

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU**

Decision [2023] NZEnvC 133

IN THE MATTER OF appeals under clause 14 of the Schedule 1
of the Resource Management Act 1991

BETWEEN

BAY OF ISLANDS MARITIME
PARK INCORPORATED

(ENV-2019-AKL-000117)

CEP SERVICES MATAUWHI
LIMITED

(ENV-2019-AKL-000111)

D LOURIE

(ENV-2019-AKL-000128)

ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED

(ENV-2019-AKL-0000127)

Appellants

AND

NORTHLAND REGIONAL
COUNCIL

Respondent

Court: Environment Judge J A Smith sitting alone under s 279 of the
Act

Last case event: 23 June 2023

Date of Order: 28 June 2023

Date of Issue: 28 June 2023

pNRP – Topic 1B – Vehicles on beaches



CONSENT DETERMINATION

A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

(1) the appeals are allowed in accordance with Annexure A to this Determination; and

(2) this Determination resolves the appeals relating to Rule C.1.5.1. No appeals remain outstanding in relation to Topic 1B – Vehicles on beaches.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] This Determination relates to appeals against Northland Regional Council's decision on the Proposed Regional Plan for Northland, which have been categorised into Topic 1B – Vehicles on beaches. The appeals relate to a single rule: Rule C.1.5.1 Use of vehicles on beaches and other activities that disturb the foreshore and seabed – permitted activity.

[2] The appeals were lodged by:

- (a) Bay of Islands Maritime Park Incorporated (**Bay of Islands Maritime Park**);
- (b) CEP Services Matauwhi Limited (**CEP Services**);
- (c) Mr D Lourie; and
- (d) Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest & Bird**).

[3] The following people gave notice of their intention to become parties to one or more of the appeals under section 274 of the Act and have signed the memorandum of the parties dated 23 June 2023:

- (a) Patuharakeke Te Iwi Trust Board;
- (b) Minister of Defence;
- (c) Forest & Bird;
- (d) Channel Infrastructure NZ Limited;
- (e) Far North District Council;
- (f) Whangarei District Council;
- (g) Federated Farmers of New Zealand;
- (h) Messrs Dean Farmer, Christopher Mace and Philip Thornton;
- (i) Minister of Conservation;
- (j) Northport Limited;
- (k) Lucklaw Farm Limited; and
- (l) Northpower Limited.

[4] By memorandum of counsel dated 5 March 2021, Channel Infrastructure NZ Limited withdrew its section 274 interest in Rule C.1.5.1.

Background

[5] Rule C.1.5.1 was originally included on Topic 1 – Coastal Activities.

[6] By memorandum dated 30 October 2020, the Council advised that hearing time was likely to be required in relation to Topic 1, Vehicles on Beaches sub-topic.

[7] By directions dated 2 November 2020, Vehicles on Beaches was split out to become Topic 1B.

[8] Topic 1B was set down for a two-day hearing commencing 30 April 2021.

[9] In March 2021, the hearing set down for Topic 1B was adjourned due to appeals against the Environment Court decision¹ on the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F). The

¹ *Bay of Islands Maritime Park Inc v Northland Regional Council* [2021] NZEnvC 6.

appeals were heard by the High Court on 6 September 2021. The High Court decision was issued on 18 November 2021.² Time was given for the parties to consider the implications of the High Court decision and discuss how Topics 1B and 15 would be progressed in light of the High Court decision.

[10] By memorandum dated 18 February 2022, the Council advised that it considered there was value in further direct discussions in relation to Topic 1B, taking into account the NES-F.

[11] By memorandum dated 17 March 2022, the Court was advised that the Council was proposing to prepare a revised version of Rule C.1.5.1 for comment by the parties. The Council was undertaking work to inform a revised rule, which required detailed input from the Council's GIS mapping team.

[12] The Court was advised in April 2022, that progress with Topic 1B had been constrained by the capacity of the Council's GIS team during the first quarter of the year.

[13] On 30 June 2022, the Council circulated a revised version of Rule C.1.5.1 to the parties for the review and comment.

[14] By memorandum dated 29 July 2022, the Court was advised the parties felt discussions were headed in the right direction and that resolution without a hearing was possible and desirable.

[15] By memorandum dated 30 September 2022, the Council reported that outstanding issues between the parties had been narrowed and the parties were moving closer to resolution on the issues.

[16] By memorandum dated 16 December 2022, the Council advised that it had circulated several revisions to the proposed provisions. Finalisation of maps was subject to further feedback from the parties, an expert ecological report commissioned by the Council, and ongoing consultation with tangata whenua. The Council requested hearing time be allocated in the third quarter of 2023 in the event

² *Minister of Conservation v Mangawhai Harbour Restoration Society Inc* [2021] NZHC 3113.

that dispute remained on the provisions or maps. It was not practical to set the matters down for hearing given the workload of the Court, but directions were made for further discussion, possible mediation and a further reporting date. Mediation was not required.

[17] On 13 March 2023, a judicial conference was convened to discuss outstanding matters on the Proposed Northland Regional Plan.

[18] The Minute dated 21 March 2023, records that Topic 1B appeared to have reached the stage where most of the matters have been agreed but the matter was still not able to be finalised. The Council was directed to circulate its preferred wording, and parties were given an opportunity to advise whether they disagreed with the Council's preferred wording. A timetable to progress the matter to hearing was also directed.

[19] By memorandum dated 12 May 2023, the Council advised it had circulated its preferred wording. No party indicated they disagreed with the Council's preferred wording and on this basis the Council advised agreement had been reached on the provisions. The only remaining issue in Topic 1B was the draft maps identifying where vehicles are permitted to drive on beaches and where they are restricted. The timetable for exchange of evidence was vacated and further time was given for filing of consent documents, including maps.

