

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

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 S BLACK, W BLACK, C O'HALLORAN, S
O'HALLORAN, B ROBINSON, G
SEMMENS & S STOREY

ENV-2016-AKL-000112

Appellants

AND

THAMES-COROMANDEL DISTRICT
COUNCIL

Respondent

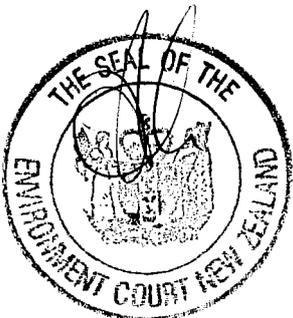
Environment Judge D A Kirkpatrick sitting alone under section 279 of the Act
IN CHAMBERS at Auckland

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 subject to the agreed amendments to the
proposed Thames-Coromandel District Plan set out in this order;
- (2) the appeal is otherwise dismissed.

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



REASONS

Introduction

- [1] This appeal relates to the proposed Thames-Coromandel District Plan.
- [2] The appellant appealed the the location of the Current Coastal Erosion Line ("CCEL") on Map 26A of the Proposed Plan.
- [3] The parties have now reached an agreement that will resolve this appeal in its entirety.
- [4] The agreement reached involves inserting new Rule 9A into the plan and adding *Activities on 401-419 Thames Coast Road between the Current Coastal Erosion Line and the Te Puru South Coastal Erosion Line* in the restricted discretionary matters and assessment criteria listed in Table 3.
- [5] In making this order the Court has read and considered the appeal and the memorandum of the parties dated 27 March 2018.
- [6] The Waikato Regional Council has given notice of an intention to become a party under section 274 of the Act.
- [7] 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, and gives effect to the New Zealand Coastal Policy Statement and the Waikato Regional Policy Statement.



[8] Therefore, the Court orders, by consent, that the appeal is allowed to the extent that the Thames-Coromandel District Council is directed to amend Section 34 of the proposed Thames-Coromandel District Plan as shown in Annexure A.

[9] This order resolves the appeal by Scott Matthew Storey, William Guy Black and Sophie Margaret Black, Greg Semmens, Betty Robinson, Clive O'Halloran and Sue Lewis O'Halloran in its entirety.

[10] There is no order as to costs.

DATED at Auckland this 11th day of April 2018



A handwritten signature in cursive script, appearing to read "D Kirkpatrick", is written over a horizontal line.

D A Kirkpatrick
Environment Judge

"A"



ANNEXURE 'A'

RULE 9A One dwelling per lot **Accessory building** **Addition to a building**

1. An activity listed in Rule 9A is a **restricted discretionary activity**, provided:
 - a) It is partly or fully within land between the Current Coastal Erosion Line and the Te Puru South Coastal Erosion Line on 401-419 Thames Coast Road, Te Puru shown in Figure 1 below; and
 - b) A new building or an addition to a building is relocatable; and
 - c) Council is indemnified against any liability associated with the failure (in whole or part) of any coastal defence structure, including any damage or costs arising from such failure, or ongoing maintenance of the structure; and
 - d) There is a long term management plan for the maintenance of coastal defence structure which has been approved by the Council and shall include long-term monitoring and maintenance of the defence, provision/triggers for removal or landward relocation of the defence, long-term management of dwellings and other buildings and structures near the defence, and back-up alternatives to the defence; and
 - e) A report on coastal processes affecting the site, at a level of detail that corresponds to the scale and significance of the environmental effects, is submitted with the application.
2. The Council restricts its discretion to the matters in Table 3 below.
3. An activity listed in Rule 9A that:
 - a) Is not a restricted discretionary activity under Rule 9A.1; or
 - b) Is located partly or fully on land seaward of the Te Puru South Coastal Erosion Line **on 401-419 Thames Coast Road, Te Puru** shown in Figure 1 below;

Is a **non-complying activity**.

NOTE:

1. Under this rule "relocatable" can include construction on wooden, concrete or other piles in a manner so that the building can be lifted or moved by vehicles and re-established in a new location.
2. The Te Puru South Coastal Erosion Line and the Current Coastal Erosion Line are shown in Figure 1 below.
3. For the avoidance of doubt, maintenance, replacement or alterations can be undertaken inside the building envelope and the building footprint of a lawfully established building on 401-419 Thames Coast Road, Te Puru **shown in Figure 1 below** in accordance with the existing use rights provisions in section 10 of the Resource Management Act 1991.





Figure 1 - 401 to 419 Thames Coast Road, Te Puru
Te Puru South Coastal Erosion Line - yellow dashed line
Current Coastal Erosion Line - solid green line



Table 3 – Restricted Discretionary Activity Matters

Matter		Assessment Criteria	
1.	Collective action across the affected area	a)	Whether all lots subject to a specific coastal hazard are protected by the 'soft' coastal defence.
		b)	The extent to which the community affected by the specific coastal hazard is working together to achieve a holistic solution to coastal hazard risk.
		c)	Whether the 'soft' coastal defence would disadvantage a site disproportionately.
2.	Effects on nearby sites	a)	Whether the 'soft' coastal defence would increase the coastal hazard risk to adjacent or nearby sites.
3.	Preservation and/or restoration of high tide beaches	a)	Whether the structure is located landward enough to allow for a beach to exist at high tide.
4.	Legal provisions for management of the coastal defence	a)	Whether the coastal defence is legally protected against damage and legally allows for access and maintenance if it is within or partly within private land and/or across multiple lots.
5.	Ability to remove structure	a)	Whether the structure can be removed or replaced if changes occur to climate, risk levels or tolerance, ecosystems, or community preferences.
6.	Effects on natural character of the coastal environment	a)	The extent to which the structure avoids, remedies or mitigates adverse effects on the existing natural character of the coastal environment.
7.	Burial of structural components	a)	Whether the rock, concrete, metal, timber, geotextile or other man-made component is buried in a manner and at a depth so that the component is only exposed for a short period of time (i.e. a few weeks) after a severe storm (e.g. once every five years).
8.	Management of cumulative or cascading risks associated with coastal erosion	a)	The extent to which the activity avoids or mitigates any cumulative risks (particularly tsunami) and any cascading risks (particularly coastal inundation).
9.	<u>Activities on 401-419 Thames Coast Road between the Current Coastal Erosion Line and the Te Puru South Coastal Erosion Line.</u>	a)	<u>Whether the building addition is a minor component of the building.</u>
		b)	<u>The extent to which an activity avoids or mitigates any risk from coastal erosion.</u>
		c)	<u>The extent to which effective erosion protection is provided for the site on which the new building is located.</u>
		d)	<u>The extent to which any recommendations provided in the coastal processes report are complied with.</u>



Table 3 – Restricted Discretionary Activity Matters	
Matter	Assessment Criteria
	e) <u>The extent to which the proposal is consistent with the long term management plan for the maintenance of coastal defence structure which has been approved by the Council.</u>

