

Notice of Appeal to Environment Court against Decisions on the Thames-Coromandel Proposed District Plan and Variation 1 – Natural Character

To: The Registrar
Environment Court
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Wellesley Street
AUCKLAND 1010

Attn: Alice McIntosh
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Name of Appellants

1. The Coromandel Property Owners Alliance Incorporated (CPOA) appeal against decisions of the Thames Coromandel District Council on the following plan:
 - (a) Thames Coromandel District Council Proposed District Plan (PDP) and Variation 1 – Natural Character

Appellants' Submission

2. The Appellants made further submissions in relation to a number of submissions lodged on the Proposed District Plan and lodged submissions and further submissions on Variation 1 – Natural Character.

Trade Competition

3. The Appellants are not trade competitors for the purpose of Section 308D of the Resource Management Act 1991.

Date on which notice of decision received by Appellants

4. The Appellants received notice of the decisions on 29th April 2016.

Name of decision maker

5. The Decisions were made by the Thames Coromandel District Council.

The decisions the Appellants are appealing are:

6. The decisions that the Appellants are appealing are:

6.1 Biodiversity

- (a) Section 6 (Biodiversity) 6.2 Issues
- (b) Section 6 (Biodiversity) 6.3 Policy 1b
- (c) Section 29 (Biodiversity) 29.4 Assessment Matters and Criteria, Table 1 Matter 1(b)

6.2 Outstanding Natural Features and Landscapes

- (a) Outstanding Natural Features and Landscapes (ONFL) Overlay Maps
- (b) Section 32 (ONFL) 32.3 Rule 1 – Any other activity and Table 1.
- (c) Section 32 (ONFL) 32.3 Rule 8 – One dwelling per lot

6.3 Natural Character of the Coastal Environment

- (a) Natural Character Overlay Maps
- (b) Section 7A (Natural Character of the Coastal Environment) 7A.2 Issue 1
- (c) Section 32A (Natural Character of the Coastal Environment) 32A.2 Rule 2 and Rule 13 Clearing Indigenous Vegetation
- (d) Section 32A (Natural Character of the Coastal Environment) 32A.3
 - Rule 12 Any other activity
 - Rule 13 Clearing Indigenous Vegetation
 - Rule 14 Earthworks
 - Rule 17 Solar Panel
 - Rule 18 Dwellings
 - Rule 19 Wind Turbine

6.4 Rural Zone

- (a) Section 56 (Rural Zone) 56.4 Rule 17 One Dwelling per Lot, Minor Unit.
- (b) Section 56.8 Table 6 – colours for farm buildings

6.5 Appendix 4

- (a) Appendix 4 Amenity Landscape Specific Design Principles

Reasons for the appeal

7. The general reasons for the appeal are that the decisions on the Proposed District Plan:
 - (a) will not enable property owners to exercise reasonable use of their resources, and to provide for their social, economic and cultural well-being, and their health and safety;
 - (b) will not promote the sustainable management of resources;
 - (c) do not adequately take into account the benefits and costs of the proposed provisions;
 - (d) are not, in some cases, consistent with higher order policies.

8. Without limiting the generality of the reasons stated above, the specific reasons are outlined below.

8.1 Biodiversity

- (a) The Appellants consider that, while the issue statements in Section 6 are overall theoretically correct, they do not reflect the actual issues facing this District in a balanced way. The Thames-Coromandel District has an abundance of indigenous biodiversity, much of which is already legally protected. Therefore the issues should reflect the need to prioritise efforts for biodiversity protection, rather than focus on loss of biodiversity generally.

The Appellants consider that Issue 3 in particular implies all indigenous vegetation requires restoration, enhancement and protection, including manuka/kanuka that is used for firewood and remnant bush areas within operational farmland that provide important shade/shelter for livestock. The Appellants consider that Issue 3 is too directive, and is not taking into account the reality of this District. In addition, the Appellants consider that Issue 2 is unnecessary and well covered by Issue 1 therefore should be deleted altogether.

