

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Resource Management Act 1991 ("the Act")
AND
IN THE MATTER of appeals under Clause 14 of the First Schedule to the Act
BETWEEN COROMANDEL MARINE FARMERS ASSOCIATION INCORPORATED
ENV-2016-AKL-000095
AND WAIPAPA BAY PROTECTION SOCIETY INCORPORATED
ENV-2016-AKL-000098
Appellants
AND THAMES-COROMANDEL DISTRICT COUNCIL
Respondent

Environment Judge D A Kirkpatrick sitting alone under s 279 of the Act
In Chambers at Auckland

CONSENT ORDER

- A. Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:
- (1) the appeals are allowed subject to the agreed amendments to the proposed Thames-Coromandel District Plan set out in this order;
 - (2) the appeals are otherwise dismissed.
- B. Under s 285 of the Resource Management Act 1991, there is no order as to costs.



REASONS

Introduction

- [1] These appeals relate to the proposed Thames-Coromandel District Plan (“PDP”).
- [2] Coromandel Marine Farmers Association Incorporated (“CMFA”) represents marine farmers who use the Sugar Loaf landing facility to offload mussels from barges onto trucks for transportation to processing facilities. Waipapa Bay Protection Society (“WBPS”) represents landowners who live near to the Sugar Loaf landing facility and also use the site for recreational purposes.
- [3] The WBPS appeal relates to the zoning of the Sugar Loaf landing facility. WBPS sought that the Sugar Loaf landing facility Recreation Active or other more suitable zone.
- [4] The CMFA appeal relates to the zone description for the Marine Service Zone. CMFA sought amendments to Section 49.1 Zone Description of the PDP, to include the Sugar Loaf landing facility in the list of areas to which the Marine Service Zone applies.
- [5] CMFA has given notice of its intention to become a party to the WBPS appeal under s 274 of the Act. There are no section 274 parties to the CMFA appeal.
- [6] While WBPS is not a section 274 party to the CMFA appeal, the appeals are interrelated in nature and were mediated together.
- [7] Together, these appeals represent the “Sugarloaf” topic. There are no other appeals in this topic.
- [8] The parties have now reached an agreement that will resolve the relief sought by the appellants, and the appeals in their entirety.
- [9] In making this order the Court has read and considered the appeal and the memorandum of the parties dated 13 February 2017.
- [10] The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:



- (a) All parties to the proceedings have executed the memorandum requesting this order.
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act, including in particular Part 2.

Order

- [11] Therefore the Court orders, by consent, that the appeals are allowed to the extent that the Thames-Coromandel District Council is directed to amend the PDP shown in Annexures "A" (WBPS appeal) and "B" (CMFA appeal).
- [12] This Order resolves the appeals by WBPS and CMFA in their entirety.
- [13] There is no order as to costs in relation to this order.

DATED at Auckland this *15th* day of *March* 2017



D A Kirkpatrick
Environment Judge



Annexure A



'A'

Amendments to resolve WBPS appeal

Additions **underlined and bold** and deletions in ~~strikethrough~~ text

Section 49 Marine Service Zone

49.4 PERMITTED ACTIVITIES

RULE 1 Commercial recreation/event facility Community facility General commercial

1. An activity listed in Rule 1 is a **permitted activity** provided:
 - a) It is directly related to marine activities; and
 - b) It meets the standards in Table 3 at the end of Section 49.
 - c) **Commercial recreation/event facility or General commercial activities are not permitted in the Marine Service Zone at Te Kouma.**
2. An activity that is not permitted under Rule 1.1 b) is a **restricted discretionary activity**.
3. The Council restricts its discretion to matters 1-7 in Table 4 at the end of Section 49.
4. An activity that is not permitted under Rule 1.1 a) **or 1.1 c)** is a **non-complying activity**.

NOTE

1. *Examples of activities that comply with Rule 1.1 a) include: boat sales, dive bottle filling, hire of marine vehicles, sale of fishing gear, seafood outlet, sailing school, yacht club, coastguard.*

RULE 2 Industrial

1. Industrial is a **permitted activity** provided:
 - a) It meets the standards in Table 3 at the end of Section 49; and
 - b) It is directly related to marine activities; and
 - c) It is not in the Marine Service Zone at Tairua **or Te Kouma.**
2. Industrial that is not permitted under Rule 2.1 a) is a **restricted discretionary activity**.
3. The Council restricts its discretion to matters 1-7 in Table 4 at the end of Section 49.
4. Industrial that is not permitted under Rule 2.1 b) and 2.1 c) is a **non-complying activity**.

