

**BEFORE THE ENVIRONMENT COURT
AT WELLINGTON**

IN THE MATTER of the Resource Management
Act 1991

AND

IN THE MATTER OF an appeal under Clause 14 of
the First Schedule of the RMA

BETWEEN **TE AWANGA SOCIETY
INCORPORATED**

AND **HAWKE'S BAY
REGIONAL COUNCIL**

**NOTICE OF APPEAL UNDER CLAUSE 14(1) OF
THE FIRST SCHEDULE OF THE RMA**

TO: The Registrar
Environment Court
Wellington

Decision subject of the appeal

1. Te Awanga Society Incorporated (“the Society”) appeals against a decision of the Hawke’s Bay Regional Council on the Proposed Regional Coastal Environmental Plan (“RCEP”).
2. The Society made a submission on the RCEP (submission numbered 163).

Notice of decision

3. The Society received notice of the decision on 19 July 2008. The decision was made by the Hawke’s Bay Regional Council.

Decision appealed against, reasons for appeal and relief sought

The Society appeals against the following parts of the decision:

4. Location of the coastal hazard zones and associated rules

- 4.1 The identification and location of the coastal hazard zones and the related rules which apply to activities in the coastal hazard zones.
- 4.2 Without limiting the generality of the above, the coastal hazard zones as they apply to the Te Awanga foreshore.

Reasons for appeal

- 4.3 The coastal hazard zones and related rules which apply to activities in those zones are contrary to Part 2 of the RMA, and the New Zealand Coastal Policy Statement.
- 4.4 The methodology developed to identify the coastal hazard zones was a desk top exercise which was neither comprehensive, nor site specific.
- 4.5 For some areas, in particular Te Awanga, there was insufficient background information to permit a quantifiable hazard zone. The resulting coastal hazard zones have been identified using data extrapolated from other coastal locations to the north.
- 4.6 The coastal hazard zones are an inaccurate assessment of the actual risk posed to coastal properties in Te Awanga.

Relief sought

- 4.7 The coastal hazard zones and associated rules in the RCEP be withdrawn in their entirety; or
- 4.8 The coastal hazard zones as they apply to the Te Awanga foreshore and the associated rules be withdrawn; or
- 4.9 The location of the coastal hazard zones affecting the Te Awanga foreshore be amended following site specific studies of the Te Awanga foreshore carried out by the Regional Council.
- 4.10 Any other consequential amendments that are necessary to give effect to the relief sought in this appeal

5 Objectives 15-1A and 15-2

- 5.1 Objective 15-1A was added to the RCEP as a result of the Regional Council's decision on submissions. It states that one of the Council's objectives is to avoid new and further development in areas identified as being currently at risk of coastal erosion or inundation (that is, those areas within Coastal Hazard Zone 1).

- 5.2 Objective 15-2 relates to new or further development in areas identified as being at risk of coastal erosion or inundation within the next 100 years (that is, those areas within Coastal Hazard Zones 2 or 3).

Reasons for appeal:

- 5.3 The objectives are contrary to Part 2 of the RMA and the New Zealand Coastal Policy Statement.
- 5.4 The objectives limit new development in the coastal hazard zones – zones which are based upon a flawed methodology and incomplete information sets for parts of the coastline in the Hawke’s Bay region.
- 5.5 The objectives are not the most appropriate way to achieve the purpose of the RMA.

Relief sought

- 5.6 The relief sought in paragraphs 4.7 – 4.10 above.

6. Policy 15-1 and the Environmental Guidelines in Table 9

- 6.1 The Society appeals against Policy 15-1, which provides that coastal erosion and inundation risks will be managed in accordance with the environmental guidelines set out in Table 9, and the environmental guidelines contained within that table.

Reasons for appeal

- 6.2 The management approach in the Environmental Guidelines states that coastal hazards will be proactively managed in a number of identified and prioritised ways. The mitigation of coastal hazards, through activities such as beach replenishment or permanent structures, is accorded least priority.
- 6.3 This is contrary to section 5 of the RMA as it does not enable existing communities to provide for their social and economic wellbeing.
- 6.4 Guideline 2: “Identification of coastal hazard areas” requires the Regional Council to carry out a review of areas subject to, or likely to be subject to coastal hazards when new information comes to hand. That review should not replace the Regional Council’s obligation to undertake a site specific assessment before identifying coastal hazard zones, as it has done in the RCEP. The identification of coastal hazard areas should be based upon empirical studies of beach morphologies of a similar nature (eg shingle beach research applied to assessments done of shingle beach sites) trends and sediment supply taking into account anecdotal evidence.
- 6.5 Guideline 7 provides that new uses and development should not be located in areas that are, or have potential to be, subject to coastal erosion or inundation, unless a number of conditions are met. This could prevent people from developing or

