

**IN THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2016-AKL

IN THE MATTER OF

An appeal to the Environment Court under clause 14 of the First Schedule to the Resource Management Act 1991

AND IN THE MATTER OF

Proposed Thames-Coromandel District Plan

BETWEEN

**ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED**

Appellant

AND

**THAMES-COROMANDEL
DISTRICT COUNCIL**

Respondent

**NOTICE OF APPEAL ON DECISIONS ON PROPOSED THAMES-COROMANDEL
DISTRICT PLAN**

Clause 14(1) of First Schedule of the Resource Management Act 1991

Royal Forest and Bird Protection Society of New Zealand Inc.
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To: The Registrar
Environment Court
PO Box 7147
Auckland

Appellant

1. The Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest and Bird) appeals decisions of the Thames-Coromandel District Council on the Proposed Thames-Coromandel District Plan (the Council, the Plan and the decisions).

Submission

2. Forest and Bird made submissions and further submission on the Plan including Variation 1.
3. Forest and Bird received notice of the decisions on 29 April 2016.

Respondent

4. The decisions were made by the Council.

Trade competition

5. Forest and Bird is not a trade competitor for the purposes of section 309D of the Resource Management Act 1991.

Decisions being appealed

6. The decisions being appealed relate to :
 - a. Biodiversity including sections 6 and 29;
 - b. Coastal Environment including section 7;
 - c. Natural character including section 7A and 32A (Variation 1);
 - d. Mining including sections 14 and 37;
 - e. Subdivision including sections 16 and 38
 - f. Forestry and earthworks including section 56.

- g. Mapping of the Coastal Environment Line.

REASONS FOR APPEAL

General grounds of appeal

- 7. In general terms the grounds of appeal are that the decisions are unreasonable, impractical and inconsistent with the purposes and principles of the Resource Management Act 1991 (RMA) including with respect to:
 - (a) Section 5 – the Council decisions do not promote the sustainable management of natural and physical resources;
 - (b) Section 6 – the Council decisions do not recognise and provide for the protection of significant areas of indigenous vegetation and significant habitats of indigenous fauna;
 - (c) Section 7 – the Council decisions do not have particular regard to the intrinsic values of ecosystems, the maintenance and enhancement of the quality of the environment or the finite characteristics of natural and physical resources;
 - (d) do not give effect to the New Zealand Coastal Policy Statement including policies 13 and 15;
 - (e) do not give effect to the relevant provisions of the Waikato Regional Policy Statement (RPS);
 - (f) are contrary to the relevant provisions in the Hauraki Gulf Marine Park Act 2000 as well as other strategies (including the Coromandel Blueprint and the Waikato Conservation Management Strategy);
 - (g) Section 31 (1) (b) (iii) - the Council decisions do not contain sufficient provisions for the control of land use and development for the maintenance of indigenous biological diversity;
 - (h) do not represent best resource management practice.

Particular reasons for appeal

- 8. The particular reasons for appeal are set out below.

Biodiversity – sections 6 & 29

9. The Plan fails to give effect to section 6 of the RMA. The decision does not provide proper planning framework for the identification and protection of significant vegetation and habitats, as required under s6(c) of the RMA. Notably, under the proposed plan applications that relate to a site identified as an SNA in the Report must undertake a site-specific assessment to confirm that status.¹ Identification of SNAs is not addressed in the operative provisions.
10. The decision does not give effect to the New Zealand Coastal Policy Statement, including Policy 11.
11. The decision does not give effect to the Waikato Regional Policy Statement, including Chapter 11.
12. Section 29.1 of the plan relies solely on the Waikato Regional Council Technical Report 2010/36 which identified SNAs across Thames-Coromandel District using the RPS criteria. The decision does not identify all areas of significance, or afford the ones identified any special protection in the plan.
13. Despite Chapter 11 of the WRPS, there is no process or method for developing a schedule or map of identified sites.
14. The rules on permitted vegetation clearance are too loose and could result in large scale loss of indigenous vegetation and adverse effects on threatened/at risk species.
15. The rules on vegetation clearance are not linked to Threatened/At Risk Species or Threatened Environments, however these warrant special protection.
16. The plan is unclear about how it addresses general vegetation clearance for example indigenous vegetation vs general vegetation. The definition of indigenous vegetation relies on the RPS, however it is unclear when there is a mixture of both exotic and indigenous vegetation.