NOTE

1. *Examples of activities that comply with Rule 2.1 b) include: boat building, boat engine servicing, fish and shellfish processing.*

RULE 3 Marine equipment storage, maintenance and harvesting Refuse transfer station, recycling operation

1. An activity listed in Rule 3 is a **permitted activity** provided:



- a) It meets the standards in Table 3 at the end of Section 49; and
 - b) It is not in the Marine Service Zone at Tairua.
 - c) **It is not in the Marine Service Zone at Te Kouma.**
2. An activity that is not permitted under Rule 3.1 **a) or 3.1 c)** is a restricted discretionary activity.
 3. The Council restricts its discretion **for the assessment of a refuse transfer station, recycling operation** to matters 1-7 in Table 4 at the end of Section 49.
 4. **The Council restricts its discretion for the assessment of a marine equipment storage, maintenance and harvesting activity to matters 1, 3, 5, 8, 9 b) and 10 in Table 4 at the end of Section 49.**
 5. An activity that is not permitted under Rule 3.1 b) is a **non-complying activity**.

NOTE

1. Rules controlling vehicle access, parking and manoeuvring are in Section 39 Transport.

RULE 4 Restaurant

1. A restaurant is a **permitted activity** provided:
 - a) It meets the standards in Table 3 at the end of Section 49; **and**
 - b) **It is not in the Marine Service Zone at Te Kouma.**
2. A restaurant that is not permitted under Rule 4.1 **a)** is a **restricted discretionary activity**.
3. The Council restricts its discretion to matters 1-7 in Table 4 at the end of Section 49.
4. **A restaurant in the Marine Service Zone at Te Kouma is a non-complying activity.**

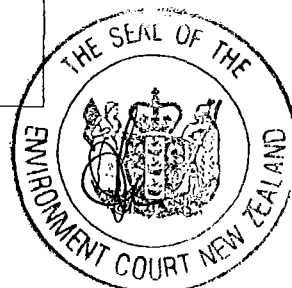
NOTE

1. Rules controlling vehicle access, parking and manoeuvring are in Section 39 Transport

RULE 11 Noise not covered by another rule in Section 49

1. Noise not covered by another rule in Section 49 is a **permitted activity** provided:
 - a) It meets the noise standards in Table 2; or
 - b) It is from a temporary site or building maintenance activity between 7 am and 8 pm; or
 - c) It is from emergency services training or emergency response activities; or
 - d) It is from military training; or
 - e) It is from the temporary use of an emergency electricity generator; or
 - f) It is from a temporary construction activity that complies with NZS 6803:1999 Acoustics – Construction noise.

Table 2 – Maximum Noise Level Standards				
	Measured at	Time period	L _{Aeq} (15 min)	L _{AF max}
1.	The receiving site at any point within the: <ul style="list-style-type: none"> • Airfield Zone 	At all times	70 dB	N/A



	<ul style="list-style-type: none"> Commercial Zone Gateway Zone Industrial Zone Light Industrial Zone Marine Service Zone Recreation Active Zone Road Zone 			
2.	The receiving site at any point within the Pedestrian Core Zone	At all times	70 dB	70 dB from 10 pm to 7 am the following day
3.	At any point within the notional boundary of a site within any other zone not listed above	Monday to Saturday 7 am to 10 pm	50 dB	N/A
4.		Sunday 7 am to 6 pm	50 dB	N/A
5.		At all other times	40 dB	<u>65 dB in Marine Service Zone at Te Kouma.</u> <u>70 dB in other Marine Service Zones.</u>

- Noise not covered by another rule in Section 49 that is not permitted under Rule 11.1 is a **restricted discretionary activity**.
- The Council restricts its discretion to matters 1 and 3 in Table 4 at the end of Section 49.

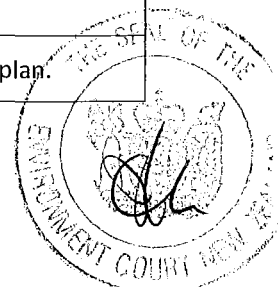
NOTE

- Rule 11.1 b) includes noise from lawn mowing, waterblasting, leaf blowing, and similar temporary maintenance activities. It does not include home business activities.
- Noise will be measured and assessed in accordance with NZS 6801:2008 Acoustics – Measurement of Environmental Sound and NZS 6802:2008 Acoustics – Environmental Noise.
- Activities may be subject to the excessive noise provisions set out in s326 to s328 of the RMA.