- (b) Section 6.3 Policy 1b seeks that the subdivision, use and development of sites with areas of non-significant indigenous vegetation should provide a buffer around such areas. The Appellants are concerned that any subdivision, use or

development of a site could trigger this policy even if it is not related to the biodiversity in question. There are also questions over what defines an “area” and also a “buffer” in relation to Policy 1b(b). There is no explanation of what is required for a buffer and in what circumstances they are considered appropriate. Buffers are a method that may be utilised to meet Policy 1b(a) so Policy 1b(b) is not required, therefore to avoid confusion and ambiguity Policy 1b(b) should be deleted.

- (c) Section 29.4 Table 1 Assessment Criteria 1(b) requires an assessment of effects on existing or planned ecological corridors, linkages, buffers, wetlands and dune systems. It is unclear what the scope and status of “planned” elements would be. In particular, if they were to result in a change or loss of land use they would need to be voluntary or negotiated with the owner. The Appellants consider that restricting an activity on the basis of a “planned” element does not provide for reasonable use and does not meet the purposes of the RMA.

8.2 *Outstanding Natural Features and Landscapes (ONFL)*

- (a) The Appellants have concerns around the ONFL assessment process, including the lack of clear identification criteria and thresholds, and the widespread application of the ONFL overlay over considerable parts of the District, including large tracts of modified farmland. In addition there appears, to the Plan user, to be inconsistencies in the way some areas have been mapped. Through the District Plan review process, the Appellants requested an independent peer review to address these and other concerns. The Appellants understand that ONFLs may include modified land in some situations, and also understand the need to give effect to the ONFL maps and policies already within the WRPS. However the WRPS states that the ONFL maps are indicative only. The PDP Decisions Report 6 paragraphs 5.10-5.18 address these issues, suggesting that further refinements could be considered. Given the onerous restrictions and costs related to the provisions of the ONFL overlay, even small refinements could be very significant to individual property owners. Therefore the Appellants consider a justifiable and pragmatic approach, rather than a full peer review, would be to allow for further refinements of the ONFL overlay at a property level, while still giving effect to the WRPS.

- (b) The maximum gross floor area for buildings within the Rural Zone with an Outstanding Natural Feature and Landscape Overlay on it is 50m² under Rule 1 (Section 32). This does not provide for farm buildings such as hay barns and implement sheds. It is the Appellants' view that should farmland be considered to be an Outstanding Natural Landscape, then farm buildings should be permitted without the need for resource consent. Similarly the maximum building height of 5m is not adequate for many farm buildings. The Appellants are also concerned that Rule 1c) can be interpreted to mean farming itself must not be within 5m of a water body, and that the inclusion of 'structures' in table 1.4 could unintentionally exclude fences, troughs and water tanks. These restrictions, whether intended or not, would be unreasonable and impractical for normal farming activity.
- (c) Rule 8 (Section 32) requires dwellings that cannot be located anywhere other than on a ridgeline to be assessed as a Non-Complying Activity. The Appellants consider this to be draconian in circumstances where the site does not allow any other viable option and should not have to be assessed as a Non-Complying Activity as a result. The Appellants seek that Standard 4 of Table 1 (Section 32) be deleted and that the ridgeline issue instead be assessed through Table 2 (ONFL Restricted Discretionary Matters) and that mitigation measures be provided where there is no other viable option.

8.3 Natural Character of the Coastal Environment

- (a) In their submission the Appellant raised questions about the accuracy, methodology and thresholds related to the Natural Character maps, and in particular, the inclusion of farming and other modified environments. The removal of most farmland from the overlay in the Decisions version of the Plan is strongly supported and has satisfied much of the Appellant's concern. However there are some areas remaining where further refinement or review of the overlay is required, and in some cases, further assessment related to thresholds. The Natural Character overlay, especially Outstanding Natural Character, places draconian restrictions and costs on property owners, and in some cases renders properties incapable of reasonable use and places an unfair burden on owners. Therefore it is very important to property owners that the natural character assessments are as accurate as possible.
- (b) As it is currently written, Issue 1 of Section 7A (Natural Character of the Coastal Environment) implies that the listed activities are inappropriate of

themselves and therefore requires an amendment for a clearer understanding. The issue is the potential for degradation. The list of activities is included within Policy 1a, and this is appropriate. Further, it is considered inappropriate to include point (f) since it is too subjective, and is at most a result of other causes, not a cause in itself.

