

**IN THE ENVIRONMENT COURT**

**IN THE MATTER**

of the Resource Management Act 1991 ("Act")

**AND**

**IN THE MATTER**

of an appeal pursuant to Clause 14(1) of Schedule 1 to the Act in respect of decisions of the Thames-Coromandel District Council on the Proposed Thames-Coromandel District Plan

**BETWEEN**

**WAIKATO REGIONAL COUNCIL**

Appellant

**AND**

**THAMES-COROMANDEL DISTRICT COUNCIL**

Respondent

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

**17 June 2016**

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**Solicitor Acting:**

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**TO:** The Registrar  
The Environment Court  
Auckland

1. The Waikato Regional Council ("**WRC**") appeals against parts of the decisions of the Thames-Coromandel District Council ("**TCDC**") on the Proposed Thames-Coromandel District Plan ("**PDP**").
2. WRC made submissions and further submissions on the PDP.
3. WRC is not a trade competitor for the purposes of section 308D of the Act.
4. WRC received notice of the decision on 5 May 2016.
5. The decision was made by TCDC.
6. The parts of the decision that WRC is appealing, the reasons for the appeal and the relief sought are set out below.
7. **Reasons and Relief**
  - 7.1 The general reasons for this appeal are that the relevant provisions of the PDP amended in accordance with the TCDC's decision:
    - (a) do not promote the sustainable management of natural and physical resources in accordance with section 5 and other relevant matters in sections 6 and 7 of the Act; and
    - (b) do not give effect to the Waikato Regional Policy Statement ("**WRPS**").
  - 7.2 Without limiting the general nature of the appeal, the specific parts of the decision which are the subject of this appeal, the reasons for the appeal and relief being sought are set out below.

## **Planning Maps - Identification and mapping of significant natural areas (SNA) as an overlay**

### *Reasons for the appeal*

- 7.3 In its submission WRC sought that:
- (a) significant biodiversity sites be identified on the planning maps and linked to the Biodiversity Overlay Rules; and
  - (b) That *Section 6.4 Non Regulatory Methods* be amended from the review of the TCDC Biodiversity Strategy to the collaborative development of a local indigenous biodiversity strategy.
- 7.4 *Section 29 Biodiversity* sits within the overlay rules section of the PDP, however there are no biodiversity sites identified on the Planning Maps. A 'catch all' approach has been used whereby the clearance of indigenous vegetation triggers a consent process (there are some exceptions to this which are permitted). However, without the identification of significant biodiversity sites WRC considers that the PDP approach does not provide for the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna as required by Method 11.2.2 of the WRPS and will lead to uncertainty for plan users in terms of where the provisions will apply and difficulties in terms of plan administration, including compliance and monitoring.
- 7.5 WRC supports the review of the TCDC Biodiversity Strategy but considers that this non-regulatory method should be amended to give effect to WRPS Method 11.1.11 which provides for the collaborative development of a local indigenous biodiversity strategy. This broader approach will enable the development of an appropriate response to indigenous biodiversity, including a mix of both regulatory and non-regulatory methods to manage indigenous biodiversity in the Thames-Coromandel District.

### *Relief Sought*

- 7.6 WRC seeks the following relief:
- (a) Include significant biodiversity sites as an overlay on the planning maps

and link to the biodiversity overlay rules; and

- (b) Amend 6.4 non-regulatory methods to provide for the development of a local indigenous biodiversity strategy, as follows:

#### **6.4 NON-REGULATORY METHODS**

*1. ~~The Council will review its biodiversity Strategy.~~*

*The Council will partner with Waikato Regional Council to develop a local indigenous biodiversity strategy that will identify the spatial picture of the biodiversity resource in the Thames-Coromandel District, and identify local management approaches to maintain and enhance that resource.*

*Development of the strategy will have commenced by 2018/19 and will involve working with iwi, affected landowners, resource managers and other key stakeholders. As a minimum the strategy will:*

- *Utilise existing biodiversity data/inventory;*
- *Identify priority actions and/ or locations for action;*
- *Include an implementation timeframe;*
- *Identify potential funding sources;*
- *Allocate roles and responsibilities;*
- *Provide a reporting, monitoring and review framework; and*
- *Inform the most appropriate mix of regulatory and non-regulatory methods to manage biodiversity for the Thames-Coromandel District.*

