

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌ'I'I TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

IN THE MATTER OF appeals under Clause 14 of Schedule 1 of
the Resource Management Act 1991 (**the
Act**)

AND Topic 17 (Outstanding Natural
Landscapes) of the Proposed Northland
Regional Plan Appeals

BETWEEN CEP SERVICES MATAUWHI
LIMITED

(ENV-2019-AKL-111)

ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED

(ENV-2019-AKL-127)

Appellants

AND NORTHLAND REGIONAL
COUNCIL

Respondent

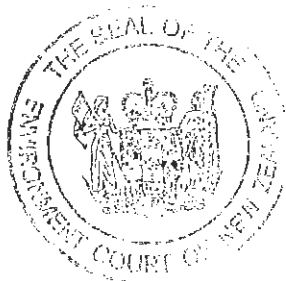
AMENDED DIRECTIONS OF THE ENVIRONMENT COURT

(9 July 2021)

Introduction

[1] This matter relates to the current section 293 process undertaken for Topic 17 – Outstanding Natural Landscapes (ONLs) for the Proposed Northland Regional Plan.

Topic 17 (Outstanding Natural Landscapes) – Proposed Northland Regional Plan



[2] Topic 17 was originally part of the Topic 11 (Biodiversity) hearing, convened between 23 and 25 November 2020. Prior to the hearing, parties asked that this matter be dealt with by way of a section 293 application.

[3] Accordingly, an interim report (**the Report**) to the Minister for Conservation pursuant to Clause 15(1)(a) of the First Schedule of the Act was issued on 3 December 2020, timetabling Topic 17 to a section 293 process. The Court's directions setting out the timetable are found in paragraph [21] of the Report.¹

[4] Parties are currently undertaking the third step of the process, which is for the Council to undertake necessary consultation with parties to these provisions, other community groups and Tangata Whenua. A milestone report as to the consultation was **directed** to be filed with the Court by **30 July 2021**.

Request for Amendment or “Suspension” of Process

[5] On 7 July 2021, counsel for the Council filed a memorandum (annexed hereto as **A**) with the Court seeking an amendment to the directions for Topic 17. Counsel advise that the reasoning for this request are as follows:

- (a) In light of the controversy over the consultation process on the Far North District Council's Proposed District Plan, particularly the proposal to identify Significant Natural Areas; and
- (b) Following consult with the Te Taitokerau Māori and Council Working Party, concerns were raised that the Council should not progress with consultation of the ONL mapping, as the process that the draft ONL maps were developed under did not provide for best practice consultation.

[6] Accordingly, the Council seeks a “suspension” of the section 293 process until 30 September 2021, with a report to the Court by the same date seeking either recommencement of the process, recommencement with additional time required, or the entire process be vacated. Alternatively, the Council suggests an amendment to

¹ *CEP Services Mataurahi Limited & Anor v Northland Regional Council* [2020] NZEnvC 202.

the directions to provide additional time for consultation, with all other milestones adjusted accordingly.

Position of Other Parties

[7] The Council have sought responses from the other parties, and generally there is no opposition for “suspension” of the process. However, CEP Services Matauwhi Limited, the Minister of Conservation, and Royal Forest and Bird Protection Society of New Zealand Incorporated similarly raise concerns about the possibility of vacating the section 293 process after 30 September 2021, particularly given that Topic 17 was placed on this process to assist mapping the ONLs for the Regional Plan.

Directions

[8] In light of the above, I **direct** the section 293 process timetable for Topic 17 is amended, with subsequent milestones amended accordingly. Topic 17 was initially placed on a section 293 process to achieve an efficient and effective resolution of the requirements set out in the New Zealand Coastal Policy Statement and settled provisions of the Regional Plan. Accordingly, it appears the most efficient solution is to amend the timetable rather than “suspend” the process altogether.

[9] Accordingly, I **direct** the following amendments to the timetable at paragraphs [21](c)-(g) of the Report as follows:

(a) Paragraph [21](c) will now read:

that by 30 September 2021, the Council will undertake necessary consultation with parties to these provisions, other community groups and Tangata Whenua. A Further milestone report as to the consultation shall be provided to the Court by **30 September 2021**;

(b) Paragraph [21](d) will now read:

that the Council will provide to interested parties and parties to these proceedings and the Court a final mapping, and all other provisions (if any) by **27 October 2021**, with a milestone report on progress to that date;

(c) Paragraph [21](e) is will now read:

that by **10 November 2021**, the Council should provide to the Court a draft of the public notification indicating the publications into which it is to be inserted and the provisions to appear on its website. Public notification shall be made after approval by the Court in the form of the notice, no later than **24 November 2021**. The Council shall provide a report to the Court with a copy of the advertisement and the dates on which the publication was made, no later than **8 December 2021**;

(d) Paragraph [21](f) will now read:

that submissions (including section 274 notices that parties may wish to file will be filed with the Court by **22 December 2021**. The notice is to advise that copies are to be forwarded to both the Council and the Court; and

(e) Paragraph [21](g) will now be read:

that the Council is to provide a summary of those submissions to the Court by **2 February 2022**, and the Court with thereafter set out an appropriate process to move this matter to mediation or hearing, as is required.

