



Level 2, Broker House
14 Vulcan Lane, Auckland
PO Box 1502
Shortland St
Auckland, New Zealand

P. 09 306 2901
M. 021 494 506
E. jeremy@brabant.co.nz

13 June 2016

Thames Coromandel District Council
customer.services@tcdc.govt.nz

By Email

Appeal re decisions on Proposed Thames Coromandel District Plan - Noel Lane and Isaac Lane

I **enclose** a copy of an appeal that have filed today in the Environment Court at Auckland.

The appeal is on behalf of Noel Lane and Isaac Lane.

Yours faithfully

A handwritten signature in black ink, appearing to be 'J Brabant', written in a cursive style.

Jeremy Brabant

And by Fax: 07 868 0234

Before the Environment Court**ENV-2016-AKL-000****In the Matter** of the Resource Management Act 1991**And****In the Matter** Of an appeal under Clause 14, Schedule 1
of the Act**Between** Noel Lane and Isaac Lane**Appellant****And** Thames Coromandel District Council**Respondent**

**Notice of Appeal to Environment Court against Decision on
Proposed Thames Coromandel District Plan**

To: The Registrar
Environment Court
Auckland

1. Noel Lane and Isaac Lane (**Lanes**) appeal parts of a decision of the Thames Coromandel District Council (**Council**) on the Proposed Thames Coromandel District Plan (**Proposed Plan**).
2. The Lanes made a submission to the Proposed Plan.
3. The Lanes are not a trade competitor for the purposes of Section 308D of the Resource Management Act 1991.
4. Council's decisions were publicly notified on 29 April 2016.
5. The decision was made by the Council, in accordance with a recommendation of Hearing Commissioners appointed to

hear submissions to the Proposed Plan. The recommendations in relation to those parts of the decisions appealed are:

- (a) "Outstanding Landscape" overlay (**ONL**): "Recommended Decision Report 6, Resource Management Act 1991, Proposed Thames Coromandel District Plan, Hearing of Submissions, Recommended Decision of Hearings Panel" (Recommendation Report 6);
- (b) Indigenous Vegetation clearance: "Recommended Decision Report 3, Resource Management Act 1991, Proposed Thames Coromandel District Plan, Hearing of Submissions, Recommended Decision of Hearings Panel" (Recommendation Report 3).

6. The decision the Lanes are appealing is:

- (a) The application of a "Outstanding Landscape" overlay (**ONL**) to the property at 130 Waihirere Drive, Tuataewa, and the existing residential settlement of Tuataewa.
- (b) The provisions of 29.3.1(h) regarding clearance of indigenous vegetation outside of the Rural Area.

7. The reasons for the appeal are:

ONL

- (a) The application of the ONL to the property at 130 Waihirere Drive, Tuataewa is inappropriate, and does not represent sustainable management of the resources in question;
- (b) Council failed to properly:

- i. take into account the existing residential settlement and zoning of Tuatēawa,
 - ii. take into account the small size of the adjustment sought, and
 - iii. undertake a balanced cost benefit analysis.
- (a) There is no evidence or reasoning in Recommendation Report 6 or Councils decision indicating the implications for the small number of lots in question (which include the property at 130 Waihirere Drive, Tuatēawa) have been properly considered by Council reporting officers, the Hearing Commissioners, or Council;
- (c) The boundary of the ONL, which generally aligns with cadastral boundaries to the west of Waihirere Drive, cuts from the termination point of Waihirere Drive across to the end of the legal access to the north east, "catching" a small number of lots forming part of the Tuatēawa settlement;
- (d) The historic and current use, development, and subdivision pattern of the land zoned Coastal Living reflects a low-density residential character within a defined area at Tuatēawa. This residential use, development, and pattern of subdivision of the land at Tuatēawa defines its character and distinguishes it from outstanding landscape and natural character areas to the north and east;
- (b) The Lanes put evidence before the Hearing Commissioners, which was not contested, which shows existing areas of vegetation clearance and built

development on the small number of lots which the Lanes say should not have ONL imposed on them;