[20] Consent documents were filed on 23 June 2023.

Rule C.1.5.1 Use of vehicles on beaches and other activities that disturb the foreshore and seabed – permitted activity

[21] Rule C.1.5.1 provides that the use of a vehicle on the foreshore and seabed and any associated disturbance of the foreshore and seabed, or the disturbance of the foreshore and seabed by any activity not the subject of any other rule in the Proposed Plan are permitted activities, provided that certain conditions are met.

[22] Rule C.1.5.1 was appealed by:

- (a) Bay of Islands Maritime Park, who sought that the Proposed Plan delineate specific areas of the foreshore and seabed where vehicles are not

permitted.³ The rationale for Bay of Island Maritime Park’s appeal is that the conditions in Rule C.1.5.1 do not make it clear to vehicle drivers where vehicles should or should not be used on the foreshore and seabed;

- (b) CEP Services, who sought to replace the reference to “Significant Ecological Area” and/or “Significant Bird Area” in the rule with “Significant Ecological Area or Significant Bird Area or any other area that meets the criteria for ‘significance’ given in Appendix 5 of the Regional Policy Statement for Northland for any indigenous biodiversity other than marine mammals or seabirds”.⁴ CEP Services’ appeal point has been resolved as part of a separate topic in the Proposed Plan;⁵
- (c) Mr Lourie, who sought to amend Rule C.1.5.1 so that it is a non-complying activity, instead of a permitted activity.⁶ The rationale for Mr Lourie’s appeal is that (among other things) Rule C.1.5.1 does not relate to any purpose or objective, is not supported by a risk assessment, does not give effect to the New Zealand Coastal Policy Statement 2010 (**NZCPS**) and undermines the ability to invoke the RMA to protect beaches from vehicles; and
- (d) Forest & Bird, who sought to amend Rule C.1.5.1 so that vehicles on beaches, other than for an emergency response, are:
 - (i) not permitted in Significant Ecological Areas (**SEAs**); and
 - (ii) in areas not identified as significant, restricted during the bird breeding period of 1 August and 31 March (inclusive).

The rationale for Forest & Bird’s appeal is that:

- (i) the rule is uncertain and it is not clear how a person driving a vehicle would know whether they complied with the conditions;
- (ii) the rule does not provide adequate protection to birds during the breeding period; and

³ Bay of Islands Maritime Park Incorporated – Notice of Appeal – 17 June 2019 at [19].

⁴ CEP Services Matauwhi Limited – Notice of Appeal – 17 June 2019 at [8.15].

⁵ Consent Order for Significant Ecological Areas and Significant Bird Areas dated 12 May 2023: *CEP Services Matauwhi Ltd v Northland Regional Council* [2023] NZEnvC 93.

⁶ David Lourie – Notice of Appeal – 24 June 2019.

- (iii) the rule is contrary to Policy 11 Indigenous biological diversity and Policy 15 Natural features and natural landscapes of the NZCPS and Policy 4.4.1 Maintaining and protecting significant ecological areas and habitats of the Regional Policy Statement for Northland 2016 (**RPS**).

[23] The parties have discussed Rule C.1.5.1 at length through an iterative process involving mediation and subsequent discussions. The provisions that have been agreed by the parties have been revised to give effect to Policy 20 Vehicle access of the NZCPS and achieve the objectives of the Proposed Plan. The agreed provisions attempt to strike an appropriate balance between enabling access to the coastal marine area (**CMA**) by vehicles, and controlling the potential impacts that Policy 20 of the NZCPS seeks to prevent from occurring.

[24] The parties have agreed to divide Rule C.1.5.1 into two rules: one dealing with the use of vehicles on beaches (new Rule C.1.5.1A) and the other with other activities that disturb the foreshore and seabed (Rule C.1.5.1).

New Rule C.1.5.1A Conditional use of vehicles on the foreshore and seabed – permitted activity

[25] As noted above, the parties have agreed to introduce a new rule: Rule C.1.5.1A Conditional use of vehicles on the foreshore or seabed – permitted activity.

[26] Rule C.1.5.1A provides that the use of a vehicle on the foreshore or seabed and any associated disturbance of the foreshore and seabed is a permitted activity, provided that certain conditions are met. Emergency service vehicles providing an emergency response are excluded from the rule, to recognise the importance of such services.

[27] The effect of new Rule C.1.5.1A is that if one of the conditions is not complied with, resource consent will be required to use a vehicle on the foreshore or seabed under Rule C.1.5.12 Dredging, deposition and disturbance activities – discretionary activity.

[28] The conditions include:

- (a) condition (1): vehicle access to the foreshore is only via authorised or existing lawful vehicle access points;
- (b) condition (2): there is no disturbance of or damage to indigenous or migratory bird nesting or roosting sites;
- (c) condition (3): there is no disturbance of, or damage to, a mapped Historic Heritage area;
- (d) condition (4): there is no disturbance of, or damage to, a mapped Site or Area of Significance to tangata whenua (**SSTW**);
- (e) condition (5): vehicles do not drive over pipi or cockle beds except where necessary for the use, maintenance, repair or removal of infrastructure, and do not damage or destroy other shellfish beds;
- (f) condition (6): vehicles do not drive over saltmarsh, saltmeadow, saltmeadow turfs, seagrass meadows, mangroves or mangrove aerial roots and do not damage or destroy other indigenous vegetation;
- (g) condition (7): vehicles do not drive on the foreshore or seabed within a mapped Vehicle Exclusion Zone (**VEZ**) unless the activity is for one of the list activities set out in the condition (VEZs are addressed further below); and
- (h) condition (8): the activity complies with C.1.8 Coastal works general conditions, with the exception of C.1.8(5) (which requires disturbance activities to only be carried out during certain hours of the day).

