

NO. 463/76

IN THE MASTER of the Town and Country
Planning Act 1953

and

IN THE MATTER of an appeal under
section 26(1) of the Act

BETWEEN

NORTHLAND REGIONAL PLANNING
AUTHORITY

Appellant

AND

WHANGAREI COUNTY COUNCIL

Respondent

BEFORE THE NUMBER ONE TOWN AND COUNTRY PLANNING APPEAL BOARD

Messrs A.R. Turner S.M. (Chairman)
E.S. Martin
G.R. Tutt

HEARING at Whangarei on the 11th, 12th, 13th, & 14th days of July 1977

APPEARANCES

Mr D.F.G. Sheppard for Appellant
Mr J.D. Gerrard and
Mr J.B. Gerrard for Respondent

The following persons are recorded as having
appeared pursuant to s.42(2)

Mr B.T. Salter for Minister of Works and Development
Mr F.P. Brady for E.T. Everard and Others
Mr A.P. Handerson for John Stewart Holdings Limited
Mr A.C. Wright for Lang Utah Laurent Consortium
Mr M.J. France for M.F. Fraser and Company Limited
Mr J.W. Imrie for A.E. Derwin and Others
Mr G. Rosenberg for the Federation of the
Ngati-Wai Incorporated.

Mr B.J. Bowden)
Mr A.H. Hensley)
Mrs M.A. Pullman)
Mr R.W. Gummer)
Mr R. Ringer)
Mr J. Ringer)
Mr W.J. Langman)
Mr L.W. Woolley)
Miss G.F. Foote)
Mr B.S. Clements)
Mr E.J. Allen)
Mr T.M. Coote)
Mrs MacMurdie)
Mr H.W. Lang)
Mr J. Lovegrove)
Mr R.A. Gordon)

Owners of land affected

DECISION

This appeal is concerned with the zoning to be applied to
a large area of land along the coastline of the respondent's
district, upon a review of its district scheme, and raises the
question of the manner in which the provisions of section 23 are

FIRST SCHEDULE

<u>Appeal Number</u>	<u>Appellant</u>
(i) 423/76	T.K. Peters
(ii) 442/76 and 443/76	Golden Bay Cement Company Limited
(iii) 460/76	Minister of Works and Development

SECOND SCHEDULE

- (i) Moureeses Bay - 5 lots out of Part 34 at eastern end of Coastal Zone.
(Coastal and R.S.P. Zoning at this Bay to stand)
- (ii) Beotahi/Taurikura - 5 ha. Pt lot 5 D.P. 24879, Valance Properties Limited
- (iii) McLeod Bay - 0.5ha. Pt. lot 6 Deeds Plan 334, Greater Pacific Land Limited
- (iv) Portland - 4.0ha. Pt 3 and Pt 4 Maungatapere Parish
Wilsons Portland Cement Limited.

THIRD SCHEDULE

Zone Statement for Rural AC Zone

This zone brings to notice that part of the Rural A zone which has a coastal environment, and in respect of which the provisions of Section 2B(a) of the Act apply. (The inland boundary of this zone is arbitrary and does not precisely define the inland limit of the coastal environment.)

Important considerations on all conditional use applications will be the needs to preserve the natural character of the coastal environment and to protect it from unnecessary development. Attention is drawn to the policies, objectives and proposals for coastal land contained in the Scheme Statement.



to be given effect to in that review.

The respondent's district scheme became operative in 1967. In August 1974 the respondent recommended a proposed new district scheme as a review of the operative district scheme and the new scheme was publicly notified shortly thereafter.

In the proposed new district scheme some 1300 ha of land is included in a "Rural Scenic Protection Zone". The scheme says that:

"The purpose of the zone is the protection of the scenic value of the landscape and the coastline because of their inherent qualities as an area of high amenity value".

Much, but not all of the land in this zone is situated on the coastline. The zone is basically a rural zone, in that agricultural uses are the principal predominant uses; but the conditional uses are very limited when compared with the uses permitted in the Rural A zone.

In the new Scheme Coastal Zones and Tourist Facilities Zones are provided in particular locations along the coast; they comprise together approximately 360 ha. There may also be other small areas on the coast with zonings which permit close subdivision and development; and small parts of the coastline are included in the Rural B and Rural/Residential zones. But substantially the whole of the land along the coastline is included in the Rural A zone, which is the general agricultural zone applied to some 230,070 ha. in the district.

Among the objections lodged by the appellant to the proposed new district scheme were two which relate particularly to the zoning of land adjacent to the coast, viz.

