted activity;

(e) Amend Rule 17 such that a minor unit and one dwelling per lot is a permitted activity within the Rural Zone, subject to the standards in Tables 5 and 6 of Section 56 of the Proposed Plan.

PART D – SECTIONS 16 AND 38 – SUBDIVISION

Reasons for Appeal

40. The Appellant made submissions opposing Objective 1, Policy 1c and Policy 4a of Section 16 of the Proposed Plan, which are not addressed in the Decisions.

41. The Appellant understands from paragraph 5.11 of Decision Report 12 that amendments sought by the Council to Objective 8 and associated policies (regarding esplanade reserves and strips) were withdrawn, and as such esplanade reserves and strips on lots greater than 4 hectares would not be required under Section 16 (the Appellant having opposed the Council's submissions in that regard).

42. On that basis, the Appellant confines its appeal regarding Section 16 to Objective 1, Policy 1c and Policy 4a of the Proposed Plan.

43. While Objective 1 has been substantially improved by the Decisions, the revised objective of requiring subdivision to maintain the amenity values of the surrounding landscape is unrealistic and unachievable. The revised objective should instead refer to

avoiding significant, and avoiding, minimising or remedying other adverse effects, on the amenity values of the surrounding landscape.

44. Policy 1c should be directed at maintaining the "sense of spaciousness" rather than "open space character" of the Rural Area which would inevitably (as to open space character) be reduced through subdivision, including through subdivision which promotes biodiversity objectives of expanding and enhancing areas of indigenous vegetation (such that as worded, the policy is counterproductive).

45. Policy 4a of Section 16 requires that building platforms not "break the natural skyline" and (in the coastal environment) be located away from headlands and ridgelines that are visually prominent from public places.

46. Physical characteristics of the Coromandel landscape can make it extremely difficult to avoid building on skylines, headlands and ridgelines, which in some cases may represent the most sympathetic response to site conditions and in particular the natural character values of the area.

47. The Appellant seeks that Policy 4a be amended to provide for siting of building platforms on headlands or ridgelines where this would overall have a lesser landscape impact than any lower less prominent building platform or site.

48. As to Section 38, the Appellant opposed the blanket 20 hectare minimum lot size for the Rural Zone and sought better provision for tailored subdivision opportunities involving enhancement benefits such as envisaged by Rule 8 (for the Rural Zone in Priority Areas) and Rule 10 for the Rural Lifestyle zone.

49. The Appellant had also sought that subdivision meeting the relevant standards be a restricted discretionary rather than full discretionary activity under Rule 9.

50. The Appellant sought a minimum lot size of between 8,000 m² to one hectare for the Rural Zone, particularly where the subdivision promoted conservation or environmental benefits.

51. The Appellant gave expert evidence in support of a provision that would better reflect the imperatives of s6 of the Proposed Plan relating to promotion and enhancement of biodiversity values, along with relevant objectives and policies of Sections 16 and 24.

52. The Decisions include an amendment to Objective 1 (Section 6) referring to restoring or enhancing indigenous ecosystems and biodiversity, and Policy 1c of Section 24 has been amended to refer to subdivision restoring or enhancing *other areas* of significant indigenous vegetation.

53. The Appellant produced a revised Rule 8 that would enable conservation lot subdivision outside of Priority Areas identified on Figure 1 of the Proposed Plan (Section 38), i.e. whereby conservation lot subdivision could also protect areas of at least 5,000 m² of vegetation that meet objective criteria as to the value of that vegetation.

54. The Appellant considers that its proposed conservation lot subdivision rule (Rule 8) better achieves the objectives and policies of the Proposed Plan relating to biodiversity enhancement, and promotes the purpose of the RMA, particularly given that the Priority Areas identified in Figure 1 are neither accurate nor complete as to indigenous vegetation that has existing value, or which could through enhancement achieve significant status as indigenous vegetation or habitat.

55. The Decisions did not adopt the Appellant's proposed conservation lot rule, nor make any of the other changes sought to the rules of Section 38 (as outlined above).

56. The Decisions also retain the 20 hectare standard in Table 2 of Section 38, but reframed as a minimum rather than minimum average lot area.

Relief Sought

57. The Appellant seeks the following relief in relation to Sections 16 and 38 of the Proposed Plan:

(a) Amend Objective 1 to state as follows:

> "Subdivision is located and designed to provide for the activities anticipated in the Zones while avoiding significant, and avoiding, minimising or remedying other adverse effects on the amenity values of the surrounding landscape."

(b) Amend Policy 1c to state as follows:

> "Subdivision in the Rural Zone shall maintain the sense of spaciousness of the Rural Area."

(c) Amend Policy 4a as follows:

> "Subdivision design shall respond to the natural landform by ensuring building platforms and road configuration sits within the site's topography, does not break the natural skyline, and in the Coastal Environment is located away from headlines and ridgelines that are visually prominent from public places unless locating below the ridgeline would cause significant:
>
> - geotechnical or erosion issues,
> - limitations on the usability of or access to the building platform, or
> - adverse landscape or natural character effects,
>
> and the alternative location avoids significant landscape or natural character effects.

(d) Amend Rule 8 (Section 38) in the manner and to the extent set out in Appendix D to this appeal (except as to the provision requiring an esplanade reserve or strip on allotments of greater than 4 ha).