[29] The parties have also agreed to:

- (a) Include a note which provides that district councils may also have bylaws that control the use of vehicles on beaches as well as dunes, and that compliance with Rule C.1.5.1A does not remove the need to comply with all relevant bylaw provisions. This draws the plan user's attention to the fact that other bylaw provisions may apply to activities that may disturb the foreshore and seabed;
- (b) Include the following footnotes:
 - (i) Footnote 1 which applies to the chapeau of the rule and clarifies that emergency vehicles providing an emergency response includes

but is not limited to surf lifesaving operations, law enforcement operations and works undertaken by a local authority or network utility operator for the purpose of emergency works as defined by sections 330 or 330B of the RMA;

- (ii) Footnote 2 which applies to condition (5) and clarifies that the rule does not apply to the use of vehicles in the harvesting of Te Oneroa-a-Tōhē (GLM9) mussel spat off Te Oneroa-a-Tōhē (90 Mile Beach);
- (iii) Footnote 3 which applies to condition (6) and provides that a “seagrass meadow” is defined as a contiguous area of seagrass of 10m² or more; and
- (iv) Footnotes 4 and 5, which define what “closest practicable point” means in the context of condition (7) of the rule. It provides that what is the “closest practicable point” will require an assessment of each vehicle access point and the nearest area of reasonable access to the foreshore or coastal water. It is not anticipated to involve using vehicles to travel hundreds of metres to the “best” or preferred area.

[30] The parties consider that the amendments are appropriate because:

- (a) Requiring that vehicle access to the foreshore is only via authorised or existing lawful vehicle access points will prevent vehicles accessing from anywhere on the beach and will limit the likelihood of harm or damage to the environment;
- (b) The inclusion of conditions (2), (5) and (6) will ensure that the values of those habitats are protected when vehicles are used on the foreshore or seabed. The conditions give effect to the NZCPS, including:
 - (i) Policy 11 of the NZCPS, which requires that adverse effects on indigenous biodiversity in the coastal environment are avoided, remedied or mitigated; and
 - (ii) Policy 20 of the NZCPS, which requires that use of vehicles on beaches, foreshore and seabed are controlled where harm to

ecological systems or indigenous flora and fauna (for example, bird habitats or breeding areas and shellfish beds) might result;

- (c) The inclusion of conditions (3) and (4) will ensure that the values of mapped Historic Heritage areas and SSTW are protected from the use of vehicles. These conditions are consistent with Policy 20 of the NZCPS, which requires that use of vehicles on beaches, foreshore and seabed are controlled where damage to historic heritage and sites of significance to tangata whenua might result;
- (d) The requirement that the activity complies with C.1.8 Coastal works general conditions is consistent with a number of other coastal rules in the Proposed Plan.⁷ The parties consider it is appropriate to exclude C.1.8.(5) from the condition. Condition (5) provides that disturbance activities must only be carried out during the hours between sunrise and sunset or 6.00am and 7.00pm, whichever occurs earlier, and on days other than public holidays (subject to a few exceptions). For certain activities requiring vehicle use on beaches (such as temporary military training activities undertaken by the New Zealand Defence Force), it is impractical to require compliance with those time limits;
- (e) The inclusion of the footnotes appropriately clarify certain matters relating to the provisions and provide certainty to plan users;
- (f) The effect of condition (7) is that vehicles must not drive on the foreshore or seabed within a mapped VEZ (described further below), unless the activity meets one of the following exceptions:
 - (i) access to property where the only access is via the coastal marine area; or
 - (ii) the launching or retrieval of vessels at the closest practicable point along the foreshore from the vehicle access; or
 - (iii) the use, maintenance, repair or removal of an authorised structure (including hard protection structures, aids to navigation structures and infrastructure structures); or
 - (iv) conservation and reserve management activities undertaken by or formally on behalf of the Department of Conservation or local authority in accordance with its statutory functions; or

- (v) environmental monitoring or data collection undertaken by consent holders, the regional council, district councils, universities and research institutes (such as NIWA), or the authorised agents; or
- (vi) kaitiakitanga monitoring in accordance with Mātauranga Māori; or
- (vii) access to customary marine title group where the only access is via the coastal marine area; or
- (viii) attending to a rescue of stranded marine mammals; or
- (ix) burial of dead animals or marine mammals (including the customary processing of carcasses before burial) by the Department of Conservation, tangata whenua, a local authority or their delegated agents; or
- (x) clearance of pipe outlets, artificial water courses and tidal stream mouths; or
- (xi) removal or recovery of wrecked vessels; or
- (xii) dune and coast restoration, enhancement and maintenance projects undertaken by a registered coast care group or group authorised by the territorial authority; or
- (xiii) access for people with mobility disabilities (while displaying a mobility card) to the closest practicable point along the foreshore from the vehicle access, or
- (xiv) surf life-saving operations, and law enforcement operations.

The parties consider that inclusion of condition (7) is appropriate as it strikes a balance between enabling public access to the CMA by vehicle for the above exceptions, while controlling the likelihood of harm or damage to the values set out in Policy 20 of the NZCPS.

Vehicle Exclusion Zone mapping

[31] The parties have agreed to include a new mapped layer (Vehicle Exclusion Zones) in the Proposed Plan which identifies locations where vehicle use on the foreshore or seabed is not permitted. Vehicles must not be driven on the foreshore or seabed within a mapped VEZ, unless the activity is for one of the exceptions set out in Rule C.1.5.1A(7) or resource consent is obtained.