- (a) Objection 372, by which the appellant sought that a substantial part of the Rural A zone, parts of the Rural B and Rural/Residential zones and off-shore islands, be included in the Rural Scenic protection Zone (which zone is hereinafter referred to as R.S.P. Zone);
- (b) Objection 370 by which it sought certain amendments to the provisions relating to the R.S.P. Zone.

The land affected by Objection 372 was defined by map. In general terms it can be said that the object of this objection was to bring all coastal land (except urban land and land zoned Coastal or Tourist Facilities) not already included in the R.S.P. Zone into that zone. Again in general terms it can be said for the purposes of the objection that "coastal land" is all the land between the foreshore and the dominant ridge behind the foreshore. The area of land affected by Objection 372 was not calculated precisely; it was estimated that approximately 13500 ha. was involved.

The respondent disallowed Objections 372 and 370. The grounds upon which it disallowed Objection 372 are sufficiently summarized in the following extracts from the report of the Committee which heard the objections:-

"Your Committee is not satisfied that the existing Rural zones, supplemented by the Rural Scenic Protection zones, proposed by the Council do not provide an adequate measure of protection for the rural portions of the coastline..... In summary the Committee does not consider that sufficient evidence has been produced to show that a more restrictive zoning is in the public interest."



In relation to Objection 370 the committee said:-

"....that the restrictions proposed in the objection are unduly restrictive and that conditional use procedures will ensure that scenic features in the zone can be protected, which is the primary objective of the zone."

The respondent did however adopt some amendments to the Ordinances for the R.S.P. Zone, as a result of certain other objections.

The appellant then brought two appeals from the decisions on the said objections.

By Appeal 472/76 it pursues its request for amendments to the provisions relating to the R.S.P. Zone.

By Appeal 463/76 it pursues its request for the rezoning of the land affected by Objection 372, except that on the appeal it expressly excludes three small areas of land (again, defined by map) from the request for rezoning.

At the time the appellant brought Appeal 463/76, it thought that forestry would not be a permitted use in the R.S.P. Zone. Being of the opinion that forestry should be a permitted use on the land affected by that Appeal, it asked by that appeal that the land affected thereby be included in a new zone which it called the Rural Coastal Protection Zone. The provisions it suggested for the new zone would be the same as for the R.S.P. Zone except that forestry would be a permitted use. (However, forestry is a permitted use in the R.S.P. Zone.)

At this point we record that the zoning of four particular parcels of land affected by Appeal 463/76 is also the subject of specific appeals brought either by the respective owners thereof or by the Minister of Works and Development. Those appeals are listed in the First Schedule hereto. We shall determine Appeal 463/76 as if it excluded the land which is the subject of those four appeals; and on those appeals we shall determine, for the purposes of this Appeal 463/76 also, the correct zoning of the land in respect of which those appeals are brought.

Also, the zoning of some land affected by Objection 372 was the subject of separate objections brought by the respective owners thereof. The respondent allowed the objections by owners referred to in the Second Schedule hereto; and on the hearing of this appeal the appellant agreed that the zoning of the land altered by the respondent's decisions on those objections should be excluded from Appeal 463/76. However the respondent allowed Objection No. 135 by Mr R.N. McGregor as to the zoning of his land at Taiharuru, and the appellant did not accept that decision. The appellant therefore pursues this appeal insofar as it affects Mr McGregor's land. But as Mr McGregor was not represented at the hearing the question of the correct zoning of his land will be held over for determination after he has had the opportunity of being heard.

The grounds upon which Appeal 463/76 was brought can be summarized as follows:-

- (a) That the zoning of the land affected by the appeal (a major portion of the coastline) does not provide for the preservation of the natural character of the coastal environment and its protection from unnecessary subdivision and development; and
- (b) That the zoning of that land does not ensure that its development will be in sympathy with the landscape and the natural character of the area and will be fitted to the environmental capacity.

The position adopted by the respondent in answer thereto is sufficiently summarized in the quotations already made from the report of the Committee which heard the objections.

It is appropriate for us to refer first to a submission by Counsel for the respondent as to the meaning of the term "coastal environment" as used in Section 2B. He argued from dictionary definitions that the term does not mean "the environs of the coast"; and that the relevant provisions of the section are directed to the preservation of the environment of the shoreline.