- redeveloping their coastal properties if that property might potentially be subject to coastal erosion or inundation at some time in the future.
- 6.6 Coastal protection structures (Guideline 10) are a measure of last resort to mitigate coastal hazards, even where there is existing development along the coast.
- 6.7 Policy 15-1 and Guideline 13 place an onus on an applicant to provide a site specific coastal assessment prepared by a suitably qualified person in support of an application for activities in the Coastal Hazard Zone 1. The onus for providing site specific coastal hazard assessments should lie with the Regional Council, rather than the individual.
- 6.8 Policy 15-1 and Guideline 13 refer to the use of scientifically appropriate models of shoreline response to storm erosion and flooding. It then refers to the Bruun Rule which has been used as the basis for identifying and imposing coastal hazard zones. The Bruun Rule is acknowledged to have limitations, which include that shoreline retreat is based on simple profile geometry for sand beaches, which renders that rule unsuitable for application to stone beaches such as Te Awanga.

Relief sought

- 6.9 Policy 15-1 and Guideline 1 be amended to give mitigation and protection measures the highest priority where there is existing development in a coastal location.
- 6.10 Policy 15-1 and Guideline 2 be amended to require the Regional Council to identify coastal hazard areas based upon empirical studies of beach morphologies of a similar nature (eg shingle beach research applied to assessments done of shingle beach sites) trends and sediment supply taking into account anecdotal evidence.
- 6.11 Policy 15.1 and Guideline 4 be amended as follows:
- The most up to date information on coastal processes and coastal hazards within the region will be made available to local authorities, statutory agencies and the public to inform people of the relevant risk of coastal hazards in the area, and to encourage people to develop existing areas appropriately.
- 6.12 Guideline 7 be amended by deleting the words “,or have potential to be”.
- 6.13 Policy 15-1 and Guideline 10 be amended to allow coastal protection structures to be constructed to mitigate coastal hazards, provided that the structure is located and designed so as to avoid adverse environmental effects to the greatest extent practicable, particularly effects on coastal processes, landscape values and the existing natural character of the coastline.

- 6.14 Sub paragraph (viii) be deleted from Guideline 13 of Policy 15-1.
- 6.15 Any other consequential amendments that are necessary to give effect to the relief sought in this appeal

7. Rules 78A and 86

Rule 78A lists permitted activities in the coastal hazard zones. The replacement of a lawfully established building or structure is a permitted activity (excluding any coastal protection structure).

Rule 86 states that, except as provided for in Rule 78A, 83A or 85, any replacement of a structure damaged or destroyed by coastal erosion or storm surge inundation is a non-complying activity in the Coastal Hazard Zones 1 and 2.

Reasons for appeal

The relationship between Rules 78A and 86 is unclear.

Rule 78A appears to apply to the replacement of a building except where the need for replacement is the result of damage caused by storm surge or erosion – in which case Rule 86 applies.

An obligation to apply for a non-complying activity consent for the replacement of a building which has been damaged as a result of storm surge or erosion is unduly onerous. If consent is not granted, the building, which could be a principal residence, may be rendered uninhabitable.

Relief sought

That Rule 86 be deleted.

- 7.7 Any other consequential amendments that are necessary to give effect to the relief sought in this appeal

8. Rules 83A and 85 and the definition of coastal protection structures

Rules 83A and 85 relate to coastal protection structures. The maintenance or repair of an existing lawfully established coastal protection structure in Coastal Hazard Zones 1 or 2 requires consent as a restricted discretionary activity, provided that listed conditions are met. If those conditions are not met, non-complying activity consent is required.

Rule 85 provides that the replacement, erection, construction, demolition or removal of a coastal protection structure requires consent as a non-complying activity.

“Coastal protection structures” are defined as “any structure(s) used to reduce risks posed by coastal erosion and/or inundation by the sea to human life, property or the

environment and includes sea walls, groynes, rip-rap, bunds, breakwaters, revetments, gabions and reinforced fences.

A footnote to Rules 83A and 85 states that the rules do not apply to “post wire fences, temporary fences, or fences for impounding stock on production land”.

Reasons for appeal

8.5 It is unclear how these rules apply to fences and walls which are not wire fences, temporary fences or fences for impounding stock. Any fence which is more substantial than those listed fences would appear to fall within the definition of a “coastal protection structure”.

Relief sought

8.6 The rules be amended to allow boundary walls to be constructed as permitted activities.

Documents attached to this notice

9 The following documents are attached to this notice:

9.1 A list of names and addresses of persons to be served with a copy of this notice.

10 Copies of the following documents may be obtained, on request from the Society:

A copy of the Society’s submission; and

A copy of the relevant decision.

Dated at Napier this 29th day of August 2008

Stuart Webster
Counsel for Te Awanga Society Incorporated

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 30 working days after this notice was lodged with the Environment Court.

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 this appeal

The copy of this notice served on you does not attach a copy of the appellant's submission and the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington or Christchurch.

**LIST OF NAMES AND ADDRESSES OF PERSONS TO BE SERVED WITH A
COPY OF THIS APPEAL**

[Annexed]