- (c) The application of the ONL to 130 Waihirere Drive and the existing residential settlement of Tuatēawa largely duplicates the coastal protection provisions included in the Proposed Plan through the "Coastal Living" zone for the subject site and the existing residential settlement area of Tuatēawa. The objectives, policies and development standards of the Coastal Living Zone, and the standards of the Waihirere Structure Plan (which applies to part of the area at issue), achieve the purpose of the Act and the objectives of the Proposed Plan by appropriately controlling development on the sites in question;
- (d) The approach taken in the reporting by Council officers with respect to Opito Bay (a recognition that anticipated and consented subdivision and subsequent built development may impact values of the immediate landscape), reflected in the ultimate recommendation of the Commissioners and decision of Council with respect to Opito Bay, should also be applied to the properties addressed in the submission of the Lanes;
- (e) There are real costs from an efficiency, amenity and functionality perspective for the owners, residents and occupiers of the sites involved if the ONL is imposed. The decision of Council does not reflect a comprehensive and appropriate cost benefit analysis with reference to the Lanes submission;
- (f) In particular:

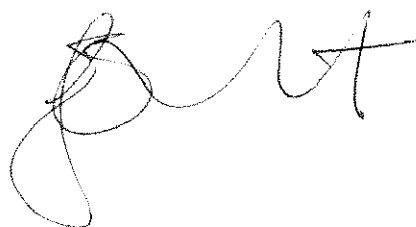
- i. The small area identified by the Lanes is contiguous with and part of the Tuataewa settlement.
 - ii. The Lanes site is part of the Coastal Living Zone.
 - iii. With respect to the required cost benefit analysis, imposition of an ONL will:
 1. impose additional costs on the landowners concerned in terms of consenting and ongoing costs generated by constraints on development (eg. in terms of limits on the form and location of buildings) with respect to the amenity and functionality of sites for residents and occupiers;
 2. erode benefits in terms of efficient use of resources that accrue from enabling development to occur in a less constrained manner on the sites affected.
- (g) The further detailed reasons set out in sections 5 – 8 of the evidence of Mr Karl Cook (dated 7 April 2015), put before the Hearing Commissioners.
- Clearance of indigenous vegetation*
- (h) The Proposed indigenous vegetation provisions in Rule 29.3.1 are too restrictive for sites outside of the Rural Area where construction of a building is anticipated, in accordance with the Coastal Living Zone provisions;
- (i) Rule 29.3.1 should include a permitted activity rule enabling removal of vegetation for a building platform and access to the building platform, per the Operative Plan provisions, where sites do not meet the

definition of 'urban environment' of the RMA but are outside the Rural area.

8. The Lanes seek the following relief:
- (a) That the Overlay Maps be amended to remove the ONL from 130 Waihirere Drive, Tuatēawa and the existing residential settlement area of Tuatēawa.
 - (b) That Rule 29.3.1(h) be amended to include a permitted activity rule enabling removal of vegetation for a building platform and access to the building platform, per the Operative Plan provisions, where sites do not meet the definition of 'urban environment' of the RMA but are outside the Rural area.
 - (a) Such further, other or consequential relief including consequential changes to the provisions of the Proposed Plan as are necessary to give effect to the relief sought in this appeal.
9. The Lanes **attach** the following documents to this notice:
- (a) A copy of their submission (**Annexure A**);
 - (b) A copy of the recommendation of the Hearing Commissioners, Recommended Decision Report 6 (**Annexure B**);
 - (c) A copy of the Proposed District Plan (Decisions Version) Map 7B Overlays – Tuatēawa (**Annexure C**);
 - (d) A copy of the recommendation of the Hearing Commissioners, Recommended Decision Report 3 (**Annexure D**);

- (e) A list of names and addresses of persons to be served with a copy of this notice (**Annexure E**).

Signature: **Jeremy Brabant** as authorised agent for **Noel Lane and Isaac Lane:**



Jeremy Brabant

Date: 13 June 2016

Address for service: Jeremy Brabant
Level 2, Broker House, 14 Vulcan Lane
PO Box 1502, Shortland St
Auckland

Telephone: 021 494 506

Email: Jeremy@brabant.co.nz

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,—

- 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
- 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

Copies of the submission and decisions are not attached to the notice served on other persons - copies may be obtained, on request, from the appellant.

Advice

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

Annexure "A"

Lanes Submission

Annexure "B"

Recommended Decision Report 6

Annexure "C"

Proposed District Plan (Decisions Version) Map 7B Overlays –
Tuataewa

Annexure "D"

Recommended Decision Report 3

Annexure "E"

A list of names and addresses of persons to be served with a copy of this notice

To be supplied.