The dictionary definition of "environment" which is apt to the context in which the word is here used, is: "the conditions or influences under which any person or thing lives or is developed". The word "coastal" is an adjective qualifying the noun "environment", and is derived from the noun which means "the side of the land next the sea, the sea-shore". We therefore hold that the term "coastal environment" means an environment in which the coast is a significant component part or element. But clearly it is impossible to give an abstract definition which is capable of simple and ready application to any given situation. What constitutes the coastal environment will vary from place to place and according to the position from which a place is viewed. Where there are hills behind the coast, it will generally extend up to the dominant ridge behind the coast. But where the land behind the coast is generally flat, there may be great difficulty in defining the coastal environment.

The respondent's district has a coastline 270 km long. The Scheme Statement has this to say of it:-

"The coast is an area of great scenic beauty and has a vast potential as a tourist attraction and recreational resource."

It has been extensively modified from the pre-european state of bush cover to grassland interspersed with frequent, and sometimes extensive, residual bush in valleys, on the headlands and on steep slopes. In a number of places its natural character has been lost or masked by urban development or man-made structures. But generally a natural character predominates; and on that point we say that a vegetative cover even though controlled by man, is nevertheless still a natural cover since it would not be there without the forces of nature.

In its proposed new district scheme, the respondent has identified several places of particular scenic beauty (several of them on the coast) and has included them within the R.S.P. Zone. (The Scheme Statement says that the zoning has been applied to rural areas "containing special scenic features.")



We were informed on behalf of the respondent that an exhaustive study has not yet been done; that there are certainly other places (particularly places on the coast) which should also be brought within that zone (they will be places which are the subject of this appeal); and that in due course steps will be taken to bring them within that zone.

Also, the proposed new district scheme contains a lengthy statement of policies, objectives and proposals under the heading "Coastal development and settlements" - para 6.5 of the Scheme Statement. One of the policies there recorded is "to safeguard the natural environment and scenic beauty of the coastline". But an examination of the new district scheme as a whole reveals that the objectives and proposals derived from that policy have been applied only to Coastal and Tourist Facilities Zones. They are not applied to the very large part of the Rural A zone which has a coastal environment. On the contrary, the Scheme Statement:-

- (a) describes the Rural A Zone simply as providing for all-uses normally associated with farming (P. 19); and
- (b) says that the siting of buildings in obtrusive positions or where they are likely to detract from the visual amenity of the area is controlled by the general bulk and location requirements in the rural zones (p.29).

The respondent's engineer and town planner when asked in cross examination where in the scheme is it recorded that the coastal environment (in the Rural A Zone) will be given special consideration, admitted that there is no specific provision to that end.

The general questions raised by this appeal are:-

- (i) Whether specific provisions should be included in the proposed new district scheme with the object of preserving the natural character of so much of the coastal environment as does not have specific provisions relating to it, and protecting it from unnecessary development; and
- (ii) If so, what form those specific provisions should take.

Having considered the evidence and submissions we have no hesitation in answering the first question in the affirmative.

The respondent's engineer and town planner said in evidence:-

"The areas included in the (appellant's) proposed Rural Coastal Protection Zone are mostly farmland in grazing. Unless there are special features of landscape quality which call for a Rural Scenic Protection Zone, it will be difficult to convince these farmers that their development rights should be more restricted than those for other farmlands in the remainder of the county."

He went on to say in effect that sufficient consideration can be given to the protection of the natural character of the coastal environment under the conditional use procedure.

However, Section 2B provides as follows:

"The following matters are declared to be of national importance and shall be recognised and provided for

in the preparation, implementation and administration of regional and district schemes:-

- (a) The preservation of the natural character of the coastal environment and the protection of them from unnecessary subdivision and development.

- (b))
) Not quoted "
 (c))

That provision is mandatory in its terms; the matters therein specified shall be recognized and provided for, and that has to be done in the preparation of a district scheme as well as in its administration. How they are to be provided for is not spelled out; that is left to the discretion of a Council when preparing its scheme. But we hold that provision for the matters referred to in that Section should not be left to be inferred from a district scheme; that the extent to which they are relevant should be expressly referred to and that they should be provided for positively in an appropriate manner.

(Those matters are of course not the only matters to be provided for; the provisions of both Sections 2B and 18 must be applied, according to the facts and circumstances.)

On the second question, the respondent and others did during the hearing of the appeal submit to the Board drafts of a zone statement for the Rural A zone which would draw specific attention to the relevance of Section 2B to coastal land.

Having considered the evidence and submissions we have concluded that the circumstances of the case would not be adequately met simply by directing the inclusion in the scheme of a zone statement for the Rural A zone; that the circumstances require the creation of a separate new zone for general land in the coastal environment; and that specific reference should be made in the Scheme Statement to the application to the land in that new zone of (inter alia) the relevant provisions of Section 2B and of so many of the policies, objectives and proposals for the coastal environment as are already contained in the Scheme Statement and are relevant to land in that new zone.