[10] The Court may make further directions, and/or further alter this timetable in the event any milestone is not met.





Judge J A Smith

Environment Judge

'A'

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

**I MUA I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKĀURĀU ROHE**

UNDER the Resource Management Act 1991
IN THE MATTER of appeals under Clause 14 of Schedule 1 of the Act

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

**ROYAL FOREST AND BIRD PROTECTION SOCIETY
OF NEW ZEALAND INCORPORATED**
(ENV-2019-AKL-000127)

Appellants

AND **NORTHLAND REGIONAL COUNCIL**
Respondent

**MEMORANDUM OF COUNSEL FOR NORTHLAND REGIONAL COUNCIL
SEEKING AMENDMENT TO DIRECTIONS**

TOPIC 17 – OUTSTANDING NATURAL LANDSCAPES

7 JULY 2021

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MAY IT PLEASE THE COURT

Background

1. By interim report dated 3 December 2020, the Environment Court determined that the Proposed Regional Plan for Northland (**Proposed Plan**) had failed to map Outstanding Natural Landscapes (**ONLs**) within the coastal marine area (**CMA**), as required in accordance with the New Zealand Coastal Policy Statement 2010 (**NZCPS**).¹
2. On application by Northland Regional Council (**Council**) and parties under section 293 of the RMA, the Court made directions for the preparation of, and consultation on, draft mapping of ONLs in the CMA.² The Court directions required milestone reporting by the Council.
3. The Council completed the first two milestones in accordance with the directions. The current step is for the Council to undertake consultation with the parties, other community groups and Tangata Whenua (particularly in accordance with Policy 15(c)(viii) of the NZCPS).³
4. Recent events in Northland have complicated the Council's consultation process, particularly its consultation with Tangata Whenua.
5. This memorandum explains the complication and seeks alternative directions.

Complications in Northland

6. In April and May 2021, Far North District Council (**FNDC**) consulted on its draft Proposed District Plan, including a proposal to identify Significant Natural Areas (**SNAs**). The mapping identified approximately 42% of the district (approximately 282,696 hectares) as SNA. Approximately half the area mapped as SNA is private land and about half of that is Māori Land or land owned by Māori.
7. The proposed SNAs have created significant controversy in Northland, with opposition resulting in a Hīkoi being led from Cape Reinga to FNDC's offices in Kaikohe.⁴ The opposition resulted in FNDC "pausing" its SNA

¹ *CEP Services Matauwhi Ltd v Northland Regional Council* [2020] NZEnvC 202, at [B].

² *CEP Services Matauwhi Ltd v Northland Regional Council* [2020] NZEnvC 202, at [21].

³ *CEP Services Matauwhi Ltd v Northland Regional Council* [2020] NZEnvC 202, at [21(c)].

⁴ Susan Botting "Significant Natural Areas (SNAs) in the Far North: What you need to know" *Stuff* (online ed, 11 June 2021).

mapping project at least until after the Government promulgates a National Policy Statement on Indigenous Biodiversity.⁵

8. As the Court will also be aware, evidence filed for the appeals in Topic 14 – Marine Protected Areas raises concerns with the consultation undertaken for that proposal (particularly from the perspective of Te Ao Māori).

Consultation on ONL mapping

9. Prior to the SNAs issue, the Council had identified the relevant groups and stakeholders it intended to consult with. However, in light of the SNAs issue, Council officers sought confirmation from the Te Taitokerau Māori and Council Working Party (a Council working party with Māori representation and with a role of advising on the Council's compliance with obligations to Māori) and from Councillors.
10. The Te Taitokerau Māori and Council Working Party advised that the Council should not progress with consultation on the ONL mapping because the constrained process that the draft ONL maps were developed under did not provide for best practice consultation: Tangata Whenua would be invited to comment on the draft maps, rather than have an opportunity to influence the methodology or process that led to the preparation of the maps.
11. Council officers were also concerned that, in light of the controversy caused by the SNA issue, concerns about the consultation process for the draft ONL maps would overshadow any substantive feedback. At a recent workshop, Councillors asked officers to reconsider whether the ONLs should be mapped through a section 293 process, or whether a variation or plan change would be more appropriate.
12. The Council shares the desire of the Court and parties that appeals against the Proposed Plan are resolved efficiently and expeditiously. However, as also noted by the Court, the process should be thorough and

