

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2016-AKL-

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14(1) of the First
Schedule of the Act in relation to the Proposed
Thames-Coromandel District Plan

BETWEEN

**ENVIRONMENTAL DEFENCE SOCIETY
INCORPORATED**

Appellant

AND

THAMES-COROMANDEL DISTRICT COUNCIL

Respondent

NOTICE OF APPEAL BY ENVIRONMENTAL DEFENCE SOCIETY

Environmental Defence Society
PO Box 91736
Victoria St West
AUCKLAND 1142
madeleine@eds.org.nz

TO: The Registrar
Environment Court
AUCKLAND

INTRODUCTION

1. The Environmental Defence Society Incorporated (**Appellant**) appeals against part of the decision of Thames-Coromandel District Council (**Respondent**) on the Proposed Thames-Coromandel District Plan (**Proposed Plan**).
2. The Appellant is a not-for-profit environmental advocacy organisation, comprised of resource management professionals who are committed to improving environmental outcomes within New Zealand.
3. The Appellant made a submission and further submissions on the Proposed Plan.
4. The Appellant is not a trade competitor for the purposes of s308D of the Resource Management Act 1991 (**RMA**).
5. The Appellant received notice of the decision on 29 April 2016.
6. The decision was made by the Respondent.

PARTS OF THE DECISION BEING APPEALED

7. The parts of the decision being appealed are those relating to:
 - a. Part II - Overlay Issues, Objectives and Policies:
 - i. Section 6 Biodiversity.
 - ii. Section 7 Coastal Environment.
 - iii. Section 7A Natural Character of the Coastal Environment.
 - iv. Section 9 Outstanding Natural Features and Landscapes.

- b. Part III – District-wide Issues, Objectives and Policies:
 - i. Section 15 Settlement Development & Growth.
 - ii. Section 16 Subdivision.
 - iii. Section 24 Rural Area.
- c. Part VI – Overlay Rules:
 - i. Section 29 Biodiversity.
 - ii. Section 32 Outstanding Natural Features and Landscapes.
 - iii. Section 32A Natural Character of the Coastal Environment.
- d. Part VII – District-wide Rules:
 - i. Section 38 Subdivision.
- e. Part VIII – Zone Rules:
 - i. Section 56 Rural Zone.
- f. Mapping:
 - i. The Coastal Environment Line.
 - ii. Natural Character Unit Maps¹: 5-14, 19, 22-24, 27, 33, 35-38, 43, 44, 46, 52, 59, 60, 65, 72-74, 77.
- g. Other:
 - i. Natural character of inland water bodies.

¹ Unit numbers as per notified Variation 1-Natural Character.

REASONS FOR THE APPEAL

General reasons

8. The Appellant says the Proposed Plan:
 - a. Does not promote the sustainable management of natural and physical resources under s5 RMA.
 - b. Does not adequately recognise and provide for matters of national importance under s6 RMA, in particular s6(a), s6(b) and s6(c).
 - c. Does not have adequate regard to the matters in s7 RMA, in particular s7(b), s7(c), s7(d), and s7(f).
 - d. Represents a failure of the Respondent to fulfil its functions under s31 RMA.
 - e. Does not have adequate regard to the Proposed Waikato Regional Policy Statement (**RPS**) as required under s74(2)(a)(i) RMA.
 - f. Does not give effect to the National Policy Statement for Fresh Water Management 2014 (**NPSFM**) or the New Zealand Coastal Policy Statement 2010 (**NZCPS**) as required under s75(3)(a) and s75(3)(b) RMA.
 - g. Does provide for policies which are the most appropriate way to achieve the Proposed Plan's objectives in terms of their efficiency and effectiveness and therefore is not appropriate in terms of s32 RMA.