(e) Provide for subdivision in the Rural Zone as a restricted discretionary activity where it meets the relevant performance standards, under Rule 9.

(f) Provide for a minimum lot size of 8,000 m² to one hectare in the Rural Zone within Table 2, and retain the minimum

average lot size of 20 hectares for general subdivision (rather than this being set as an absolute minimum).

PART E – SECTION 31 AND APPENDIX 1 – ARCHAEOLOGICAL SITES

Reasons for Appeal

58. In its submissions, the Appellant opposed the mapping of archaeological sites (items 8 and 15) applied to Whanganui Island (as identified within Appendix 1 of the Proposed Plan).

59. The Appellant also opposed the restrictions in Section 31 of the Proposed Plan whereby permitted activities within archaeological sites are confined to cutting grass, grazing stock and fencing repairs (of relevance to a rural property) under Rules 1 and 3.

60. In the Decisions, the archaeological sites (items 8 and 15 of Table 1) sites are retained on the Appellant's Whanganui Island property, and Rule 1 and 3 remain unchanged.

61. In addition, Section 31 is amended to require that for any lot with more than one archaeological site, the overall rules (of Section 31) apply to any land within 100 metres of the site's location identified on the planning maps.

62. Each triangular overlay applied on the Proposed Plan maps covers some 1.26 hectares of land, extending significantly beyond the features described in Table 1, such that the overlay bears no direct relationship to any visible features on the ground.

63. The Appellant is concerned to ensure that it can continue rural activity including carrying out ancillary earthworks or land disturbance in these areas.

64. If the overlays are to be retained, Rules 1 and 3 of Section 31 need to be amended to provide for cultivation and other land disturbance activities within an archaeological site as a permitted activity.

Relief Sought

65. The Appellant seeks the following relief in relation to Section 31 of the Proposed Plan (and relative to Appendix 1, and the relevant Proposed Plan Maps):

    (a) Delete items 8 and 15 of Table 1 (Archaeological Sites) of Appendix 1 to the Proposed Plan and/or confine the extent of the overlays mapped on the relevant Proposed Plan maps to more accurately reflect the extent of each feature; and/ or

    (b) Amend Rules 1 and 3 of Section 31 to provide for land disturbance associated with cultivation and rural activity within these areas as a permitted activity.

PART F – VARIATION 1, SECTION 7A AND 32A OF PROPOSED PLAN

Reasons for Appeal and Relief Sought

66. In its submissions on Variation 1, the Appellant opposed the mapping of its island properties as having High Natural Character value on the relevant Proposed Plan maps introduced through Variation 1.

67. The Decisions delete the High Natural Character overlay from all of the Appellant's island properties, apart from (principally) the coastal margin areas of Rangipukea Island (Unit 10).

68. To the extent that the High Natural Character overlay continues to be applied, the Appellant maintains all grounds of opposition to those aspects of section 7A and section 32A that were raised in the Appellant's submissions, further submissions and evidence presented to the Hearings Panel in relation to Variation 1.

69. Specifically, and (without limitation) for the reasons stated in the Appellant's submissions, further submissions and evidence in relation to Variation 1, the Appellant seeks by way of relief that:

(a) The remaining area of the High Natural character overlay applied to Rangipukea Island be deleted from the planning maps.

(b) Policy 1a d) and j) (Section 7A) be deleted;

(c) Policy 1c be reframed to require avoidance of significant adverse effects of “inappropriate” subdivision, use and development;

(d) Objective 2 be amended to delete any requirement that areas of high and outstanding natural character be “set aside for legal protection”;

(e) Policy 2a be amended to delete the words “high or outstanding”;

(f) the restrictions in Rule 1 (Section 32A) be deleted such that the requirements of the underlying zone continue to apply;

(g) better provision be made for clearance of vegetation and earthworks as necessary to sustain rural activities in Rules 2 and 3;

(h) Rule 10 be amended such that all forms of subdivision retain status as a restricted discretionary activity (where provided for as such under the underlying zoning);

(i) the assessment criterion 2a) in Table 2 be amended to provide for buildings on ridge lines that are well integrated with the topographical character of the area;

(j) all references to “values and characteristics” within the assessment criteria in Table 2 be deleted unless and until better defined in the District Plan (and similarly in relation to Policy 1c of Section 7A);

(k) the functional need test in criterion 2g) of Table 2 be deleted, along with the reference to the extent to which alternative locations have been considered; and

(l) criteria 1a) and 3a) be deleted.

70. I **attach** the following documents to this notice:

(a) A copy of the Appellants' submissions to the Proposed Plan.

(b) A copy of the Decisions.

(c) A list of names and addresses of persons to be served with a copy of this notice.

(d) The relief sought under paragraph 57(d) above.

Signature: **TASMAN BUILDINGS LIMITED** by their authorised agent:

Martin Williams

Date: 10 June 2016

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

(a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and

(b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* form 38).

**How to obtain copies of documents relating to appeal*

The copy of this notice served on you does not attach a copy of the appellant's submission and (*or* or) the decision (*or* part of the decision) appealed. These documents may be obtained, on request, from the appellant.

*Delete if these documents are attached to copies of the notice of appeal served on other persons.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.