

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2023] NZEnvC 002

IN THE MATTER OF an appeal under clause 14 of Schedule 1
of the Resource Management Act 1991
regarding the general provisions of the
Proposed Northland Regional Plan.

BETWEEN

ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED

(ENV-2019-AKL-000127)

MATAKA RESIDENTS
ASSOCIATION INCORPORATED

(ENV-2019-AKL-000112)

ROBINIA INVESTMENTS LIMITED

(ENV-2019-AKL-000115)

PAROA BAY STATION LIMITED

(ENV-2019-AKL-000113)

Appellants

AND

NORTHLAND REGIONAL
COUNCIL

Respondent

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

Date of Order: 17 January 2023

Date of Issue: 17 January 2023

pNRP – General provisions and plan structures



CONSENT DETERMINATION

- A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that the appeal is allowed in accordance with **Annexure A** to this determination.
- 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, in respect of appeals against provisions relating to General provisions and plan structures.

[2] The appeals were lodged by:

- (a) Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest and Bird);
- (b) Mataka Residents Association Incorporated;
- (c) Robinia Investments Limited; and
- (d) Paroa Bay Station Limited.

[3] The appeals relate to:

- (a) Objective F.1.5 Enabling economic wellbeing;¹
- (b) Policy D.2.1 Rules for managing natural and physical resources; and

¹ Previously F.1.4.

(c) Policy D.2.14 Resource consent duration.²

[4] 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) Aquaculture Industry Parties (Aquaculture New Zealand, Moana New Zealand Limited and The New Zealand Oyster Industry Association);
- (b) CEP Services Matauwhi Limited;
- (c) Federated Farmers of New Zealand;
- (d) Horticulture New Zealand;
- (e) Waka Kotahi;
- (f) Transpower New Zealand Limited;
- (g) Patuharakeke Te Iwi Trust Board;
- (h) MLP LLC;
- (i) Atlas Quarries Limited and Atlas Concrete Limited;
- (j) Channel Infrastructure NZ Limited;
- (k) Mataka Residents Association Incorporated;
- (l) Robinia Investments Limited; and
- (m) Paroa Bay Station Limited.

[5] By memorandum of counsel dated 24 September 2020, Channel Infrastructure NZ Limited withdrew its s 274 interest in provisions relating to General provisions and plan structure. The remaining s 274 parties have signed the memorandum of the parties dated 16 December 2022.

² Previously D.2.12.

Agreement reached

[6] No mediation was held on the appeals, however, the parties participated in informal discussions and have reached agreement on the provisions under appeal.

Objective F.1.5³ Enabling economic well-being

[7] Objective F.1.5 provides that Northland's natural and physical resources are managed in a way that is attractive for business and investment that will improve the economic well-being of Northland and its communities.

[8] It was appealed by Forest and Bird who sought that it be amended to better reflect the purpose of sustainable management in section 5 of the RMA.

[9] Following discussions, the parties agreed to amend Objective F.1.5 as follows:

The use and development of Northland's natural and physical resources is efficient and effective and ~~are~~ managed in a way ~~that is attractive for business and investment~~ that will improve the economic, and social and cultural well-being of Northland and its communities.

[10] The parties consider the amendments are appropriate as they:

- (a) strengthen the link between the objective and section 5 of the RMA; and
- (b) by including reference to social and cultural wellbeing, the amendments better align with the Council's economic development philosophy which seeks to strengthen, diversify and grow Te Tai Tokerau Northland's economy to help support strong communities and environmental stability.

Policy D.2.1 Rules for managing natural and physical resources

[11] Policy D.2.1 provides for the inclusion of rules to manage the use, development and protection of natural and physical resources.

³ Previously F.1.4.

[12] Policy D.2.1 was appealed by Forest and Bird who sought that the policy be deleted. The rationale for Forest and Bird's appeal is that the policy is unbalanced, as it provides for the inclusion of rules that enable use and development, but it does not recognise that higher order planning documents may require activities to be avoided in some situations.

[13] Following discussions, the parties agreed to amend the policy as follows:

Include rules to manage the use, development and protection of natural and physical resources that:

...

5) enable use and development that complies with any relevant National Policy Statement, the Regional Policy Statement for Northland and the objectives and policies of this Plan, and ...

[14] The parties consider that the amendments are appropriate as:

- (a) including reference to national policy statements avoids any doubt that the requirements of higher order documents apply, including the New Zealand Coastal Policy Statement 2010 (NZCPS); and
- (b) like any plan, the objectives set the outcomes that the plan is trying to achieve and the policies identify how the outcomes are to be achieved. Including reference to policies in the Proposed Plan ensures that more detailed direction is also taken into account.

Policy D.2.14⁴ Resource consent duration

[15] Policy D.2.14 sets out the matters that must be given particular regard to when determining the expiry date for a resource consent.

[16] Policy D.2.14 was appealed by:

- (a) Mataka Residents Association Incorporated, Robina Investments Limited, and Paroa Bay Station Limited (**Mataka et al**), who sought that

⁴ Previously D.2.12.

the policy be clear that where there is uncertainty as to the effects of an activity, a shorter resource consent duration should result; and

- (b) Forest and Bird, who sought to delete condition (5) (which provides additional matters to have regard to where the resource consent application is to re-consent an activity).

