

COASTAL DEVELOPMENT THAT PRESERVES THE COASTLINE: WHITIANGA WATERWAYS

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Abstract: The success of the approval process for the development of a 1500-lot canal housing development on 220ha of land at Whitianga on the Coromandel Peninsula owes a great deal to the District Council maintaining, over a long period, a few effective strategies for containing coastal development. The three key strategies were (and still are): concentrating most development in seven fully serviced district towns; limiting non-rural development around the coastline; and providing for the planned growth of the towns by identifying specific growth areas and excluding from them activities (such as ad hoc subdivision) that could prejudice comprehensively planned expansion. Supplementary District Plan strategies involve promoting conservation and rehabilitation of indigenous vegetation through selective subdivision and development, and maintaining land use controls in the coastal zone on activities that could, cumulatively, degrade coastal amenity values. These strategies have enabled significant growth to be accommodated (averaging around 500 new houses a year over a long period), while at the same time preserving large tracts of publicly and privately owned coastal land. The challenge for the future will be continuing to maintain these strategies under the Resource Management Act 1991.

The 220 ha of land that has become the Whitianga Waterways site was identified in mid-1970's as the area into which Whitianga should expand. District Plan rules over the past 25 years effectively prevented its fragmentation (through land subdivision). As a result of this, when Hopper Developments Ltd formed a company to develop canal housing at Whitianga, the 220ha site had only 7 owners. This has been a critical success factor in making the Whitianga Waterways development possible.

This paper discusses the past and future policy context for the Whitianga Waterways development, the District Plan change process, quantifies 9 steps in the 4 year 9 month planning and consent process, and identifies the single most significant cause of delay. The author provides his perspective on the process of drafting the District Plan provisions and taking them through the regulatory processes is given and concludes that under the Resource Management Act 1991 jurisdiction at the land-water interface is complex and confusing, and the Act sets an impossibly difficult task for Councils and their advisers in assessing whether a large development such as this promotes the sustainable management of natural and physical resources.

Keywords: Coastal Development, Canal Housing, Consent Process, District Plan Variation, Change, Hearings, Consent processing, Whitianga.

INTRODUCTION

Whitianga is a small seaside town on the eastern side of the Coromandel Peninsula. It is approximately one and a half hours by road from Thames, which is a further hour to hour and a half from Auckland. It lies on a natural harbour, and in recent years has grown strongly. The current winter population is about 3,500 people. Resident population swells to approximately 30,000 during the summer.

For at least 30 years, the territorial local authority has recognised Whitianga in its planning and resource management documents as a growth centre. The location, natural setting and attributes of the town, and its topography make this decision obvious. The town lies on a flat, sandy area of several hundred hectares with few physical constraints, in theory at least, hindering growth. The land identified at Whitianga for growth is flat with few topographical features. Current uses are farming and horticulture. Soil thinly covers a sandy base, which is several metres deep and drains well.

As development has progressed, however, developing the infrastructure to cope with growth of the town has presented challenges. A new wastewater system was retro-fitted to the town during the 1980's to replace individual household septic tanks. A reticulated water supply network has been installed and upgraded, and new water intakes constructed. Roading improvements have included the designation of an alternative heavy vehicle route to remove the need for such vehicles to travel through the town centre. There have been improvements to and lengthening of the airfield, and a 220 berth marina has been constructed adjacent to the town centre. Even as this has occurred, stormwater disposal has become an increasingly difficult infrastructural problem to resolve because of the flat terrain, and inadequate existing stormwater pipes. To deal adequately with this problem through conventional subdivision and development has required substantial areas of land to be set aside as stormwater ponding reserves. This is wasteful of land, and results in relatively large areas of characterless housing. Clearly, an alternative form of development needed to be found if development of the growth area was to be realised. Whitianga Waterways canal housing has provided such an opportunity.

With the approvals process for the Whitianga Waterways development now completed and the development underway, it is opportune to evaluate the effectiveness of the policy context within which the District Plan provisions for the development were prepared, and to analyse the Plan Change and Variation process. This paper sets out the author's perspective on and conclusions drawn from having prepared the District Plan provisions and taken them through the consent process.

POLICY CONTEXT

The District Council strategy of concentrating most new development into seven towns dates from the first planning documents, and continues to this day. Its benefits include economies of scale in the provision of infrastructure, and the opportunity to provide for large numbers of people in a coastal setting, without compromising the qualities of most of the coastline. The strategy fitted well with the purpose of the various Town and Country Planning Acts and the NZ Coastal Policy Statement, but required re-evaluation under the purpose of the Resource Management Act, "to promote the sustainable management of natural and physical resources."

