

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

Decision No. [2020] NZEnvC 001

IN THE MATTER of the Resource Management Act 1991
AND of appeals under clause 14 of Schedule 1
to the Act relating to the proposed Thames-
Coromandel District Plan in relation to the
Coastal Environment and Natural Character
Topics

BETWEEN ENVIRONMENTAL DEFENCE SOCIETY
INCORPORATED
(ENV-2016-AKL-000147)
(Topic: ENV-2016-341-000007)
and others
Appellants

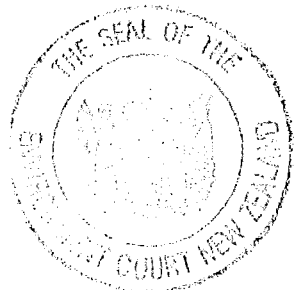
AND THAMES-COROMANDEL DISTRICT
COUNCIL
Respondent

AND MARTIN WALLACE
PETER ROSCOE
SUSAN EDENS
COROMANDEL PROPERTY OWNERS'
ALLIANCE INCORPORATED
Section 274 Parties

Court: Environment Judge D A Kirkpatrick
Environment Commissioner D J Bunting
Environment Commissioner K Prime

Hearing: at Thames on 3 April 2019

Appearances: H-M Noone for appellant
S J Berry and C F Timbs for respondent
M Wallace in person
P Roscoe in person



S Edens in person
C M Vickerman on behalf of Coromandel Property Owners' Alliance
Inc

Date of Decision: 13 January 2020

Date of Issue: **14 JAN 2020**

DECISION OF THE ENVIRONMENT COURT

- A. The Thames Coromandel District Council is directed to amend its proposed District Plan by altering the Coastal Environment Line on the property at 500 Boat Harbour Road, Whenuakite, as shown in Attachment 8 to the supplementary statement of evidence of Stephen Brown dated 2 April 2019 and presented to the hearing before the Court on 3 April 2019.
- B. In all other respects the requests for amendments in respect of the properties at 500 Boat Harbour Road, Whenuakite and 896 Hikuai Settlement Road, Pauanui, are dismissed.
- C. There is no order as to costs.

REASONS

Introduction

[1] This decision is about the appropriateness of the location of the Coastal Environment Line (CEL) on two properties on the east coast of the Coromandel Peninsula.

[2] The procedural background to the matters presently before the Court is set out in the findings and directions in the Court's determination in *Vernon & ors v Thames-Coromandel District Council*.¹ That determination records the problems identified in the location of the CEL and the extent of the Natural Character Overlays as set out in the decisions version of the Thames-Coromandel District Council's proposed District Plan (**the proposed Plan**), and the Council's proposal to address those problems using the

¹ *Vernon & ors v Thames-Coromandel District Council* [2018] NZEnvC 076.



process available under s 293 Resource Management Act 1991 (**RMA** or **the Act**).

[3] The problems largely stemmed from the requirements to give effect to the Waikato Regional Policy Statement and the New Zealand Coastal Policy Statement under s 75(3) of the Act. The detail set out in that determination need not be repeated here. It is sufficient to note that, to the credit of everyone involved, the process was successful in addressing and resolving:

- (i) the problems of mapping methodology;
- (ii) the text of the proposed Plan concerning the CEL;
- (iii) almost all of the issues in relation to the location of the CEL; and
- (iv) almost all of the issues in relation to the text and mapping of the Natural Character Overlays.

[4] The location of the CEL remains in issue on three properties:

- (a) 500 Boat Harbour Road, Whenuakite (Mr Wallace's property);
- (b) 896 Hikuai Settlement Road, Pauanui (Mr Roscoe's property); and
- (c) The land behind New Chums Beach or Wainuiototo, Whanagapoua (Northern Land Property Ltd).

[5] This decision deals with the first two properties in that list. We will give our decision separately in relation to the land behind New Chums Beach/Wainuiototo: the circumstances of that land raise other issues concerning the Natural Character Overlays and a proposed structure plan for the development of the land, not relevant to the first two properties, which also require a decision and which should be dealt with separately.

[6] As a result of this somewhat unusual procedural background, this decision is primarily concerned with the issues raised by two parties under s 274 RMA to a number of appeals, where their interests in the proceedings have arisen through a procedure under s 293 RMA rather than directly from the appeals. We have identified the Environmental Defence Society (**EDS**) as the lead appellant, as they took a leading role



in the s 293 procedure and participated in the hearing before us in support of the Council's position, but the principal proponents in relation to the issues addressed in this decision were Mr Wallace and Mr Roscoe.

[7] In light of this, the other parties under s 274 of the Act who participated in the hearing, Ms Edens and the Coromandel Property Owners' Alliance, adopted a watching role, expressing the concern that the general agreement on the provisions of the proposed Plan concerning the CEL, including its location in respect of all but three properties in the district, should not be undone by the resolution of site-specific issues. That is a reasonable concern and we have borne it in mind in our deliberations.