[32] The VEZ maps can be viewed on the Council's GIS viewer at the link below. The maps are also shown in **Annexure B** to this memorandum (albeit at a wider scale). <https://nrcgis.maps.arcgis.com/apps/webappviewer/index.html?id=21b4117f24eb4e0395f7f8fd6afd9392>

[33] The VEZ mapping is supported by expert ecological reports undertaken by Mr Vince Kerr commissioned by the Council⁷ and a report by Boffa Miskell in relation to Puheke Beach.⁸ The mapping is based on areas where significant values are at risk of harm by vehicle use, including:

- (a) SEAs, which include:
 - (i) Indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System;
 - (ii) areas of indigenous vegetation and habitats of indigenous fauna, that are significant using the assessment criteria in Appendix 5 of the Regional Policy Statement for Northland; and
 - (iii) areas set aside for full or partial protection of indigenous biodiversity under other legislation;
- (b) Outside of SEAs, areas include:
 - (i) significant habitats of indigenous biodiversity under Policy 11 of the NZCPS;
 - (ii) threatened and at risk indigenous bird species that regularly use coastal areas or are in high numbers; and
 - (iii) important shellfish beds.

[34] The map layer applies to the strip from mean high-water springs to generally around 50 metres seaward of mean high-water springs. The management of the full beach area, including dunes and adjoining areas, requires broader inter-agency management, including operational management (e.g., signage). The Council is willing

⁷ Kerr, V: Ecological Impacts of Vehicles on Intertidal Habitats Within Coastal Ecological Significant Areas, April; 2023 and Kerr, V: Hokianga Harbour – Ecological Considerations of Vehicles on Beaches, April 2023. The Council's methodology for mapping VEZ is set out in: Northland Regional Council Vehicle Exclusion Zone – Mapping Methodology Report, September 2022.

⁸ Boffa Miskell: Puheke Beach Ecological Values, November 2022.

to work with other regulators in that space to achieve integrated management and ensure that the full beach area is managed effectively.

[35] As indicated previously, the Council has worked to consult with tangata whenua on the draft VEZ maps and has incorporated some of the feedback it has received on the maps into the final mapping.

[36] Other than as noted below, the parties consider that inclusion of the VEZ mapped layer is appropriate as it is consistent with the direction provided in Policy 20 of the NZCPS, which requires the identification of areas where and times when recreational vehicular use on beaches, foreshore and seabed may be permitted, without a likelihood of any adverse effects set out in the policy occurring.

Patuharakeke Te Iwi Trust Board

[37] Patuharakeke Te Iwi Trust Board (**the Trust Board**) is a s 274 party to the Forest & Bird appeal. Patuharakeke rohe extends from the northern point of Mangawhai harbour at Paepae-o-Tu / Bream Head in the south, north along Te Akau / Bream Bay including Waipu and Ruakaka estuaries, around Te Poupouwhenua / Marsden Point and west up Whangarei Terenga Paraoa / Whangarei harbour to Mata and Oakleigh. While the Trust Board acknowledges that the VEZ maps (and the accompanying rules) are a significant improvement on the decisions version of the Proposed Plan, the Trust Board does not agree that the proposed maps are sufficient within Patuharakeke rohe as they do not apply the VEZ to the full extent of Bream Bay required to appropriately manage the effects of vehicles on this beach (as set out in the Hapu Environmental Management Plan).

[38] While acknowledging the jurisdictional restrictions of the RMA for a regional plan, the Trust Board's concerns relate to habitat, taonga species and historic heritage sites where the values, relationships and effects of vehicle use cross agency boundaries and jurisdictional lines. Taking a pragmatic approach however the Trust Board has signed the consent memorandum so as not to block the settlement reached with all parties and to lock in the benefits associated with the VEZ mapping (and the accompanying rules) immediately. The Trust Board will continue to collaborate with the district and regional councils, DOC and community groups on inter-agency work

to protect historic heritage and biodiversity from the effects associated with vehicles on the beach in Bream Bay.

Rule C.1.5.1 Activities that disturb the foreshore and seabed – permitted activity

[39] The agreed amendments to Rule C.1.5.1 include:

- (a) Excising the references and conditions relating to vehicle use (which includes the title of the rule, the chapeau, conditions (3), (4), (7) and (8) and the note at the end of the rule);
- (b) In condition (1), the inclusion of reference to “saltmarsh, saltmeadow turfs and mangroves” and “no damage or destruction of other indigenous vegetation”. The effect of these changes are that disturbance activities are permitted, provided that there is no disturbance of, or damage to, those habitats;
- (c) The inclusion of a new condition requiring that there is no disturbance of or damage to indigenous or migratory bird nesting or roosting sites, which will ensure that birds are adequately protected from disturbance activities when they are nesting or roosting;
- (d) The inclusion of a note at the end of the rule which provides that Rule C.1.5.1 does not apply to disturbance of the seabed or foreshore arising from the lawful harvesting of any plant or animal. This has been included to clarify that the rule is not intended to apply to the harvesting of shellfish;
- (e) The deletion of the reference to “all relevant conditions” in condition (8) of Rule C.1.5.1, as sought by Forest & Bird. Forest & Bird sought that this amendment apply to a number of other rules, which have already been resolved as part of separate topics in the Proposed Plan.⁹ By deleting the reference to “all relevant conditions”, activities are required to comply with all Coastal works general conditions. The parties consider that the amendments are appropriate as they are consistent with the Topic 1 – Moorings and anchorages Consent Order issued by the Court on 20 May 2020.

⁹ Topic 1 – Moorings and anchorages.

