

**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), First Schedule of the Act in relation to the Proposed Thames-Coromandel District Plan Decisions

**BETWEEN** **BURFOOT LIMITED**

**Appellant**

**AND** **THAMES-COROMANDEL DISTRICT COUNCIL**

**Respondent**

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**NOTICE OF APPEAL**

**10 June 2016**

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**ANDERSON LLOYD  
LAWYERS  
QUEENSTOWN**

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**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON  
PROPOSED POLICY STATEMENT OR PLAN**

*Clause 14(1) of First Schedule, Resource Management Act 1991*

**TO:** The Registrar  
Environment Court  
Auckland

- 1 Burfoot Limited appeals against parts of a decision of Thames-Coromandel District Council on the Proposed Thames-Coromandel District Plan ("**pTCDC Plan**").
- 2 Burfoot Limited made a submission on 14 March 2014, and further submissions on 24 June 2014 on the pTCDC Plan.
- 3 Burfoot Limited is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 ("**the Act**").
- 4 Burfoot Limited received notice of the decision on or about 29 April 2016.
- 5 The parts of the decision that Burfoot Limited is appealing relate to:
  - (a) Matarangi Structure Plan Diagram A;
  - (b) Matarangi Structure Plan Open Space Area;
  - (c) Part 27.3.4 Policy 4c relating to land for management of stormwater flows; and
  - (d) Part 27.3.5 relating to the Structure Plan Rules.

**MATARANGI STRUCTURE PLAN DIAGRAM A**

- 6 The Appellants appeal the part of the pTCDC Plan relating to the Matarangi Structure Plan Diagram A.
- 7 The Matarangi Structure Plan shows a residential zone and the planned residential and recreational land in the Matarangi area, to enable residential development and Open Space. The purpose of the Structure Plan is to set the general layout for development and Open Space

anticipated and enabled by the pTDCD Plan including; provide for pedestrian and road connectivity; establish appropriate infrastructure; and create a coastal community. Diagram A is a Structure Plan showing what the general layout of the area will be.

- 8 Burfoot Limited supports the Structure Plan approach for Matarangi, and particularly the Council decision which makes it clear that the Structure Plan is intended as a guidance for development by use of the term "general accordancy". However the Structure Plan should reflect the current intentions for development at Matarangi to provide for efficient decision making. Because the decision version of the Structure Plan does not reflect the current intentions for development as well as it could, Burfoot Limited is seeking changes.

#### **Reasons for Appeal**

- 9 Burfoot Limited seeks a number of amendments to Matarangi Structure Plan Diagram A to enable more efficient use of the Matarangi area.
- 10 The changes proposed are:
- (a) Realignment of the indicative roading pattern. This reflects current consents and intentions for later stages of development, whilst retaining the principle of an interconnected street network and roads which take pedestrian, cyclists and vehicles from the main community to the north, to the coast.
  - (b) Addition of view corridors. The principle of view corridors and the general location identified on the Council Structure Plan is supported by Burfoot Limited. The alignment however has been slightly adjusted to reflect the current proposal, and the primary view corridor is extended through to Matarangi Drive to increase public amenity.
  - (c) Addition of more lakes. The Structure Plan correctly indicates that a series of lakes will be developed in the area for the following reasons: amenity; the ability to manage "cut to fill" operations within the area for land formation reasons; and in some cases to assist the stormwater management approach. Burfoot Limited requests that the Structure Plan is modified to include additional lakes.

- 11 Relocation of the Open Space area adjacent to the town centre to a more strategically important coastal edge location (this is explained in more detail in paragraphs 14 to 19). The Diagram A in the Council's decision does not represent optimum development layout because it does not adequately enable people and communities to provide for their social, economic and cultural wellbeing.

#### **Relief Sought**

- 12 Matarangi Structure Plan Diagram A being replaced with a modified Matarangi Structure Plan Diagram A (**attached as Appendix 1**).
- 13 In addition to the above, the following relief is also sought:
- (a) Any additional or alternative relief that achieves the same or similar outcome; and
  - (b) Consequential or ancillary changes to the above.

#### **MATARANGI STRUCTURE PLAN OPEN SPACE AREA**

- 14 The Appellants appeal the part of the pTCDC Plan relating to the Matarangi Structure Plan Open Space Area.
- 15 The Open Space area includes the Open Space Zone and any publicly owned or privately owned but publicly accessible (through a consent notice) land such as roads, lakes, view corridors, and recreational facilities. The Council decision maintained the need for an Open Space area adjacent to the existing commercial centre.
- 16 This open space should be relocated from its current indicative location adjacent to Matarangi Drive, to the coastal edge. This is because the coastal edge is a more strategically important location.

#### **Reasons for Appal**

- 17 An Open Space area adjacent to the existing commercial centre is unnecessary, and should be relocated to a more strategic area, for the following reasons:
- (a) Open Space areas are better situated within view corridors, which are already wide (around 30-40m in width) due to necessity, and at the coastal margin. This is more appropriate for childrens' play areas and is an efficient use of land.

- (b) Despite being labelled as "adjacent" to the commercial centre, this area is separated by a fire station and therefore the expected synergies (as a result of the location) will not eventuate. This will make the area of lesser value to the community.
  - (c) This Open Space area is much improved by being relocated to the coastal edge and aligned to the view corridor. This coastal edge Open Space is a more strategically important location because residents and visitors are more attracted to the coastal locations, and thus prefer recreational activities.
  - (d) The relocated coastal edge site is able to leverage off the existing 20m wide esplanade reserve and the view corridors in order to create a significant area of open space and critically, one that is interconnected through a series of walkways and open space linkages to the broader Matarangi community.
  - (e) The relocated coastal edge site enlarges the Open Space area in a strategic location, and is part of the open space network signalled in the operative District Plan Structure Plan.
- 18 The Open Space area in the decisions Structure Plan is inferior to the locations sought in this appeal which better provides for amenity and social community benefit. Therefore, the Open Space area should be deleted and replaced with the Open Space areas shown on Appendix 1.