- (b) The Permitted activities rules for clearing indigenous vegetation (Section 32A.2 Rule 2 and Rule 13) do not allow for:-
- Any domestic firewood allowance whatsoever
 - Avoiding loss of life, injury or serious damage to property
 - Existing domestic garden, or horticulture
 - Collection of material for traditional Maori cultural practices
 - Within 10m of an existing dwelling, or consented dwelling.

The appellants consider that these activities are essential to provide for social, economic and cultural wellbeing and for health and safety, including fire risk, and need to be included as permitted activities.

The Proposed District Plan Decisions Report 31, point 4.58 addresses the removal of the rule that related to firewood: Rule 2.1e) "It is no more than 5m³ of wood per natural character area per calendar year". The report states that because farmland has (mostly) been removed from the overlay, there is no longer a need to provide for general clearance. This is incorrect, as the general clearance rule is directly related to firewood, and this applies whether the Natural Character area is part of an operational farm or not. Many properties within Natural Character overlays are not farms, and many are completely covered by the overlay.

The Decision related to the underlying zone rule restricting clearance to manuka/kanuka only for domestic use, provides a sensible and reasonable solution that is in line with current practice. There is no evidence to suggest that this level of clearance would have any adverse effect on the values and characteristics of natural character.

- (c) The Outstanding Natural Character (ONC) rules, in particular Rules 12, 13, 14, 17, 18, 19 are either Discretionary activities or default to Discretionary status. The Appellants believe that this places unnecessarily onerous consent requirements and costs on property owners, when the effects of the activities on the values and characteristics of outstanding natural character could be assessed as a Restricted Discretionary activity. The S42A hearing report states the use of discretionary status in ONC "sends a stronger signal

setting a higher standard". We believe a "stronger signal" is not an appropriate reason for using a higher activity status, rather what is required is an assessment of effects.

- (d) In addition to c) above, Section 32A.3 Rule 18 states more than one dwelling in a natural character area is non-complying. The Appellants consider this to be ambiguous as a natural character area could be confused with natural character assessment units, which in many cases span a number of sites.

8.4 Rural Zone

- (a) One Dwelling per Lot and Minor Unit in the Rural Zone Coastal Environment (Section 56.4 Rule 17) was a permitted activity in the Proposed District Plan, and has now been changed to restricted discretionary. The Appellants consider a dwelling to be an expected and necessary part of rural activity, and of an appropriate scale for the zone. The potential for consent to be denied introduces uncertainty, potentially could render a property incapable of reasonable use, and therefore does not meet the requirements of s5 and s85 of the RMA. Further, the restricted discretionary status of this activity in the Rural Zone is inconsistent with every other zone within the Coastal Environment. The Appellant considers that a permitted status, with a requirement to meet the standards in Table 5 and 6, is reasonable and appropriate for this activity.
- (b) Section 56.8 Table 6 requires external colours for buildings in the Coastal Environment to be from a specific colour range. However, this does not allow for the use of Coloursteel, which is a very common and cost-effective method for farm buildings. The appellant considers this exclusion overly restrictive and costly. Coloursteel colours within the reflectivity limits stated in Table 6 would be appropriate and in keeping with the rural coastal character and should be provided for within the permitted activity status.

8.5 Appendix 4 Amenity Landscape Specific Design Principles

- (a) The PDP Decisions included the removal of the Amenity Landscape Overlay "including the policy and rule provisions and reference to it throughout the Plan" (Decisions April 2016, Report 6, paragraph 5.5). However clearly it is referenced in Appendix 4, which creates confusion and uncertainty as to the status of the Amenity Landscape Overlay and the significance for property owners.