The Policy Requirements

[8] In achieving the purpose of the Act, the Council (and, on appeal as required by s 290 RMA, the Court) is required by s 6 RMA to recognise and provide for, among others, the following matter of national importance:

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

[9] The Council (and, on appeal, the Court) is also required by s 75(3)(b) RMA, in preparing a district plan (or determining appeals against decisions on submissions on a proposed plan) to give effect to the New Zealand Coastal Policy Statement (**NZCPS**). The objectives and policies of the NZCPS are focussed on the coastal environment and all of those provisions are relevant. Of particular application in the present case, Objectives 1 and 2 provide:

1. To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by:
 - maintaining or enhancing natural biological and physical processes in the coastal environment and recognising their dynamic, complex and interdependent nature;
 - protecting representative or significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand's indigenous coastal flora and fauna; and
 - maintaining coastal water quality, and enhancing it where it has deteriorated from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity.
2. To preserve the natural character of the coastal environment and protect natural features and landscape values through:
 - recognising the characteristics and qualities that contribute to natural character, natural features and landscape values and their location and distribution;
 - identifying those areas where various forms of subdivision, use, and development would be inappropriate and protecting them from such activities; and
 - encouraging restoration of the coastal environment.



[10] Among the provisions to achieve those objectives, Policy 1 provides for the extent and characteristics of the coastal environment, as follows:

- (1) Recognise that the extent and characteristics of the coastal environment vary from region to region and locality to locality; and the issues that arise may have different effects in different localities.
- (2) Recognise that the coastal environment includes:
 - (a) the coastal marine area;
 - (b) islands within the coastal marine area;
 - (c) areas where coastal processes, influences or qualities are significant, including coastal lakes, lagoons, tidal estuaries, saltmarshes, coastal wetlands, and the margins of these;
 - (d) areas at risk from coastal hazards;
 - (e) coastal vegetation and the habitat of indigenous coastal species including migratory birds;
 - (f) elements and features that contribute to the natural character, landscape, visual qualities or amenity values;
 - (g) items of cultural and historic heritage in the coastal marine area or on the coast;
 - (h) inter-related coastal marine and terrestrial systems, including the intertidal zone; and
 - (i) physical resources and built facilities, including infrastructure, that have modified the coastal environment.

[11] In broad terms these provisions require that a plan identify the coastal environment for the purposes of sustaining its ecosystems and preserving its natural character.

[12] The Council (and, on appeal, the Court) is also required by s 75(3)(c) RMA), in preparing a district plan (or determining appeals against decisions on submissions on a proposed plan), to give effect to the Waikato Regional Policy Statement (**WRPS**). The most relevant objective is 3.7 relating to the coastal environment:

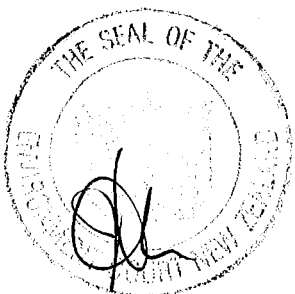
The **coastal environment** is managed in an integrated way that:

- a) preserves **natural character** and protects natural features and landscape values of the coastal environment;
- b) avoids conflicts between uses and values;
- c) recognises the interconnections between marine-based and land-based activities; and
- d) recognises the dynamic, complex and interdependent nature of natural biological and physical processes in the coastal environment.

[13] The terms in boldface in that objective are defined in the glossary (*sic*) of the WRPS as follows:

Coastal environment – the environment where the coast is a significant part or element, comprising at least:

- a) the **coastal marine area**;
- b) islands within the coastal marine area;
- c) areas where coastal processes, qualities or influences are significant, including coastal lakes, lagoons, tidal estuaries, salt marshes, coastal **wetlands**, and the margins of these;
- d) areas at risk from coastal hazards;



- e) coastal vegetation and the habitat of **indigenous** coastal species, including migratory birds;
- f) elements and features that contribute to **natural character**, visual qualities or **amenity values**;
- g) items of cultural and historic heritage in the coastal marine area or on the coast;
- h) inter-related coastal marine and terrestrial systems, including the intertidal zone; and
- i) physical resources and built facilities, including **infrastructure**, that have modified the coastal environment.

Natural character – in relation to the coastal environment, **wetlands**, and lakes and rivers and their margins, the degree of naturalness of an area, as evidenced by the degree to which it possesses qualities and features that are products of nature as opposed to products of human activities.

[14] Policy 3.22 of the WRPS essentially repeats s 6(a) of the Act.

[15] Policy 4.1 of the WRPS in relation to integrated management provides for an integrated approach as follows:

An integrated approach to resource management will be adopted that:

- a) recognises the inter-connected nature of **natural and physical resources** (including spatially and temporally) and the benefits of aligning the decisions of relevant management agencies across boundaries;
- b) maximises the benefits and efficiencies of working together ;
- c) recognises the multiple values of natural and physical resources including **ecosystem services**;
- d) responds to the nature and values of the resource and the diversity of effects (including cumulative effects) that can occur;
- e) maximises opportunities to achieve multiple objectives;
- f) takes a long-term strategic approach which recognises the changing environment and changing resource use pressures and trends;
- g) applies consistent and best practice standards and processes to decision making; and
- h) establishes, where appropriate, a planning framework which sets clear limits and thresholds for resource use.

