

BEFORE THE ENVIRONMENT COURT

AUCKLAND REGISTRY

ENV-

IN THE MATTER: of the Resource Management Act 1991 (the “Act”)

AND

IN THE MATTER: an appeal pursuant to clause 14 of the First Schedule to the Act

BETWEEN: **MR MAX TOOMEY**
MS COLLEEN TOOMEY
MR STEPHEN NATHAN, QC

Appellants

AND: **THAMES COROMANDEL DISTRICT COUNCIL**

Respondent

**NOTICE OF APPEAL AGAINST DECISIONS ON THE
PROPOSED THAMES COROMANDEL DISTRICT PLAN
and
DECISIONS ON VARIATION 1 TO THE PROPOSED DISTRICT PLAN**

**NOTICE OF APPEAL AGAINST DECISIONS ON THE PROPOSED THAMES COROMANDEL
DISTRICT PLAN AND VARIATION 1 TO THE PROPOSED DISTRICT PLAN
Pursuant to Clause 14(1) of Schedule 1, Resource Management Act 1991**

TO: The Registrar
Environment Court
AUCKLAND

1. We, Ms Colleen Toomey, Max Toomey and Mr Stephen Nathan QC (together “the Appellants”) appeal parts of a decision (“the “Decision”) by the Thames Coromandel District Council (“the Respondent”) in relation to the proposed Thames Coromandel District Plan (“Proposed Plan”) and Variation 1 to the Proposed Plan (“Variation 1”)
2. We made submissions on the Proposed Plan and Variation 1.
3. We are not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. We received notice of the Decision on or about 29 April 2016.
5. The Decision was made by a Hearings Panel of Thames Coromandel District Council.
6. The parts of the Decision that we are appealing are:
 - a. Recommended Decision Report 6 (Landscape), addressing Section 9 Landscape Overlays, Section 32 Landscape Overlay Rules;
 - b. Recommended Decision Report 4 (Coastal Overlay) addressing Section 7 Coastal Overlay
 - c. The Decisions Version of the Planning Maps (specifically Maps 7 and 7A Overlays) showing of areas of Outstanding Natural Landscape, in particular the decision not to extend the proposed Waikawau Bay Outstanding Natural Landscape as proposed in our submission.
 - d. Variation 1 Natural Character Decisions set out in Report 31.

- e. The Decisions Version of the Planning Maps (specifically Maps 7 and 7A Overlays) as a result of not reviewing the definition of Natural Character and applying the appropriate natural character attributes to the Natural Character Overlay to the Coastal Environment Line or to extent sought for Waikawau Bay Natural Character Units.

7. The reasons for the appeal are:

- a. The Decisions Report and supporting Council documentation (Section 42A Report/Section 32AA Further Evaluation Report), and the landscape assessments that informed the Proposed Plan, did not apply the appropriate criteria, attributes, or tests in determining the spatial identification of landscapes, the differentiation of landscapes and landscape features, the evaluation of landscape and natural features, and the assessment of natural character. The Overlays for Landscape and Features of Outstanding or High Natural Character are not spatially applied correctly. They fail to give full and proper effect to the NZCPS Policy 13 and Policy 15.
- b. The landscape studies that informed the plan and the resulting ONFL overlay fail to differentiate between outstanding natural landscapes and outstanding natural features. Many areas identified as ONL are in fact more correctly regarded as ONF. The Waikawau Beach ONL is an example of an area that should be regarded as an ONF. The Waikawau Beach landscape unit cannot be regarded as a landscape for s6(b) purposes. The landscape studies and the plan overlays have failed to identify a Waikawau Bay landscape, and have failed to consider whether such a landscape, properly defined, is also an outstanding natural landscape.
- c. The Coastal Environment Line delineating the extent of the Coastal Environment Overlay cannot be interpreted with any degree of accuracy and the local level, is lacking in clarity and certainty, in respect to its position on the ground. Nor are there any sound reasons why it is not located in the position shown in the operative Waikato Regional Policy Statement (WRPS). Further the decisions version CEL fails to give effect to the Natural Character provisions of the WRPS.
- d. The Beca Ltd Natural Character assessment and Variation 1 failed to adequately identify natural character attributes, particularly those associated with the identification of the ONC and areas of HNC.
- e. There were inconsistencies in the s42A reports concerning the manner in which submissions have been addressed. This is, in part, a result of the Panel's reliance on background reports that have adopted different attributes and methods of assessment.

The decision has resulted in artificial and/or arbitrary divisions where none should exist. As a result the application of landscape and natural character overlays fail to provide a proper and holistic perceptual analysis to a single area. This is particularly the case for the Waikawau Bay area.

