

BEFORE THE ENVIRONMENT COURT

IN THE MATTER of the Resource Management Act 1991 (**the Act**)

AND

IN THE MATTER of an appeal pursuant to Clause 14 of the First
Schedule to the Act

BETWEEN HOPPER DEVELOPMENTS LIMITED,
WHITIANGA WATERWAYS LIMITED AND
PAUANUI WATERWAYS LIMITED
(ENV-2016-AKL-000129)
Appellants

AND THAMES-COROMANDEL DISTRICT COUNCIL
Respondent

Environment Judge C J Thompson sitting alone under section 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 appeal is allowed in part, subject to the agreed amendments
to the proposed Thames-Coromandel District Plan set out in
Annexure A and Annexure B to this order. The appeal points
regarding Section 38.5 of the Proposed Plan on Subdivision, and
the Whitianga Airfield maps remain extant.

[B] Under s 285 of the Resource Management Act 1991, there is no order
as to costs.



REASONS

Introduction

- [1] This appeal relates to a range of amendments sought by the appellants to Sections 3 (Definitions), 27.5 (Whitianga Waterways Structure Plan), 45 (Gateway Zone), 54 (Residential), and Map 17A of the Thames-Coromandel Proposed District Plan.
- [2] In terms of the case management of the Proposed Plan appeals, this appeal point falls within the Topic 22: Pauanui-Whitianga. It is the only appeal in that topic.
- [3] The parties have reached an agreement that will resolve all of the appellants' appeal points save for two, which concern Section 38 (Subdivision) and the Whitianga Airfield. The first is subject to another topic (Subdivision General) where the settlement involves a number of other parties, and the Airfield point is subject to Variation 2.
- [4] In making this order the Court has read and considered the appeal and the memorandum of the parties dated 22 November 2017.
- [5] The New Zealand Transport Agency and Keith Vernon filed s 274 notices to become parties to this appeal. Mr Vernon withdrew his s 274 interest in this appeal on 15 November 2017 and is not a party to this consent order. The New Zealand Transport Agency has signed the memorandum of the parties in support of this order.
- [6] 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

[7] Therefore the Court orders, by consent, that the appeal is allowed to the extent that the Thames-Coromandel District Council is directed to amend the Proposed Plan as set out in Annexures A and B.

[8] There is no order as to costs in relation to this order.

DATED at Auckland this 4th day of December 2017





C J Thompson
Environment Judge

“A”

Section 3 Definitions

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Yard Terms

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Yard Exclusion Eaves ~~(and any attachment to the eaves)~~ can extend up to 0.6 m within a yard boundary, without the yard applying. This Yard Exclusion shall not apply to the Canal Frontage Yard at Pauanui.



Section 27 Structure Plans

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27.5 Whitianga Waterways Structure Plan

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27.5.5 WHITIANGA WATERWAYS STRUCTURE PLAN RULES

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RULE 1 Subdivision creating one or more additional lots

1. For subdivision that is a ~~restricted discretionary activity~~ in Section 38 Subdivision, the Council extends its discretion to all the matters in Table 1. Subdivision creating one or more lots shall be a **controlled activity** provided the subdivision standards in Section 38 Tables 2 and 3 are met.
2. The Council reserves its control to all the matters in Table 1 below and matters 1, 7 and 10 in Table 4 in Section 38.
3. Subdivision that does not retain its activity status under Rule 1.1 is a **discretionary activity**.

| Matter | | Assessment Criteria | |
|---------------|--|----------------------------|--|
| 1. | Landscaping of publicly accessible areas | a) | The extent to which landscaping varies the topography and softens the appearance of buildings. |
| 2. | Transport network | a) | Whether the <u>Connections</u> to the existing road network as shown in Diagram A are created. |
| | | b) | The extent to which the road network is generally consistent with Diagram A. |
| | | c) | Whether a <u>A</u> connected network of cycleways and footpaths link neighbourhoods, existing and new development, schools, reserves and focal points. |
| 3. | Long-term canal maintenance and management | a) | Whether a <u>A</u> management company is created and a management plan prepared that will effectively maintain and repair the canals, maintain canal water quality, address health and safety issues, control surface water activities and collect sufficient funding for the above. |
| | | b) | Whether <u>Legal</u> instruments tie adjoining landowners to ownership and maintenance of the canals, canal water quality monitoring and control of water surface activities over the long |