[16] Implementation method 4.1.7 of the WRPS in relation to integrated management provides for managing the coastal environment as follows:

Local authorities should:

- a) recognise and manage the **coastal environment** as an integrated unit; and
- b) recognise the special context of the coastal environment, including the recognition that it has particular values and issues that are of regional and national significance and that impact on the wellbeing of the Waikato region, including:
 - i) its contribution to the regional and local economy;
 - ii) its cultural values and association, including **historic heritage**;
 - iii) its value as a **pātaka kai**;
 - iv) its public nature;
 - v) its **amenity values**, including its contribution to open space;
 - vi) its dynamic and hazardous nature;
 - vii) the difficulty in containing adverse effects due to its inter-connected nature;
 - viii) its potential for renewable energy generation;
 - ix) its ecological diversity and **indigenous biodiversity** values;
 - x) the use of the **coastal marine area** as the receiving environment for landbased discharges of sediment and **contaminants** and its sensitivity to them; and



- xi) its potential for **mineral** resources.

[17] Implementation method 4.1.8 of the WRPS provides for identifying the extent of the coastal environment as follows:

In relation to the coastal environment:

- a) the Regional Policy Statement shall map the landward extent of the coastal environment at an indicative level;
- b) regional and district plans shall map or otherwise identify the landward extent of the **coastal environment** as the area:
 - i) identified in the indicative maps provided in Section 4A; or
 - ii) determined by further detailed investigation;
- c) any detailed investigation undertaken under b) above shall:
 - i) recognise and include assessment and consideration of all of the elements of the coastal environment (as defined in the Glossary);
 - ii) be undertaken by the relevant **local authority** using a collaborative approach under Policy 4.2 in recognition of the need to manage the coastal environment as an integrated unit;
- d) where a detailed investigation has been undertaken and the results of this investigation have been made operative through inclusion in the relevant regional and district plans, this area should take precedence over the relevant indicative area provided in Section 4A.
- e) regional and district plans shall contain provisions that:
 - i) address adverse effects of activities on the coastal environment, including cross-boundary and cumulative effects; and
 - ii) recognise the particular values and issues present in the coastal environment; and
 - iii) provide for integrated management and consistent provisions to give effect to the policy direction of the Regional Policy Statement for the coastal marine area and the adjoining land in the coastal environment.

[18] The WRPS includes, in Chapter 4A, indicative coastal environment maps.

[19] Policy 6.2 of the WRPS in relation to the built environment provides for planning for development in the coastal environment as follows:

Development of the built environment in the **coastal environment** occurs in a way that:

- a) ensures sufficient development setbacks to protect coastal natural character; public access, **indigenous biodiversity**, natural physical processes, amenity and natural hazard mitigation functions of the coast;
- b) protects hydrological processes and natural functions of back dune areas;
- c) avoids the adverse effects of activities on areas with outstanding natural character, and outstanding natural features and landscapes;
- d) ensures that in areas other than those identified in (c) above, activities are appropriate in relation to the level of **natural character** or natural feature and landscape;
- e) has regard to local coastal character;
- f) allows for the potential effects of sea level rise, including allowing for sufficient coastal habitat inland migration opportunities;
- g) protects the valued characteristics of remaining undeveloped, or largely undeveloped coastal environments;
- h) ensures adequate water, stormwater and wastewater services will be provided for the development;
- i) avoids increasing **natural hazard risk** associated with coastal erosion and inundation;
- j) has regard to the potential effects of a tsunami event, and takes appropriate steps to avoid, remedy or mitigate that risk;



- k) avoids ribbon development along coastal margins;
- l) does not compromise the function or operation of existing or planned coastal infrastructure;
- m) provides for safe and efficient connectivity between activities occurring in the **coastal marine area** and associated land-based infrastructure;
- n) manages adverse effects to maintain or enhance water quality; and
- o) maintains and enhances public access.

[20] Policy 11.1 of the WRPS in relation to indigenous biodiversity provides for the maintenance or enhancement of indigenous biodiversity as follows:

Promote positive indigenous biodiversity outcomes to maintain the full range of ecosystem types and maintain or enhance their spatial extent as necessary to achieve healthy ecological functioning of ecosystems, with a particular focus on:

- a) working towards achieving no net loss of indigenous biodiversity at a regional scale;
- b) the continued functioning of ecological processes;
- c) the re-creation and restoration of habitats and connectivity between habitats;
- d) supporting (buffering and/or linking) ecosystems, habitats and areas identified as significant indigenous vegetation and significant habitats of indigenous fauna;
- e) providing ecosystem services;
- f) the health and wellbeing of the Waikato River and its catchment;
- g) contribution to natural character and amenity values;
- h) tāngata whenua relationships with indigenous biodiversity including their holistic view of ecosystems and the environment;
- i) managing the density, range and viability of indigenous flora and fauna; and
- j) the consideration and application of biodiversity offsets.

