

BEFORE THE ENVIRONMENT COURT

Decision No. [2017] NZEnvC 158

IN THE MATTER of the Resource Management Act
1991

AND of an appeal under Clause 14 of the
First Schedule to the Act

BETWEEN GRAHAM MORCOM, SELMA
MORCOM, CHRIS MORCOM AND
JANET CLARKE

(ENV-2016-AKL-000126)

Appellants

AND THAMES-COROMANDEL DISTRICT
COUNCIL

Respondent

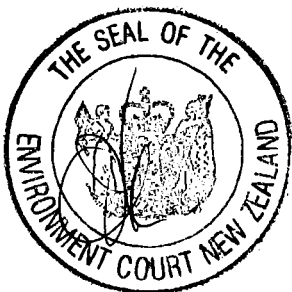
Environment Judge D A Kirkpatrick sitting alone under s 279 of the Act

Date of Decision: 25 SEP 2017

Date of Issue: 26 SEP 2017

DETERMINATION OF THE ENVIRONMENT COURT

- A: The Court makes an order under s 293 of the Act confirming the changes prepared by the Thames-Coromandel District Council amending the zoning over 931A, 931B, 931C and 931D Purangi Road, Cooks Beach in the proposed Plan from Rural Zone to Coastal Living Zone.
- B: The Court orders by consent that that the appeal is allowed to the extent that the Thames-Coromandel District Council is directed to amend Planning Maps 18 Zones "Mercury Bay" and 18H Zones "Cooks Beach" of the proposed Thames-Coromandel District Plan as shown in **Annexure A** to this order.
- C: The appeal is otherwise dismissed.
- D: There is no order as to costs.



REASONS

Introduction

[1] This appeal relates to the proposed Thames-Coromandel District Plan. The appellants appealed the Rural Zone shown on Planning Maps 18 Zone "Mercury Bay", 18G Zone "Ferry Landing" and 18H Zone "Cooks Beach" and certain rules in Section 38 Subdivision in relation to their land at 925 and 1025 Purangi Road, Cooks Beach.

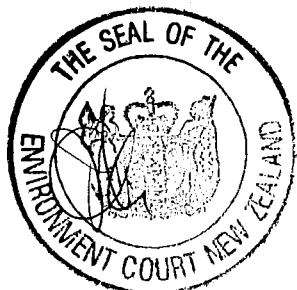
[2] In summary the appellants sought the following relief:

- (a) Rezone part of the land currently zoned Rural Zone at 925 Purangi Road and 1025 Purangi Road to Coastal Living Zone or an equivalent zone;
- (b) Rezone part of the land currently zoned Rural Zone at 925 Purangi Road and 1025 Purangi Road to Rural Lifestyle Zone;
- (c) Amendments to the conservation lot provisions in Section 38 (Subdivision) of the proposed Plan to provide for landscape, natural and cultural aspects and protection and enhancement of historic heritage; and
- (d) That the conservation lot provisions be replaced with the provisions in Rule 752 of the operative District Plan

Consent Order

[3] The parties have agreed that the appeal can be resolved by consent, and that it is appropriate to make provision for a greater density of development on part of the property from Rural Zone to Coastal Living Zone (providing for subdivision at a minimum net lot area of 800m², when that lot is able to connect to wastewater reticulation, as a restricted discretionary activity) and part to Rural Lifestyle Zone (providing for a minimum net lot area of 2ha as a restricted discretionary activity).

[4] The area of 925 Purangi Road that is proposed to be rezoned is at the north-eastern end of the property fronting onto Purangi Road. This area is adjacent to other Coastal Living Zone areas to the north and west and also neighbours who live on a recent small lot subdivision to the east. The majority of



this large property is proposed to remain in the Rural Zone. The appellants have confirmed that they do not wish to pursue the balance of the rezoning relief. i.e. the rezoning of 1025 Purangi Road or the relief set out at [2](c) and [2](d) above.

Application under s 293 of the Act

[5] The proposed rezoning would leave an “island” of four adjoining properties at 931A, 931B, 931C and 931D Purangi Road, Cooks Beach zoned Rural Zone. The total area of the four properties is 6799m². These four properties would be surrounded by land zoned as Coastal Living Zone.