<<https://www.stuff.co.nz/national/politics/local-democracy-reporting/300330331/significant-natural-areas-snas-in-the-far-north-what-you-need-to-know>>

⁵ Meriana Johnsen "Far North District Council halts SNAs as hīkoi marches on" *Radio New Zealand* (online ed, 10 June 2021).
<<https://www.rnz.co.nz/news/te-manu-korihī/444442/far-north-district-council-halts-snas-as-hikoi-marches-on>>

achieve the requirements of the NZCPS (and therefore, Part 2 of the RMA).⁶

13. In light of the SNA issue and the recommendations of the Te Taitokerau Māori and Council Working Party, the Council seeks that progress on the section 293 process is suspended until 30 September 2021. The purpose of the suspension is to allow the Council to engage with the Te Taitokerau Māori and Council Working Party (and other stakeholders) and put its recommendation to Councillors. The outcome may either be a proposal for expanded consultation as part of the section 293 process, or that the Council commits to a variation or plan change to engage the full Schedule 1 process.
14. Suspension until 30 September 2021 is sought as that would allow consideration by Te Taitokerau Māori and Council Working Party at its next meeting (12 August 2021), followed by a decision by full Council at its following meeting (21 September 2021). The Council would then report to the Court on 30 September 2021 seeking that:
 - a. the section 293 process recommence; or
 - b. the section 293 process recommence, but with additional time for expanded consultation; or
 - c. the section 293 process be vacated in favour of a variation or plan change.
15. If the Court is not minded to suspend the section 293 process, the Council alternatively seeks an amendment to the directions to provide additional time for consultation now. While this would not address the Council's concerns identified above, it would provide a greater opportunity for meaningful engagement. If this option is preferred, the Council seeks an extension for the current milestone to 30 September 2021, with all other milestones adjusted accordingly,

Position of the parties

16. The Council circulated a draft of this memorandum to the parties for their feedback:

⁶ *CEP Services Matauwhi Ltd v Northland Regional Council* [2020] NZEnvC 202, at [D] and [13].

- a. The Aquaculture Industry Parties, New Zealand Sport Fishing Council, Fishing Industry Parties, Horticulture New Zealand, Whangarei District Council, Far North District Council, Mr Farmer, Mr Mace and Mr Thornton support the proposed suspension.
- b. CEP Services Matauwhi Limited accepts, very reluctantly, the proposed suspension until 30 September 2021, but only in respect of the options in paragraphs 14(a) and (b) above. It is concerned with the suggestion that the process may change to a Schedule 1 process for the main reason that the Court enforced timetable under the section 293 process would be lost. It considers that the timetable set under the section 293 process is important as the Proposed Plan is deficient until such a time as ONLs are mapped, and there can be considerable delays in implementing Schedule 1 processes. A further reason is that CEP Services Matauwhi Limited is concerned that no detail has been provided on how the Council will give effect to Policy 15 of the NZCPS in the interim.
- c. The Minister of Conservation's position is:

The Minister of Conservation supports full consultation and therefore does not oppose the options set out in paragraphs 14(a) and (b), and 15. In the absence of further information including on methodology, timeframes and any interim measures, the Minister opposes 14(c) as this does not abide the Court's directions in *CEP Services Matauwhi v NRC* [2020] NZEnvC 202.
- d. The Royal Forest and Bird Protection Society of New Zealand Inc takes the same position as CEP Services Matauwhi Limited and the Minister of Conservation. It takes issue with the characterisation of the Council's request as a "suspension".
- e. Patuharakeke Te Iwi Trust Board supports early, full and meaningful consultation with mana whenua. It is, however, also concerned that the Proposed Plan is progressed in a timely manner and (if a variation or plan change is to be advanced) that the question of any interim arrangements is directly addressed.
- f. Refining New Zealand, Transpower, Federated Farmers of New Zealand, Northport Limited and Yachting New Zealand do not object to the proposed suspension.

Request for directions

17. In light of the above, the Council respectfully requests that the Court directs that:
 - a. the timetable for Topic 17 is suspended until 30 September 2021;
and
 - b. the Council provide a report on the outcome of its decision by 30 September.
18. Alternatively, the Council respectfully requests that the Court directs that the timetable is amended to provide an extension for the current milestone to 30 September 2021 and the remaining milestones are adjusted accordingly.
19. Counsel for the Council is available at short notice for a judicial teleconference conference.

DATED this 7th day of July 2021



M J Doesburg

Counsel for Northland Regional Council