Table 1 - Restricted-Discretionary Controlled Activity Matters

| Matter | | Assessment Criteria | |
|--------|--|---------------------|--|
| | | | term. |
| 4. | Provision, location and design of reserves | a) | Whether s ufficient reserves are provided to meet the needs of the future residents. |
| | | b) | Whether t There is at least one reserve at the head of each canal and one reserve within each neighbourhood without canal frontage. |
| | | c) | The extent to which reserves are accessible, usable, and provide access to the canals. |
| | | d) | Whether t The reserves incorporate stormwater infrastructure. |
| | | e) | Whether t The reserves complement the roading network. |
| 5. | Accidental discovery protocol with Ngati Hei | a) | Whether p rocedures are in place with Ngati Hei to manage the discovery of unidentified archaeological sites that may have cultural significance. |
| 6. | Water, wastewater, stormwater, electricity and telecommunications | a) | Whether t The provision and installation of infrastructure for reticulated water, wastewater, stormwater, electricity and telecommunications is integrated with existing infrastructure within Whitianga. |
| 7. | Subdivision layout | a) | The extent to which neighbourhoods provide for a variety of residential housing forms. |
| 8. | Staging of subdivision | a) | The order of proposed subdivision stages. |
| 9. | <u>Code of Practice for Subdivision and Development (October 2013)</u> | a) | <u>The works are designed and constructed in accordance with the Code of Practice for Subdivision and Development (October 2013).</u> |
| 10. | <u>Earthworks</u> | a) | <u>The area and volume of earthworks have been minimised.</u> <u>Matter 10 a) is satisfied if consent has been granted by Waikato Regional Council for the proposed earthworks.</u> |

RULE 2 Commercial activity

Industrial activity servicing a marine activity

Marine equipment storage, and maintenance and harvesting

An activity listed in Rule 2 is a restricted discretionary activity.

A resource consent application under Rule 2.1 shall be assessed without limited and public notification under Sections 95, 95A and 95B of the RMA.



3. The Council restricts its discretion to the matters in Table 2 below for each activity listed in Rule 2.

NOTE

1. For a list of commercial and industrial activities, refer to the Activity Summary Table in Section 1.8.
2. For other activity provisions, refer to the applicable overlay, district-wide and zone sections of the Plan.
3. Wherever there is conflict between provisions, the Whitianga Waterways Structure Plan objectives, policies and rules shall override other objectives, policies and rules in the overlays and zones.

| Table 2 - Restricted Discretionary Activity Matters | | | |
|--|--|----------------------------|--|
| Matter | | Assessment Criteria | |
| Commercial activities | | | |
| 1. | <u>Consistency with the Whitianga Waterways Structure Plan</u> | a) | <u>The extent to which the activity is consistent with Diagram A.</u> |
| 2. | <u>Effects of not meeting the standard(s)</u> | a) | <u>Whether actions (if any) taken to avoid, remedy or mitigate adverse effects of not meeting the standard(s) in 3(b) below are appropriate and effective.</u> |
| 3. | <u>Building bulk and design</u> | a) | <u>The extent to which the building is designed to reflect the built form of adjacent buildings and to take into account the wider surroundings.</u> |
| | | b) | <u>The extent to which commercial building(s) comply with the standards in Section 42 Table 3 (standards 1 - 9, 13 and 14).</u> |
| | | c) | <u>The extent to which the street frontage provides interest and access for pedestrians.</u> |
| 4. | <u>The suitability of the site for the scale of the proposed activity</u> | a) | <u>The extent to which the site can accommodate all aspects of the activity without causing adverse effects that are more than minor.</u> |
| | | b) | <u>Whether the provision of wastewater, water and solid waste is adequate for the number of people anticipated at the site.</u> |
| | | c) | <u>Whether appropriate provision is made for the management of stormwater.</u> |
| 5. | <u>Roading, loading bays and vehicle parking</u> | a) | <u>Whether adequate consideration has been given to parking and where this is provided.</u> |
| | | b) | <u>Whether traffic associated with the activity will have an adverse effect on the safety and efficiency of the roading network.</u> |