#### **Relief Sought**

- 19 In the Structure Plan, delete the Open Space area adjacent to the existing commercial centre at the northeast corner of the Structure Plan area and relocate this Open Space area to the coastal margin also within Burfoot Limited land. The deletion and proposed relocation is shown on the modified Matarangi Structure Plan Diagram A (**attached as Appendix 1**). In addition to the above, the following relief is also sought:
- (a) Any additional or alternative relief that achieves the same or similar outcome; and
  - (b) Consequential or ancillary changes to the above.

**PART 27.3.4 POLICY 4C**

- 20 The Appellants appeal the part of the pTCDC Plan relating to Part 27.3.4 Policy 4c.
- 21 Policy 4c provides that land vested or covenanted for lakes, wetlands or swales to manage stormwater flows are credited for stormwater provision rather than for development contributions.

**Reasons for Appeal**

- 22 Land used for lakes can have three functions. These three functions are providing passive recreation; providing amenity values (public recreation); and planning for stormwater management. The Development Plan should provide for the option of crediting the land against both the stormwater provision and/or reserve contributions to the extent necessary to reflect these multiple purposes<sup>1</sup>.
- 23 The lakes are a critically important part of an extensive walkway network which will form under the Structure Plan, and will complement the existing walkway network around Matarangi. The walkway network is a significant part of the recreational opportunities and activity for residents and visitors.
- 24 Lakes have a significant amenity and passive recreational function in addition to the stormwater function. This important recreational function will be optimised by carefully planned attributes such as planting, and contributions and connections to the walkway network. It is expected that the residents and wider community will be able to use the lakes for public recreation. Particularly relevant is the land around the lakes which will allow for and enable public access. In the interest of maintaining and enhancing public access, it is this land that should be able to be considered for reserve contribution.

**Relief Sought**

- 25 Amend Part 27.3.4 Policy 4c to acknowledge that land, such as lakes, which provides a multiple purpose which can be credited against either or both of the stormwater provisions and reserve contributions by adding the words "*however, where these lakes additionally provide for either*

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<sup>1</sup> Paragraphs 25 and 26 of the Statement by Jeffrey Brown (25 February 2015).

*passive recreation or amenity then they shall be credited for reserve contributions in addition to stormwater provision" at the end of Policy 4c.*

- 26 In addition to the above, the following relief is also sought:
- (a) Any additional or alternative relief that achieves the same or similar outcome; and
  - (b) Consequential or ancillary changes to the above.

### **PART 27.3.5**

- 27 The Appellants appeal the part of the pTCDC Plan relating to Part 27.3.5.
- 28 Part 27.3.5 contains all of the Matarangi Structure Plan Rules. In particular, the appeal concerns the restricted discretionary activity status for all rules within the Structure Plan.

### **Reasons for Appeal**

- 29 When developments meet the various rules of the Structure Plan, those developments should have the certainty of being processed as a non-notified application (without public or limited notification). The reason for doing so is that the requirements for notification (including obtaining written approvals) introduce an unnecessary element of uncertainty into this process.
- 30 In its original submission Burfoot Limited sought controlled activity status for subdivision in the Structure Plan (as opposed to the notified restricted discretionary activity status).
- 31 Restricted discretionary status is only sufficient on the basis that a new clause is added to the Structure Plan provisions, providing that applications that comply with all relevant Structure Plan provisions are processed as non-notified<sup>2</sup>.
- 32 The reasons for an activity being either controlled or restricted discretionary without notification are<sup>3</sup>:

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<sup>2</sup> Paragraphs 30-31 of the Statement by Jeffrey Brown (25 February 2015).

<sup>3</sup> Paragraphs 27-30 of the Statement by Jeffrey Brown (25 February 2015).

- (a) To do otherwise would add considerable uncertainty to the subdivision process; a process where certain outcomes are pre-established by zoning provisions;
  - (b) In the Structure Plan, the land is zoned to achieve specific outcomes within a set of specific development parameters; and
  - (c) These parameters are easily understood by all parties involved.
- 33 If the activity status is restricted discretionary and there is no provision for non-notification this creates a sense of double-uncertainty for developers and is unduly restrictive.
- 34 Non-notification is not only optimal, but essential in this situation where matters can be addressed and resolved between developer and the council. Non-notification will allow the community to provide for their social, economic and social well-being.

#### **Relief Sought**

- 35 Insert a new clause 4.3 which provides:

*A resource consent application under Rule 18.1 shall be assessed without public or limited notification under section 95, 95A and 95B of the RMA.*

- 36 In addition to the above, the following relief is also sought:

- (a) Any additional or alternative relief that achieves the same or similar outcome; and
- (b) Consequential or ancillary changes to the above.

#### **ATTACHMENTS**

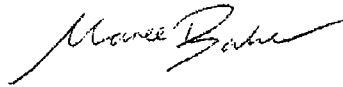
- 37 The following documents are **attached** to this notice:

- (a) A copy of the modified Matarangi Structure Plan Diagram A (**Appendix 1**).
- (b) A copy of Burfoot Limited's submission and further submissions on the pTCDC Plan (**Appendix 2**).
- (c) A copy of the relevant parts of the decision (**Appendix 3**).



- (d) A list of names and addresses of persons to be served with a copy of this notice (**Appendix 4**).

**DATED** this 10th day of June 2016



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