Other amendments – Rule C.1.8 Coastal works general conditions

[40] Rule C.1.8 sets out the general conditions that apply to activities when referred to in coastal rules set out in section C.1 Coastal activities of the Proposed Plan. The parties have agreed to make some minor consequential amendments to condition (7) of Rule C.1.8, which provides:

(7) All machinery, equipment and materials used for the activity must be removed from the foreshore and seabed at the completion of the activity. Additionally, vehicles and equipment must be in a good state of repair and free of any fuel or oil leaks. Refuelling must not be carried out in the coastal marine area and for the duration of the activity, no vehicle or equipment is to be left in a position where it could come into contact with coastal water.

[41] The amendments include:

- (a) minor formatting changes, which the parties consider improve the readability of the condition; and
- (b) the inclusion of “except where contact with coastal water is necessary to undertake the activity” at the end of the condition. The parties consider that the amendment appropriately recognises that for some activities, such as temporary military training activities undertaken by the New Zealand Defence Force, vehicles may need to come into contact with coastal water to complete an amphibious landing.

Consideration

[42] The Court has now read and considered the consent memorandum of the parties dated 23 June 2023.

[43] In terms of an assessment under section 32AA of the Act, as noted above, the proposed changes were discussed at significant length between the parties through an iterative process involving mediation and subsequent discussions. The parties consider that the proposed changes are the most appropriate way to achieve the objectives of the Proposed Plan as well as give effect to the relevant higher-order documents, including the RPS and the NZCPS.

[44] I conclude the agreement reached has struck a balance between enabling vehicles and activities that disturb the foreshore and seabed access to the CMA and

protection against damage, harm and disturbance. I agree that splitting into vehicles and activities is practical.

[45] The conditions provide for protection of valuable and/or sensitive ecological systems and parts of the environment. The conditions will limit the likelihood of damage and harm.

[46] The footnotes provide clarity for plan users. The agreement reached has provided for the local level in C.1.5.1A by including a note that Council bylaws may apply.

[47] I am satisfied the VEZ mapping is based on expert reports and recognises areas where significant value are at risk of harm by vehicles use. It is acknowledged by the parties that management of the whole of beach will require inter-agency management.

[48] The Court acknowledges the Trust Board's view that the proposed maps are not sufficient within the Patuharakeke rohe, but they have taken a pragmatic approach and recognised the limits of the RMA for a regional plan.

[49] It is important that the changes are consistent with other consent determinations that have been issued.

[50] This is a complex issue which is likely to become more significant as beach use increases and environmental changes affect seashore species. This is an exhaustive attempt by the parties to commence that balancing between public access and use and environmental and cultural impacts.

[51] I commend all parties on seeking to lock in protections for major issues while recognising the need for multiple agencies to address these issues in due course. We commend the suggestion of seeking unified controls across regional and district boundaries. The Court acknowledges the wide range of legitimate reasons to access the foreshore but also the damage careless or wilful vehicle misuse can do to critical foreshore values. Any outcome can only be part of a broader consultative and iterative process. This outcome is a good start to that process.

[52] I am of the view that the changes to C.1.8 provide for a logical exception.

[53] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order; and
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

[54] I am satisfied that the agreement reached is one that represents the various interests of the parties. I conclude the parties have taken a balanced and pragmatic approach. I conclude the agreed amendments are the most appropriate way to achieve the purpose of the Act and the objectives in the Plan. Overall, I consider the sustainable management purpose and the other relevant requirements of the Act are broadly met.

Further comments

[55] The Council and the Court understand that Topic 1B is the final outstanding topic in the Proposed Plan and there are no outstanding appeal points against the Proposed Plan. Parties have been given an opportunity to advise of any outstanding appeal points, but it is the Courts expectation that in issuing this Determination the appeals against the Proposed Plan will be at an end.

[56] I commend the parties on their indefatigable efforts to resolve these matters in the face of covid restraints, policy and regulatory change.

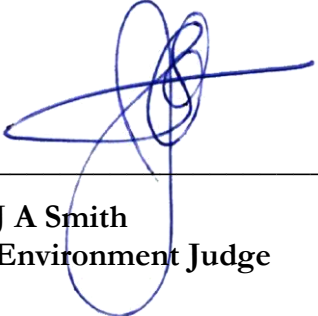
[57] I wish to thank Mike Doesburg, Emmalene Lake and the team at Northland Regional Council for the regular updates, redrafting, and meetings with parties to advance matters. I acknowledge the efforts of other key parties to finalise this plan

and move matters forward during regular Covid lockdowns and continuing many hearings online.

Outcome

[58] Therefore, the Court orders, by consent that:

- (a) the appeals are allowed in accordance with Annexure A to this Determination;
- (b) the Determination resolves the appeals relating to Rule C.1.5.1. No appeals remain outstanding in relation to Topic 1B – Vehicles on beaches; and
- (c) there are no issues as to costs.



J A Smith
Environment Judge



ANNEXURE A

Key:

Yellow highlight (~~underlined~~ or ~~strike through~~) = amendments agreed between the parties as part of Topic 1B – Vehicles on beaches.

Grey highlight (~~underlined~~ or ~~strike through~~) = amendments proposed as part of a separate topic in the Proposed Plan (Rule C.1.8). These amendments are agreed and have been recorded on draft consent documents which were filed with the Court on 9 June 2023.