[6] The appeal does not seek the rezoning of these four properties. The Council submits that it is appropriate for the Court to exercise its powers under s 293 to amend the zoning over the properties at 931A, 931B, 931C and 931D Purangi Road, Cooks Beach in the proposed plan from Rural Zone to the Coastal Living Zone.

[7] The Council has consulted with the following landowners of the additional properties:

- (a) Peter Symons (owner of 931A Purangi Road);
- (b) RV Williams and JA Williams and Te Awamutu Trustees Limited (owners of 931B Purangi Road);
- (c) DL Brunton and MS Brunton (owner of 931C Purangi Road); and
- (d) CH Alexander (owner of 931D Purangi Road).

[8] The Council has provided confirmation from the owners of the four properties that they agree to the zoning changing to Coastal Living Zone.

[9] In support of the application the Council referred the Court to the recent decision in *Kahuranaki Station Limited v Hastings District Council*.¹ In that case the Court considered circumstances were the appellant had appealed the decision on the proposed plan asking for the Rural Character Landscape Area notation to be removed from its land. The parties lodged a consent memorandum and draft consent order to that effect. The consequence of making the order by consent

¹ [2016] NZEnvC 111.



was that an area of RCL7 on neighbouring land would be left “orphaned” from the remainder of the RCL7 notation. The Council acknowledged that there would be a jurisdictional issue if it asked the Court to remove the notation from the neighbouring property, as the appellant’s appeal only sought removal of the zoning for their own land.

[10] The Court said at [9] that:

[9] Section 293 contemplates that the Court will identify relevant matters during the hearing of a plan appeal, and direct the council to prepare changes to address those matters. In this case, the hearing is “on the papers”, to consider the consent memorandum and the draft order the parties have provided. I am satisfied that in this case it is appropriate for the Council to identify the issue for the Court and that the Council has provided sufficient information to allow the Court to consider and confirm the amendment without further directions.

[11] The Council submitted that the same approach as taken in *Kahuranaki Station Ltd* should apply in this case. The parties have together presented their settlement to the Court by way of a memorandum as a result of the agreement reached through Court-assisted mediation. The zoning anomaly arising from the relief would have been identified should the matter have been heard by the Court, just as it has been identified through the settlement process.

[12] I accept that the parties’ reasoning for seeking to re-zone the four properties is to avoid leaving an “island” of properties zoned Rural Zone when they would be surrounded by land zoned Coastal Zone. It is generally sound resource management practice in relation to the zoning of land to avoid spot zoning of land without good reason. Here, the Rural zoning of 4 lots, each of less than 2,000 m², within an area zoned Coastal Living, where it appears almost certain that the actual use of the land will be for coastal living purposes rather than rural purposes, would not be an appropriate outcome. I am also satisfied that all the owners of the properties have consented to the re-zoning, and as a result no party will be prejudiced by the exercise of the power under s 293 of the Act.

Determination

[13] Accordingly, the Court makes an order under s 293 of the Act confirming the changes prepared by the Thames-Coromandel District Council amending the zoning over 931A, 931B, 931C and 931D Purangi Road, Cooks Beach in the proposed Plan from Rural Zone to Coastal Living Zone.



[14] The Court orders by consent that that the appeal is allowed to the extent that the Thames-Coromandel District Council is directed to amend Planning Maps 18 Zones "Mercury Bay" and 18H Zones "Cooks Beach" of the proposed Thames-Coromandel District Plan as shown in **Annexure A** to this order.

[15] The appeal is otherwise dismissed.

[16] There is no order as to costs.

