

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER of the Resource Management Act 1991

AND of appeals under Clause 14 of Schedule 1
of the Act in relation to the Proposed
Regional Plan for Northland

BETWEEN TRANSPower NEW ZEALAND LTD
(ENV-2019-AKL-000107)

CEP SERVICES MATAUWHI LIMITED
(ENV-2019-AKL-000111)

ROYAL FOREST AND BIRD
PROTECTION SOCIETY NZ
(ENV-2019-AKL-000127)

Appellants

AND NORTHLAND REGIONAL COUNCIL

Respondent

Environment Judge J A Smith sitting alone under s 279 of the Act
In Chambers at Auckland

CONSENT ORDER

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



- (1) the appeals are allowed in part subject to the amendments set out in **Annexure A** to this order.
- (2) This order resolves the appeals as they relate to Policy D.5.20 Reclamation, Policy D.5.21 Rule C.1.6.1 Unlawful public road reclamation, Rule C.1.6.3A Reclamation for the National Grid and Rule C.1.6.5 Reclamation in Significant Areas.
- (3) The outstanding appeal points within the sub-topic consist of Rule C.1.6.3 and Rule C.1.6.4.

[B] Under s 285 of the Resource Management Act 1991, there is no order as to costs in relation to this consent order.

REASONS

Introduction

- [1] These appeals are against the Northland Regional Council's decision on the Proposed Regional Plan for Northland, in respect of provisions on the Reclamation provisions within Topic 1 – Coastal Activities, subtopic - reclamation policies and rules.
- [2] Following Court-assisted mediation on the Reclamation provisions on 2 September and 24 October 2019 the parties have reached agreement on some of the provisions under appeal.

Policy D.5.20 Reclamation and Policy D.5.21 Unlawful Reclamation

- [3] Royal Forest and Bird Protection Society sought the deletion of both these policies because they did not sufficiently give effect to clause (1) of Policy 10 (Reclamation and de-reclamation) of the New Zealand Coastal Policy Statement (NZCPS).
- [4] The parties have agreed that the policies did not give effect to Policy 10 of the NZCPS and have agreed to the inclusion of two new (additional) reclamation policies:



D.5.20A

Reclamation of land in the coastal marine area shall be avoided unless all of the following criteria are met:

- (a) Land outside the coastal marine area is not available for the proposed activity;
- (b) The activity which requires reclamation can only occur in or adjacent to the coastal marine area;
- (c) There are no practicable alternative methods of providing the activity;
- (d) The reclamation will provide significant regional or national benefit.

D.5.20AA

When considering proposed reclamations, have particular regard to the extent to which the reclamation and intended purpose would provide for the efficient operation of infrastructure, including ports, airports, coastal roads, pipelines, electricity transmission, railways and ferry terminals, and of marinas and electricity generation.

- [5] Additionally, the parties have agreed to a minor amendment to the chapeau of Policy D.5.21 to improve its readability as follows:

~~Recognise~~ Consider the following matters when ~~considering~~ assessing the ~~authorisation of an~~ unlawful reclamations in the coastal marine area:

- [6] The parties consider that this new policy regime gives effect to the New Zealand Coastal Policy Statement 2010 and the Regional Policy Statement for Northland.

Rule C.1.6.3 – Reclamation for regionally significant infrastructure: discretionary activity

- [7] Transpower New Zealand Ltd sought that this rule be amended as follows:

A reclamation in the coastal marine area necessary for the functional and operational need of regionally significant infrastructure are... discretionary activities.

- [8] The parties have agreed to resolve Transpower's appeal point by inserting a new (discretionary activity) rule for reclamations for the National Grid (C.1.6.3A), provided the National Grid has a functional or operational need to be located in the coastal marine area.

C.1.6.3A Reclamation for the National Grid – discretionary activity

Any reclamation in the coastal marine area and any associated destruction, damage or disturbance of the foreshore or seabed, deposition of material on to the foreshore or seabed, and the use of the reclamation for the National Grid are discretionary activities, provided the National Grid has a functional or operational need to be located in the coastal marine area.

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

- Reclamation of any foreshore or seabed and any associated destruction, damage or disturbance of the foreshore or seabed and deposition of material on to the foreshore or seabed (s12(1)).



- Use of a reclamation in the coastal marine area (s12(3)).
- Discharge of sediment or water into water or onto land incidental to the activity (s15(1)).
- Discharge of sediment or water onto land incidental to the activity (s15(2A)).

[9] The parties consider this rule is appropriate because the Proposed Plan must give effect to the National Policy Statement on Electricity Transmission, which requires plans to recognise and provide for the effective operation and development of the National Grid.

Rule C.1.6.5 – Reclamation in significant areas: non-complying activity

[10] This rule was appealed by Transpower New Zealand Ltd who did not consider that a non-complying rule was an appropriate method for managing the effects of National Grid infrastructure. However, as mediation resulted in the creation of 'new' Rule C.1.6.3A for Reclamations for National Grid, Transpower agreed to settle their appeal on Rule C.1.6.5 through the insertion of a new clause 3) to rule C.1.6.5 as set out below:

C.1.6.5 Reclamation in significant areas – non-complying activity

A reclamation, any associated destruction, damage or disturbance of the foreshore or seabed, any deposition of material on to the foreshore or seabed, and use of the reclamation, that is not a:

- 1) discretionary activity under Rule C.1.6.4 Reclamation – discretionary activity, or
 - 2) discretionary activity under Rule C.1.6.3 Reclamation for regionally significant infrastructure – discretionary activity, or
 - 3) or a discretionary activity under Rule C.1.6.3A Reclamation for the National Grid,
- are non-complying activities.

