

IN THE ENVIRONMENT COURT

AT AUCKLAND

ENV-2016-AKL-

IN THE MATTER

of an appeal under Clause 14(10) of the
First Schedule of the Resource
Management Act 1991

BETWEEN

**COROMANDEL WATCHDOG
INCORPORATED**

Appellant

AND

**THAMES COROMANDEL DISTRICT
COUNCIL**

Respondent

**NOTICE OF APPEAL ON BEHALF OF COROMANDEL WATCHDOG OF HAURAKI
INCORPORATED**

PROPOSED THAMES DISTRICT PLAN

Dated 13 JUNE 2016

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NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION PROPOSED POLICY

STATEMENT OR PLAN

To: The Registrar
Environment Court
PO Box 7147
Auckland

MAY IT PLEASE THE COURT:

1. Coromandel Watchdog of Hauraki Incorporated (**Watchdog**) appeals against the decisions of Thames Coromandel District Council (**Council**) on the Proposed Thames Coromandel District Plan (the proposed plan).
2. Watchdog made a submission and further submission on natural character variation 7A of the proposed plan.
3. Watchdog is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Watchdog received notice of the decisions on 29 April 2016.
5. The parts of the decision that Watchdog is appealing are provisions relating to mining activities and associated definitions in the Thames Coromandel district, notably mining within the coastal environment, high and outstanding natural character overlays, exclusion of the amenity overlay, activity status thresholds for exploration and notification provisions.

PARTS OF DECISION BEING APPEALED, REASONS FOR APPEAL AND RELIEF SOUGHT

6. In addition to the reasons below, the general reasons for Watchdog's appeal are that the provisions appealed against:
 - a. do not promote sustainable management of natural and physical resources under s5 RMA;
 - b. do not give effect to the New Zealand Coastal Policy Statement including Policies 13, 15 and 23;
 - c. do not give effect to relevant provisions of the Waikato Regional Policy Statement (RPS);

- d. 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).
- e. are not consistent with Part 2 of the Resource Management Act ('the Act') including sections 6(a), (b), (c) and (e) and s7(b), s7(c), s7(d) and s7(f);
- f. do not implement Council functions under s 31 of the Act; and/or
- g. do not represent best resource management practice.

PARTS OF THE DECISION BEING APPEALED

- 7. Watchdog appeals the following sections:
 - a. Part II- Overlay Issues, Objectives and Policies:
 - i. Section 7 Coastal Environment,
 - ii. Section 7A Natural Character of the Coastal Environment
 - iii. Section 9 Outstanding Natural Features and Landscapes.
 - b. Part III- District wide issues, objectives and policies
 - i. Section 14- Mining activities
 - c. Part VI- Overlay Rules
 - i. Section 32 Outstanding Natural Features and Landscapes.
 - ii. Section 32 A Natural Character of the Coastal Environment.
 - d. Part VII- District- wide Rules
 - i. Section 37 Mining Activities
 - e. Other
 - i. Natural Character of inland water bodies and riparian margins.
- 8. The parts of the decision appealed, reasons for the appeal and relief are set out below. Where specific wording changes are proposed by way of relief, Watchdog seeks in the alternative any wording that would adequately address the reasons for its appeal. Watchdog also seeks consequential relief.

Section 7 Coastal Environment

- 9. Watchdog appeals part of the decision recorded in Recommended Decision Report 4 at paragraph 6.1 (page 6) to adopt the Reporting Officers discussion and

recommendations as contained in the Section 42A/Section 32AA Further Evaluation Report (subject to amendments not relevant to this appeal).

10. Watchdog seeks prohibited status for mining activities anywhere in the Coastal Environment. This reflects policy imperatives in the RPS, NZCPS and Part 2 RMA.
11. Given the adverse effects associated with mining activities, it is appropriate that a precautionary approach be adopted. Prohibited activity status may be appropriate in circumstances where the Council takes a precautionary approach due to insufficient information about an activity to determine what provision should be made for the activity in the local authority's plan.¹ This aligns with the NZCPS and *King Salmon* principles².
12. There is no sound reason given for adopting a coastal environment line (CEL) that is different from that in the RPS.

Relief Sought

13. Add additional policy justifying prohibited status for mining activities in the coastal environment and establishing that it is an inappropriate activity and should be avoided. This reflects the requirement for environmental bottom lines and preservation expectations of s6 RMA.
14. Include activity status, methods and rules for the coastal environment to prohibit mining activities including: mineral prospecting, mineral exploration, underground mining, surface mining, mineral processing and waste rock/tailings storage.
15. The CEL be amended to that shown in the RPS.

Section 7A- Natural Character Overlay

16. Watchdog appeals part of the decision recorded in Recommended Decision Report 31 at paragraph 6.1 (page 16) to adopt the Reporting Officers discussion and recommendations as contained in the Section 42A/Section 32AA Further Evaluation Report (subject to amendments not relevant to this appeal).