[21] Policy 11.2 of the WRPS in relation to indigenous biodiversity provides for the protection of significant indigenous vegetation and significant habitats of indigenous fauna as follows:

Significant indigenous vegetation and the significant habitats of indigenous fauna shall be protected by ensuring the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced.

[22] Policy 12.2 of the WRPS in relation to landscape provides for preserving natural character as follows:

Ensure that activities within the **coastal environment, wetlands**, and lakes and rivers and their margins are appropriate in relation to the level of **natural character** and:

- a) where natural character is pristine or outstanding, activities should avoid adverse effects on natural character;
- b) where natural elements/influences are dominant, activities should avoid significant adverse effects and avoid, remedy or mitigate other adverse effects on natural character;
- c) where man-made elements/influences are dominant, it may be appropriate that activities result in further adverse effects on natural character, though opportunities to remedy or mitigate adverse effects should still be considered;
- d) promote the enhancement, restoration, and rehabilitation of the natural character of the coastal environment, wetlands and lakes and rivers and their margins; and
- e) regard is given to the functional necessity of activities being located in or near the coastal environment, wetlands, lakes, or rivers and their margins where no reasonably practicable alternative locations exist.

[23] Chapter 12C of the WRPS sets out assessment criteria for the natural character



of the coastal environment, to be used a basis for identifying areas of high and outstanding natural character. These are grouped as bio-physical characteristics and perceptual values, showing a clear relationship with those elements of the landscape evaluation factors established by this Court over a number of years,² and provide for an overall assessment of landscapes as outstanding, high or less than high.

[24] We take from these provisions of the WRPS, read together, a directive requirement in Implementation Method 4.1.8 to map the landward extent of the coastal environment of the district in order to achieve the four elements of Objective 3.7 in an integrated way. The complexity of that objective is demonstrated by the great range of considerations listed in other policies. The WRPS does not appear to set out any ranking or prioritisation of those matters or give any other indication of a strategic direction in relation to the coastal environment.

The Coastal Environment Line – Relevant Plan Provisions

[25] The Council (and, on appeal, the Court) is also required by s 74(1)(e) RMA, in preparing a district plan (or determining appeals against decisions on submissions on a proposed plan), to have particular regard to an evaluation report prepared in accordance with s 32 or s 32AA RMA. We did not receive such a report on, or any submissions or evidence about, any such evaluation of the revised CEL, either generally or in the particular circumstances of the properties in issue. Given the general agreement about the text, the parties may have considered there was no issue there. We appreciate that Mr Brown's evidence, covering his lengthy and extensive involvement in advising the Council on these and associated parts of the operative and proposed plan, provides a great deal of important and useful information about how these provisions have been developed and assessed.

[26] For our purposes, however, we consider that the statutory framework in s 32 RMA for such an evaluation provides guidance for resolving the issues in this case about the most appropriate location of the CEL. On that basis we will examine whether the locations of the CEL on these two properties are the most appropriate ways to achieve the objectives of the proposed revised CEL given other reasonably practicable options and the efficiency and effectiveness, including the benefits and costs of the effects, of the locations.



²

See the general review in *Western Bay of Plenty District Council v Bay of Plenty Regional Council* [2017] NZEnvC 147 at [78] – [111].

[27] The proposed Plan provisions for the coastal environment of the District which are relevant to the CEL are to be found in:

- (a) Section 7 – Coastal Environment – objectives and policies;
- (b) Section 7A – Natural Character of the Coastal Environment – objectives and policies; and
- (c) Section 32A – Natural Character of the Coastal Environment – rules.

[28] In Section 7 there is a general objective and two associated policies which are concerned with subdivision, use and development:

Objective 1

Subdivision, use and development in the Coastal Environment:

- Enables people and their communities to provide for the social, economic, and cultural well-being and their health and safety;
- Maintains or restores the integrity, form, functioning and resilience of the Coastal Environment, including the long-term projected effects of climate change; and
- Protects the indigenous biodiversity values of the Coastal Environment; and
- Preserves the natural character of the Coastal Environment; and
- Protects outstanding natural features and landscapes values of the Coastal Environment; and
- Recognises and provides for the relationship of tāngata whenua with the Coastal Environment; and
- Maintains and enhances public open space and recreation opportunities in the Coastal Environment; and
- Manages coastal hazard risks; and
- Protects and enhances historic heritage values; and
- Avoids sprawling or sporadic patterns of development and enabling consolidation of existing settlements.

Policy 1a

New subdivision, use and development along the coast shall provide a setback from the coastal edge to allow for:

- a) Preserving natural character; and
- b) Maintaining and enhancing public access to public areas; and
- c) Natural ecosystems functioning; and
- d) Natural functioning of physical processes, including the ability of natural features to migrate inland.

Policy 1b

Subdivision, use and development in the Coastal Environment (outside of the Natural Character Overlay) shall avoid significant adverse effects on the values and characteristics of natural character and avoid, remedy or mitigate other adverse effects.