Table 2 - Restricted Discretionary Activity Matters

| Matter | | Assessment Criteria | |
|--|--|----------------------------|--|
| | | c) | <u>Whether third party agreements are in place to secure alternative or spill-over vehicle parking on adjacent sites.</u> |
| | | d) | <u>Whether the nature, scale, character or intensity of the activity is such that the loading and unloading of goods involves smaller vehicles than the required standard.</u> |
| Industrial activity servicing a marine activity | | | |
| 6. | <u>Consistency with the Whitianga Waterways Structure Plan</u> | a) | <u>The extent to which the activity is consistent with Diagram A.</u> |
| 7. | <u>Effects of not meeting the standard(s)</u> | a) | <u>Whether actions (if any) taken to avoid, remedy or mitigate adverse effects of not meeting the standard(s) in 11a below are appropriate and effective.</u> |
| 8. | <u>The suitability of the site for the proposed activity</u> | a) | <u>The extent to which the site can accommodate all aspects of the activity without causing adverse effects that are more than minor.</u> |
| | | b) | <u>Whether the provision of wastewater, water and solid waste is adequate for the number of people anticipated at the site.</u> |
| | | c) | <u>Whether appropriate provision is made for the management of stormwater.</u> |
| 9. | <u>Positive and adverse effects on adjacent sites</u> | a) | <u>The extent to which noise, odour, fumes, smoke, liquid spray, dust, vibration, bulk, glare or stormwater runoff from the activity does not affect adjacent sites.</u> |
| | | b) | <u>The extent to which the activity complies with the maximum noise level standards in Section 46 Table 3.</u> |
| | | c) | <u>The extent which positive effects from the activity contribute to the economic, social and cultural well-being of the community.</u> |
| | | d) | <u>Whether any spill over of effects into adjacent zones is appropriate or mitigated.</u> |
| 10. | <u>Roading, vehicle loading bays and vehicle parking</u> | a) | <u>Whether adequate consideration has been given to parking and where this is provided.</u> |
| | | b) | <u>Whether traffic associated with the activity will have an adverse effect on the safety and efficiency of the roading network.</u> |



Table 2 - Restricted Discretionary Activity Matters

| Matter | | Assessment Criteria | |
|---|--|----------------------------|---|
| | | c) | <u>Whether third party agreements are in place to secure alternative or spill-over vehicle parking on adjacent sites.</u> |
| | | d) | <u>Whether the nature, scale, character or intensity of the activity is such that the loading and unloading of goods involves smaller vehicles than the required standard.</u> |
| 11. | New permanent buildings | a) | <u>The extent to which the building(s) comply with the standards in Section 46 Table 4 (standards 1 - 7).</u> |
| 12. | Utility infrastructure provision for water, wastewater, solid waste, stormwater, electricity and telecommunications | a) | <u>Whether the provision and location of utility infrastructure on-site is appropriate.</u> |
| | | b) | <u>The extent to which the activity may impact on the capacity or integrity of reticulated networks.</u> |
| | | c) | <u>Whether the activity should be connected to existing reticulated networks.</u> |
| | | d) | <u>Where hydraulic neutrality is not able to be achieved, the extent to which the development minimises the increase of stormwater flows and the extent to which the receiving environment can sustain any increased flows.</u> |
| Marine equipment storage and maintenance | | | |
| 13. | Consistency with the Whitianga Waterways Structure Plan | a) | <u>The extent to which the activity is consistent with Diagram A.</u> |
| 14. | Positive and adverse effects on adjacent sites | a) | <u>The extent to which noise, odour, fumes, smoke, liquid spray, dust, vibration, bulk, glare or stormwater runoff from the activity does not affect adjacent sites.</u> |
| | | b) | <u>The extent to which the activity complies with the maximum noise level standards in Section 46 Table 3.</u> |
| | | c) | <u>Whether the frequency and duration of any effects in 14 a) above are comparable to effects that occur within the zone or the applicable adjacent site.</u> |
| | | d) | <u>Whether these effects are appropriate to occur within the structure plan and whether any spill-over of effects into adjacent sites is appropriate.</u> |
| | | e) | <u>The extent to which positive effects from the activity contribute</u> |



