

I MUA I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE

Under	Schedule 1, clause 14 of the Resource Management Act 1991
Concerning	Decisions of the Independent Commissioners on the proposed Waikato District Plan
Between	Jacqui Graham, Julie Nelson, Chris Harris, Suzanne Harris, Susanne Giessen-Prinz, Andreas Broring, Joyce Davis-Goff, Kate Dermer-McGregor, Kathryn Williams, Chris Williams, Lewis Williams, Adam Williams, Hannah Williams, Matthew Williams, Alan Jones submitting as members of the Raglan Collective currently seeking incorporation
	Appellant
And	Waikato District Council
	Respondent

**NOTICE OF APPEAL AGAINST DECISION ON
WAIKATO DISTRICT COUNCIL DISTRICT PLAN CHANGE**

Dated 28 February 2022

To the Registrar of the Environment Court, Auckland:

1. Jacqui Graham, Julie Nelson, Chris Harris, Suzanne Harris, Susanne Giessen-Prinz, Andreas Broring, Joyce Davis-Goff, Kate Dermer-McGregor, Kathryn Williams, Chris Williams, Lewis Williams, Adam Williams, Hannah Williams, Matthew Williams, Alan Jones submitting as members of the Raglan Collective currently seeking incorporation (hereafter the Raglan Collective) appeal part of a decision on the following plan change:

Waikato District Council Proposed District Plan

2. The Raglan Collective made a submission dated 23 September 2020 on the proposed District Plan. Some of the individual appellants also made individual submissions.
3. The Raglan Collective made a further submission dated 14 December 2020 on the proposed District Plan.
4. The Raglan Collective made a submission on that policy statement (or plan or change or variation).
5. The Raglan Collective and its members are not trade competitors for the purposes of section 308D of the Act.
6. The the members of the Raglan Collective are directly affected by an effect of the subject of the appeal that—
 - 6.1. adversely affects the environment; and
 - 6.2. does not relate to trade competition or the effects of trade competition.
7. The Raglan Collective received notice of the decision on 17 January 2022.
8. The decision was made by Hearing Commissioners Dr. Phil Mitchell (Chair), Paul Cooney, Dynes Fulton, Cllr Jan Sedgwick, Cllr Janet Gibb, Associate Professor Linda Te Aho and Matua Weo Maag on behalf of the Waikato District Council.

9. The part of the decision that the Raglan Collective is appealing against is the coastal hazard provisions contained within the Proposed District Plan applying to the applicants' collective properties that lie within the mapped High Risk Coastal Hazard and Coastal Sensitivity overlay areas:

9.1. **Section 15.1 Introduction:** failure to include an explanation that increased resilience to coastal hazards and projected changes in climatic conditions will include the replacement of existing coastal protection structures in Raglan where longstanding subdivisions rely on them.

9.2. **Objective 15.2.1 – Resilience to natural hazard risk:** Failure to include provision for repair, maintenance and replacement of some existing coastal protection structures in Raglan where longstanding subdivisions rely on them

9.3. **Policy 15.2.1.7 – Protection from risks of coastal hazard:** Failure to include policy that provides for repair, maintenance and replacement of some existing coastal protection structures in Raglan where longstanding subdivisions rely on them.

9.4. **Policy 15.2.1.8 – Limitations on hard protection works for coastal hazard mitigation:**

9.4.1. Failure to include policy that provides for repair, maintenance and replacement of some existing coastal protection structures in Raglan where longstanding subdivisions rely on them; and

9.4.2. Inclusion of the requirement for new structures in existing developments to achieve that they be effective considering a range of coastal hazard events including the effects of climate change and the activities or development they are designed to protect.

9.5. **Rule 15.7A.1 Coastal Sensitivity Area (Erosion) and the Coastal Sensitivity Area (Inundation):** Failure to provide for upgrade/ improvement (short of replacement) of existing

coastal protection structures in the Wallis Street and Lorenzen Bay areas in the Coastal Sensitivity Area (Erosion), as a permitted activity, or controlled activity having regard to the medium-term intention for the development and implementation of site specific adaptive management plans; and

9.6. **Rule 15.7A.2 Coastal Sensitivity Area (Erosion) and the Coastal Sensitivity Area (Inundation):**

9.6.1. Failure to provide for Wallis Street and Lorenzen Bay properties a controlled activity to implement any adaptive management plans developed by the council and/or owners of two or more properties.

9.6.2. Provision as a restricted discretionary activity construction of a new hard protection structure, or any extension to, or upgrade or replacement of an existing hard protection structure.

9.7. **Rule 15.9 High Risk Coastal Hazard (Erosion) Area:**

9.7.1. Failure to provide for upgrade/ improvement (short of replacement) of existing coastal protection structures in the Wallis Street and Lorenzen Bay areas in High Risk Coastal Hazard (Erosion) Area, as a permitted activity, or controlled activity; and

9.7.2. Failure to provide for Wallis Street and Lorenzen Bay properties a controlled activity to implement any adaptive management plans developed by the council and/or owners of two or more properties.

9.7.3. Provision as a restricted discretionary activity construction of a new hard protection structure, or any extension to, or upgrade or replacement of an existing hard protection structure.