Specific reasons

9. Without detracting from the generality of the above the following, specific reasons are advanced:

Strategic settlement, development and growth

Consolidation

10. The Proposed Plan should set a strategic framework providing for the consolidation of settlement, development and growth at existing urban settlements, in particular the three main centres of Thames, Whitianga and Whangamata. This directs development towards areas that are already equipped with existing infrastructure and where environmental values are already compromised. Development outside existing urban settlements should be subject to more stringent restrictions. Outstanding Natural Features and Landscapes (**ONFL**), areas that have Outstanding Natural Character (**ONC**) and Significant Natural Areas (**SNA**) should receive the highest level of protection. High Natural Character areas (**HNC**) and areas with high amenity values – in particular areas where the Rural Zone and Coastal Environment overlap - should also receive protection albeit of a lesser stringency.
11. This approach is consistent with the Part 2 RMA, the NZCPS and the RPS, and underpins this appeal. It is efficient.² It ensures preservation and protection where that is required.³ It will avoid sprawling and sporadic patterns of development.⁴ It ensures development occurs in a planned and co-ordinated manner that is focused on existing settlements.⁵
12. The Proposed Plan is not sufficiently directive to achieve this outcome.
13. EDS seeks:
 - a. Section 15 Policy 1a be amended as follows:

² Section 7(b) RMA.

³ Section 6(a), s6(b), s6(c) and s7(c) RMA and Policies 11, 13, 15 NZCPS.

⁴ Policy 6 NZCPS.

⁵ Policy 6.9 RPS.

Settlement development and growth should be focused towards ~~make use of opportunities for~~ consolidation and redevelopment of existing urban settlements.

- b. That 'existing urban settlements', including the three main centres of Thames, Whitianga and Whanagamata, be specifically identified as the areas where development is to be focused.
- c. Other consequential amendments as required to carry this directive through the Proposed Plan.

Subdivision

Standard Subdivision

- 14. Subdivision is a critical tool in achieving strategic and consolidated development. The Proposed Plan should direct where subdivision is appropriate and where it should not occur. A tiered approach should be applied with the most stringent restrictions on land of the highest natural value.
- 15. The use of hierarchies is a defining feature of the RMA. This is carried through into the NZCPS and the RPS. ONCs, ONFLs and SNAs sit at the top of the hierarchy. Their protection is a matter of national importance.⁶ HNCs and areas with high amenity value sit below but above areas where only the underlying zoning applies.⁷
- 16. This should be reflected in the Proposed Plan's approach to subdivision. Non-complying status for subdivision in ONLs and ONCs and failing to provide direction on subdivision in SNAs is inadequate. It fails to ensure that the social and cultural expectations that the district's highest value natural areas will be protected, and that new

⁶ Section 6 RMA.

⁷ For example s7(c) RMA, Policies 13(1)(b) and 15(b) NZCPS, and Policy 12.4 and Method 12.4.1 RPS.

development occurs in a co-ordinated manner that is compatible with the Proposed Plan and the strategic allocation of resources.⁸ Prohibited status is required for areas at the top of the hierarchy. The activity status of second tier areas should be similarly scaled up.

17. EDS seeks that:
 - a. Prohibited activity status be applied to standard subdivision in ONLs, ONCs and SNAs.
 - b. Non-complying activity status be applied to standard subdivision in HNCs.
 - c. Consequential changes to the objectives and policies in Sections 6, 7, 7A, 9, and 16 necessary to support a prohibition on subdivision in ONFLs, ONCs and SNAs and non-complying activity status for HNCs.

Incentive subdivision

18. Section 38 Rule 8 – Conservation lots and Rule 11 Environmental benefit lots provide for subdivision opportunities in the Rural Area as an incentive to, and a reward for, protection, enhancement or restoration of indigenous biodiversity. Rule 8 is targeted at areas to achieve the “*greatest benefit to indigenous biodiversity in the district*”.⁹ Rule 11 is targeted at underrepresented indigenous ecosystems, natural character, and areas that provide links or stepping stones between larger ecological areas.¹⁰
19. Rules 8 and 11 fail to provide sufficient detail regarding (*inter alia*) the quality of the area to be protected and the future obligations of the land owner necessary to ensure outcomes are significant and ongoing,

⁸ The reasons identified by the Court of Appeal in *Coromandel Watchdog v Chief Executive of Ministry of Economic Development* [2007] NZCA 473 at [34].

⁹ Section 38 Subdivision at [38.2.3].