Identifying large areas for the expansion of this and the other District towns has involved zoning provisions that have over a long period limited development and subdivision opportunities within the identified growth areas. The District Scheme under the former Town and Country Planning Act 1977 used Future Urban Development zone, which fitted well with the "direct and control" philosophy of that Act. More latterly (and prior to the Whitianga Waterways plan change and variation) a Future Development policy area has been used. In both, land use rules have excluded activities that involve high capital investment, such as horticulture and glasshouses, "long cycle" uses such as forestry, and uses that heavily modify the land such as quarrying, all of which could prejudice the comprehensively planned expansion of the town.

The success of this strategy became evident when comprehensive planning for the whole 220 ha of the expansion area became a practical reality with the Whitianga Waterways proposals. At the time of forming the development company to carry out the project, the developer had only 7 landowners to work with. Without such strong limitations on subdivision, maintained consistently over a long period (helped by there having been only three planners giving the Council policy advice between 1975 and 1998), it is a certainty that fragmentation of the identified growth area would have occurred. This would have resulted in many landowners to negotiate with. In all probability, not all would have agreed at the same time to become partners in the development. This would have relegated the project to the realm of dreams, and removed any hope of ever achieving comprehensive planning and development of the area.

SCOPE OF THE WHITIANGA WATERWAYS DEVELOPMENT, AND DISTRICT PLAN PROVISIONS

The Whitianga Waterways development encompasses 220 ha of land lying between the existing lineal settlement of Whitianga and the Whitianga airfield. The area has been known locally as “Whitianga Flatlands”. Hopper Developments Ltd. investigated the feasibility of developing the future growth area for "waterways housing", a concept that they had not long before constructed on a small scale at Pauanui.

The development involves:

- Deepening the existing channel within the estuary to provide a 1500-metre access channel for vessels to the canal network,
- A canal network allowing access through the main canal for vessels drawing up to 1.5 metres, the secondary canals being suitable for smaller motor boats.
- Relocation of the State Highway to create a heavy vehicle bypass for the town, and solving the current problems of heavy vehicles having to travel through the town centre.
- Residential neighbourhoods providing properly planned and serviced residential areas, with reserves within 300 metres of each residential property, pedestrian linkages and public and private access to the canals.
- Four types of housing areas: canal frontage, airfield frontage, canal village (at extra density), and standard residential density areas.
- Public access to the canal network.
- A local commercial centre, accessible by canal and road, and not competing with the existing town centre.

There are expected to be between 1500 and 1600 residential lots when completed. This will give an anticipated additional permanent population of about 5,200 residents. Assuming a realistic lot development of 45-55 lots per year, the development could take about 28 years to complete.

The canals provide frontage to the maximum number of house sites, cater for a variety of boats, provide adequate water circulation, have a natural and attractive appearance, and provide effective stormwater drainage for the developed land. Residential areas provide for a variety of lot sizes, flexibility to meet changing markets, set overall capacity for utilities, result in a varied topography through earthworks involved in canal construction, and involve logically staged construction.

The District Plan provisions include a Structure Plan showing the full 220 ha extent of the anticipated development. Within the Structure Plan, land is zoned "Housing" with the Structure Plan showing the approximate location of roads and canals and neighbourhoods with different design characteristics. The text accompanying it includes specific objectives, policies, rules and criteria that provide for the construction of the full project. These provisions attempt to strike a balance between providing certainty for all parties about the form and scale of the development, and flexibility for Hopper Developments Ltd to change the layout and form of development within the specific Objectives and Policies in response to changing market or other circumstances. The provisions will need to survive reasonably intact through 7 changes of Council and two District Plan reviews.

CONSENT PROCESS

Administrative arrangements

Hopper Developments Ltd. approached the Thames-Coromandel District Council and the Mercury Bay Community Board and began an extensive process of consultation that led in January 1999 to the public notification of a change to the Transitional District Plan and variation to the Proposed District Plan. By agreement between the Thames-Coromandel District Council and Hopper Developments Ltd., Lawrence Cross Chapman & Co. Ltd was retained to draft the District Plan change and variation provisions, report on the submissions received, recommend decisions to Council, attend the hearings, present evidence at the Environment Court, and assess stage one of the subdivision against the new District Plan provisions.

The Council required Hopper Developments Ltd to fund the consent process on the basis of full cost recovery, with Hopper Developments Ltd providing all the required information, carrying out community and agency consultation alongside Council, while Council undertook to initiate the District Plan process and draft the District Plan provisions. This reflected the Council's view that the sole beneficiary of the development was the developer. Circulation of the change and variation was extensive, with every landowner in the Whitianga area being written to individually. Although the project was privately initiated, in every respect possible the variation was treated as a privately initiated change. The provisions of the change (to the Operative District Plan) and variation (to the Proposed District Plan) were identical.