¹ Section 6 Biodiversity, Background.

17. There is no definition of clearance, which makes those rules around clearance very uncertain and could potentially lead to habitat loss through activities which result in indigenous vegetation being out-competed by introduced species; effectively a form of indigenous vegetation clearance.
18. There is no rule specifically regarding the clearance of indigenous vegetation within SNA's. This is addressed through indigenous vegetation clearance rules which permit unlimited clearance of manuka and kanuka (much of which could be significant) and permit clearance for land survey work, tracks and fences without need to identify if it is through a SNA.

Coastal Environment – section 7

19. The Plan fails to give effect to section 6 of the RMA.
20. Policy 1a(d) is intended to allow for migration inland of natural features, however it is not at all clear about how this is followed through with in the rules and how it will be achieved.
21. It is not appropriate to exclude developed urban areas from the Coastal Environment Line (CEL). This is because developed urban areas do extend into the coastal environment and so they should be included in that line. Excluding developed urban areas from the CEL means that these areas will automatically get a low natural character ranking. However, there can often be significant coastal restoration works that take place in heavily developed urban areas that will enhance natural character values.
22. There is no sound reason given for adopting a coastal environment line (CEL) that is different from that in the RPS. This does not give effect to the RPS.
23. The plan does not adequately address the effects of climate change, specifically in terms of sea-level rise and subdivision setbacks, and allowing coastal ecosystems to migrate inland.

Natural Character – Section 7A and 32A

24. The Plan fails to give effect to section 6 of the RMA and the NZCPS.
25. The methodology for identifying natural character in the coastal environment is insufficient to assess the biophysical characteristics. For

example the Otama wetland which contains remnant coastal swamp shrubland is not mapped as either high or outstanding natural character. The mapping does not include the best example of a shingle beach on the Coromandel just south of Amodeo

26. The plan also fails to consider natural character outside the coastal environment.

Mining Activities – Section 14 and 37

27. The Plan fails to give effect to section 6 of the RMA. For example it does not recognise the potential for adverse effects on significant indigenous vegetation or habitats as required by section 6(c). Further most of section 7 matters have not been given any regard in the Plan such as (d) intrinsic values of ecosystems, (f) maintenance and enhancement of the quality of the environment, and (g) any finite characteristics of natural and physical resources. There are no provisions in the Plan that gives reference to indigenous vegetation or biodiversity.
28. The Plan does not give full effect to Schedule 4 of the Crown Minerals Act 1991.

Subdivision – Section 16 and 38

29. The Plan leaves out specific mention of climate change and the effects of sea-level rise.

Forestry and earthworks

30. The Plan does not adequately set out that it is the Waikato Regional Council's responsibility to govern forestry effects on soil erosion, discharges to waterways, roads and tracking etc. For erosion and sediment control section 42 of the Plan merely provides a note under point 3 to view the Guidelines for Soil Disturbing Activities available on Waikato Regional Council website.
31. The plan provides for afforestation and earthworks in indigenous vegetation, including SNA's as a permitted activity. This is not appropriate.
32. The buffers from afforestation and replanted forest are inadequate .

33. The Plan does not provide a definition of forestry.

RELIEF SOUGHT

34. The relief sought by Forest & Bird is set out below. Where applicable new words are shown as underlined and deletions are shown as crossed out.