¹⁰ *Ibid.*

and to prevent perverse environmental outcomes from the Rules' application.

20. The Proposed Plan also fails to specify the activity status of conservation lot subdivision under Rule 8 in ONCs and HNCs. This means that the restricted discretionary activity status attached to the underlying Rural Zone applies. Conservation lot subdivision is a non-complying activity in ONFLs. ONCs should receive the same level of protection. Consistent with a tiered management approach the activity status for HNCs should be similarly scaled up.

21. EDS seeks that:

a. Rules 8 and 11 be amended to include more detailed and specific ecological standards that must be met in respect of the specific features of the area to be protected and the actions required to ensure protected areas are appropriately managed. The rules should identify the minimum size of a natural area (e.g. at least 5000m² for a wetland and 5-10ha for forest), and the ecological quality and value (e.g. the RPS criteria an area meets) to qualify for an environmental lot. The rules should also identify restoration and protection standards and monitoring timeframes. For example, revegetation planting density and standards, how restoration will provide buffers and ecological linkages, fencing standards, requirements for ongoing pest and weed control, and require protection of the entire significant ecological area/feature on a site.

b. Non-complying activity status be applied to conservation lot subdivision in ONCs.

c. Discretionary activity status be applied to conservation lot subdivision in HNCs.

Management – objectives and policies

22. Section 16, Objective 1 states that subdivision should be provided for in a manner consistent with the underlying zone while maintaining the amenity values of the surrounding landscape. “Surrounding landscapes” can also exhibit other natural values. If they do, adjacent subdivision will need to be cognisant of those values.

23. EDS seeks that:

- a. Section 16, Objective 1 be amended as follows (or words to similar effect):

Subdivision benefits the district by being located and designed to provide for activities anticipated in the zone while maintaining the amenity values and appropriately providing for the landscape, natural character, ecological and heritage values of the surrounding landscape.

Natural Character Overlay

Inland water bodies

24. The Proposed Plan fails to provide for the preservation of natural character of inland water bodies.¹¹ Relying on reference to protection and preservation of these areas in the general settlement and development section¹² is inadequate.¹³ Section 6(a) RMA and Policy 12.3 RPS impose a duty on the Respondent to preserve the natural character of all wetlands, lakes and rivers and their margins, not only those in the coastal environment.¹⁴ That a national policy instrument

¹¹ See Decisions Report 31 at [4.42]-[4.44].

¹² Section 15 Settlement, development and growth.

¹³ See Decisions Report 31 at [4.55].

¹⁴ See: *Royal Forest and Bird Association of New Zealand v New Plymouth District Council* [2015] NZEnvC 219 at [64]. The Court relied on the Supreme Court’s finding in *King Salmon* at [48] that decision-makers must take steps to implement s6 RMA.

applies to the coastal environment and not to inland water bodies does not obviate the Respondent's duty under s6(a) RMA.

25. EDS seeks that:
- a. Chapter 7A be amended to provide for identification of ONC and HNC of inland water bodies; and
 - b. Chapter 7A's objectives and policies (subject to amendments sought in this appeal) be amended to apply to both inland and coastal ONC and HNC areas; or
 - c. A new chapter be included addressing natural character of inland water bodies including: identification, preservation, a management framework for ONC and HNC areas, restoration and rehabilitation.

Identification of coastal natural character

26. The Respondent has deleted all areas which are "*predominately pasture land*"¹⁵ from the ONC and HNC overlays.
27. The identification of natural character is a technical process demanding expert analysis and based on specific criteria.¹⁶ Areas that are not pristine can still have ONC or HNC.¹⁷ In some instances pastoral land will qualify as ONC or HNC and in some instances it will not.
28. The Respondent cannot ignore the identification process and criteria to delete all pastoral land from the ONC and HNC overlays based on an assumption that in all instances these areas will not meet the ONC or

¹⁵ Decisions Report 31 at [4.31].

¹⁶ Section 7A1.1 & Table.

¹⁷ See: *Akaroa Civic Trust v Christchurch City Council* [2010] NZEnvC 110 and Policy 13(2)(g) NZCPS.