C.1.5.1A Conditional use of vehicles on the foreshore or seabed – permitted activity

The use of a vehicle on the foreshore or seabed and any associated disturbance of the foreshore and seabed is a permitted activity, provided that apart from emergency services vehicles providing an emergency response:¹

- 1) vehicle access to the foreshore is only via [authorised](#) or existing lawful vehicle access points, and
- 2) there is no disturbance of or damage to indigenous or migratory bird nesting or roosting sites, and
- 3) there is no disturbance of, or damage to, a mapped [Historic Heritage area](#) (refer | Maps | Ngā mahere matawhenua), and
- 4) there is no disturbance of, or damage to, a mapped Site or Area of Significance to tangata whenua (refer | Maps | Ngā mahere matawhenua), and
- 5) vehicles do not drive over pipi or cockle beds except where necessary for the use, maintenance, repair or removal of infrastructure, and do not damage or destroy other shellfish beds,² and
- 6) vehicles do not drive over saltmarsh, saltmeadow, saltmeadow turfs, seagrass meadows³, mangroves or mangrove aerial roots (pneumatophores) and do not damage or destroy other [indigenous vegetation](#), and

¹ including but not limited to surf lifesaving operations, law enforcement operations and works undertaken by a local authority or network utility operator (in relation to any project or work that it is approved as a requiring authority) for the purpose of emergency works as defined by sections 330 or 330B of the Resource Management Act 1991.

² This rule does not apply to the use of vehicles in the harvesting of Te Oneroa-a-Tōhē (GLM9) mussel spat off Te Oneroa-a-Tōhē (90 Mile Beach).

³ For the purpose of condition 6, a “seagrass meadow” is a contiguous area of seagrass of 10m² or more.

- 7) vehicles do not drive on the foreshore or seabed within a mapped Vehicle Exclusion Zone (refer I Maps | Ngā mahere matawhenua) unless the activity is for one of more of the following listed activities:
- a) access to property where the only access is via the coastal marine area;
or
 - b) the launching or retrieval of vessels at the closest practicable point⁴ along the foreshore from the vehicle access; or
 - c) the use, maintenance, repair or removal of an authorised structure (including hard protection structures, aids to navigation structures and infrastructure structures); or
 - d) conservation and reserve management activities undertaken by or formally on behalf of the Department of Conservation or local authority in accordance with its statutory functions; or
 - e) environmental monitoring or data collection undertaken by consent holders, the regional council, district councils, universities and research institutes (such as NIWA), or the authorised agents; or
 - f) kaitiakitanga monitoring in accordance with Mātauranga Māori; or
 - g) access to customary marine title group where the only access is via the coastal marine area; or
 - h) attending to a rescue of stranded marine mammals; or
 - i) burial of dead animals or marine mammals (including the customary processing of carcasses before burial) by the Department of Conservation, tangata whenua, a local authority or their delegated agents; or
 - j) clearance of pipe outlets, artificial water courses and tidal stream mouths; or
 - k) removal or recovery of wrecked vessels; or
 - l) dune and coast restoration, enhancement and maintenance projects undertaken by a registered coast care group or group authorised by the territorial authority; or
 - m) access for people with mobility disabilities (while displaying a mobility card) to the closest practicable point⁵ along the foreshore from the vehicle access, or
 - n) surf life-saving operations, and law enforcement operations, and
- 8) the activity complies with C.1.8 Coastal works general conditions, with the exception of C.1.8(5).

⁴ What is the "closest practicable point" will require an assessment of each vehicle access point and the nearest area of reasonable access to the foreshore or coastal water. It is not anticipated to involve using vehicles to travel hundreds of metres to the "best" or preferred area.

⁵ What is the "closest practicable point" will require an assessment of each vehicle access point and the nearest area of reasonable access to the foreshore or coastal water. It is not anticipated to involve using vehicles to travel hundreds of metres to the "best" or preferred area.

Notes:

District councils may also have bylaws that control (including prohibiting) the use of vehicles on beaches as well as dunes. The taking and using of vehicles within reserves is also regulated (including prohibited) under the Northland Reserves Bylaws 2007. Compliance with Rule C.1.5.1A does not remove the need to comply with all relevant bylaw provisions.

For the avoidance of doubt this rule covers the following RMA activities:

- Disturbance of any foreshore or seabed by a vehicle or an activity not the subject of any other rule in this Plan (s12(1)).
- The use of vehicles on the foreshore or seabed (s12(3)).

C.1.5.1 ~~Use of vehicles on beaches and other~~ Activities that disturb the foreshore and seabed – permitted activity

The ~~use of a vehicle on the foreshore or seabed and any associated disturbance of the foreshore and seabed, or the~~ disturbance of the foreshore and seabed by any activity not the subject of any other rule in this Plan, are permitted activities, provided:

- 1) ~~apart from emergency services vehicles providing an emergency response,~~ there is no disturbance of, or damage to, ~~saltmarsh, saltmeadow turfs, mangroves,~~ seagrass meadows ~~within mapped Significant Ecological Areas (refer I Maps | Ngā mahere matawhenua) and outside these areas, there is no and no damage or~~ destruction of ~~other indigenous vegetation or~~ shellfish beds ~~or indigenous vegetation,~~ and
- 2) the activities do not involve the exclusive occupation of space in the coastal marine area, and
- 3) ~~vehicles must ensure minimal disturbance of the foreshore and seabed, and~~
- 4) ~~apart from emergency services vehicles providing an emergency response, there is no disturbance of or damage to indigenous or migratory bird nesting or roosting sites, and~~
- x) ~~there is no disturbance of or damage to indigenous or migratory bird nesting or roosting sites, and~~
- 5) there is no disturbance of, or damage to, a mapped Site or Area of Significance to tangata whenua (refer I Maps | Ngā mahere matawhenua), and
- 6) there is no disturbance of, or damage to, a mapped **Historic Heritage area** (refer I Maps | Ngā mahere matawhenua), and
- 7) ~~apart from emergency services vehicles providing an emergency response, vehicle access to the foreshore is only via authorised access points, and~~
- 8) ~~all relevant conditions of the activity complies with~~ C.1.8 Coastal works general conditions, ~~are complied with, and~~
- 9) ~~apart from emergency services vehicles providing an emergency response, vehicles do not drive over pipi or cockle beds.~~

For the avoidance of doubt this rule covers the following RMA activities:

- Disturbance of any foreshore or seabed by ~~a vehicle or~~ an activity not the subject of any other rule in this Plan (s12(1)).
- ~~The use of vehicles on the foreshore or seabed (s12(3)).~~

Note:

~~District councils may also have bylaws that control (including prohibit) the use of vehicles on beaches. Compliance with those provisions is also required.~~

Notes:

This rule does not apply to disturbance of the seabed or foreshore arising from the lawful harvesting of any plant or animal (s12(1)).