[29] There is also an objective to promote opportunities for restoration or rehabilitation of modified or degraded areas of natural character, which is then repeated with no elaboration in its associated policy.

[30] In Section 7A, Objective 1 and Policy 1a provide for the natural character



overlays for areas of high natural character (**HNC**) and outstanding natural character (**ONC**) in the Coastal Environment as follows:

Objective 1

Recognise that there are different levels of natural character in the Coastal Environment and natural character is preserved and protected from inappropriate subdivision, use and development.

Policy 1a

Subdivision, use and development in an area of High Natural Character or Outstanding Natural Character in the Coastal Environment shall consider:

- a) The values and characteristics of the natural character area;
- b) The extent of existing man-made changes to the landform, vegetation, coastal processes and water movement;
- c) The presence or absence of man-made elements/structures, including infrastructure;
- d) The vulnerability of the ecosystem and its representation in the District;
- e) The integrity of landforms and features including ridgelines, headlands, peninsulas, cliffs and streams, rivers and their margins;
- f) The natural appearance, functioning of beach and dune systems, wetlands, rivers and their margins;
- g) The duration and nature of adverse effects of the proposed activity;
- h) The physical and visual integrity of the natural character area;
- i) The cover, pattern, sequence and integrity of vegetation of the natural character area; and
- j) The functional necessity of the activity being located in this area where no reasonably practicable alternative locations exist.

[31] Section 32A of the proposed Plan sets out the rules for activities in any HNC or ONC area. These rules set additional limits to those in the applicable zone rules on the bulk and location of buildings and the scale and extent of earthworks and clearance of indigenous vegetation. The rules provide for exceedance of such limits generally as a restricted discretionary activity but in certain cases, such as for additional dwellings or subdivision creating one or more additional lots, as a full discretionary activity or a non-complying activity. The matters of restricted discretion in Table 2 in Rule 32A.4 are the location and extent of earthworks, the location, design and visibility of buildings or structures and the effects of clearing indigenous vegetation on natural character values.

[32] As already noted, the text of these provisions of the proposed Plan are not in issue before us. These provisions are relevant to the location of the CEL because HNC and ONC areas are only identified within the Coastal Environment and they accordingly indicate the consequences for a property with high or outstanding natural character being inside the CEL.

The Coastal Environment Line - Methodology

[33] As explained by counsel for the Council, the procedure followed in accordance with the Court's determination under s 293 considered a full remapping by Mr Stephen



Brown, a very experienced landscape architect. Mr Brown's approach was based on Policy 1 of the NZCPS. Noting that Policy 1 does not explain how to define the boundary of the coastal environment, Mr Brown's approach was to identify areas where coastal processes, landforms and vegetation are prominent and where there is a strong sense of interaction with the coastal marine area (**CMA**). He used the following criteria to identify the extent of the coastal environment:

- A. Areas that are physically linked to the coastal marine area:
 - 1. that are directly subject to wave action and tidal inundation / movement and which contain / define the inter-tidal margins of the CMA;
 - 2. coastal drainage systems, including catchments and headwaters that feed directly into the CMA; and
 - 3. landforms and vegetation cover that are directly affected / modified by exposure and proximity to the CMA – through wind action, wave action and salt exposure.
- B. Areas the character of which is substantially defined by proximity to the coastal marine area:
 - 4. areas within which the CMA is a dominant to significant visual entity;
 - 5. locations whose landscape character and amenity is clearly influenced by proximity to, and a sense of connection with, the CMA; and
 - 6. locations within which items of cultural and historic heritage are found that are linked to, or within the CMA.

[34] On that basis, Mr Brown used contour mapping to identify major coastal ridgelines, coastal escarpments, secondary ridgelines where they enclosed areas of water, and transitions between coastal plains or terraces and hill country.

[35] Mr Brown explained that these criteria could be met by direct visual interaction between the land and the coastal marine area and by conveying a sense of the land being shaped by exposure to the sea. Contour mapping was done to see if a meaningful delineation of a ridgeline could be the boundary, with contours every 5 metres in low lying areas which tend to be more complex and every 20 metres in higher areas. Ecological assessments by Mr Gerry Kessels were also referred to, particularly to show the extent of indigenous coastal vegetation such as pohutukawa, kauri, kohekohe, rata, puriri, tanekaha and towai which can be indicative of the coastal environment.

[36] This overall approach was not contested, although the two properties where the CEL remains in issue demonstrate that a single methodology can still result in disputes.

[37] Counsel for EDS explained that its appeal against the CEL in the decisions



version of the proposed Plan was based on the lack of a consistent approach to the location of the line. Counsel for EDS said that line in the decisions version was an amalgamation of the WRPS indicative areas, the line in the proposed Plan as notified and the Council's reporting officer's version, with any discrepancy being resolved in favour of the most seaward line at any point and with the areas of settlements excluded.