9.8. **Rule 15.10: High Risk Coastal Hazard (Inundation) Area:**

- 9.8.1. Failure to provide for maintenance, repair and upgrade/ improvement (short of replacement) of existing coastal protection structures in the Wallis Street and Lorenzen Bay areas in High Risk Coastal Hazard (Inundation) Area, as a permitted activity, or controlled activity.
- 9.8.2. Failure to include for for Wallis Street and Lorenzen Bay properties a controlled activity to implement any adaptive management plans developed by the council and/or owners of two or more properties.
- 9.8.3. Provision as a restricted discretionary activity construction of a new hard protection structure, or any extension to, or upgrade or replacement of an existing hard protection structure.

Grounds of appeal

- 10. Coastal sites in the Wallis St and Lorenzen Bay areas owned or represented by these members of the Raglan Collective contain private dwellings and significant District Council infrastructure.
- 11. They are currently protected by hard coastal protection structures.
- 12. Evidence before the Commissioners was that coastal hazards in these areas, including sea level rise, could be managed by repair, maintenance and replacement of existing hard coastal protection structures and adverse effects could be mitigated.
- 13. Despite this evidence, Commissioners determined that for these coastal sites, maintenance and replacement of these hard structures would require a restricted discretionary consent that included an assessment in every case of the effects of sea level rise, whether a hard structure was the most suitable option, whether a hard structure provided environmental, social benefits and did not increase risk, and assessment against an adaptive management strategy should one exist.
- 14. The resulting plan does not meet the tests for plan rules namely:

- 14.1. The rules are not sustainable management;
- 14.2. The rules are inefficient and put landowners to the expense of a fresh assessment in each case when it is already known that hard structures are appropriate in these places and their effects can be managed;
- 14.3. The Decision does not properly apply superior planning instruments including the New Zealand Coastal Policy Statement 2010;
- 14.4. The section 32 report failed to address key issues and consequently could not form the basis of a sound Decision on these matters.

Relief Sought

15. Amendments to the objectives, policies and rules in Chapter 15: Natural Hazards and Climate Change and Variation 2 - Natural Hazards & Climate Change for Wallis Street and Lorenzen Bay properties in the coastal sensitivity and high risk coastal hazard zones (namely, Coastal Sensitivity Area (Erosion), Coastal Sensitivity Area (Inundation), High Risk Coastal Hazard (Erosion) Area, High Risk Coastal Hazard (Inundation) Area) to provide for interim repair of existing coastal protection structures and the development and implementation as soon as practicable of site specific adaptive management plans including seawall replacement.
16. The amendments sought include:
 - 16.1. Under 15.1 Introduction: add a paragraph explaining that increased resilience to coastal hazards and projected changes in climatic conditions will include repair, maintenance and replacement of existing coastal protection structures in Raglan where longstanding subdivisions rely on them.
 - 16.2. Under 15.2 Objectives and policies: add a policy under Objective 15.2.1 - Resilience to natural hazard risk, that provides for repair, maintenance and replacement of some

existing coastal protection structures in Raglan where longstanding subdivisions rely on them.

- 16.3. Amend other policies accordingly to reflect this policy, in particular:
 - 16.3.1. Policy 15.2.1.7 - Protection from risks of coastal hazard;
 - 16.3.2. Policy 15.2.1.8 - Limitations on hard protection works for coastal hazard mitigation;
 - 16.3.3. Policy 15.2.1.16 - Development in the Coastal Sensitivity Areas.
 - 16.3.4. Make any other consequential amendments to policies to reflect this priority for this activity.
- 16.4. Amend the rules to provide as a controlled activity for the Wallis Street and Lorenzen Bay properties in the above zones the implementation of any adaptive management plans developed by the district council and/or owners of two or more properties that include:
 - 16.4.1. Replacement of the existing structures with a well-engineered structure capable of providing long term protection.
 - 16.4.2. Consideration of a design that recovers some of the natural character lost with construction of the structures built in the past.
 - 16.4.3. Consideration of a design that allows for possible public access or similar public benefit.
17. Amend the rules to provide for maintenance, repair and upgrade/improvement (short of replacement) of existing coastal protection structures in the Wallis Street and Lorenzen Bay areas in the above zones, as a permitted activity, or controlled activity having regard to the medium-term intention for the development and implementation of site specific adaptive management plans above.

Attachments

18. The following documents are attached to this notice:

- 18.1. A copy of the submissions of the Raglan Collective.
- 18.2. A list of names and addresses of persons to be served with a copy of this notice.



Tom Bennion / Lisa Black

Counsel for the appellant

This document is filed by Thomas Bennion, Solicitor for the Appellant.

The address for service of the Appellant is at the offices of Bennion Law, First Floor, 181 Cuba Street, Wellington.

Documents for service on the above-named Appellant may be left at that address for service or may be:

- Posted to the solicitor at PO Box 25-433, Wellington 6140; or
- Transmitted to the solicitor by email to tom@bennion.co.nz.

Advice to recipients of copy of notice

How to become party to proceedings

You may be a party to the appeal if,—

- (a) within 15 working days after the period for lodging a notice of appeal ends, you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and

(b) within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the relevant application or the relevant decisions. These documents may be obtained, on request, from the appellant.