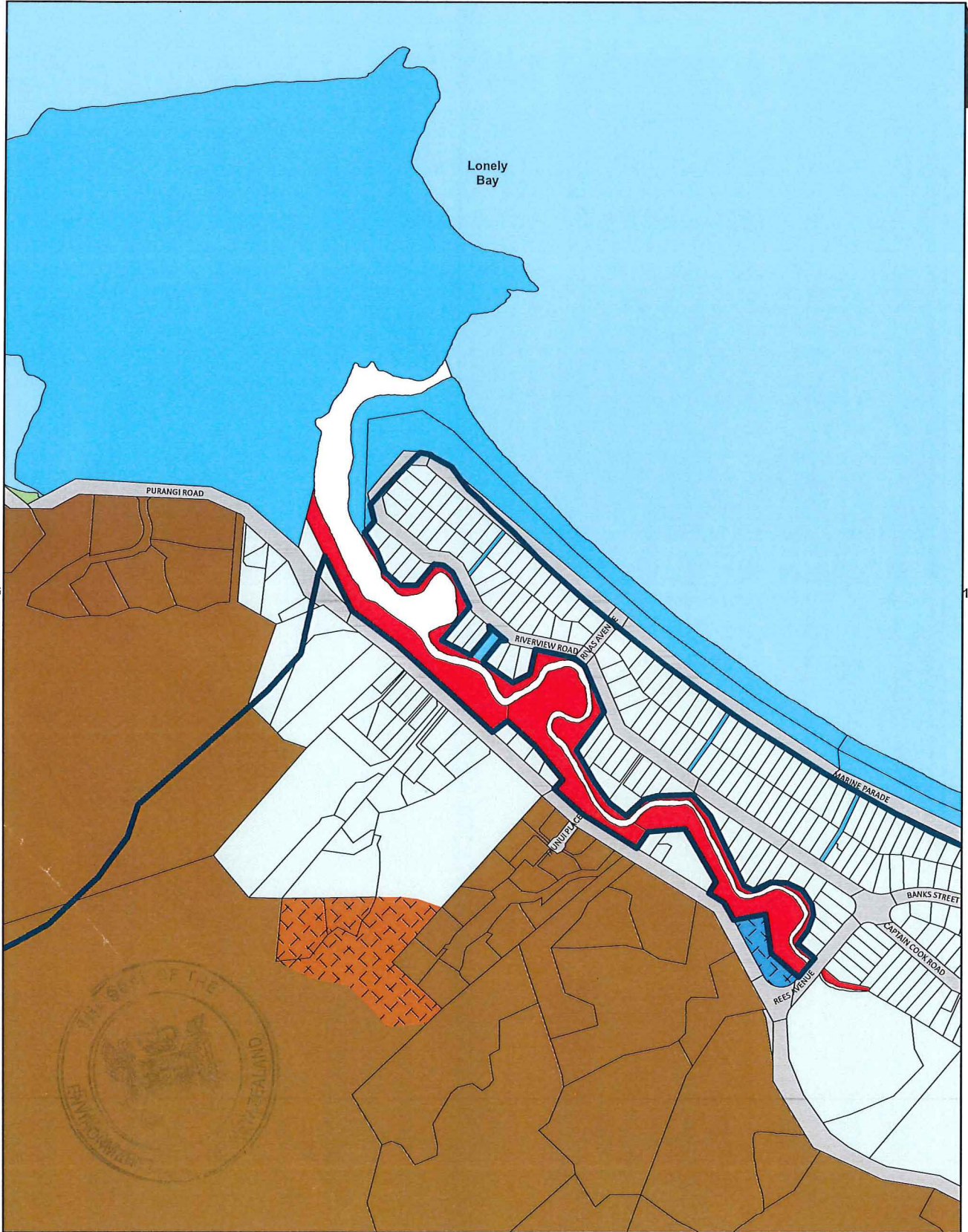


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D A Kirkpatrick
Environment Judge

Annexure A

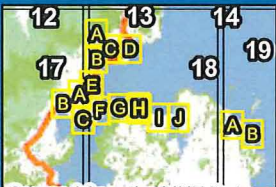




18G

18I

18



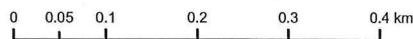
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MAP 18H ZONES

COOKS BEACH

PROPOSED DISTRICT PLAN - Appeals Version
Scale 1:7,500 at A4 Paper Size



MAP PRINTED
August 2017