Table 2 - Restricted Discretionary Activity Matters

| Matter | | Assessment Criteria | |
|---------------|---|----------------------------|--|
| | | | <u>to the economic, social and cultural wellbeing of the community.</u> |
| 15. | <u>The suitability of the site for the proposed activity</u> | a) | <u>The extent to which the site can accommodate all aspects of the activity without causing adverse effects.</u> |
| | | b) | <u>The extent to which noise sensitive activities will be affected.</u> |
| | | c) | <u>Whether the provision of wastewater, water and solid waste is adequate for the activity.</u> |
| 16. | <u>Roading, vehicle parking and access</u> | a) | <u>Whether adequate consideration has been given to parking and where this will be located.</u> |
| | | b) | <u>Whether traffic associated with the activity will have an adverse effect on the safety and efficiency of the roading network.</u> |
| 17. | <u>New permanent buildings</u> | a) | <u>The extent to which the building(s) comply with the standards in Section 49 - Table 3 (standards 1 - 7).</u> |



Section 45 Gateway Zone

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45.4 PERMITTED ACTIVITIES

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RULE 8 Noise not covered by another rule in Section 45

1. Noise not covered by another rule in Section 45 is a **permitted activity** provided:
 - a) It is from a temporary site or building maintenance activity between 7 am and 8 pm; or
 - b) It is from emergency services training or emergency response activities; or
 - c) It is from military training; or
 - d) It is from the temporary use of an emergency electricity generator; or
 - e) It is from a temporary construction activity that complies with NZS 6803:1999 Acoustics – Construction noise; or
 - f) It meets the noise standards in Table 2.
2. Noise not covered by another rule in Section 45 that is not permitted under Rule 8.1 is a **restricted discretionary activity**.
3. The Council restricts its discretion to matter 1 in Table 5 at the end of Section 45.

| 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"> • Commercial Zone • Gateway Zone • Road Zone | At all times | 70 dB | N/A |
| 2. | At any point within the notional boundary of a site within any other zone not listed above | Monday to <u>Sunday</u> Saturday 7 am to 10 pm | 50 <u>55</u> dB | N/A |
| 3. | | Sunday 7 am to 6 pm | 50 dB | N/A |
| 4.3. | | At all other times | 40 dB | 65 dB |

NOTE

1. Rule 8.1 a) includes noise from lawn mowing, waterblasting, leaf blowing, and similar temporary maintenance activities. It does not include home business activities.
2. 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.



Section 54 Residential Zone

54.8 Assessment Standards, Matters and Criteria

| Table 5 – Restricted Discretionary Matters | | | |
|--|--|---------------------|---|
| Matter | | Assessment Criteria | |
| ... | ... | ... | ... |
| 16. | <u>Canal Frontage Yard at Pauanui.</u> | a) | <u>Whether the proposed activity can be sited in an alternative location on the site; and</u> |
| | | b) | <u>The extent to which the proposed activity will have adverse visual and amenity effects on the existing character of the area; and</u> |
| | | c) | <u>Whether the proposed activity will have adverse effects on the integrity (i.e. engineering design) of the revetment wall of the canal; and</u> |
| | | d) | <u>Whether the proposed activity will have adverse effects on the management and operation of the canal.</u> |



"B"

Planning Map 17A Zones

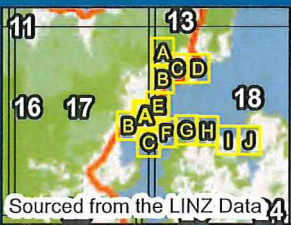




17B

18E

17C



Sourced from the LINZ Data

MAP 17A ZONES
WHITIANGA
PROPOSED DISTRICT PLAN - Appeals Version
Scale 1:7,500 at A4 Paper Size

0 0.05 0.1 0.2 0.3 0.4 km

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**THAMES
COROMANDEL
DISTRICT COUNCIL**

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