

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

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

BAY OF ISLANDS MARITIME PARK INCORPORATED  
(ENV-2019-AKL-000117)

Appellants

AND NORTHLAND REGIONAL COUNCIL

Respondent

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

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CONSENT ORDER

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

- (1) the appeals are allowed in accordance with **Annexure A** to this Order.
- (2) This order resolves the appeals as they relate to Topic 12 – Natural Hazards  
– Objective F.1.9, Policy D.6.1, Policy D.6.2, Policy D.6.4 and Policy D.6.5.



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

## REASONS

### Introduction

[1] These appeals are against a decision of the Northland Regional Council on the Proposed Regional Plan for Northland. The appeal points that are to be resolved by this order have been assigned to Topic 12– Natural Hazards.

#### *Objective F.1.9 – Natural hazard risk*

[2] The appeal by Royal Forest and Bird Protection Society requested that this objective be amended to add an outcome for coastal biodiversity values and natural systems affected by sea-level rise and natural hazard events. The parties have agreed to make amendments to:

- (a) recognise the potential impact of natural hazards on coastal biodiversity values;
- (b) promote long term strategies to reduce the risk of natural hazards on natural systems; and
- (c) anticipate and allow for landward migration of coastal biodiversity values affected by sea-level rise and natural hazard events.

#### *Policy D.6.1 Appropriateness of hard protection structures and Policy D.6.2 Design and location of hard protection structures*

[3] These two policies were appealed by CEP Services Matauwhi and Bay of Islands Maritime Park Inc. They sought that the policies be amended to better reflect the relevant provisions of the Regional Policy Statement for Northland and recognise the adverse effects that can arise from hard protection measures.

[4] The parties have agreed on an amendment to Policy D.6.1 which requires that priority be given to the use of non-structural measures over the use and construction of hard protection structures when managing hazard risk. An amendment was also made that requires that hard protection structures, when considered necessary to protect



private assets, should not be located on public land unless there is significant benefit in doing so.

[5] The parties have also agreed to an amendment to condition 4) of policy D.6.2, which requires that when designing new hard protection structures, there is a requirement to use the latest national guidance and best available information on the projected effects of sea level rise.

*Policy D.6.4 Flood hazard management – flood defences and Policy D.6.5 Flood hazard management – development within floodplains*

[6] Bay of Islands Maritime Park appealed these policies, and sought to amend Policy D.6.4 to recognise that hard protection structures can cause adverse effects on wetlands and natural character. They sought to amend Policy D.6.5 to promote the removal of hard flood defences and other infrastructural barriers.

[7] The parties have agreed to a minor amendment to Policy D.6.4. The policy now states that flood defences “can” provide significant benefits in reducing flood risk, which recognises that there may be exceptions to that statement. It was agreed that there would be no amendment to Policy D.6.5.

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

[9] Golden Bay Cement, Minister of Conservation, The New Zealand Refining Company Limited, Winstone Aggregates, New Zealand Transport Agency and Patuharakeke Te Iwi Trust Board have given notice to become s 274 parties to these appeals, and have signed the memorandum of the parties seeking this order.

[10] The Court is making this order under s 279(1)(b) of the Act; such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:

- (a) All parties to the proceedings that have an interest in the matters to be resolved by this order 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**

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

12 This order resolves the appeals as they relate to Topic 12 – Natural Hazards – Objective F.1.9, Policy D.6.1, Policy D.6.2, Policy D.6.4 and Policy D.6.5.

[13] There is no order as to costs.

DATED at Auckland this 20<sup>th</sup> day of May 2020



  
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J A Smith  
Environment Judge

## Annexure A

### Objective F.1.9 Natural hazard risk

The risks and impacts of natural hazard events (including the influence of climate change) on people, communities, property, natural systems, infrastructure and the regional economy are minimised by:

- 1) increasing the understanding of natural hazards, including the potential influence of climate change on natural hazard events and the potential impacts on coastal biodiversity values, and
- 2) becoming better prepared for the consequences of natural hazard events, and
- 3) avoiding inappropriate new development in 100-year flood hazard areas and coastal hazard areas, and
- 4) not compromising the effectiveness of existing natural and man-made defences against natural hazards, and
- 5) enabling appropriate hazard mitigation measures to be implemented to protect existing vulnerable development, and
- 6) promoting long-term strategies that reduce the risk of natural hazards impacting on people and communities and natural systems, and
- 7) recognising that in justified circumstances, critical infrastructure may have to be located in natural hazard-prone areas, and
- 8) anticipating and providing for, where practicable, landward migration of coastal biodiversity values affected by sea-level rise and natural hazard events

### Policy D.6.1 Appropriateness of hard protection structures

Priority will be given to the use of non-structural measures over the use and construction of hard protection structures when managing hazard risk.

New hard protection structures may be considered appropriate when:

- 1) alternative responses to the hazard (including soft protection measures, restoration or enhancement of natural defences against coastal hazards and abandonment of assets) are demonstrated to be impractical or have greater adverse effects on the environment, or
- 2) they are the only practical means to protect:
  - a) existing or planned regionally significant infrastructure, or
  - b) existing core local infrastructure, or
  - c) concentrations of existing vulnerable development, and
  - d) they provide a better outcome for the local community, district or region, compared to no hard protection structure, and the works form part of a long-term hazard management strategy, which represents the best practicable option for the future.

Hard protection structures, when considered necessary to protect private assets, should not be located on public land unless there is significant public or environmental benefit in doing so.



## Policy D.6.2 Design and location of hard protection structures

New hard protection structures must:

- 1) be located as far landward as possible in order to retain existing natural defences against coastal hazards as much as possible, and
- 2) be designed and constructed by a suitably qualified and experienced professional, and
- 3) incorporate the use of soft protection measures where practical, and
- 4) be designed to take into account the nature of the coastal hazard risk and how it might change over at least a 100-year time-frame, including the projected effects of a sea level rise, using the latest national guidance and best available information. of one metre by 2115 (100 years).

### D.6.4 Flood hazard management – flood defences

Recognise the significant benefits that flood defences can play in reducing flood hazard risk to people, property and the environment.

### D.6.5 Flood hazard management – development within floodplains

Development in flood hazard areas and continually or intermittently flowing rivers (including high-risk flood hazard areas) must not increase the risk of adverse effects from flood hazards on other property or another person's use of land or property.