HNC threshold.¹⁸ Natural character encapsulates more than type of vegetation cover.¹⁹ Rural land can qualify as having ONC or HNC.

29. The notified ONCs and HNCs were identified through extensive expert analysis applying consistent criteria. Redrawing those areas to delete the sections which fall outside the decisions version Coastal Environment Line (**CEL**) undermines that identification process. It applies a less stringent management regime to one part of a contiguous high value area. This will not achieve preservation under s6 RMA.

30. EDS seeks:

a. The notified Natural Character Unit Maps are retained. Specifically that:

- i. Natural Character Unit Maps 6, 11, 13, 19, 27, 36, 37, 43, 44, 59 be reintroduced.
- ii. The notified extent of ONCs and HNCs in Natural Character Unit Maps 5, 7, 8, 9, 10, 12, 14, 22, 23, 24, 33, 35, 38, 46, 52, 60, 65, 72, 73, 74 be reintroduced.

b. Consequential amendments to Section 7A or Section 32A required as a result of reintroduction of the notified Maps.²⁰

Management – objectives and policies

31. Section 7A fails to address activities in areas adjacent to ONCs and HNCs. Activities in adjacent areas can have adverse effects

¹⁸ See Decision Report 31 at [4.20ff].

¹⁹ Policy 13(2) NZCPS.

²⁰ See Decisions Report 31 at [4.58]: Changes were made to Section 32A Rules 2(1)(e) and 12(1)(e) as a result of the changes to the overlay maps deleting pastoral land. Provisions addressing general vegetation clearance in the natural character overlays were considered redundant with farm land removed. Re-introducing the notified Maps may require a corresponding reintroduction of permitted standards for (*inter alia*) vegetation clearance. Provisions acknowledging the diversity of landforms within the overlay may also be appropriate.

(cumulative effects are particularly relevant) on natural values.²¹ This is recognised in Policy 6.2 RPS. Activities in adjacent areas will have to assess effects on ONCs and HNCs under s104 RMA. The Proposed Plan should direct how this assessment should be undertaken.

32. EDS seeks:

- a. A new policy in Section 7A addressing effects of activities in areas adjacent to ONCs and HNCs. For example:

Subdivision, use and development in areas adjacent to areas of Outstanding or High Natural Character shall be managed to:

a. Avoid or minimise adverse effects on the natural characteristics and qualities that contribute to the ONCs natural character values.

b. Avoid or minimise significant adverse effects, and avoid remedy or mitigate other adverse effects on the natural characteristics and qualities that contribute to the HNCs natural character values.

c. Maintain significant landforms and indigenous vegetation and habitats that have significant natural characteristics and qualities in ONC/HNC areas to protect the visual and biophysical linkages between the two areas.

In implementing this policy the considerations in Policy 1a apply.

²¹ See: *Unison Networks Ltd v Hastings DC* HC Wellington CIV-2007-485-896, 11 December 2007.

Management – rules

33. Section 32A Rules 1, 3, 12, 14 address vegetation clearance and earthworks in ONCs and HNCs. These Rules do not include a waterway setback distance where breach triggers a consent requirement.
34. The Respondent cannot rely on the careful management and attitude of the person undertaking the activity to assess and preserve natural character and the effects on the water body.²² The effects of earthworks and building activities on waterways can be significant. Permitted activity status is only appropriate if a council is “*confident that compliance with any requirements, conditions, and permissions will adequately manage the effects expected*”.²³ The Respondent cannot be confident that adverse effects on a waterway within an ONC or HNC will be adequately managed if it does not require consent for activities within a sensitive distance.
35. Under Section 32A Rule 3(1)(d) and Rule 14(1)(d) earthworks are also a permitted activity in accordance with the permitted standards that apply to the underlying zone when “*part of the farming activity operational at the time Variation 1 was publicly notified (6 November 2015)*”.
36. As earthworks are not a continuous activity and do not occur in the same location it is unclear the nature and extent of earthworks that will fall within this rule. The ONC and HNC overlays are applied where the unique values characteristics of the area warrant special protections. It is appropriate that specific and more stringent permitted standards apply.
37. Different dates determining application of permitted activity status for farming activities are used in respect of the ONC and HNC overlays and

²² Section 32A - s42A Report.