[38] Counsel for the Council noted that the extent of the coastal environment can be difficult to determine and depends very much on the circumstances, citing dicta from several decisions. A rule of thumb can be discerned in the cases that the coastal environment extends from the landward boundary of the coastal marine area to the dominant ridgeline above that boundary. The potential fallacy in such a heuristic method of analysis was made clear in *Mainpower NZ Ltd v Hurunui District Council*³ where the Court said:

[320] ... In other cases before the Environment Court a landward ridge has been adopted as a boundary to a coastal environment. However, where a dominant ridge may be a useful means to identify a coastal environment boundary, such a boundary should be relevant to the coastline and coastal environment. There is no necessity to identify a dominant ridge in each case, particularly one that may be kilometres away from the coast.

[39] The position has not really advanced much beyond the observation of the Planning Tribunal in *Hay v Banks Peninsula District Council*:⁴

It is in our view a question of fact in each case what is or is not part of the coastal environment, or when land is within or without the "margin" of a lake or river. It is one of those theoretically difficult questions which will usually yield to the facts and a liberal dose of common sense.

[40] The relevant considerations are now mostly encapsulated in Policy 1 of the NZCPS, quoted above. The one from the *Hay* case that is not stated in that policy may be regarded as implicit.

500 Boat Harbour Road, Whenuakite

[41] The property at 500 Boat Harbour Road, Whenuakite, is owned by Tapuaetahi Bay Trustee Limited. Mr Wallace is a director of that company. The property is a large coastal property north of Tairua around Tapuaetahi Bay / Boat Harbour, with landmarks of Lynch Stream to the south and the maunga Tapuaetahi in the north. It has an area of over 827 ha in 9 titles, is zoned Rural and is a mixture of pasture and bush. The land is hilly and generally steep, with several perched valleys making the landscape topographically complex. All of the property is identified as part of an outstanding natural

³ *Mainpower NZ Ltd v Hurunui District Council* [2011] NZEnvC 384.

⁴ *Hay v Banks Peninsula District Council* (1990) 14 NZTPA 421, 434.



landscape in the proposed Plan. Most of it also appears to be identified as a significant natural area by the Waikato Regional Council.

[42] The proposed CEL on this property follows the high ridge, including the summit of Tapuaetahi at 277m and other points at similar levels. The parts of the property in the Coastal Environment are an ONC area.

[43] Mr Brown had not been able to inspect this property until shortly before the hearing. His assessment of it, as for much of the more remote hill country across the district, had been based on topographical mapping updated with LIDAR contours. He expressed a willingness to endorse further relocation of the CEL provided that it continued to follow the true high points and ridges.

[44] At the hearing, supplementary evidence of Mr Brown was presented, based on his site visit, in which he reported:

- (a) That the vegetation patterns and avifauna did not offer real guidance on a boundary;
- (b) That the landform in the northern part of the property is more open towards the sea;
- (c) That the landform in the central and southern parts of the property is more complex and does not have such strong connections with the sea, the central area (behind Tapuaetahi Bay) having a long valley up to the main ridge and the southern area (behind Neaves Bay and around the Lynch Stream) having secondary ridges and spurs which interrupt the connection of the main ridge to the coast.

[45] On that basis Mr Brown proposed that the CEL be shifted seaward on the southern part of the property above Neaves Bay where he considered that a series of secondary ridges interrupted the physical and visual connection of that area with the sea. He presented an aerial photograph overlaid with contour lines and the existing CEL and showed where he considered this amended line could go.

[46] Mr Wallace has engaged at some length with the Council about the location of the line, with some adjustments being made. Mr Wallace said that the CEL has been moved significantly inland through the Council's review, with the consequential effect of



increasing the area identified as ONC, and that all but 14 hectares of the farmed land on the property is in the CEL. He said that only very limited and relatively distant public views are available of the southern end of the property. He complained that only limited on-site assessment was done at earlier stages.

[47] In terms of how the property should be assessed, Mr Wallace submitted that the factors listed in Policy 1(2) NZCPS and the approach to identification set out in Implementation Method 4.1.8 of the WRPS exaggerate and elevate the landscape and visual elements, pushing the CEL further inland than the coastal environment actually extends. He submitted that the degree of significance to be assessed in terms of Policy 1(2)(c) NZCPS, including in the context of the matters in subparagraphs (e) and (h), fails to recognise the transition between truly coastal vegetation and lowland or podocarp forest.

[48] On that basis he challenged the analytical framework used by Mr Brown in his assessment, quoted above, and submitted that this framework misinterprets Policy 1 NZCPS. In particular, he submitted that Mr Brown's approach reverses the viewpoint that ought to be taken. Instead of considering the coastal environment as the area influenced by the sea, he submits that Mr Brown's analysis emphasises the area from which the sea can be seen. In doing so, Mr Wallace submitted that the result is to extend control over larger areas through the use of the CEL beyond the extent to which such areas are affected by the coast.

[49] He noted that even if the CEL were shifted seawards so that the areas of ONC were reduced, any development on the property outside the CEL would remain controlled because of its identification as an outstanding natural landscape. He said that the degree of control for the latter purpose was not as severe as the controls to protect ONC areas. As well, the property is subject to a trust which has as its primary object the protection, maintenance and improvement of the property for environmental protection, provision of open space and landscape protection. Parts of the property are also subject to Queen Elizabeth II Open Space Covenants. Mr Wallace told us that while substantial development is not presently planned, there is an intention to maintain the existing farming operation and some scope for accommodating the interests of family members in using the property.