C.1.8 Coastal works general conditions

...

- 7) All machinery, equipment and materials used for the activity must be removed from the foreshore and seabed at the completion of the activity. Additionally:
- a) vehicles and equipment must be in a good state of repair and free of any fuel or oil leaks; and
 - b) Refuelling must not be carried out in the coastal marine area, except:
 - i) where there is a functional or operational need to refuel equipment or machinery onboard a vessel, in which case refuelling must be undertaken using leak-proof containers and contained spill capture areas (which prevent any fuel entering the coastal marine area); or
 - ii) where there is a functional or operational need to refuel equipment or machinery on a structure in the coastal marine area, in which case refuelling must be undertaken using leak-proof containers and bunds to prevent any fuel entering the coastal marine area; and
 - c) for the duration of the activity, no vehicle or equipment is to be left in a position where it could come into contact with coastal water, except where contact with coastal water is necessary to undertake the activity.

...

I Maps | Ngā mahere matawhenua

Vehicle Exclusion Zone	<p>This map layer identifies locations where vehicle use on the foreshore or seabed is not permitted. The mapping is based on areas where significant values are at risk of harm by vehicle use, including:</p> <ul style="list-style-type: none">• Significant Ecological Areas, which include:<ul style="list-style-type: none">○ indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System;○ areas of indigenous vegetation and habitats of indigenous fauna, that are significant using the assessment criteria in Appendix 5 of the Regional Policy Statement for Northland; and
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- areas set aside for full or partial protection of indigenous biodiversity under other legislation.
- Outside of Significant Ecological Areas, areas include:
 - significant habitats of indigenous biodiversity under Policy 11 of the NZCPS;
 - threatened and at risk indigenous bird species that regularly use coastal areas or are in high numbers; and
 - important shellfish beds.

Vehicles must not drive on the foreshore or seabed within a mapped Vehicle Exclusion Zone, unless the activity is for one of the exceptions set out in Rule C.1.5.1A Conditional use of vehicles on the foreshore or seabed – permitted activity.

The map layer applies to the strip from mean high-water springs to 50 metres seaward of mean high-water springs.


The Vehicle Exclusion Zone mapping is based on the following reports:

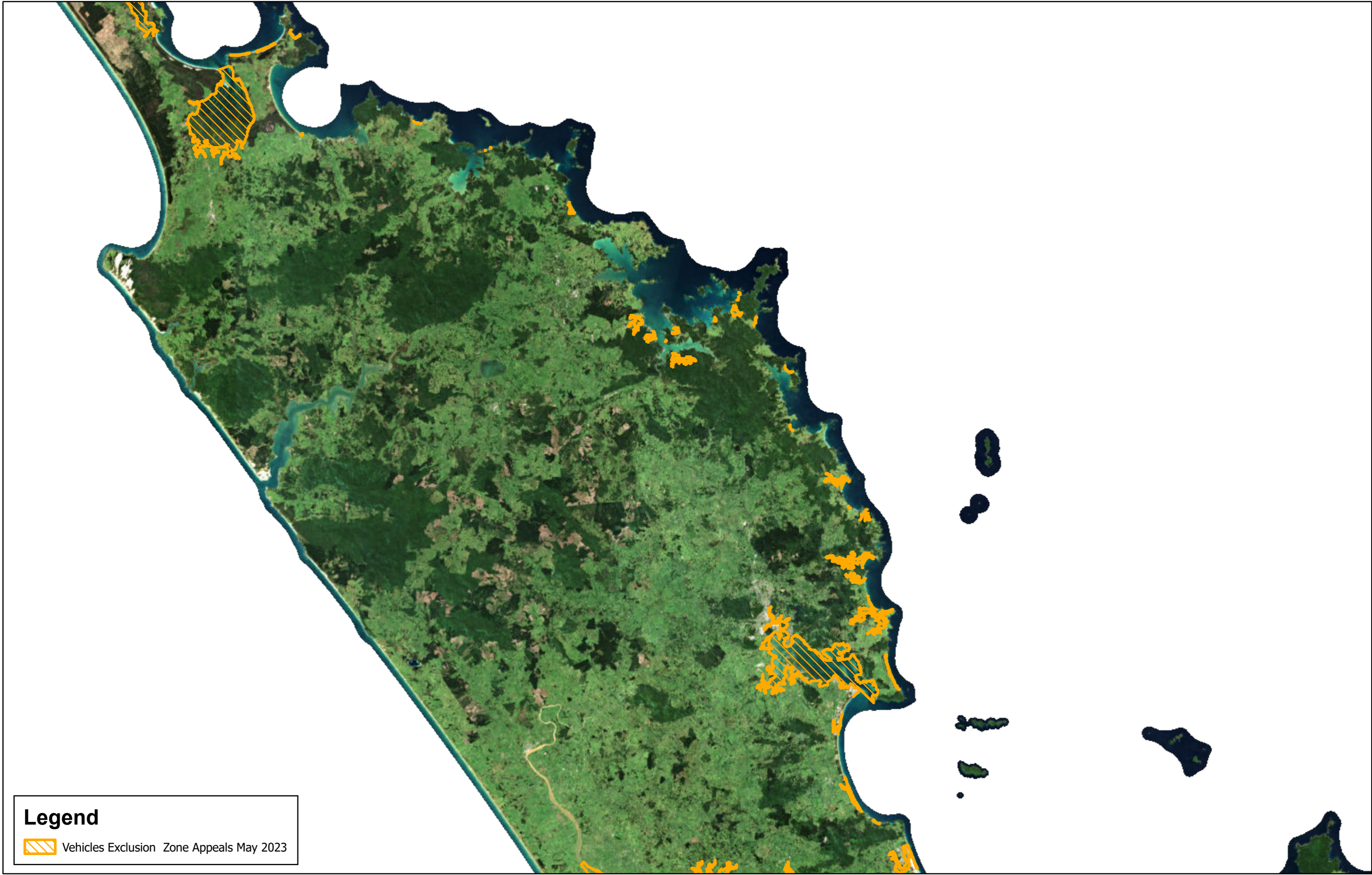
- *Kerr, V: Ecological Impacts of Vehicles on Intertidal Habitats Within Coastal Ecological Significant Areas, April, 2023;*
- *Kerr, V: Hokianga Harbour – Ecological Considerations of Vehicles on Beaches, April 2023;*
- *Boffa Miskell: Puheke Beach Ecological Values, November 2022; and*
- *Northland Regional Council Vehicle Exclusion Zone – Mapping Methodology Report, September 2022.*