²³ www.qualityplanning.org.nz

the ONFL overlay.²⁴ This is confusing. Decisions on all sections of the Proposed Plan have been released simultaneously. The same date should apply throughout the Proposed Plan.

38. The matters over which discretion is reserved drive and limit decision-making. This means it is important that all significant stressors are identified.
39. The Assessment Matters and Criteria Table in Section 32A fails to consider:
 - a. Cumulative effects of buildings on natural character. Section 3 RMA defines effect to include cumulative effects. The adverse cumulative effects of sporadic and ribbon development are expressly identified in the NCZPS and RPS.²⁵
 - b. The value of vegetation to soil conservation, hydrological function and water quality.
40. EDS seeks that:
 - a. Vegetation clearance or earthworks within 5 metres of a waterway that is 0.5 metres or greater in width be included as a permitted standard in Section 32A Rules 1, 3, 12, 14.
 - b. The date triggering permitted activity status for specific activities undertaken as part of a broader 'farming activity' be consistent throughout the Proposed Plan.
 - c. Section 32A Rules 3(1) and 14(1) be amended to:

²⁴ Under Section 32A earthworks in the ONC and HNC overlays are permitted as part of a farming activity operational at 6 November 2015. Whereas, under Section 32 earthworks and vegetation clearance in the ONFL overlay are permitted as part of a farming activity operation at 29 April 2016.

²⁵ REF.

- i. Include a maximum volume per site per calendar year restriction on earthworks undertaken as part of existing farming activities; and/or
 - ii. To provide more certainty on the nature of existing earthworks that are permitted.
- d. A new criterion be included in Section 32A.4 to apply to building activities addressing cumulative effects. For example:

Whether the building or structure will result in adverse cumulative effects having regard to other buildings and development.

- e. A new criterion be included in Section 32A.4 to apply to vegetation clearance addressing the value to soil conservation and hydrology. For example:

The importance of the vegetation to soil stability and erosion prevent, water quality and hydrological function.

Outstanding Natural Features and Landscapes Overlay

Background

41. Background sections provide important context to support the management approach applied to a specific area. In contrast to other sections of the Proposed Plan, the Background to Section 9 does not explain what an ONFL is, how ONFLs are identified, or the importance of protecting the district's ONFLs.
42. It also states that Section 9's objectives and policies only apply to ONFLs identified in the Proposed Plan's maps. Mapping should not preclude identification of other outstanding areas. If a landscape qualifies under s6(b) and the *WESI* factors²⁶ it should receive the

²⁶ *Wakatipu Environmental Soc Inc v Queenstown Lakes DC* [2000] NZRMA 59 (EnvC).

protections afforded to an ONFL irrespective of whether it was identified as part of a mapping exercise or a site-specific assessment.

43. EDS seeks that:
 - a. The Section 9 'Background' be amended to explain what an ONFL is, ONFL identification, and the importance of protection.
 - b. The final sentence in Section 9 'Background' restricting the application of Section 9's provisions to mapped ONFLs be deleted.
 - c. Provision for identification of ONFLs as part of a site-specific assessment be included in the Proposed Plan.

Management – objectives & policies

44. Section 9 Policy 1a sets a management framework for ONFLs in the Coastal Environment and Policy 1b for ONFLs outside the Coastal Environment. Policy 1b(a)-(j) are a list of measures to *“maintain the values and characteristics of ONFLs”*.

45. These measures are applicable to ONFLs inside and outside the Coastal Environment and should not be tied to Policy 1(b). They should be subject to a *“protect”* not a *“maintain”* directive. They should include relocation of the activity and controls on adjacent activities as possible tools.

46. EDS seeks that:
 - a. The measures in Policy 1b(a)-(j) be included in a separate and distinct policy as measures available to *“protect”* ONFLs inside and outside the Coastal Environment.
 - b. That *“relocation of the activity”* and *“controls on activities in adjacent areas”* be included as an additional measure in the new policy sought in (a) above.

