

**BEFORE THE ENVIRONMENT  
COURT**

**ENV-2016-AKL-000078**

**IN THE MATTER OF**

the Resource Management Act

**AND**

**IN THE MATTER OF**

appeals pursuant to Clause 14(1)  
of Schedule 1 of the Act

**BETWEEN**

**OPOUTERE RESIDENTS AND  
RATEPAYERS ASSOCIATION  
"ORRA"**

Appellant

**A N D**

**THAMES COROMANDEL  
DISTRICT COUNCIL**

Respondent

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**MEMORANDUM OF COUNSEL FOR OPOUTERE RESIDENTS AND  
RATEPAYERS ASSOCIATION ("ORRA") SEEKING THAT ITS APPEAL BE  
EXPEDITED AND DISPOSED OF IN ITS FAVOUR**

**Dated 22 June 2016**

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## **MAY IT PLEASE THE COURT**

### **Introduction**

1. The purpose of this memorandum is to request, for reasons that follow, that ORRA's appeal in respect to the proposed Thames Coromandel District Plan, be expedited and disposed of, in short order, in favour of the appellant, ORRA.

### **Background**

2. ORRA filed submissions in relation to the proposed Thames Coromandel District Plan on 7 March 2014. It was seeking, among other things, that;
  - a. Opoutere (as marked on a map attached to the submissions) be classified, in the Proposed District Plan, as an outstanding natural feature and landscape ("ONFL") and;
  - b. That it be classified in the proposed District Plan as an area of ecological significance.
3. These same two submissions had been made in respect to the then proposed Waikato Regional Policy Statement and were the subject of an appeal to the Environment Court which was heard over the period October / November 2014.
4. On 7 May 2015 Counsel for ORRA appeared before the District Plan Hearings Panel and spoke to the submissions filed in respect to the Proposed District Plan. At that time the Environment Court had not issued its decision in respect to ORRA's appeal on the Proposed Waikato Regional Policy Statement.
5. However counsel made the Hearings Panel aware that the same two points had been argued before the Environment Court in respect to the Proposed Waikato Regional Policy Statement.
6. It seemed to be accepted by the Hearings Panel, as it should have been, that if the Environment Court found in favour of ORRA in respect to the Proposed Waikato Regional Policy Statement then the Hearings Panel would be bound by that decision in respect to the proposed TC District Plan. Obviously the Environment Court sits above a Hearings Panel in the hierarchy of tribunals and regional policy statements sit above district plans in the hierarchy of planning instruments.

7. The Environment Court issued its decision in respect ORRA's Proposed Waikato Regional Policy Statement appeal on 9 June 2015.<sup>1</sup> The decision was in favour of ORRA on both points, namely that Opoutere should be classified as an ONFL and as an area of ecological significance in the Proposed Waikato Regional Policy Statement.<sup>2</sup>
8. A copy of that decision was supplied to the Hearings Panel on 10 June 2015.
9. On 2 May 2016 ORRA received notice of the Hearings Panel decision. The Hearings Panel rejected ORRA's submissions that Opoutere be classified in the Proposed District Plan as an ONFL and as an area of ecological significance.
10. There is no indication from the Hearings Panel decision that it considered or even saw the Environment Court's decision which expressly held that Opoutere should be classified and identified at Regional Policy Statement level as an ONFL and area of ecological significance.
11. ORRA has attempted to draw, what must surely be an oversight or mistake on the part of the Hearings panel to the attention of TCDC / the hearings panel, but without success. ORRA has now filed this appeal on exactly the same two points it has already argued successfully in the Environment Court.

#### **Grounds for expediting this appeal and disposing of it in favour of ORRA**

12. As a consequence of the Hearings Panel completely ignoring the Environment Court's decision, ORRA now faces the prospect of having to pursue exactly the same points again, using, at potentially great expense, exactly the same expert evidence etc.
13. At present ORRA is being required by the Court to file with it copies of expert reports etc. which, even of itself, comes at a cost.
14. ORRA is a small rate payer funded organisation that can ill afford the cost of running another appeal on the same issues and shouldn't have to.
15. ORRA invokes the doctrines of precedent and res judicata in respect to this appeal.

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<sup>1</sup> ORRA-v-Waikato Regional Council -Decision no [2015] NZ EnvC 105

<sup>2</sup> The decision was not appealed and Opoutere is and remains so classified in the current Waikato Regional Policy Statement

16. In short, a Hearings Panel making decisions in respect to a lower level planning instrument ( a District Plan) *must* be bound to follow a decision of the Environment Court in respect to a higher level planning instrument (a Regional Policy Statement). Self-evidently TCDC can not succeed on this appeal.
  
17. Accordingly counsel requests that ORRA's appeal be expedited and disposed of in ORRA's favour as soon as possible. ORRA also seeks costs for what would appear to be rank incompetence on the part of the Hearings Panel / TCDC in failing to consider the Environment Court's decision in ORRA-v-Waikato Regional Council.



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Michael Lloyd, counsel for ORRA

22/6/16  
Date