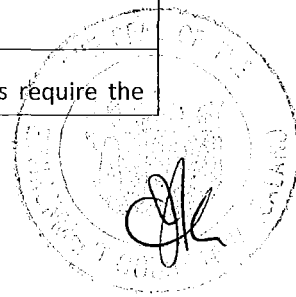
Restricted Discretionary Activities in the above rules have assessment criteria on the matters stated in the respective rule

49.8 ASSESSMENT STANDARDS, MATTERS AND CRITERIA

Table 4 - Restricted Discretionary Activity Matters			
Matter		Assessment Criteria	
1.	Effects of not meeting the standard(s)	a)	Whether actions (if any) taken to avoid, remedy, or mitigate the adverse effects of not meeting the standard(s) are appropriate and effective.
2.	Consistency with a Council-	a)	The extent to which the activity is consistent with this plan.



	approved concept plan, or other plan that outlines staging of an activity	b)	Whether proposed staging can mitigate an existing lack of infrastructure provision or capacity.
3.	Positive and adverse effects on adjacent sites	a)	The extent to which noise , odour, fumes, smoke, liquid spray, dust, vibration, bulk, glare or stormwater runoff from the activity do not affect adjacent sites.
		b)	Whether the frequency and duration of the activity and any effects in 3 a) above are comparable to effects that occur within the zone of the applicable adjacent site.
		c)	Whether these effects are appropriate to occur in the Marine Service Zone, and whether any spill-over of effects into adjacent zones is appropriate.
		d)	The extent to which positive effects from the activity contribute to the economic, social and cultural wellbeing of the community.
4.	Passive surveillance of publicly accessible areas	a)	The degree to which lighting, landscaping and windows increases the safety of publicly accessible areas.
5.	The suitability of the site for the scale of the proposed activity	a)	The extent to which the site can accommodate all aspects of the activity without causing adverse effects.
		b)	Whether the site is an appropriate location for the activity, and what alternatives have been considered.
		c)	The location of noise sensitive activities in relation to the proposed activity and the extent to which they will be affected.
		d)	Whether the provision of wastewater, water and solid waste is adequate for the number of people anticipated and the duration of the activity.
6.	Utility infrastructure provision and location (including easements) for water, wastewater, solid waste, stormwater, electricity, telecommunications	a)	Whether the location of utility infrastructure on site is appropriate.
		b)	Whether the provision and location of utility infrastructure will constrain future planned development.
		c)	The extent to which the activity may impact on the capacity or integrity of reticulation networks.
		d)	Whether the activity should be connected to existing reticulation networks.
		e)	The extent to which the proposed infrastructure improves the resilience and security of the network.
		f)	Whether easements are appropriate.
		g)	Whether there is technical and practical potential for co-location of utility infrastructure on a site.
		h)	The extent to which technical and functional needs require the



			proposed location of the utility infrastructure.
		i)	The extent to which the utility infrastructure contributes to the functioning and well-being of the community.
		j)	Whether the extension of existing above ground utility infrastructure is appropriate.
		k)	The extent to which the activity will contribute to central and regional government energy policy objectives and renewable energy targets.
7.	Off-site effects from earthworks	a)	Whether existing infrastructure and utilities are protected.
		b)	The extent to which changes in water drainage to and from adjacent sites because of the earthworks causing adverse effects, such as ponding, erosion, drainage or flooding, are avoided, remedied or mitigated.
		c)	Whether mitigation measures are implemented to avoid earthwork debris being carried into adjacent properties, waterways, estuaries and harbours, also taking into account cumulative effects.
8.	Roading, vehicle parking and access	a)	Whether adequate consideration has been given to parking and where this will be located.
		b)	Whether traffic associated with the activity will have an adverse effect on the safety and efficiency of the roading network.
		c)	Whether consultation and approval is needed from the roading authority.
		d)	Whether the activity involves the use of roads, whether an approved traffic management plan is in place.
9.	New permanent buildings	a)	Whether the building/s have a viable use beyond the festival, event.
		b)	The extent to which the building/s comply with the standards in Table 3.
10.	<u>Activities located in the Marine Service Zone at Te Kouma</u>	a)	<u>The extent to which the proposed activity compromises current authorized uses of the existing facility, including recreational boating and servicing activities for marine farming.</u>
		b)	<u>Whether the site can accommodate the activity without compromising amenity values of the adjacent area.</u>



Annexure B



'B'

Amendments to resolve CMFA appeal

Additions **underlined and bold** and deletions in ~~strikethrough~~ text

49.1 ZONE DESCRIPTION

The Marine Service Zone comprises land with appropriate water and land-based infrastructure that allows for marine-related industrial and commercial activities to locate at the waters' edge in:

1. Thames, adjacent to the Shortland Wharf;
2. Coromandel Town, in two areas:
 - a) on Long Bay Road; and
 - b) on Wharf Road adjacent to the boat haul-out area;

3. Te Kouma Road, on the Sugar Loaf landing facility;

4 ~~3.~~ Tairua, on The Marina at the base of Paku;

5 ~~4.~~ Whangamata, on Beach Road adjacent to the causeway and adjoining the Whangamata Marina;

6 ~~5.~~ Whitianga, at the end of Dundas Street adjacent to the Whitianga Marina.