[17] Following discussions, Mataka et al confirmed that they would not pursue their appeal points, in light of the broader settlement of the other Mataka et al appeals. MLP LLC and the Aquaculture Industry Parties (section 274 parties to Mataka et al's appeal) have confirmed they have no issue with the appeal not being pursued.

[18] The remaining parties agreed to amend Policy D.2.14 as follows:

...

5) ~~the following additional matters~~ where the resource consent application is to re-consent an activity,

a) ~~the applicant's past compliance with the conditions of any previous resource consent or relevant industry guidelines or codes of practice (significant previous non-compliance should generally result in a short duration), and~~

b) ~~the applicant's voluntary adoption of good management practice (the adoption of good management practices that minimise adverse environmental effects could result in a longer consent duration).~~

[19] The parties consider that the above amendments are appropriate. The parties agree that an applicant's past compliance with relevant industry guidelines or codes of practice, or an applicant's voluntary adoption of good management practices, are not particularly relevant when re-consenting an activity. However, case law contemplates that past compliance (or lack thereof) can be relevant consideration for resource consent duration. Accordingly, given that Policy D.2.14 is an important guiding policy for the appropriate duration for resource consents, the parties consider that it should be retained in the policy.

Consideration

[20] The Court has now read and considered the consent memorandum of the parties dated 16 December 2022.

[21] 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.

[22] In terms of an assessment under section 32AA of the Act, the parties advised that the proposed changes were discussed at length between the parties through an iterative process. 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 Regional Policy Statement for Northland and NZCPS.

[23] This Determination does not represent the outcome of a full hearing by the Court, but rather an agreement reached between parties represented by experienced counsel after lengthy discussions.

[24] I am of the view that the agreed amendments to Objective F.1.5 better reflect section 5 of the RMA and the aim of the Northland region to improve economic wellbeing of their communities. The amendments to Policy D.2.1 provide clarity and direction. Policy D.2.1 as amended explicitly recognises and provides for higher order documents. The reference to objectives and policies provides better direction. I agree the amendments to Policy D.2.14 are the most appropriate of those available for the

reasons given by the parties. It is noted that Mataka et al are not pursuing their appeal points, and the relevant s 274 parties have no concerns with this.

[25] I am satisfied that there is sound rationale for the changes. I conclude that the parties have taken a balanced approach, and 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.

Order

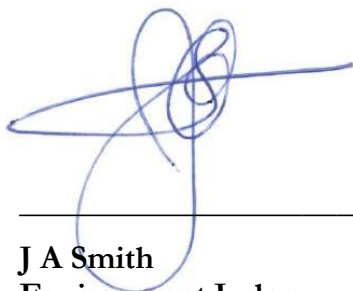
[26] Therefore, the Court orders, by consent that the Proposed Regional Plan for Northland be amended as set out in **Annexure A** to this Determination.

[27] The Determination resolves the following provisions:

- (a) Objective F.1.5 Enabling economic wellbeing;⁵
- (b) Policy D.2.1 Rules for managing natural and physical resources; and
- (c) Policy D.2.14 Resource consent duration.⁶

[28] No appeal points remain outstanding in relation to General provisions and plan structure.

[29] There is no order as to costs.



J A Smith
Environment Judge

⁵ Previously F.1.4.

⁶ Previously D.2.12.



ANNEXURE A

F.1.5 Enabling economic well-being

The use and development of Northland's natural and physical resources is efficient and effective and are managed in a way that is attractive for business and investment that will improve the economic, and social and cultural well-being of Northland and its communities.

D.2.1 Rules for managing natural and physical resources

Include rules to manage the use, development and protection of natural and physical resources that:

- 1) are the most efficient and effective way of achieving national and regional resource management objectives, and
- 2) are as internally consistent as possible, and
- 3) use or support good management practices, and
- 4) minimise compliance costs, and
- 5) enable use and development that complies with any relevant National Policy Statement, the Regional Policy Statement for Northland and the objectives and policies of this Plan, and
- 6) focus on effects and, where suitable, use performance standards.

D.2.14 Resource consent duration

When determining the expiry date for a resource consent, have particular regard to:

- 1) security of tenure for investment (the larger the investment, then generally the longer the consent duration), and
- 2) the administrative benefits of aligning the expiry date with other resource consents for the same activity in the surrounding area or catchment, and
- 3) certainty of effects (the less certain the effects, the shorter the consent duration), and
- 4) whether the activity is associated with regionally significant infrastructure (generally longer consent durations for regionally significant infrastructure), and
- 5) the following additional matters where the resource consent application is to re-consent an activity:
 - a) the applicant's past compliance with the conditions of any previous resource consent or relevant industry guidelines or codes of practice (significant previous non-compliance should generally result in a shorter duration), and
 - b) the applicant's voluntary adoption of good management practice (the adoption of good management practices that minimise adverse environmental effects could result in a longer consent duration).