[11] The following persons gave notice of their intention to become parties to one or more of the appeals under s 274 of the Act:

- (a) Minister of Conservation
- (b) Northport Ltd
- (c) Royal Forest & Bird Protection Society of NZ Incorporated
- (d) Federated Farmers
- (e) CEP Services Matauwhi Ltd
- (f) Northpower NZ



(g) NZ Refining Company Ltd

(h) NZ Transport Authority

[12] In making this order the Court has read and considered the memorandum of the parties dated 13 March 2020 in support of this order.

[13] The Court is making this order under section 279(1)(b) 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;

(b) All parties are satisfied that all matters proposed for the Court's endorsement are within the scope of submissions and appeals, fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act 1991, including in particular Part 2.

Order

[14] Therefore, the Court orders, by consent, that the Proposed Regional Plan for Northland is amended as set out in **Annexure A** to this Order.

[15] This order resolves the appeals as they relate to Policy D.5.20 Reclamation, Policy D.5.21 Rule C.1.6.1 Unlawful public road reclamation, Rule C.1.6.3A Reclamation for the National Grid and Rule C.1.6.5 Reclamation in Significant Areas. The outstanding appeal points within the sub-topic consist of Rule C.1.6.3 and Rule C.1.6.4.

[16] There is no order as to costs.

DATED at Auckland this 20th day of May 2020





J A Smith
Environment Judge

Annexure A

D.5.20A

Reclamation of land in the coastal marine area shall be avoided unless all of the following criteria are met:

- (a) Land outside the coastal marine area is not available for the proposed activity;
- (b) The activity which requires reclamation can only occur in or adjacent to the coastal marine area;
- (c) There are no practicable alternative methods of providing the activity;
- (d) The reclamation will provide significant regional or national benefit.

D.5.20AA

When considering proposed reclamations, have particular regard to the extent to which the reclamation and intended purpose would provide for the efficient operation of infrastructure, including ports, airports, coastal roads, pipelines, electricity transmission, railways and ferry terminals, and of marinas and electricity generation.

D.5.20 Reclamation

Recognise the potential benefits of **reclamations** when they are undertaken to:

- 1) maintain or repair an **authorised reclamation**, or
- 2) carry out rehabilitation or remedial works, or
- 3) create or enhance habitat for indigenous species where degraded areas of the coastal environment require restoration or rehabilitation.

D.5.21 Unlawful reclamation

Recognise **Consider** the following matters when **considering assessing** the authorisation of an unlawful **reclamations** in the coastal marine area:

- 1) the extent of social or economic benefit provided to the public, including whether the **reclamation** is necessary to enable the operation of infrastructure, and
- 2) the length of time the unlawful **reclamation** has existed, and
- 3) the extent to which removal of the **reclamation** is practicable, and
- 4) whether there will be more significant adverse effects resulting from the works required to remove the **reclamation**, compared with retaining the **reclamation**.

C.1.6.1 Unlawful public road reclamation – controlled activity¹

An unlawful **reclamation** in the coastal marine area used for a public road and in a legal road reserve, existing at 1 September 2017, is a controlled activity.

¹ Appeal to Environment Court by CEP Services Matauwhi Ltd ENV-2019-AKL-000111



Matters of control:

- 1) The effects of any remedial works necessary to mitigate adverse effects.
- 2) Effects on coastal processes, including effects on shoreline stability in the vicinity of the site.
- 3) Effects on tangata whenua and their **taonga**.

Notification:

Resource consent applications under this rule are precluded from notification (limited or public).

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

- **Reclamation** of any foreshore or seabed (s12(1)).

C.1.6.3A Reclamation for the National Grid – discretionary activity

Any reclamation in the coastal marine area and any associated destruction, damage or disturbance of the foreshore or seabed, deposition of material on to the foreshore or seabed, and the use of the reclamation for the National Grid are discretionary activities, provided the National Grid has a functional or operational need to be located in the coastal marine area.

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

- Reclamation of any foreshore or seabed and any associated destruction, damage or disturbance of the foreshore or seabed and deposition of material on to the foreshore or seabed (s12(1)).
- Use of a reclamation in the coastal marine area (s12(3)).
- Discharge of sediment or water into water or onto land incidental to the activity (s15(1)).
- Discharge of sediment or water onto land incidental to the activity (s15(2A)).

C.1.6.5 Reclamation in significant areas – non-complying activity²

A **reclamation**, any associated destruction, damage or disturbance of the foreshore or seabed, any deposition of material on to the foreshore or seabed, and use of the reclamation, that is not a:

- 1) discretionary activity under Rule **C.1.6.4 Reclamation – discretionary activity**, or
 - 2) discretionary activity under Rule **C.1.6.3 Reclamation for regionally significant infrastructure – discretionary activity**, or
 - 3) or a discretionary activity under Rule C.1.6.3A Reclamation for the National Grid,
- are non-complying activities.

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

² Appeal to Environment Court by Transpower New Zealand Ltd ENV-2019-AKL-000107



- Reclamation of any foreshore or seabed and any associated destruction, damage or disturbance of the foreshore or seabed and deposition of material on to the foreshore or seabed (s12(1)).
- Use of a reclamation in the coastal marine area (s12(3))
- Discharge of sediment or water into water or onto land incidental to the activity (s15(1)).
- Discharge of sediment or water onto land incidental to the activity (s15(2A)).