Iwi participation

Council considered Ngati Hei iwi was the relevant iwi to the area, and consultation with representatives of that iwi were integral to the process. Such discussions recognised Council's obligations under the Resource Management Act 1991. Part of this process involved commissioning a Maori Values Assessment. Ngati Hei required this document to be kept confidential to itself and to members of the hearings committee, the Council's advisers and the applicant's principals. This was intended to ensure its contents were not available to other iwi, or the general public, to protect them against possible misuse. While Council and Hopper Developments Ltd made every attempt to involve the appropriate iwi in the process and give effect to their concerns, the development could not take place without the destruction of two archaeological sites and modification through dredging of the bed of the harbour, a significant location. A pragmatic approach and compromises by Ngati Hei were essential to a favourable outcome for the process.

During consultation it became apparent that three rival iwi groups wished to assert their authority on the process, claiming to be the appropriate iwi to consult. Council and Hopper Developments Ltd acknowledged these claims, without necessarily agreeing with them. Limited discussions took place. However, as long as Council and Hopper Developments Ltd

continued to recognise Ngati Hei as the principal iwi, little progress with the other iwi was made.

Following the release of decisions, the rival iwi lodged an appeal to the Environment Court, challenging the recognition given Ngati Hei. This was the only Environment Court appeal that could not be resolved by consent. It was ultimately unsuccessful, leaving other participants frustrated at the delays it had caused. That was not the end of court proceedings, however, as they further appealed to the High Court, again unsuccessfully. These proceedings effectively delayed the approvals process a little over 15 months. The motivation behind the court actions was a desire by the rival iwi to demonstrate that they were the relevant iwi for this part of the District, not Ngati Hei. As long as these issues remain unresolved, developers will continue to face long delays while rival iwi pursue their claims. While such appeals are legal, developers find it difficult to reconcile them with the purpose of the Resource Management Act 1991 or any “environmental” matter, and the courts are rightly reluctant to make any finding about the relative status of a particular iwi or tribal authority. Frequently, as may have been the case here, the court actions were a way of backing up Waitangi Tribunal claims to the area.

The Resource Management Act 1991 requires Councils to make decisions reconciling often conflicting systems of traditions and beliefs, and this is reflected in the number and diversity of Environment Court appeals. With current debate on the ownership of foreshore and seabed, particularly where this is changed by a development, our courts will continue to be asked to resolve increasingly complex and difficult cultural conflicts. Legislative clarification can only assist.

Assessment of the proposal

Given the scale and effects of the proposal, it was essential that checks and balances were incorporated into the approvals process to ensure Council's decision was soundly based. These included engaging a consultant planner as a member of the hearings Committee, having her audit Council's decision, and taking appropriate legal advice. The conditions subject to which the change and variation were approved reflected the care and attention paid to detail, incorporating clauses in the Structure Plan that will, as far as possible, ensure that matters of public interest will be safeguarded. The new plan provisions have now been used to assess several stages of the development.

The Resource Management Act 1991 enables Councils to set very high threshold tests for developments of this scale, and the regulatory agencies involved in this development required significantly more rigorous scientific study of the dynamics and ecology of the Whitianga Harbour than was required of the Tairua Harbour when the Pauanui Waterways development (by the same developer) was assessed in 1991. The reason for this is not obvious, but increasing and sometimes excessive demands for information is one issue commonly confronted in many parts of the country, adding significantly to the costs of and processing time required. It is debatable whether environmental gains of any consequence will arise out of all the additional data, and the satisfactory performance of Pauanui Waterways over the last 10 years provided little reassurance to the regulatory agencies that the proposed Whitianga Waterways development would be satisfactory based on similar or lesser levels of information.

Status of the canals

The canals at Pauanui Waterways are vested in Council, as local purpose reserves with their own reserve management plan. This approach was adopted initially for Whitianga because Hopper Developments Ltd had experience with it, it guarantees public rights of access along the waterways, and it minimises the number of organisations involved in canal administration. However, during the hearings the hearings committee decided the canals should be privately owned, and administered by a body corporate made up of the owners of the lots fronting the canals. This change was made without any particular submissions seeking it, and contrary to the recommendations of the Committee's advisers. This significant policy change was made without public consultation or discussion with Hopper Developments Ltd, and in the absence of submissions seeking it. It was, however, in accordance with the private sector model of administration the Council of the day was pursuing, and the experience of the appointed member of the Hearings Committee with other canal developments. This policy shift left the applicant grappling with the implications of the change, but subsequent legal advice confirmed that it was not adverse to Hopper Developments' Ltd interests because it would give the company greater leverage in its dealings with District and Regional Councils, and remove the uncertainty created by the 10-yearly review of a reserve management plan. Following many thousands of dollars of unbudgeted expenditure, a body corporate was established to own and administer the canals.