On objection No.372, the appellant contended that the land to which this appeal relates should be included in the R.S.P. Zone. On this appeal, for a reason already recorded, it suggested that that land be included in a new zone to be called the R.C.P. Zone. The appellant's reason for applying for a separate R.C.P. Zone was not well founded (see supra). But even so we have concluded that the land to which this appeal relates should not be included in the R.S.P. Zone. The latter zone should be reserved specifically for land containing special scenic features, and not made a zone of more general application.

(But that is not to say that some of the land affected by this appeal cannot later be brought within the R.S.P. Zone if it has the appropriate scenic quality or features.)

We rule that the new zone to be created by our order on this appeal shall be called the Rural AC Zone. In so ruling



we record our opinion that the name of a zone should be generic, rather than definitive of a purpose.

The appellant asserted strongly that the conditional uses permitted in its proposed new zone should be severely limited, and be along the lines of the uses permitted in the R.S.P. Zone. Considerable evidence and argument was addressed to us in relation to the appropriateness of particular uses in the new zone.

It is not doing a disservice to the appellant to summarize its evidence and argument on that question by saying that it contended that the status of a conditional use implies a strong element of right to consent to the use, and steps around the need to demonstrate that the use is a necessary one.

The list of conditional uses in the Rural A zone is long. Many of the uses listed are unlikely to be needed in the coastal environment, and could just as well, or perhaps more appropriately, be sited inland. But we see no general reason to limit the conditional uses in the new Rural AC Zone. The provisions of Section 2B will be among the considerations relevant on a conditional use application, and those provisions require that the coastal environment be preserved from unnecessary development. Thus the need for the proposed use on the particular site will be among the factors relevant to the determination of an application.

In practice the types of use which are most likely to be of concern in the coastal environment are:-

- (i) dwellinghouses on "pre-existing" sites;
- (ii) motels and camping grounds; and
- (iii) mineral workings.

As to (i), these are permitted as a predominant use in the Rural A zone, and the appellant would allow them as a conditional use in its proposed R.C.P. Zone.

As to (ii) these are permitted as conditional uses in the Rural A Zone, but it is important to note that motels are therein defined as and limited to:-

"Premises for the transient accommodation of travellers and holidaymakers but only where the particular site can be shown to have a special advantage to those groups, other than accessibility to a main highway."

The appellant would allow only camping grounds in its proposed new zone.

As to (iii), farm borrow pits are permitted as a predominant use, and commercial quarries are permitted as a conditional use in the Rural A Zone; the appellant would allow only farm borrow pits in its proposed new zone.

Having considered the evidence and submissions on the question, we hold that the uses to be permitted in the Rural AC Zone should be the same as those permitted in the Rural A Zone, except:

- (i) that dwellinghouses on pre-existing sites should be a conditional use and



- (ii) That the definition of dwellinghouses on pre-existing sites should be as we have settled in our decisions on appeals 453/76, and 472/76; and
- (iii) That farm borrow pits and commercial quarries should both be conditional uses.

The particular reason for giving dwellings on "pre-existing" sites conditional use status is of course the need to consider each case individually to ensure that a dwelling is not sited obtrusively or in a manner which will detract from the visual amenity. A similar reason applies to farm borrow pits.

We have already dealt generally with the relevance of the question of the need for a particular use proposed in the coastal environment. As far as motels are concerned, the use is already subject to the express qualification quoted above. And as far as mineral workings are concerned, minerals exist only in the places where they are found. We would not exclude mineral workings from a general zone relating to the coastal environment without evidence that mineral resources sufficient for likely needs already exist in inland zones (though it would seem appropriate to exclude mineral workings from a special zone in which scenery protection is the paramount consideration.)

Concerning bulk and location requirements for predominant uses, and subdivisional standards, we have concluded that for the Rural AC Zone these should be the same as for the Rural A Zone. However one part of the ordinance regulating subdivision requires amendment in order to clarify it and avoid ambiguity. The 7th line of ordinance III clause 3(i) should read ".....or unless the use has been approved....."

Representatives of the Federation of Ngati Wai Incorporated appeared on the hearing of these appeals and sought that the proposed new district scheme recognize the need to develop ways whereby the evolving customs and usage of Maori owned land can be accommodated. They requested that certain uses not provided for in the rural zones be provided for.