### **Section 29 - Exceptions to indigenous biodiversity provisions**

*Reasons for the appeal*

- 7.7 In its submission WRC sought that Section 29.3, Rule 2 be deleted (Notified numbering).
- 7.8 The clearance of indigenous biodiversity (including significant indigenous vegetation and significant habitats of indigenous fauna) outside of the Rural and Conservation Zones is a permitted activity if it meets the criteria in 29.3, Rule 1, clause 1 (a) – (c). WRC considers that the rule does not provide for the maintenance or protection of biodiversity in those areas. Initial indications from WRC GIS analysts is that up to 894 SNA sites and 39.7ha of Significant Natural Areas mostly in coastal settlements, will be affected.

7.9 Furthermore, WRC also considers that the provisions do not give effect to Chapter 11 of the WRPS, in particular Policy 11.1 *Maintain or enhance indigenous biodiversity* and Policy 11.2 *Protect significant indigenous vegetation and significant habitats of indigenous fauna*. It is also inconsistent with section 6(c) or section 5(2)(b) of the Act.

#### *Relief Sought*

7.10 WRC seeks the following relief:

- (a) Section 29.3, Rule 1, clause 1, sub clauses (a) –(c) be deleted as follows:

***RULE 1 Clearing indigenous vegetation outside of the Rural Area***

*1. Clearing indigenous vegetation outside of the Rural Area, excluding the Conservation Zone, is a **permitted activity** provided:*

*a) ~~The lot is less than 4,000m<sup>2</sup>; and~~*

*b) ~~The lot is connected to a reticulated water supply and reticulated wastewater system; and~~*

*c) ~~The lot contains a building used for industrial or commercial purpose or as a dwelling;~~*

**OR**

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#### **Section 7 - Coastal Environment**

7.11 In its submission, WRC sought that the coastal environment line (“**CEL**”) be applied in all areas along the coastline and did not stop at towns and built up areas. The 2010 New Zealand Coastal Policy Statement (“**NZCPS**”) requires TCDC to define the extent of the coastal environment in the District Plan. WRC considered that the extent of the coastal environment should accurately reflect all the characteristics identified in Policy 1 of the NZCPS including clauses d) and i)

7.12 In the decision, the panel adopts the Reporting Officer's discussion and recommendations to create a 'hybrid CEL'. The reasons for the decision

include:

*“The hybrid line addresses the RPS requirement to have a CEL and adoption of the RPS CEL for Thames, Whitianga and Whangamata also addresses concern raised by WRC that the provisions should give effect to RPS Section 6.2 as required by Method 6 encompassing urban areas”.*

7.13 WRC also notes that in 5.18 of the report the Panel states:

*“the appropriate response is to continue excluding these settlements from being mapped in the District Plan differently to the RPS CEL. For those settlements, the RPS CEL will remain until such time as a further Plan modification is initiated”....” For the purposes of clarity, the Panel recommends that the provisions be amended to explicitly state that for Thames, Whitianga and Whangamata, the RPS CEL has been adopted”.*

7.14 WRC cannot locate the WRPS CEL on the Planning Maps or its reference in the PDP's provisions.

7.15 WRC acknowledges the decision panel's preference to impose a revised CEL to include Thames, Whitianga and Whangamata townships and its recommendation that TCDC further consider this. However, WRC considers that the provisions should be amended now to ensure the CEL includes these townships.

7.16 WRPS method 4.1.8(b) (Identifying extent of the coastal environment states that in relation to the coastal environment) requires that District Plans shall map or otherwise identify the landward extent of the coastal environment as the area identified in the indicative maps provided in Section 4A of the WRPS or as determined by further detailed investigation

7.17 Method 4.1.8 (c) states that any detailed investigation undertaken under Method 4.1.8 (b) must recognise and include assessment and consideration of all of the elements of the coastal environment (as defined in the WRPS Glossary) and be undertaken by the relevant local authority using a

collaborative approach under Policy 4.2 in recognition of the need to manage the coastal environment as an integrated unit.

