

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

Decision [2022] NZEnvC 132

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

BETWEEN CHANNEL INFRASTRUCTURE NZ
LIMITED

(ENV-2019-AKL-000121)

Appellant

AND NORTHLAND REGIONAL
COUNCIL

Respondent

Court: Environment J A Smith sitting alone pursuant to s 279 of the Act

Last case event: 7 July 2022

Date of Order: 21 July 2022

Date of Issue: 21 July 2022

CONSENT DETERMINATION

A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that the planning maps of the Northland Regional Plan are amended in accordance with **Annexure A** to this order.



- B: The following appeal points are confirmed as withdrawn:
- (a) seeking the introduction of a new Rule C.1.5.12A: ‘Capital dredging in the Whangarei Harbour Channel Entrance and Marsden Point Port Zone – Restricted Discretionary’; and
 - (b) seeking non-complying activity status for “other” capital dredging through amendments to rule C.1.5.14.
- C: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[2] Channel Infrastructure NZ Limited (**the Appellant**)¹ has appealed provisions of the proposed Regional Plan for Northland (**pNRP**).

[3] The Appellants appeal, relevant to this consent order, seeks:

- (a) an extension of the mapped Marsden Point Port Zone (**MPPZ**);
- (b) the introduction of a new Rule C.1.5.12A: ‘Capital dredging in the Whangarei Harbour Channel Entrance and Marsden Point Port Zone – Restricted Discretionary’; and
- (c) amendments to Rule C.1.5.14: ‘Other dredging, deposition and disturbance activities – non-complying’.

[4] The following persons gave notice of their intention to become parties to these appeal points:

- (a) Patuharakeke Te Iwi Trust Board;
- (b) Northport Limited;
- (c) CEP Services Matauwhi Limited;
- (d) Minister of Conservation;
- (e) Mirra Norris and Te Parawhau ki ai Whangarei; and
- (f) Royal Forest and Bird Protection Society of New Zealand Incorporated.

¹ At the time the appeal was lodged the Appellant was known as The New Zealand Refining Company Limited. It has since changed its name to Channel Infrastructure NZ Limited.

[5] Mere Kepa filed an interested party notice in relation to the appeal, however the extent of her interest was expressly limited to the SEA status at Mair and Marsden Banks. As such, it did not extend to the provisions listed above. In any event, Dr Kepa has now withdrawn her interest in the appeal.

Agreement reached

[6] The parties participated in Court-assisted mediation and have also engaged in subsequent informal discussions. The parties have reached agreement on the above listed provisions/appeal points.

[7] The parties have advised that since the time of lodging the appeal, the Appellant has undergone a strategic review of its operations. As a result, refinery operations at the Appellant's Marsden Point site ceased earlier in 2022 and the site is being operated as a dedicated fuel import terminal. Therefore, some of the issues raised in the appeal are no longer a priority.

[8] The purpose of the MPPZ in the pNRP is to enable the development and operation of existing and authorised maritime-related commercial enterprises or industrial activities located within the zone.²

[9] The MPPZ in the decisions version of the pNRP does not cover the full extent of the tanker berth pocket next to the Appellant's jetty, which does not adequately enable development and operation of the Marsden Point Import Terminal (which is identified in the pNRP as regionally significant infrastructure).

[10] The parties have agreed a small extension to the mapped MPPZ as shown outlined in red in Annexure A.

[11] The parties state the amendment to the pNRP maps to provide a small extension of the MPPZ is carefully designed to include the full extent of the tanker berth pocket (and associated activities) next to the Appellant's jetty. This is considered as necessary to appropriately provide the Appellant with sufficient operational

² Policy D.5.8: Coastal Zone and Marsden Point Port Zone Purpose. Note this policy was the subject of an appeal by the Royal Forest and Bird Protection Society of New Zealand Incorporated. That appeal has been resolved without making any changes to the wording of this policy.

flexibility, including for its current and future operations within the coastal marine area proximate to Marsden Point. This will, in turn, enable better the development and operation of existing and authorised maritime-related commercial enterprises or industrial activities located within the MPPZ.

[12] The parties consider any adverse effects associated with the extension of the MPPZ would be minimal given that the Appellant and Northport Limited hold extant resource consents for dredging within the area of the proposed MPPZ extension.