Management – rules

47. Under Section 32 Rule 2 earthworks are a permitted activity when setback at least 5 metres from a waterway and *“it is part of the farming activity operational at 29 April 2016”*.²⁷
48. As noted, permitted activity status is only appropriate if a council is *“confident that compliance with any requirements, conditions, and permissions will adequately manage the effects expected”*²⁸ Providing a carte blanche for earthworks as part of a farming activity does not meet this standard. As earthworks are not a continuous activity and do not occur in the same location it is also unclear the nature and extent of earthworks that will fall within this rule. ONFLs that are also working rural landscapes have been identified because the landscape is sufficiently natural (to the point that it is also outstanding), not because farming is occurring. Not all farming activities will be *“sufficiently natural that they do not adversely affect the natural values of the land”*²⁹. Consent should be required when any earthworks reach a scale where the effects of the activity are unknown and require assessment to ensure adverse effects are avoided.
49. Under Section 32 Rule 3(1)(e) vegetation clearance is permitted where *“it is to maintain open pasture of a farming activity in operation at 29 April 2016”*.
50. EDS agrees with the intention behind Rule 3(1)(e). However (as noted above), ONFLs that are also working rural landscapes have been identified because of the landscape’s natural values not because farming is occurring. Not all farming activities will be *“sufficiently natural that they do not adversely affect the natural values of the*

²⁷ The dates triggering application of permitted activity status in the context of “farming activities” differ throughout the Proposed Plan. EDS seeks that a consistent date be applied. This is discussed above at [38] and [41(b)].

²⁸ www.qualityplanning.org.nz

²⁹ Decisions Report 6 at [5.27].

*land*³⁰. If “*open pasture*” in existence at “29 April 2016” is not defined and identified there is a real risk of the rule being relied on in respect of unintended and inappropriate clearance. For example, ‘clearance creep’ in areas adjacent to those being actively managed.

51. EDS seeks that:

a. Section 32 Rule 2(1)(e) be amended to:

- i. Include a maximum volume per site per calendar year restriction on earthworks undertaken as part of existing farming activities; and/or
- ii. Provide more certainty on the nature of existing earthworks that are permitted.

b. Section 32 Rule 3(1)(e) be amended to define/provide more certainty as to the definition of “open pasture” and its spatial extent.

Biodiversity and Significant Natural Areas

Identification

52. The Proposed Plan relies on the Waikato Regional Council Technical Report 2010/36 (**Report**) to identify SNAs. Resource consent applications that relate to a site identified as an SNA in the Report must undertake a site-specific assessment to confirm that status.³¹ This approach is outlined in the Background to Section 6 Biodiversity. Identification of SNAs is not addressed in the operative provisions.

53. The Proposed Plan also fails to provide for identification of SNAs outside areas identified in the Report. The Report’s SNAs are not part of the RPS. Its limitations were accepted by the Hearings Committee

³⁰ Ibid.

³¹ Section 6 Biodiversity, Background.

which concluded that the Report's SNA mapping should not be included as an overlay in the Proposed Plan.³² Flaws in identification can just as easily result in areas which qualify as significant being excluded as areas which do not being included. This is acknowledged in the RPS.³³

54. EDS seeks that:

a. A new policy be included in Section 6 Biodiversity providing for the identification of SNAs through:

i. The Report's SNA mapping.

ii. Ecological assessment³⁴ using the criteria for determining significance of indigenous biodiversity in Section 11A RPS to ascertain whether an area in the Report is significant or otherwise.

iii. Ecological assessment using the criteria in Section 11A RPS for areas not identified in the Report on a case-by-case basis in respect of specific, high-impact activities for example³⁵ earthworks, vegetation clearance and subdivision, to ensure that all areas of significant indigenous vegetation and significant fauna habitat in the district are identified and that the effects of those activities are appropriately managed.

Management – objectives & policies

55. The Proposed Plan fails to include an objective of no net loss of biodiversity at a district level. The RPS requires territorial authorities

³² Decisions Report 3 at 5.6-5.7.

³³ Method 11.2.1 RPS.

³⁴ Undertaken by a suitably qualified ecologist.