- 7.18 WRC considers that the resulting PDP provisions and CEL do not give adequate effect to the Coastal Environment provisions of the WRPS, particularly in respect of Thames, Whitianga and Whangamata townships.

*Relief Sought*

- 7.19 WRC seeks the following relief:

- (a) the District's coastal environment line as identified on the Planning Maps be amended to include townships and built up areas; and/or
- (b) Policy guidance and rules be included in the relevant zones and policy overlays pertaining to Thames, Whitianga and Whangamata townships in order to give effect to WRPS Policy 6.2 "Planning for Development in the Coastal Environment" and in particular Method 6.2;
- (c) Amend the introductory background statement 7.1.1-7.1.3 to clarify the difference between the "Coastal Marine Area" and the "Coastal Environment" and to explain the relationship between a CEL and the "coastal environment"
- (d) Clarify the notations in the planning map legend which provide for "Coastal Environment" under both the "overlays" key and "other provisions" key.

**Section 9 - Landscape and Natural Character & Section 24 – Rural Area**

*Reasons for the appeal*

- 7.20 In its submission, WRC sought a new policy be added to Section 9 – Outstanding Natural Features and Landscapes to provide support for development setbacks from coastal and riparian margins. Additionally, WRC sought that Policy 3c be amended to provide better focus on natural character values and to offer more direction around avoiding, remedying or mitigating adverse effects in order to give effect to WRPS Policy 12.3 (now 12.2). WRC also supported a number of other objectives and policies and in

some cases sought that those provisions were amended to strengthen their intent.

- 7.21 WRC considers that one of the important mechanisms for protecting and enhancing natural character is the use of appropriate development setbacks, especially in relation to riparian and coastal margins. WRC considers that the PDP would benefit from specific policy direction relating to riparian margins and that this would improve consistency with WRPS Policy 12.2 and its associated implementation methods. WRC notes that Policy 1a in Section 7.3 of the PDP provides some policy support for setbacks in the coastal areas
- 7.22 The majority of policies and objectives in Section 9 of the Plan have been deleted as a result of decisions. As a result of those deletions WRC considers that there is now a gap in the policy guidance provided in the PDP in respect of areas of natural character outside of either the coastal environment or outstanding natural features and landscapes.
- 7.23 WRC also considers that the policies in support of Objective 1 should be strengthened to ensure that the identified values and characteristics of outstanding natural features and landscapes (including seascapes) of regional or district significance are better protected from adverse effects.
- 7.24 WRC has not been able to locate any specific reference to its submission points in the Recommended Decision Report.

*Relief Sought*

- 7.25 WRC seeks the following relief:
- (a) Amend Policy 1b in Section 9 to ensure that measures to maintain the values and characteristics of ONFLs include the identification of any opportunity to enhance, restore or rehabilitate the natural character of the coastal environment, wetlands, and lakes and rivers and their margins where it has been compromised.
  - (b) Amend the provisions of section 9 to provide policy support for areas of natural character outside of the coastal environment or outstanding natural features and landscapes. In particular, policy support for the use

of development setbacks and to ensure that activities in and around wetlands, lakes, rivers and their margins are appropriate in relation to the level of natural character, and that the activities avoid significant adverse effects and avoid, remedy or mitigate other adverse effects on natural character. Policy support is also required for these areas to promote the enhancement, restoration, and rehabilitation of the natural character and to ensure regard is given to the functional necessity of activities being located in or near the wetlands, lakes, rivers and their margins.

(c) Make any consequential amendments to sections 32 and 32A as required to reflect the relief sought;

(d) Amend 24.3 by including a new policy as per WRC's submission, being:

*Provide for coastal development setbacks in the coastal environment of sufficient width to maintain and enhance natural features, natural ecosystem functioning and natural physical processes including the ability for inland migration of coastal ecosystems in response to sea level rise*

## **Section 32 - Outstanding Natural Features and Landscapes Overlay**

### *Reasons for the appeal*

7.26 In its submission, WRC sought that:

(a) Rule 32.3 Rule 7 (now 32.3 Rule 10) be amended to provide for vegetation clearance as a non-complying activity as its removal can have significant impacts on the values and characteristics of Outstanding Landscapes. Vegetation, particularly indigenous vegetation, is one of the key factors in identifying landscapes as outstanding. Issue 9.2 of the PDP identifies its removal as something that needs to be addressed.