Reasons for Appeal

¹ Coromandel Watchdog of Hauraki Inc. v Chief Executive of the Ministry of Economic Development [2008] 1 NZLR 562

² *EDS v King Salmon* [2014] NZSC 38.

17. The Proposed Plan fails to provide for the appropriate preservation of natural character of inland water bodies and riparian margins. Relying on reference to protection and preservation of these areas in the general settlement and development section³ is inadequate. This duty cannot be fulfilled absent mapping to ensure appropriate consideration is given to these values, when resource consents (or plan changes) are sought (and that may affect this resource). 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.⁴ That a national policy instrument applies to the coastal environment and not to inland water bodies does not obviate the Respondent's duty under s6(a) RMA.
18. The natural character and landscape overlays do not address cultural landscapes and Maori perceptions of natural character, despite this being required for the coastal environment by Policies 13 and 14 of the NZCPS and s 6(e) RMA.
19. Section 7A fails to address activities in areas adjacent to ONCs and HNCs. Activities in adjacent areas can have adverse effects (cumulative effects are particularly relevant) on natural values.⁵ 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.

Relief

20. Watchdog seeks:
- a. Chapter 7A be amended to require identification of ONC and HNC of inland water bodies and riparian margins; 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

³ Section 15 Settlement, development and growth.

⁴ 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.

⁵ See: [Unison Networks Ltd v Hastings DC](#) HC Wellington CIV-2007-485-896, 11 December 2007.

- 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.
- d. Chapter 7A's objectives and policies reflect Mana Whenua perceptions of natural character.
- e. Add policy that Mining activities in areas adjacent to areas of Outstanding or High Natural Character shall be managed to:
 - i. Avoid or minimise adverse effects on the natural characteristics and qualities that contribute to the ONCs natural character values.
 - ii. 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.
 - iii. Maintain significant landforms and indigenous vegetation and habitats that are significant natural characteristics and qualities in ONC/HNC areas to protect the visual and biophysical linkages between the two areas.

Section 9 – Landscape Overlay

21. Watchdog appeals part of the decision recorded in Recommended Decision Report 6 at paragraph 6.1 (page 10) to adopt the Reporting Officers discussion and recommendations as contained in the Section 42A/Section 32AA Further Evaluation Report (subject to amendments not relevant to this appeal).

Reasons for appeal

22. If a landscape qualifies under s6(b) and the *WESI* factors⁶ it should receive the protections afforded to an ONFL irrespective of whether it was identified as part of a mapping exercise or a site-specific assessment.
23. Amenity Landscape are foregrounds, buffers, context or setting for outstanding natural landscapes or adjoining or beyond.⁷ A review of the ALO was required to

⁶ [Wakatipu Environmental Soc Inc v Queenstown Lakes DC](#) [2000] NZRMA 59 (EnvC).

⁷ Supplementary Expert Evidence of Di Lucas at [38] & [40].

address cultural attributes. The ALO should be retained to give effect to the RPS, Policy 12.4 and 12.4.1.

24. Amenity or cultural landscapes are also worthy of protection from adverse effects. Landscapes (and features) that are not considered natural qualify for protection under HGMPA and the NZCPS. See, for example, Objective 4 (and Policy 18) NZCPS referring to public open space qualities and s 8(d) and (e) HGMPA referring to cultural and social consideration.

Relief Sought

25. Watchdog seeks the following relief:
- a. Provision for identification of ONFLs as part of a site-specific assessment be included in the Proposed Plan.
 - b. Include an Amenity Landscape Overlay and associated policy and objectives.
 - c. Mapping associated with (a) and (b) above.

Section 32- Outstanding Natural Features and Landscapes Overlay

26. Watchdog appeals part of the decision recorded in Recommended Decision Report 6 at paragraph 6.1 (page 10) to adopt the Reporting Officers discussion and recommendations as contained in the Section 42A/Section 32AA Further Evaluation Report (subject to amendments not relevant to this appeal).
27. Watchdog seeks prohibited status for mining activities in the outstanding and natural features landscape (ONF and ONL) and areas of outstanding and high natural character (HNC and ONC).

Reasons for Appeal

28. "Avoiding" adverse effects to ONFL and ONC/ HNC is required under Policies 13 and 15 of the NZCPS. An overall balanced judgment is not required where NZCPS Policy is more directive in relation to protection of environmental bottom lines. Watchdog says that prohibition of mining in the Coromandel is an environmental bottom line.
29. 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.

30. Given the adverse effects associated with mining activities, a precautionary approach be adopted. Prohibited activity status may be appropriate in circumstances where the Council takes a precautionary approach due to insufficient information about an activity to determine what provision should be made for the activity in the local authority's plan.⁸ There are few areas with known mineral deposits in the coastal environment.

