

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: **Brian and Karen McMillan**

Appellants

AND: **THAMES COROMANDEL DISTRICT COUNCIL**

Respondent

**NOTICE OF APPEAL AGAINST DECISIONS ON THE
PROPOSED THAMES COROMANDEL DISTRICT PLAN**

**NOTICE OF APPEAL AGAINST DECISIONS ON THE PROPOSED THAMES COROMANDEL
DISTRICT PLAN**

Pursuant to Clause 14(1) of Schedule 1, Resource Management Act 1991

TO: The Registrar
Environment Court
AUCKLAND

1. We, Brian and Karen McMillan (“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”)
2. We made submissions on the Proposed Plan.
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. The Hearing Decisions Report 29A; and
 - b. The decision on the Thames Coromandel District Council Public work Designation TC 117 on Overlay Map 11E for Proposed Road Pottery Lane Coromandel over Lot 4 DPS 62243 and included in Appendix 2 Designations Schedule;
7. The reasons for the appeal are:
 - a. The recent decisions by the Thames Coromandel District Council to grant consent to new commercial activities served by Pottery Lane including the Coromandel Supermarket was made on the basis that they would have no adverse effects. These decisions were made with the existing Pottery Lane road widths in place and on the basis that no other parties were affected.
 - b. Brian and Karen McMillan are owners of Lot 4 DPS 62243 and would have expected to be considered affected parties if their land was required to widen Pottery Lane to

provide for the increased generation of traffic by a Supermarket site for customer parking and loading by service vehicles including the heavy vehicles required. They were not.

- c. The appellants had previously offered the land to Council for road widening and the offer was turned down.
- d. The appellants having explored the opportunities open to them to provide the land to Council for road widening or parking and access and having brought to the Council's attention that they considered they would be adversely affected by the supermarket activities and assured that the land was not required and that they would not be affected, then made business decisions that rely on the land being available for their use in association with other commercial land they own and have recently tenanted in the vicinity.
- e. The Council as designating authority did not approach the McMillans or consult with them before the land was included in the schedule of public works and designated on the Planning Map. They learned of the designation through word of mouth from a third party.
- f. The Staff Section 42A Report is not correct in several respects and has not adequately considered the options available to the Council in respect to the design and function of Pottery Lane. There has been no identification of the purpose of the designation, that is, why Pottery Lane must be widened. Nor has there been any consideration of the alternatives available. For that reason there is no basis on which determine whether the work and the designation are reasonably required because the Designating authority has not established the purpose.
- g. The Hearings Panel decision erroneously formed the conclusion that the relief sought at the Hearing was a request for a land swap. This was not a correct summary of the relief sought. The relief sought was that the designation be altered to provide a designation over an equal area, currently part of the existing public road, to be designated "road to close" with underlying zone Commercial to enable road closing procedures to take place so that land that could be made available for loading, parking and storage as an offset for use by the businesses affected by the designation. The appellants accept that the designation cannot include a "land swap". The designation needs to be modified or "altered" so that land equivalent to that taken could be made available for uses by businesses affected when the designating authority wish to take the designated land.

- h. The appellants consider the designation in its current form will significant adverse effects on the environment, including the following:
- It will remove carparking located on the land to meet conditions of resource consent for the Star & Garter Restaurant and Bar.
 - The loss of the land will restrict the development opportunities planned for 2 Wharf Road which is a small lot, with an outdated building that is to be replaced for commercial activities at ground floor and visitor accommodation above in accordance with zone requirements. Activities established at 2 Wharf road will require additional land for parking and storage.
 - The land is required for the storage and other uses secondary or accessory to the businesses of the Star and Garter (5 Kapanga Road) and Pepper Tree Restaurant and Bar (31 Kapanaga Road) both recently tenanted with the additional land for the businesses committed for their use.

8. We seek the following relief:

- a. **Withdraw the requirement for Lot 4 DPS 62243 to be Proposed Road at Pottery Lane Coromandel by deleting TC117 from the schedule; or alternatively**
- b. **Alter the designation to include an equal or similar area of land that is proposed to be taken for road to be designated “Closed road” or “road to stop”. The designation for ”closed road ”/ “Road to Stop” be located at the rear of 2 Wharf Road and 5 and 31 Kapanga Road where Pottery Lane widens beyond the standard carriageway width established for Pottery Lane taking into account the land taken for road (widening).**

9. We attach the following documents to this notice:

- a. a copy of our submission
- b. a copy of the relevant decision (*or* part of the decision):
- c. a list of names and addresses of persons to be served with a copy of this notice.



Signed by Graeme Lawrence

Authorized person

Dated 10 June 2016

ADDRESS FOR SERVICE OF APPELLANTS

Brian and Karen McMillan

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) 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