

**BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2019-AKL-

UNDER the Resource Management Act 1991

IN THE MATTER of an appeal pursuant to Clause 14(1) of Schedule
1 of the Act

BETWEEN **TOP ENERGY LIMITED**

Appellant

A N D **NORTHLAND REGIONAL COUNCIL**

Respondent

**NOTICE OF APPEAL ON PROVISIONS IN THE NORTHLAND REGIONAL
COUNCIL PROPOSED REGIONAL PLAN**

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To The Registrar
Environment Court
Auckland

1. Top Energy Limited appeals against decisions of Northland Regional Council on the Proposed Regional Plan for Northland (“PRP”).
2. Top Energy Limited made submissions and further submissions on the PRP.
3. Top Energy Limited is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Top Energy Limited has never received formal notice of the decision.
5. The decisions were made by Northland Regional Council.
6. The parts of the decisions that Top Energy Limited is appealing are the decisions of the Northland Regional Council with respect to the following provisions in the PRP:
 - 6.1. The definitions of the following term in Part B of the PRP:
 - 6.1.1. “Regionally significant infrastructure”
 - 6.2. The following Rules in Part C of the PRP –
 - 6.2.1. C.1.1.5 Signs
 - 6.2.2. C 1.1.7 Reconstruction, replacement, maintenance or repair of structures in the coastal marine area (CMA)
 - 6.2.3. C.8.3.1 Standards for earthworks as a permitted activity
 - 6.3. The following policy in Part D of the PRP -
 - 6.3.1. D.2.18 in relation to the precautionary approach to managing effects on significant indigenous biodiversity
7. The reasons for the appeal are, with respect to each part of the decision which is subject to appeal, as follows:
 - 7.1. Definition of the term “Regionally Significant Infrastructure”**
 - 7.1.1. Inclusion of such a term would align the PRP with the Regional Policy Statement (“RPS”).
 - 7.1.2. Inclusion of such a definition would facilitate the operations of network utility operators such as the Appellant.
 - 7.1.3. The general conditions of appeal as set out in Schedule 1.

7.2. Rule C.1.1.5 - Signs

- 7.2.1. The rule for signs should be amended to include signage erected as cable markers for infrastructure cables on the sea floor and overhead conductors to ensure safe and efficient operation of the facility being identified and safety to users of the CMA.
- 7.2.2. By providing greater clarity and wider application the proposed rule would be more appropriate.
- 7.2.3. The general conditions of appeal as set out in Schedule 1.

7.3. Rule C.1.1.7 – Reconstruction in CMA

- 7.3.1. The rules providing for reconstruction, replacement, maintenance or repair of structures as permitted activities should be amended to include minor upgrades.
- 7.3.2. Inclusion of such as a permitted activity would be of no consequential effect to the rule and provide greater ability for a network utility operator to maintain its infrastructure.
- 7.3.3. Provisions for minor upgrades as a permitted activity would be a pragmatic approach enabling ongoing management and operation of public network facilities.
- 7.3.4. The general conditions of appeal as set out in Schedule 1.

7.4. Rule C.8.3.1 – Standards for Earthworks

- 7.4.1. The provisions for earthworks as a permitted activity are unduly restrictive and onerous for a network utility operator. Greater flexibility should be permitted for earthworks as part of infrastructural network facility constructions and maintenance.
- 7.4.2. The general conditions of appeal as set out in Schedule 1.

7.5. Policy D.2.18 – Precautionary Approach

- 7.5.1. Policy D.2.18 is unnecessary in that there is sufficient protection built into the RMA in any event without the need for such a policy.
- 7.5.2. The general conditions of appeal as set out in Schedule 1.

8. Top Energy Limited seeks the following relief:

8.1. Definition of the term “Regionally Significant Infrastructure”

- 8.1.1. The definition of regionally significant infrastructure should include, like the RPS, an appendix identifying such infrastructure.

8.2. Rule C.1.1.5 - Signs

- 8.2.1. Include an amendment to Rule C.1.1.5 to permit signs as an activity as cable markers for infrastructure cables on the sea floor and conductor markers for overhead lines over water bodies.
- 8.2.2. Amend the rule to provide for signs in the CMA which are placed by a network utility operator directly relating to information or safety matters concerning the CMA or to fulfil a regulatory or legislative requirement, including cable markers on the sea floor.

8.3. Rule C.1.1.7 – Reconstruction in CMA

- 8.3.1. Amend rule C.1.1.7 to provide for minor upgrading to allow for a 5% increase in footprint, length, width and height from that which existed as at 5 September 2017 so long as there is no material change to the location and form of the structure.

8.4. Rule C.8.3.1 – Standards for Earthworks

- 8.4.1. Table 13 be amended to provide explanatory text to the effect that for network utility operators the thresholds applying to areas and volume of earthworks being undertaken at any one time at a particular location such that progression of closure and stabilisation works can be adopted to maintain the activity within the permitted thresholds.

8.5. Policy D.2.1.8 – Precautionary Approach

- 8.5.1. This policy should be deleted.

SCHEDULE

GENERAL CONDITIONS OF APPEAL

1. This provision in the PRP is contrary to good resource management practice.
2. The relief sought through amendment to the PRP would better accord with the principles of the Act.
3. The relief sought would more closely align the PRP with the Regional Policy Statement for Northland, the New Zealand Coastal Policy Statement and Part 2 of the Act.
4. The relief sought would more appropriately provide for the public benefit that the electricity transmission network operated by the Appellant provides.
5. The relief sought would more appropriately provide for the social and, economic wellbeing of the people and communities served by the Appellant's electricity transmission network.

The following documents are attached to this notice:

- (a) a copy of the Top Energy Limited submission and further submission;
- (b) a list of names and addresses of persons to be served with a copy of this notice; and
- (c) while no decision has been received the decision of Northland Regional Council can be reviewed on line at www.nrc.govt.nz/media/14124/reporting-and-recommendations-of-the-hearing-panel-for-the-proposed-regional.pdf

Date: 17 June 2019



Signature of Graeme John Mathias being Solicitor for
and person authorised to sign on behalf of Appellant

Contact details

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

- 1 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 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends. You must also serve a copy of that notice on Northland Regional Council and the appellant within the same 15-working-day period and serve copies on all other parties within 5 working days after that period ends.
- 2 If you are a trade competitor of a party to the proceedings, your right to be a party to the proceedings in the court may be limited (see section 274(1) and Part 11A of the Resource Management Act 1991).
- 3 You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

How to obtain copies of documents relating to appeal

- 4 The copy of this notice served on you does not have attached a copy of the appellant's submission or the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

- 5 If you have any questions about this notice, contact the Environment Court in Auckland.