Biodiversity

35. Forest & Bird seeks the following relief:

- (a) Add a new issue which acknowledges the threats to biodiversity and need for action.
- (b) Add a new objective requiring protection of significant indigenous vegetation and significant habitat of indigenous fauna.
- (c) Add a new objective seeking to achieve no net loss of biodiversity and preferably a net biodiversity gain across the Thames-Coromandel District.
- (d) Amend the policies to provide clear direction on the implementation of biodiversity offsetting, including the articulation of principles of offsetting such as require adherence to the mitigation hierarchy.
- (e) Provide additional non-regulatory methods.
- (f) Amend the PTCDP to provide for additions to the SNA layer over time.
- (g) Retain 29.2 Rule 2 as notified, except provide that the rule only applies on allotment of less than 250m².
- (h) Add a policy as follows:

Identify and protect ecosystems which support significant indigenous vegetation and habitats of indigenous fauna and ensure that any reduction in the quality and extent of the indigenous vegetation and habitats of these areas is avoided.

Explanation: Indigenous flora and habitats of indigenous fauna considered to be significant will be identified using the following criteria:

(a) Significance criteria:

Representativeness

- The extent to which indigenous biodiversity represents what was originally characteristic of the ecological district.

Diversity & pattern

- The extent of natural diversity present within an area. This includes physical, habitat, biological, genetic and ecological processes.
- Biological diversity can be further subdivided into species (number of species and abundance) and community diversity.
- Ecotones are particularly important as transitions between adjacent communities or patterns as they are usually very productive and support high species diversity.
- Some areas are naturally of low diversity, but support the full range of diversity expected for that habitat type.

Rarity & distinctiveness

These two are often combined because of their similarities and relationships, e.g. uncommon, unusual or atypical.

- The extent to which an area supports an indigenous species, habitat or community which is rare in the ecological district or threatened/at risk nationally.
- The extent to which an area supports uncommon physical and ecological features in the ecological district.
- The extent to which an area is characterised by endemism, relict distributions, type localities, distribution limits, atypical bedrock/habitats, unique or specialised species. This includes geological, scientific or other special features.
- Supporting protected indigenous fauna for some part of their life-cycle (e.g. breeding, feeding, moulting, roosting), whether on a regular or infrequent basis;
- Playing an important role in the life-cycle of protected migratory indigenous fauna;

Naturalness

- The extent to which the area is modified by human activity, including the presence of weeds or pests.

- This must be assessed at the ecological district scale to reflect the degree of modification that is characteristic of that district.

Ecological context

- The extent to which the area has ecological value due to its location and functioning in relation to its surroundings e.g. hydrology, pollination and dispersal.
- An area may be ecologically significant because of its connections to a neighbouring area, or as part of a network of areas of fauna habitat, or as a buffer.
- The degree to which the size and shape of an area contributes to its natural diversity. Larger areas and its life supporting or carrying capacity. Larger areas tend to support greater natural diversity, and compact areas are less influenced by edge effects.
- Small areas do contribute to total genetic diversity and may be viable habitats for invertebrates and threatened plants. They can also collectively have increased value e.g. scattered small wetlands used by waterbirds.

(b) Whether the affected indigenous vegetation or habitat of indigenous fauna is one of the four priorities specified in the Statement of National Priorities for Protecting Rare and Threatened Indigenous Biodiversity on Private Land (MfE 2007);

- (i) In addition to this policy, amend the provisions to provide for the identification and protection of SNA's in accordance with Chapter 11 of Waikato Regional Policy Statement PS, indigenous vegetation clearance, land disturbance and land drainage within SNA's a non-complying activity.
- (j) Add objectives and associated policies, methods, rules and performance standards that give effect to sustainably managing the use and development of rural land, and of discharges of contaminants.
- (k) Amend the PTCDP to ensure a greater focus is placed on enhancement and restoration of biodiversity across the District.
- (l) Amend the rules relating to vegetation clearance in the Coastal Environment so that where Policy 11 NZCPS would apply vegetation clearance is prohibited (where adverse effects are

significant) or non-complying activity. Forest and Bird seeks that section 29.1 be amended to include a map identifying all areas of significance. Add a definition of clearance set out below, be included in the plan.