(b) Rule 32.7 be amended to add the following activities as discretionary activities:

(i) Vegetation removal and earthworks within and adjacent to

areas of identified natural character and within 20m of waterways.

- (ii) A building setback rule for buildings, structures and infrastructure within and adjacent to areas of identified natural character and within 25m of waterways

(c) Amend the assessment criteria in 32.4 Table 2:

- (i) So that it applies to Restricted Discretionary, Discretionary and Non-Complying activities;
- (ii) To include the extent to which the activity reduces or impacts on the values and characteristics that have determined the location's status as an Outstanding landscape or natural feature;
- (iii) To include new assessment criteria for earthworks 1(d): The extent to which new earthworks are visible from a public place.
- (iv) To include new assessment criteria for Building/structure matters as 2h) The ability for the Outstanding Landscape to absorb the cumulative impact of each additional dwelling or structure.

7.27 Policy 12.1 of the WRPS requires the values and characteristics of outstanding natural features and landscapes (including seascapes) of regional or district significance to be protected from adverse effects, including cumulative effects, arising from inappropriate subdivision, use and development.

7.28 In addition:

- (a) Method 8.3.8 of the WRPS requires district plans to ensure that that the natural functioning and ecological health of fresh water bodies and coastal water is maintained and where appropriate enhanced, including by providing for appropriate development setbacks from fresh water bodies;

- (b) Method 8.3.10 of the WRPS requires territorial authorities to manage the effects of subdivision, use and development through district plans by providing for appropriately vegetated riparian margins;
- (c) Method 11.1.11 of the WRPS which requires district plans to ensure that indigenous biodiversity is enhanced or maintained by providing for positive indigenous biodiversity outcomes when managing activities including subdivision and land use change and creating buffers, linkages and corridors to protect and support indigenous biodiversity values, including esplanade reserves and esplanade strips to maintain and enhance indigenous biodiversity values

7.29 WRC considers that amendments to the PDP are required to give effect to the WRPS.

*Relief Sought*

7.30 WRC seeks the following relief

- (a) Amend 32.3 Rule 10 to include vegetation clearance as a non-complying activity where it cannot comply with the permitted activity status in 32.2 Rule 3. Make consequential amendments to 32.2 Rule 3.
- (b) Amend 32.3 Rule 3 to add the following as discretionary activities:
  - (i) Vegetation removal and earthworks within 20m of waterways;  
and
  - (ii) A building setback rule for buildings, structures and infrastructure within 25m of waterways.
- (c) Add consequential amendments to 32.3 Rules 1, 2 and 8 to reflect the relief in (b) above;
- (d) Add additional matters of discretion to Table 2 as per the original submission and as follows:
  - (i) So that they apply to the consideration of Restricted Discretionary activities;
  - (ii) To include the extent to which the activity reduces or impacts

on the values and characteristics that have determined the location's status as an Outstanding landscape or natural feature;

- (iii) To include new assessment criteria for earthworks as 1(d): The extent to which new earthworks are visible from a public place.
  - (iv) To include new assessment criteria for Building/structure matter as 2h) The ability for the Outstanding Landscape to absorb the cumulative impact of each additional dwelling or structure
8. Such further, consequential or alternative relief as may be necessary or appropriate to give effect to the reasons and the relief sought in the appeal.
9. The following documents are attached to this notice:
- (a) a copy of WRC's submission and further submission on the PDP;
  - (b) a copy of the relevant parts of the decision; and
  - (c) a list of names and addresses of parties to be served with a copy of this notice.

**DATED** at Hamilton this 17 day of June 2016.



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**S Plant**  
Legal Services Lead

**Address for service of Waikato Regional Council**

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### **Advice to recipients of copy of notice of appeal**

#### **How to become party to proceedings**

If you wish to be a party to this appeal, you must lodge a notice in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

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.

The copy of this notice served on you does not attach a copy of the appellant's submission and or the 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.

## **Appendix A: WRC Submission & Further Submission**

## **Appendix B: Relevant parts of the decision**

## **Appendix C: List of parties to be served**