[50] Mr Wallace called two expert witnesses, Ms Rebecca Ryder, a landscape architect, and Dr Vaughan Keesing, an ecologist. Dr Keesing's evidence mostly dealt



with landscape issues.

[51] Ms Ryder drew a distinction between coastal significance or dominance and coastal context. She acknowledged the subtleties involved in interpreting coastal landforms and processes. She accepted the presence of a dominant coastal ridgeline 1.5 – 2 km from the sea, but also identified a series of intermediary escarpment ridgelines and spurs which should also be taken into account and which, with the perched valleys, created a tiered landscape. In her opinion, the Council's approach on this property was inconsistent with that taken in similar landscapes on the coast of the Peninsula and resulted in the CEL being located on the mid slopes and first ridge between 700m and 1 km from the sea, with the greatest distance occurring where an entire headland was located inside the CEL.

[52] In Ms Ryder's opinion, the northern segment of the CEL on the property was appropriately located. Moving south, she considered that the line should drop down and move seaward to the perched plateau and its escarpment. In the central part of the property, where Waipapa Island is offshore from Tapuaetahi Bay, Ms Ryder also considered that the CEL should be along the lower hilltops and spurs. In the southern, less steep, area she would continue the CEL across the mid-slope.

[53] Ms Ryder presented an alternative CEL for the property which, from the north, followed the existing line only as far as the summit of Tapuaetahi maunga, then dropping down, in places as low as the 100m contour, and traversing the slopes of the central and southern parts of the property, including the area in the southern part which Mr Brown identified.

Evaluation

[54] Our site visit, including an overland trip skilfully navigated by Mr Wallace, confirmed the complex landscape of this property, the value of the conservation efforts by Mr Wallace's family over many years and the low likelihood of any substantial amount of development occurring here at least during the current planning period.

[55] In that context, the precision thought to be needed in drawing the CEL must be tempered by practical considerations. In seeking to achieve the objectives of the proposed Plan, the WRPS, and the NZCPS with their emphasis on the preservation of natural character drawn from s 6(a) RMA, it is important that the mapping exercise not



become an end in itself. The purpose of identifying the coastal environment must drive any mapping methodology, not the other way around. This is because such mapping is an inherently reductive exercise, setting an apparently clear boundary when in the real world *it is impossible to get an abstract definition which is capable of simple and ready application to any given situation.*⁵

[56] It is clearly open to debate whether the revised CEL is in the most appropriate location simply because the landscape offers numerous reasonably practicable alternative locations. As a line on a map extending all the way around the coastline of the district, some preference should be given to its continuity. Equally, however, the variety of the environment along any section of coastline would generally confound an approach which presumed that any physical factor such as distance, elevation, slope or a particular bio-physical element such as vegetation type would be determinative by itself.

[57] The relative efficiency and effectiveness, including the benefits and costs of the effects, of the different locations offered by Mr Brown and Ms Ryder also do not appear to offer any clear-cut basis for choice. The general planning principle is that a restriction in a plan should be the least required to serve the purpose of the restriction. This is difficult to apply where the site is affected, as this one is, both by the Outstanding Natural Features and Landscapes overlay and by the CEL with associated HNC and ONC overlays. While one may imagine each control operating in the absence of the other, in reality these two controls overlap conceptually as well as spatially.

[58] For example, one dwelling per lot, which is permitted in the Rural zone under Rule 56.4.17, becomes a restricted discretionary activity in an outstanding natural landscape under Rule 32.3.8 and a discretionary activity in an ONC area under Rule 32A.3.18. It is not immediately apparent that the matters to which discretion is restricted in an outstanding natural landscape under Rule 32.4, Table 2 (being earthworks, building visibility and location, mitigation planting and cumulative effects), are substantially less than the unrestricted range of matters that would be relevant to a discretionary assessment in an area of outstanding natural character in light of the objectives and policies in Section 7A of the proposed Plan.

[59] In our judgment, Mr Brown was right to accept that the CEL on the southern part of the property should be moved seaward to the extent shown on Attachment 8 to his



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Northland Regional Planning Authority v Whangarei County Council (1977) TCPAB A4828, quoted in *Kaupokonui Beach Society Inc v South Taranaki District Council* Decision W 030/2008 at [36].

supplementary statement of evidence dated 2 April 2019, a copy of which is **attached**. The more complex nature of the landforms in this part of the property reduces the influence that the sea has on it and conversely the degree of connection that it has to the sea. We do not consider that elsewhere on the property the line should be moved seaward as far as shown on the attachment to Ms Ryder's evidence because the influence of the coastal marine area remains sufficiently strong to warrant the assessment of effects on its natural character as part of any proposed development in that area.