[13] Within the extended MPPZ area, the boundaries of those mapped areas of elevated values (Significant Ecological Area (**SEA**), Significant Bird Area (SBA), Sites or Areas of Significance to tangata whenua (SSTW))) would remain unchanged. To be clear, the parties have agreed to the extension of the MPPZ, and there will be no change to those other mapped layers.

[14] As a consequence of the agreed revisions to the pNRP, the Appellant has agreed to withdraw its appeal points seeking:

- (a) the introduction of a new Rule C.1.5.12A: ‘Capital dredging in the Whangarei Harbour Channel Entrance and Marsden Point Port Zone – Restricted Discretionary’; and
- (b) non-complying activity status for “other” capital dredging through amendments to rule C.1.5.14.

Consideration

[15] The parties have filed a consent memorandum of the parties dated 7 July 2022 supporting this determination.

[16] 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;

- (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.

[17] I am satisfied that the proposed small extension to the mapped MPPZ would better enable activity at the Appellant's site, consistent with the purpose of the MPPZ. It is clear that the agreement reached is measured. I also note the advice of the parties that some issues raised in the appeal are no longer pursued.

[18] The issues relating to Marsden Point, the nearby SEA, and Significant Marine Mammal and Seabird Areas (SMMSA) and its natural values have been broadly discussed in previous decisions.³

[19] The *Royal Forest and Bird Protection Society of New Zealand Incorporated v Northland Regional Council* decision concerned an area of the Whangarei Harbour adjacent to the existing port facility at Marsden Point. The area had been listed as SEA when the proposed plan was notified. Part of the SEA area became a MPPZ in the decisions version of the plan and the SEA designation was removed. By the time of the hearing the parties agreed that areas could retain multiple overlays including SEA, MPPZ, SMMSA.⁴ The Court reclassified the area as SEA and stated "... the new overlay of SEA will simply underlie the MPPZ and change the status of any activity within that area for reclamation to non-complying".⁵ This was consistent with the rest of the Northland region, and in the Courts view properly met the "avoid" requirement of the relevant regional plan, Regional Policy Statement and Policy 11 of the New Zealand Coastal Policy Statement.⁶ I refer to this case to underscore that mapped layers co-exist.

[20] Clearly there would be significant issues relating to capital dredging works. Those provisions for capital dredging are no longer being pursued and I am satisfied

³ *Royal Forest and Bird Protection Society of New Zealand Incorporated v Northland Regional Council* [2021] NZEnvC 21; *Northport Limited v Whangarei District Council* [2021] NZEnvC 192.

⁴ At [3].

⁵ At [52].

⁶ At [45]

these issues would have been a major focus of submitters. However, the adjustment to the berthage is a practical recognition of the activity already occurring at the former refinery site. Accordingly, I conclude that the sustainable management purpose and the other relevant requirements of the Act are broadly met.

Orders

[21] Therefore, the Court orders, by consent, that the pNRP maps be amended in that the MPPZ be amended to include the area shown outlined in red in **Annexure A**.

[22] The following appeal points are confirmed as withdrawn:

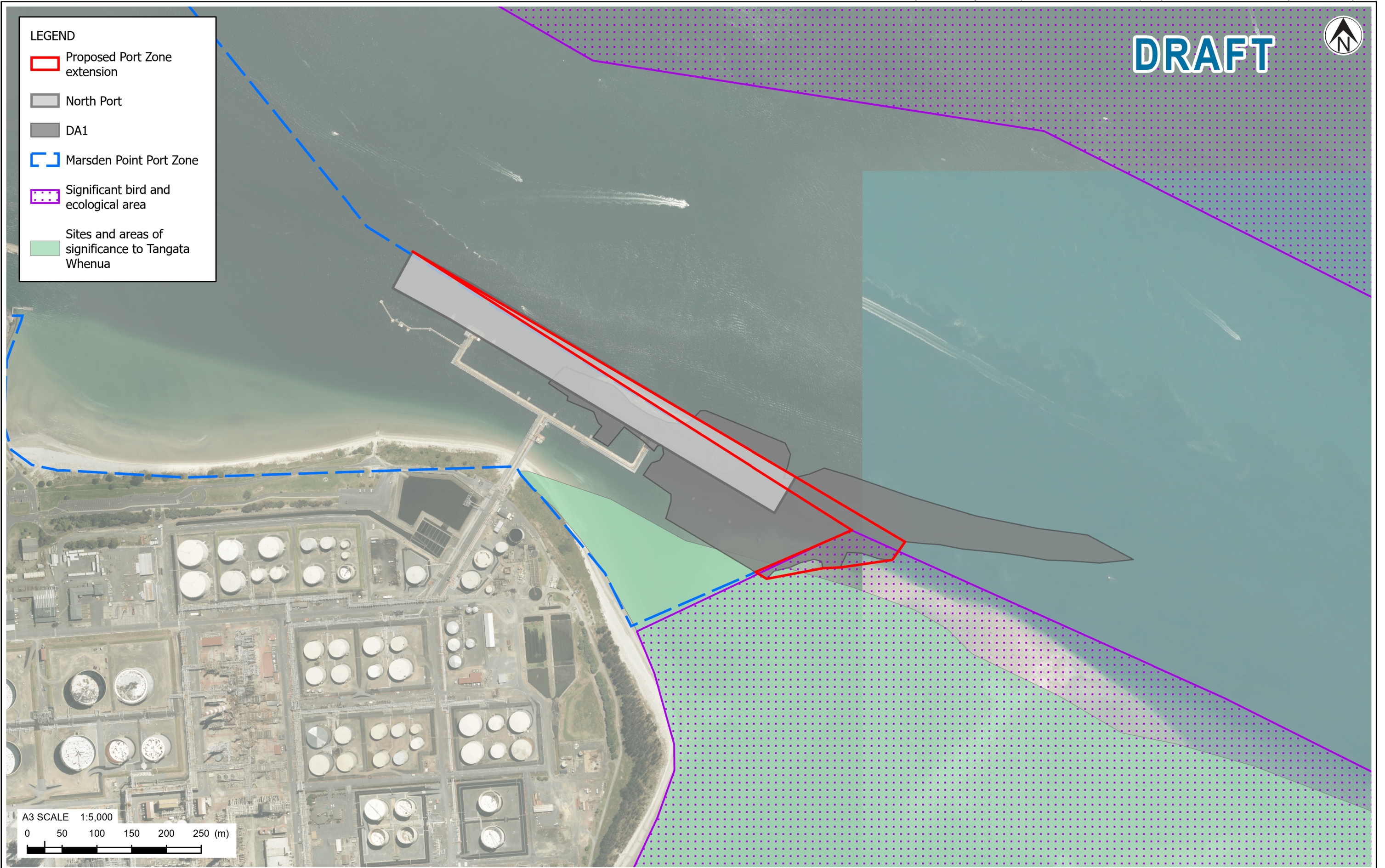
- (a) seeking the introduction of a new Rule C.1.5.12A: ‘Capital dredging in the Whangarei Harbour Channel Entrance and Marsden Point Port Zone – Restricted Discretionary’; and
- (b) seeking non-complying activity status for “other” capital dredging through amendments to rule C.1.5.14

[23] There is no order as to costs.




J A Smith
Environment Judge

Annexure A
Map of Marsden Point Port Zone



DRAFT



LEGEND

- Proposed Port Zone extension
- North Port
- DA1
- Marsden Point Port Zone
- Significant bird and ecological area
- Sites and areas of significance to Tangata Whenua

A3 SCALE 1:5,000
 0 50 100 150 200 250 (m)



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NOTES:
 Basemap Imagery/newzealand: Eagle Technology, Land Information New Zealand, GEBCO, Community maps contributors. NZ
 Navigation Map: Eagle Technology, LINZ, StatsNZ, NIWA, Natural Earth, © OpenStreetMap contributors.



0	First version	MOLI	JORB	11/05/22
REV	DESCRIPTION	GIS	CHK	DATE

PROJECT No.	1014261	
DESIGNED	MOLI	MAY.22
DRAWN	MOLI	MAY.22
CHECKED		
APPROVED		DATE

CLIENT	REFINING NZ	
PROJECT	COMMERCIAL CHANNEL UPDATE	
TITLE	PROPOSED PORT EXTENSION	
SCALE (A3)	1:5,000	FIG No. FIGURE 1
REV	0	