Clearance, Modification or Removal of Indigenous Vegetation:
means the felling, clearing or modification of any indigenous vegetation by cutting, crushing, cultivation, (including, oversowing, top dressing and direct drilling), spraying, (including effluent or water, or water containing contaminant) burning, grazing or planting of exotic species.

36. Forest and Bird seeks that a policy to include criteria to better identify and protect areas of significant indigenous vegetation and significant habitats of indigenous fauna in accordance with this notice of appeal, be included in the plan.

Coastal Environment

37. Forest and Bird seeks a policy that provides for guidance on how inland migration of natural features will be provided for.
38. The plan needs to better address the seriousness of the effects of climate change in the coastal environment. Forest and Bird therefore seeks a policy that prohibits all new developments in areas subject to coastal hazards including sea level rise.
39. Forest & Bird also seeks that:
- (a) Rule 2 provide that clearance of indigenous vegetation, earthworks and afforestation in SNA's in the coastal environment be non-complying; and
 - (b) The CEL be amended to that shown in the RPS.

Natural Character and Outstanding Natural Character

40. Add a new policy which provides for the assessment of natural character (high and outstanding) in accordance with section 6 and the NZCPS including biophysical characteristics and provides for the addition of sites in the coastal environment and the margins of lakes, rivers and wetlands.

41. Amend Rule 32.3 Rule 3(4) so that activities not complying with Rules 32.2(1)-(3) are non-complying and make it clear that indigenous vegetation rules also apply.

Mining

42. Forest and Bird seeks the following relief:
- (a) amendment to section 37.3 Rule 2 that exploration be a discretionary activity rather than a permitted activity; and
 - (b) an additional note that where mining involves the clearance of indigenous vegetation the rules relating to the clearance of indigenous vegetation apply in accordance with this appeal (i.e. mining within SNA's is non-complying)

Subdivision

43. Forest and Bird seeks that sea-level rise be planned into subdivision setbacks, not just for building platforms.

Forestry and earthworks

44. Forest and Bird seeks a policy that provides clear guidance for applicants wishing to undertake forestry activities that they need to apply to the Waikato Regional Council for permits.
45. Forestry in areas of indigenous vegetation should be a discretionary activity and non-complying in SNA's.
46. Earthworks in areas of indigenous vegetation should be a discretionary activity and non-complying in SNA's.
47. Alternatively the plan should be clear that the rules regarding clearance of indigenous apply to earthworks.
48. Increase buffers from new and replanted forestry to water bodies to 30 m.
49. Forest and Bird seeks that the definition of forestry set out below be included in the plan under section 3 definitions.

Forestry - means the management of land for commercial wood production, inclusive of all phases of the production cycle including ground and or vegetation clearance for access and planting, planting (and re-planting), thinning, spraying, pruning and maintenance, felling and the extraction of timber from the site. Forestry includes any quarrying or gravel extraction activities on the site associated with private access road formation, any traffic movements associated with the production cycle, and forestry-related scientific or research activities.

The term forestry also includes any planting and management of trees for water and soil conservation, carbon sequestration, shelter belts, and farm-forestry activities that are not necessarily commercial-scale wood production.

For the purposes of this plan the term forestry excludes associated processing activities such as sawmills, pulp and paper production and other wood processing facilities, except for the operation of mobile sawmill facilities on a site for no longer than 3 months in any 12-month period.

Other relief

50. Forest and Bird also seeks any other relief:

- (a) consequential on the above relief sought; and/or
- (b) as is necessary to give effect to the relief sought seeks the relief identified above; and/or
- (c) such other relief as may be considered appropriate by the Court and/or the parties in agreement.

Attachments

51. Forest and Bird attach the following documents to this notice:

- (a) Copy of Forest and Bird's submission;
- (b) Copy of relevant Council Decisions on submissions;
- (c) Schedule of names and addresses of persons to be served.

Dated 13 June 2016



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Peter Anderson
Counsel for Royal Forest and Bird Protection Society NZ Inc

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Attention: Peter Anderson

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*

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.

Advice

If you have any questions about this notice, contact the Environment Court in

Auckland, Wellington, or Christchurch.