A considerable area of coastal land in the respondent's district is Maori owned. It appears to us that in the preparation of its new district scheme the respondent has not taken account, or sufficient account, of the needs of the Maori people and that some specific provision should be made therein, in particular for marae, marae communities and urupa. How that should be done cannot be defined in these appeals and is in any event beyond the scope of these appeals. However, we record that it was acknowledged on behalf of the respondent that provision should be made in an appropriate manner; and we rely upon the respondent to do that and to introduce changes to the district scheme. For illustrations of what can be done we refer the respondent to the provisions of the district schemes for Whakatane and Tauranga counties.

There was considerable criticism by those opposing these appeals of the inland boundary defined by the appellant for its proposed L.C.P. Zone. We have already referred to the difficulty of a precise definition of the coastal environment. The appellant conceded that the determination of the landward boundary of the zone requires an arbitrary determination resting on a judgment made from point to point, and that at certain places the boundary proposed by it could be inappropriate.

In view of the fact that we have ruled that the uses permitted in the Rural AC Zone shall be the same as those permitted in the Rural A zone (save that dwellings in "pre-existing" sites and farm borrow pits shall be conditional and not predominant), we have concluded that the arbitrariness of the inland boundary defined by the appellant will be of no consequence and that it is proper to accept that boundary for the purpose of defining the Rural AC Zone. On a conditional use application it will be a question of fact whether or not the site proposed is within the coastal environment, and no property owner will be disadvantaged by the present arbitrary definition of the inland boundary of the zone.

A number of owners of land affected by this appeal appeared in opposition thereto and sought to have their land excluded from the proposed R.C.P. Zone. As we have concluded that the proper course is to create a separate zone which is but a particular form of Rural A zoning, it is unnecessary for us to refer particularly to the land of each of those owners save:-

- (a) Ringer Farms Matapouri Limited - the appellant agreed at the hearing to exclude from the proposed R.C.P. Zone a small area seaward of the Coastal zone, retained by this company with the object of a motel development or something similar. As the Rural AC zone will permit travellers' accommodation as a conditional use, there is no need to exclude this small area from the Rural AC zone.
- (b) Ngunguru Land Company Limited - the Company has 8.3618 ha of land adjacent to the settlement at Ngunguru of which a little less than half is flat land subject to some flooding. The company wishes to use some of the flat land for a motor camp and the balance of its land for houses or motels. The respondent proposes to zone the land rural/residential. Having considered the evidence we have concluded that this land should be zoned Rural AC. That zone will permit travellers' accommodation and camping grounds as conditional uses. Part or all of the land may be suitable for rural/residential use. But the evidence did not go far enough to enable us to rule on that question, and in particular we were left in uncertainty over the degree to which liability to flooding imposes a restraint on the development of the land.
- (c) Wellington's Bay - The question of an extension of the settlement at this Bay was not within the scope of these appeals.
- (d) Land zoned Rural B and subject to this appeal - The evidence did not disclose any particular reason why this land should have been zoned Rural B rather than Rural A in the first instance. We have therefore concluded that there are no factors requiring the retention of the Rural B zoning and that the owners will not suffer any injustice in having that land zoned Rural AC.

For the foregoing reasons this Appeal 463/76 is allowed in the following manner and to the following extent viz:-

- (i) It is directed that the land defined by the appellant's objection No. 370 (except (a) the three pieces of land

specifically excluded therefrom by this Appeal, (b) the land affected by the Appeals specified in the First Schedule hereto, (c) the land affected by the respondents decisions on objections, referred to in the Second Schedule hereto and (d) the land affected by Mr McGregor's objection No. 135) be included in a separate new zone to be called the Rural AC Zone;

- (ii) It is further directed that provisions appropriate to the Rural AC Zone be included in the Scheme Statement, that the respondent draft appropriate provisions having regard to the contents of this decision, and that the respondent submit its draft to this Board for approval;
- (iii) It is further directed that the provisions of the Ordinances relative to the new zone be defined in accordance with paragraph 18 of this decision, but that the Ordinances contain a zone statement for the Rural AC Zone as set out in the Third Schedule hereto; and
- (iv) It is further directed that Ordinance III clause 3(i)(b) be amended in the manner specified in paragraph 19 hereof.

Further, it is ordered that the zoning of the land defined in the Appeals specified in the First Schedule hereto be determined on those appeals and not on this appeal; and that the zoning of Mr R.N. McGregor's land at Taiharuru affected by objection No. 135 be the subject of a further order on this appeal after he has had the opportunity of being heard.

DATED this

3rd

day of

OCTOBER

1977



(Chairman)