896 Hikuai Settlement Road, Pauanui

[60] Mr Roscoe's property at 896 Hikuai Settlement Road, Pauanui, is about a kilometre from the entrance to Pauanui Waterways on the landward side of the road which runs along the southern and eastern sides of the Tairua River estuary. It has an area of nearly 11 hectares, is zoned Rural and is used a rural-residential lifestyle block. The land rises from the road but does not extend as far as the crest of the ridges around it.

[61] The decisions version of the CEL excluded this property as well as the orchards across the road. The proposed CEL in this vicinity now generally follows the upper ridgelines and includes the whole of the property.

[62] Mr Roscoe said that drawing the line on the basis of this topography rather than any biophysical interaction with the ocean results in the CEL including areas up to 300m above sea level and up to 15 km from the ocean. He said that no account is taken of climatic features such as prevailing winds and high rainfall which result in coastal influences not penetrating that far inland along the eastern coastline of the Coromandel Peninsula. He pointed to several ridges which project into the river valley and said that these block visual connections with the ocean as well as affect climatic conditions. In questions of the Council's expert witnesses he pressed the point that the revised CEL goes back up the next valley, but comes down to include his property. He submitted that the CEL has been drawn in a way that selectively follows the topography.

[63] Referring to Policy 1 NZCPS, he pointed to the absence of coastal vegetation, the level of development (including farms and resort activities) and the lack of inter-related costal and terrestrial systems. He noted that in respect of other parts of the proposed Plan the Council has rezoned areas within the CEL for residential purposes.



[64] In Mr Roscoe's view, the CEL as now proposed adversely affects private land, including his, that displays no feature such as a significant natural area or high natural character that would justify such additional control. He acknowledged that the degree of additional control was not great in respect of a property such as his which is not identified as having natural character to a degree that requires further protection.

[65] In response, the evidence of Mr Brown called by the Council was that while Mr Roscoe's property has at best mixed natural character values, it sits on the edge of the coastal flats adjoining the Tairua River estuary and within the apron slopes that frame those flats which are the river curtilage. In Mr Brown's opinion, these slopes help to define the extent and character of the estuary. Mr Brown also said that he had been unable to identify any intermediate ridges or other topographic features that embrace the catchment without compromising its overall integrity.

[66] In response to questions from Mr Roscoe, Mr Brown maintained his opinion that the revised line was appropriate. He said that there was no single topographic, ecological, visual or other criterion which set the location of the CEL, but that in each location the combination of relevant factors had to be considered.

Evaluation

[67] We noted during the hearing that the Tairua River estuary is within the coastal marine area as far up as its confluence with Duck Creek, as listed in Schedule 4 to Appendix III of the Waikato Regional Coastal Plan and shown on Map 23 of that Plan. This cross-river boundary is south (that is, upstream) of the subject property. As it is within the CMA, the estuary forms part of the coastal environment in terms of Policy 1(2) NZCPS. Thus, while this property is over two and a half kilometres from the open sea and may not appear to be in a coastal setting, it is only about 800m from the coastal marine area as that is defined for the purposes of the RMA.

[68] The vegetation both on the property and on the low-lying river flats, including the shelter belts for the orchards across the road, tends to obscure the visual connection between the property and the estuary. Nonetheless, the property clearly sits on the edge of the river valley.

[69] In our judgment, the property is an element that contributes to the landscape and amenity values of this part of the Tairua River estuary which is in the coastal marine area.



We are satisfied that it is appropriately included within the CEL.

Conclusion

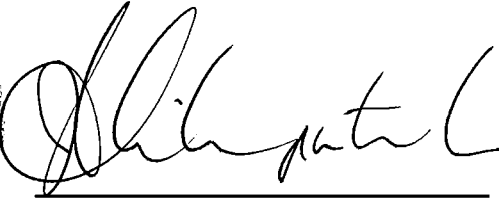

[70] In respect of the properties at 500 Boat Harbour Road, Whenuakite and 896 Hikuai Settlement Road, we consider that the CEL should be moved on the former property to the extent shown in Attachment 8 to Mr Brown's supplementary evidence and that no change should be made in respect of the latter property.

[71] As these matters arise out of proceedings relating to the preparation of a district plan, and as the preparation for and conduct of the hearing of these matters was generally satisfactory, we do not consider this to be a case where there should be any award of costs against any party.

[72] For the foregoing reasons, we make the following orders:

- (a) The Thames Coromandel District Council is directed to amend its proposed District Plan by altering the Coastal Environment Line on the property at 500 Boat Harbour Road, Whenuakite, as shown in Attachment 8 to the supplementary statement of evidence of Stephen Brown dated 2 April 2019 and presented to the hearing before the Court on 3 April 2019.
- (b) In all other respects the requests for amendments in respect of the properties at 500 Boat Harbour Road, Whenuakite and 896 Hikuai Settlement Road, Pauanui, are dismissed.
- (c) There is no order as to costs.

For the Court:



D A Kirkpatrick
Environment Judge



Attachment 2

500 BOAT HARBOUR ROAD - C.E.L. REVIEW: RECOMMENDED CHANGES TO C.E.L.

Stephen Brown
(April 2019)