³⁵ But not limited to.

to develop local strategies which specify how they will contribute to achieving no net loss of biodiversity across the region.³⁶ Setting a goal of no net loss at a district level is a tool to ensure that the district's contribution is met. It provides clarity and certainty as to what maintenance requires.

56. Section 6 Policy 1a sets out a management framework for achieving protection of SNAs. It fails to identify that in some situations (for example where biodiversity is rare, at risk, threatened or irreplaceable) adverse effects must be avoided.³⁷ Strong and clear direction is required to provide a course of action³⁸ to achieve protection.
57. Section 6 Policy 1a and Policy 1b provide for the use of biodiversity offsetting to address residual adverse effects. The offset measures proposed in each policy incorrectly conflate biodiversity offsetting and environmental compensation. Biodiversity offsetting is a scientific tool subject to specific criteria. It is distinct from environmental compensation.
58. The Proposed Plan does not define biodiversity offsetting or environmental compensation. No criteria for assessing when biodiversity offsetting or environmental compensation are appropriate are included. Without criteria, the Proposed Plan is providing for new steps to s5 RMA's mitigation hierarchy, with no direction on how or when those steps should be applied.
59. Definitions and a clear framework for assessing biodiversity offset or environmental compensation proposals is necessary to achieve Section 6 Objective 1 and to comply with Part 2 and s31(1)(b)(iii) RMA and Policy 11.2 RPS. Biodiversity protection and maintenance is not

³⁶ Policy 11.1(aa) RPS.

³⁷ Method 11.2.2 RPS recognizes that remediation, mitigation and offsetting may not be appropriate where indigenous biodiversity is rare, at risk, threatened or irreplaceable.

³⁸ *Auckland Regional Council v North Shore City Council* [1995] 3 NZLR 18; [1995] NZRMA 424 (CA).

achieved if biodiversity that is lost cannot be replaced, or is incorrectly or inadequately replaced, by offset or compensation measures.

60. EDS seeks that:

a. Section 6 Objective 1 be amended as follows (or words to similar effect):

The full range of the District's ecosystems and biodiversity is maintained in a healthy and functional state, and restored or enhanced where appropriate to achieve no net loss of biodiversity at a district level.

b. Section 6 Policy 1a be amended to:

i. Include a management framework identifying when avoidance of adverse effects is mandatory, when remediation or mitigation are available, and when biodiversity offsetting or environmental compensation proposals can be considered.

ii. Identify specific outcomes which subdivision, use and development in SNAs should achieve (analogous to Section 6 Policy 1b) to guide the application of the management framework.

c. Section 6 Policy 1b be amended by deleting the second part of the policy addressing residual adverse effects and providing for offsetting.

d. That a new policy be inserted in Section 6 as follows (or words to similar effect):

"In addressing residual adverse effects (i.e. those effects left after all the appropriate avoidance, minimisation and on-site rehabilitation actions have been taken), local authorities should

consider the use of biodiversity offset or environmental compensation measures”.

- e. Biodiversity offsetting be defined.
- f. Environmental compensation be defined.
- g. Criteria for biodiversity offsetting be included.
- h. Criteria for environmental compensation be included.

Management – rules

- 61. Section 29 does not include a vegetation clearance rule specific to SNAs. Only if the permitted standards are breached does SNA status become relevant (with specific SNA assessment criteria). More stringent protection should apply. SNAs are identified precisely because of the quality of the vegetation in the area. Protection is a matter of national importance.³⁹
- 62. EDS seeks that:
 - a. A rule controlling vegetation clearance in SNAs be included in Section 29.

Coastal Environment

Identification

- 63. The Coastal Environment Line (**CEL**) is an amalgamation of the notified CEL, the s42A CEL and the RPS-CEL. At all points the CEL with the most seaward position has been selected.⁴⁰ No consistent identification criteria have been relied on to identify or justify the location of the CEL.

³⁹ Section 6(c) RMA.

⁴⁰ Report 4 at [5.15].