31. Underground mining without surface expression is arbitrary definition and further complicates the plan. It does not reflect effects based outcomes of the RMA.

Relief Sought

32. Amend section 32.3

- a. Delete "underground mining" from Rule 6, discretionary activities.
- b. Delete "underground mining" from Rule 7, non-complying activities.
- c. Add "mineral prospecting", "mineral exploration", "underground mining" to Rule 8, prohibited activity.

33. Amend section 32.7, rule 16A and 17

- a. Delete "underground mining" from Rule 16A, discretionary activity.
- b. Delete "underground mining" from Rule 17, non-complying activity.

34. Amend section 32.5, rule 6, 7

Underground mining (~~without surface expression~~)

35. Amend section 32.7, rule 16A and 17

Underground mining (~~without surface expression~~)

36. Prohibited activity status for all mining activities in Amenity Landscape including mining prospecting, mining exploration, underground mining, surface mining mineral processing and waste rock/tailings storage.

Variation 1, Section 32A- Natural Character of the coastal environment overlay

⁸ *Coromandel Watchdog of Hauraki Inc. v Chief Executive of the Ministry of Economic Development* [2008] 1 NZLR 562.

37. Watchdog appeals part of the decision recorded in Recommended Decisions Report 31, paragraph 6.1, to adopt the Reporting Officers discussion and recommendations as contained in the Section 42A/Section 32AA Further Evaluation Report (subject to amendments not relevant to this appeal).

Reasons for Appeal

38. "Avoiding" adverse effects to outstanding natural landscapes and areas of high natural character is required under Policies 13 and 15 of the NZCPS. An overall balanced judgment is not required where NZCPS Policy is more directive in relation to protection of environmental bottom lines. Watchdog says that prohibition of mining in the Coromandel is an environmental bottom line.
39. 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.
40. Given the adverse effects associated with mining activities, it is appropriate that a precautionary approach be adopted. Prohibited activity status may be appropriate in circumstances where the Council takes a precautionary approach due to insufficient information about an activity to determine what provision should be made for the activity in the local authority's plan.⁹

Relief Sought

41. Amend Rule 8, 9, so that Underground Mining has prohibited (and not non-complying) status.
42. Add to Rule 10, so that "underground mining", "exploration" and "prospecting" are prohibited activities.
43. Remove "with surface expression" from Underground mining in Rule 8 and Rule 9.

Section 37 Mining Activities (Rules)

⁹ Coromandel Watchdog of Hauraki Inc. v Chief Executive of the Ministry of Economic Development [2008] 1 NZLR 562

44. Watchdog appeals part of the decision in Recommended Decision Report 11 at paragraph 6.1 (page 7) to adopt the Reporting Officers discussion and recommendations as contained in the Section 42A Report/Section 32AA Further Evaluation Reports (subject to amendments not relevant to this appeal).

Reasons for Appeal

45. No volume levels are set for exploration and mining, meaning there is little or no effective difference in intensity and scale. The Crown Minerals Act does not set intensity and scale thresholds. However the RMA is effects based and should address the volumes of extraction associated with prospecting and exploration.
46. Due the adverse effects of mining activities and public interest in mining all discretionary status mining activities should be publicly notified.

Relief Sought

47. Watchdog seeks the following relief:
- a. Exploration
 - i. Exploration above an identified threshold (for example, but not limiting relief, the threshold for earthworks) is deemed to be mining and therefore requires resource consent (or is prohibited in terms of the relief sought above).
 - ii. Alternatively, if it is deemed excavation then above an identified threshold it should not have permitted status. Threshold for consent might be based on earthworks threshold e.g. bulk sampling that exceeds permitted standard in zone triggers resource consent; above that consent threshold becomes prohibited status.
 - b. Rule 3.5 be amended so that discretionary status mining activities be publicly notified.
 - c. Under Table 1, change activity status for all mining activities including: mineral processing, quarrying, surface mining, underground mining and waste rock/tailings storage as non-complying in the conservation zone.

ATTACHMENTS

1. The following documents are attached to this notice of appeal:
 - a. A copy of Watchdog's submission (Appendix 'A').
 - b. Copy of the relevant parts of the Council's decision (Appendix 'B').
 - c. A list of names and addresses of persons to be served with a copy of this notice (Appendix 'C').
2. Parties served with a copy of this notice of appeal will not be served with the attachments, and may obtain a copy from the Appellant on request.

Rob Enright/ Ruby Haazen

A handwritten signature in blue ink, appearing to be 'Rob Enright' or 'Ruby Haazen', written over a light blue grid background.

Counsel for Coromandel Watchdog of Hauraki Inc.
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,-

- 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 or the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.