It will be interesting to look back in 20 or 30 years and compare the performance of the two management methods. The author predicts that public ownership of canals will prove the more satisfactory because fewer organisations are involved, public access is permanently guaranteed, and the public benefit of works (such as dredging) within the canals and the adjacent estuary can be properly assessed in a broader, more holistic, and less litigious environment in the absence of a body corporate.

The Resource Management Act 1991 deals poorly with creation of new Coastal Marine Area and the land-water interface. Firstly, there is a constant tension between the permissive approach the Act takes to land development and the restrictive approach it takes to the Coastal Marine Area. Further, as soon as the sea is let into a canal, administration shifts from the District Council to the Regional Council. This tension creates confusion, is unduly complex, and often blurs jurisdictional boundaries of administration and ownership for no apparent benefit, and for no good reason. Administering the interface between land and water should be, and could be, a lot simpler.

The Hauraki Gulf Marine Park Act 2000 (HGMPA).

Parliament passed this Act after the decisions on the Waterways submissions had been released, and for no apparent reason it did not contain a clause providing for applications that were in the approvals process. After some four years work, Hopper Developments Ltd was looking at having to start the consent process again. The Act was changed once Members of Parliament were made aware of the situation.

The application process

The time taken for each of the 9 steps in the application process is set out below:

Table 1: Steps in Application Process

Step	Months Taken	% Total Time
1. Project development	24	42
2. Plan drafting, amending	2.75	5
3. Waiting for Council to pass a resolution	2	3
4. Waiting for Council to act on a resolution to take the next procedural step	3.25 incl. Xmas	6
5. Period for public submissions or lodging appeals	3.75	7
6. Hearings (Council, Court)	0.5	1
7. Waiting for a hearing to be convened	14.5	25
8. Waiting for the release of a decision	2.5	4
9. Non statutory waiting for third parties to take a particular action	4	7

The detailed results are set out below:

Table 2: Process

Task	Step	Time (months)
Project development 1996 to 1998	1	24
Draft District Plan variation (1998)	2	1
Council consideration of draft variation	3	2
Time between resolution to adopt and public notification	4	2
Statutory period for submissions	5	1
Time between closing date of submissions and notification of further submissions	4	1.25
Statutory period for further submissions	5	1
Time between closing date of further submissions and the start of the hearing	7	3.5
Duration of the hearing	6	0.25
Time between close of hearing and adoption of decisions	4	1.75
Time between adopting decisions and releasing them	8	0.5
Statutory period for lodging appeals to the Court	5	0.75
Time between close of appeal period and first Court hearing Ngati Tamatera appeal	7	11
Duration of Court hearing	6	0.25
Time between conclusion of Court hearing and release of decision	8	2
Period for lodging High Court appeal	5	1
Time between Ngati Tamatera lodging High Court appeal and withdrawing it	9	1
Time between withdrawal of High Court appeal and Minister of Conservation deciding to refuse to sign approval (result of HGMPA provisions)	9	1.75
Time between Minister of Conservation's decision and amending legislation being introduced	9	0.5
Time taken for Parliament to approve legislation and Minister's approval (the last approval required prior to construction being authorised)	9	0.75
Total time taken from inception to last approval	All Steps	57.25 mths (4 yrs 9 mths)

These results show the very long processing time under the Act for a project of this scale, steps 3, 4, 7, 8, and 9 (waiting for something to happen), being 26.25 months, or 45.9% of the total.

CONCLUSIONS

The purpose of the RMA is “to promote the sustainable management of the natural and physical resources”. Yet even for a project of this scale it was difficult if not impossible to look in a holistic way at whether creating another 1500 lots at Whitianga promotes the sustainable management of natural and physical resources. The issue is worthy of constructive debate around whether the lemming-like activity of having the owners and occupiers of another 1500 properties at Whitianga driving for 3 hours or so from Auckland or the Waikato to Whitianga at the start of a weekend or holiday and returning at the end of it, year in year out taking into account the consumption of fossil fuel, wear and tear on vehicles, roads, and other consumption this involves.

Whitianga Waterways is an integral part of the District strategy for coastal development: concentrating most development in seven serviced towns and limiting development elsewhere. It is however not possible to know whether (in the terms of the RMA) it promotes the sustainable management of natural and physical resources. This dilemma highlights the difference between ‘sustainable development’ and ‘sustainable management of resources’. It is difficult if not impossible at present to obtain adequately detailed indicators of sustainable management, and there is little will to provide them. The tools analyse such information are unavailable at Council level. It is perhaps more realistic to consider indicators of ‘sustainable development’ given the impossibly high threshold tests involved in considering whether a development strategy promotes the sustainable management of resources. One must rely on national directives such as the New Zealand Coastal Policy Statement to provide the direction.

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