64. EDS seeks that:
- a. The s42A CEL be applied.

Rural Area & Coastal Environment Intersection

65. The RPS requires amenity areas to be identified.⁴¹ The notified Amenity Overlay was deleted on the basis that amenity values were adequately provided for in “*other ways*” in the Plan.⁴² One of the most important of those “*other ways*” is the protection of areas where the Rural Zone and the Coastal Environment intersect.

66. Extensive deletions have been made to notified Section 24 Rural Area as a result of perceived duplication with other sections in the Proposed Plan. As a result, the Proposed Plan fails to adequately protect the high amenity values of areas where the Rural Zone and the Coastal Environment overlap.

67. EDS seeks that:
- a. The Background to Section 24 Rural Area be amended to include a paragraph identifying the importance of the overlap of the Rural Area with the Coastal Environment or Overlay areas.
 - b. A new Section 24 Policy 4f be included as follows (or words to similar effect):

Subdivision, use and development of areas that fall within the Rural Zone and the Coastal Environment maintains or enhances coastal ecosystems, indigenous biodiversity, coastal water quality, natural features and landscapes, ecological functions and physical processes.

⁴¹ Policy 12.4 Method 11.4.1 RPS.

⁴² Section 9 Landscapes – s42A Report at [18],[19].

- c. Notified Section 24 Policy 5a be inserted into Section 7 as new Policy 1c as follows (or words to similar effect):

Subdivision use and development shall not result in significant increase in sedimentation in the Coastal Environment and shall avoid adverse effects of stormwater discharge to water in the Coastal Environment.

- d. Notified Section 24 Policy 7b be inserted into Section 7 as new Policy 1d as follows (or words to similar effect):

Subdivision and development in the Rural Lifestyle Zone in the Coastal Environment shall provide opportunity for rural living while retaining the open space character of the Rural Area.

- e. That Notified Section 24 Policy 6b(a)&(b) be inserted as additional subsections into Section 15 Policy 3c.

Management – objectives and policies

- 68. Section 7 does not address effects of subdivision, use and development in the coastal environment on natural features and landscapes outside the ONFL Overlay. Policy 1b has been included to give effect to Policy 13 NZCPS. An analogous provision is required to give effect to Policy 15 NZCPS.

- 69. EDS seeks that:

- a. A new Section 7 Policy 1c be inserted as follows (or words to similar effect):

Subdivision, use and development in the Coastal Environment (outside of the Outstanding Natural Features and Landscapes Overlay) shall avoid significant adverse effects and avoid, remedy or mitigate other adverse effects on the natural values

and characteristics of the area's natural features and landscapes.

RELIEF

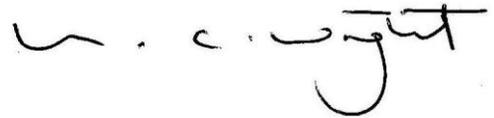
70. EDS seeks
- a. The relief or alternative relief (in response to the reasons for the appeal) set out in paragraphs 13, 17, 21, 23, 25, 30, 32, 40, 43, 46, 51, 54, 60, 62, 64, 67, 69. above;
 - b. Such consequential or further relief as may be necessary to fully address the reasons for appeal and give effect to the relief sought; and
 - c. Costs.

ANNEXURES

71. The following documents are **attached** to this notice:
- a. Copy of the Appellant's submission (**Annexure A**);
 - b. Copy of the Appellant's further submission (**Annexure B**);
 - c. Copy of the Appellant's submission on Variation 1-Natural Character (**Annexure C**);
 - d. Copy of the Appellant's further submission on Variation 1-Natural Character (**Annexure D**);
 - e. Copy of the relevant parts of the Respondent's decision (**Annexure E**); and
 - f. List of names and addresses of persons to be served with a copy of this notice (**Annexure F**).

DATED at Auckland this 13th day of June 2016

Signed for and on behalf of the
**ENVIRONMENTAL DEFENCE SOCIETY
INCORPORATED** by its duly authorised
agent



Madeleine Cochrane Wright

ADDRESS FOR SERVICE:

Environmental Defence Society
PO Box 91736
Victoria St West
AUCKLAND 1142
Email: madeleine@eds.org.nz
Phone: (09) 480 2565

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.