ANNEXURE B: VEHICLE EXCLUSION ZONE MAPS

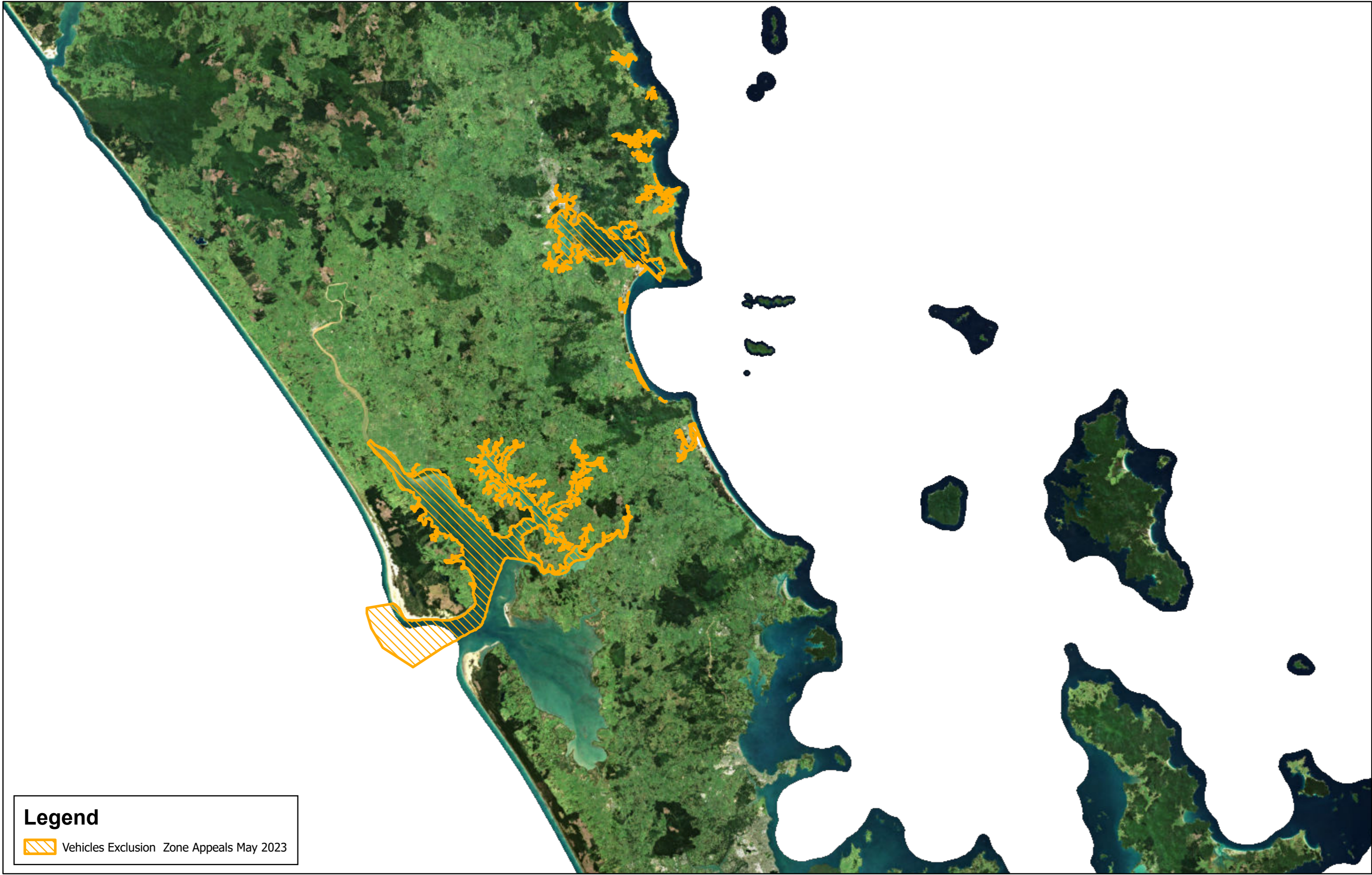


Legend


 Vehicles Exclusion Zone Appeals May 2023



Legend
Vehicles Exclusion Zone Appeals May 2023



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