Relief:

9. The Appellants seek the following relief:

9.1 Biodiversity

- (a) That Section 6 (Biodiversity) 6.2 Issue 2 be deleted.
- (b) That Section 6 (Biodiversity) 6.2 Issue 3 be modified to read “The health and ecological functioning of the District’s biodiversity is dependent on the identification of opportunities and priorities for restoration, enhancement and protection, including the creation of ecological buffers, connections and corridors where appropriate”.
- (c) That Section 6 (Biodiversity) 6.3 Policy 1b be amended by deleting “of sites with areas of” and replace with “Involving”. In addition, that 6.3 Policy 1b(b) be deleted.
- (d) That Section 29 (Biodiversity) 29.4 Assessment Matters and Criteria, Table 1 Matter 1(b) be amended to delete “existing or planned”.

9.2 Outstanding Natural Features and Landscapes

- (a) That the ONFL Overlay Maps be refined to exclude areas that do not meet the thresholds for ONFLs.
- (b) That Section 32 (Outstanding Natural Features and Landscapes) 32.3 Rule 1 – Any other activity, be amended so that it does not apply to farm buildings and structures. That Rule 1c) be deleted, consistent with Section 32A. That Table 1.4 be amended to delete “or structure.”
- (c) That Section 32 (Outstanding Natural Features and Landscapes) 32.3 Rule 8 – One dwelling per lot be amended by deleting Rule 8.1(b) so that the matters relating to Table 1 can be assessed through the restricted discretionary matters in Table 2.
Or
Delete item 4 from Table 1.

9.3 Natural Character of the Coastal Environment

- (a) That the Natural Character Overlay Maps be further revised to exclude areas that do not meet the WRPS criteria for High or Outstanding Natural Character.
- (b) That Section 7A (Natural Character of the Coastal Environment) 7A.2 Issue 1 be amended by deleting the items (a) to (f).
- (c) That Section 32A (Natural Character of the Coastal Environment) 32A.2 Rule 2 and 32A.3 Rule 13 Clearing indigenous vegetation be amended to add the provisions for firewood and for health and safety similar to Section 29.3 Rule 2.1:-
- “It is necessary to avoid loss of life, injury or serious damage to property; or
 - The area to be cleared is existing domestic garden, or horticulture; or
 - It is for the collection of material for traditional Maori cultural practices; or
 - It is within 10 m of an existing dwelling, or;
 - It is manuka (*leptospermum scoparium*) or kanuka (*Kunzea ericoides*) for domestic use within 18 months of felling...”
- (d) That Section 32A (Natural Character of the Coastal Environment) 32A.3 Rules 12, 13, 14, 17, 18, 19 be amended to change Discretionary status to Restricted Discretionary, with appropriate matters of discretion for the Outstanding Natural Character values and characteristics, similar to those in Section 32.

Further, that Rule 18 be amended to clarify that it relates to one dwelling per site in an outstanding natural character area.

9.4 Rural Zone

- (a) That Section 56 (Rural Zone) 56.4 Rule 17 One Dwelling per Lot, Minor Unit in the Coastal Environment be amended to Permitted provided it meets the specific Standards in Table 6.
- (b) That Section 56 (Rural Zone) 56.8 Table 6 be amended to provide for the use of Coloursteel colours for farm buildings in the Coastal Environment.

9.5 Appendix 4

(a) That the Amenity Landscape Specific Design Principles in Appendix 4 be deleted.

OR Such further, consequential or alternative relief as may be necessary or appropriate to give effect to the relief sought.

Attached documents:

10. The following documents are attached to this notice:

- (a) A copy of the Appellants' submission and further submissions (with a copy of the submission opposed or supported by my further submission);
- (b) A copy of the relevant decisions;
- (c) A list of names and addresses of persons to be served with a copy of this notice.

Christine Vickerman
For Coromandel Property Owners Alliance Incorporated

13 June 2016

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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,—

- (a) 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
- (b) 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, further submission or the parts 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.