- f. The application of the overlay rules for ONF&L, CEL and ONC and HNC have not adequately considered the adverse effects that may occur, particularly as a result of subdivision, earthworks and introduction of built form. The overlay rules have not been amended to introduce appropriate levels of management to avoid, remedy or mitigate adverse effects. The rules proposed will not be an effective means of meeting the requirements of s6 RMA, NZCPS and WRPS and the objectives and policies of the Proposed District Plan. They will be inefficient because they provide a level of intervention that is not justified given the low level of effectiveness they will achieve in preserving natural character and protecting it from inappropriate development. The proposed rules will result in allowing for wholly inappropriate development
- g. The provisions relating to subdivision and development in return for restoration and legal protection, for instance cannot apply to areas of ONC or HNC or within areas of ONF& ONL. They are untenable and contrary to Policy 13(1)(a) NZCPS. Restoration and legal protection can only properly occur where restoration of degraded areas on the margins is undertaken and where the development following subdivision lies outside the landscape or natural character overlay and where all other means of avoidance, remediation and mitigation have been undertaken.
- h. Variation 1 fails to give effect to the RMA for preservation of the Natural Character of wetlands, lakes and rivers and their margins and does not give full effect to the NZCPS Policy 13(1)(b) to provide preservation and protection of the Natural Character of the coastal environment outside areas identified as ONC and HNC.

8. We seek the following relief:

- a. Establish the inland extent of the Coastal Environment Overlay in accordance with the line shown in the WRPS.
- b. Remove the artificial divisions of ONL& ONF and ONF & HNC at Waikawau Bay within the Coastal Environment (as redefined in (a) above) and create a properly holistic, single area (whilst recognizing there may be slight variations in perceptual qualities within the larger area).

- c. Alter Planning Maps 6, 7 and 7A Overlays to show the following:
- the ONF&L for Waikawau Bay as produced by Dr Michael Steven in the Hearing on Landscape Overlays (see Figure 6 of his statement of evidence presented at the Hearing and included in Attachment C).
 - The HNC for Waikawau Bay to accord with the ONF&L as amended above or alternatively by application of the complete set of correct attributes to units 45, 46 and 48 taking account of them in the wider context of Waikawau Bay in a holistic sense.
- d. Retain the Amenity Landscape Overlay to ensure the appropriate buffer areas are provided for ONF&L and ONC and HNC overlays.
- e. Make alterations to the rule sets for the overlays in accordance with and to give effect, or like effect, to the Table providing for appropriate scale development which was produced by Mr Graeme Lawrence in the Hearing on Landscape Overlays and Rules (Attachment C).
- f. Amend 7A.3 Natural Character of the Coastal Environment Objectives and Policies Objective 2 and Policy 2a to prevent the creation of any development within an ONC or HNC area.

Where subdivision of or within an ONC or HNC area is being carried out to create legal protection, development must be relocated outside the ONC or HNC Overlay and only be provided for if the ONC or HNC area is being enlarged or added to.

Reword Policy2a to ensure that development within an ONC or HNC area is avoided.

In Policy 2a ensure subdivision or development that restores or enhances attributes or qualities of natural character of land in order to expand an existing Natural Character Overlay Area; and is only provided for only where:

- the development occurs outside the Natural Character Area when combined with the additional area to be protected ; and
- legal protection is put in place to achieve an offset of adverse effects of subdivision or development within the coastal environment , that is when avoidance, remedy and mitigation measures have been fully implemented.

- g. Amend the conservation lot policy and rules in Section 16 and Section 38 to prevent new lots which provide development opportunities within an ONF, ONL or area of HNC or ONC.

- h. Make the necessary consequential amendments or alterations changes that may be required.
- i. In the alternative or in addition to any one or more of the above make the alteration set out in the relief sought on pages 13-17 of the Toomey and Nathan submission on Variation 1 (See Attachment A)

9. We attach the following documents to this notice:

- a. a copy of our submissions: (Attachment A)
- b. a copy of the relevant decisions (*or* part of the decision): (Attachment B)
- c. a copy of the Dr Steven's Map of ONL& F & Mr Lawrence's Table of Standards for Houses by Zone & Overlay (Attachment C)
- d. list of names and addresses of persons to be served with a copy of this notice.

(Awaiting advice from the Thames Coromandel District Council)



Graeme Lawrence

Authorised Person

12 June 2016

ADDRESS FOR SERVICE OF APPELLANTS

Stephen Nathan QC Colleen Toomey & Max Toomey

C/o Lawrence Cross Chapman & Co Ltd

PO Box 533

THAMES 533

Phone: 027 248 0226

Email: graeme@lcc-planning.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 and you lodge a notice of your wish to be a party to the proceedings (in [form 33](#)) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends. 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 IIA](#) 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.

Contact details of Environment Court for lodging documents

Documents may be lodged with the Environment Court by lodging them with the Registrar.

The Auckland address of the Environment Court is: 8th Floor, District Court Building

3 Kingston Street Auckland

Its postal address is:

P O Box 7147

Wellesley Street Auckland

And its telephone and fax numbers are: Telephone: (09) 916 9091

Fax: (09) 916 9090