

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2019-AKL-

**I MUA I TE KOOTI TAIAO
I TĀMAKI MAKAURAU ROHE**

IN THE MATTER of the Resource Management Act 1991
(the Act)

AND

IN THE MATTER of an appeal pursuant to clause 14 of
Schedule 1 to the Act in relation to a
decision on the Proposed Northland
Regional Plan

BETWEEN **MLP LLC**
Appellant

AND **Northland Regional Council**
Respondent

NOTICE OF APPEAL



ATKINS | HOLM | MAJUREY

Vicki Morrison-Shaw
PO Box 1585
Shortland Street
AUCKLAND 1140

TO: The Registrar
Environment Court
AUCKLAND

1. MLP LLC (**MLP**) appeals a decision on the Proposed Northland Regional Plan (**Proposed Plan**).
2. MLP owns The Landing, a 1,000-acre (400 ha) property, which comprises approximately 8.5 kms of coastline, a jetty and boat ramp, six beaches, an award-winning vineyard, lush wetlands, and seven dwellings – four of which are currently available for hire.
3. MLP has invested significant time, effort and expense in developing The Landing to the high-quality successful venture it is today. The development has been master-planned to create a burgeoning luxury accommodation destination, complete with immaculately kept grounds, environmental enhancements, biking and walking tracks, and vineyard.
4. The development of The Landing has involved extensive wetland creation and restoration, the re-establishment of native bush – including the planting of more than one million native trees. MLP has also facilitated the preservation of archaeological and historical sites, including the development of Rangihoua Heritage Park.
5. MLP made a submission dated 14 November 2017 and a further submission dated 23 March 2018 on the Proposed Plan.
6. MLP is not a trade competitor for the purposes of section 308D of the Act.
7. MLP also has an interest greater than the public generally as MLP owns and manages a 1,000 acre block of land, which houses luxury short term accommodation, a vineyard, and working farm located in the Bay of Islands, which would be

adversely affected by the proposed restrictions on moorings and the allowance of small scale or short term aquaculture.

8. MLP received notice of the decision on 3 May 2019.
9. The decision was made by Northland Regional Council (**Council**).
10. The parts of the decision that MLP is appealing are:
 - (a) C.1.2.5 Existing swing mooring outside a Mooring Zone;
 - (b) C.1.3.12 Small scale and short duration aquaculture in areas with significant areas values and development zones; and
 - (c) C.1.3.14 – Aquaculture in areas with significant values.

REASONS FOR APPEAL

11. While MLP is generally supportive of the Proposed Plan provisions, MLP considers that some change is required to ensure that the Proposed Plan:
 - (a) promotes the purpose of the Act being the sustainable management of resources (section 5);
 - (b) is not contrary to Part 2 and other provisions of the Act;
 - (c) is not contrary to other relevant planning documents; and
 - (d) will meet the reasonably foreseeable needs of future generations.
12. In particular, and without limiting the generality of paragraph 11 above:
 - (a) Rule C.1.2.5 restricts existing swing moorings to one per 'Property' as a permitted activity. Such a rule

takes no account of the size of a Property's coastal frontage areas. MLP's Property, which comprises some 30 separate but adjoining certificates of title,¹ has a large coastal frontage of approximately 8.5kms and more than one existing swing mooring. The Rule would treat such a property the same as a property with a much smaller frontage. There does not appear to be any real effects basis to justify such treatment.

- (b) Rules C.1.3.12 and C.1.14 allow consent applications to be made for small scale and short duration aquaculture in aquaculture exclusion areas. Such rules:
 - (i) undermine the purpose and function of aquaculture exclusion areas;
 - (ii) are inconsistent with the reasons that aquaculture exclusions areas were imposed through the earlier Northland Regional Council plan change 4 process.

RELIEF SOUGHT

- 13. MLP seeks changes to the Proposed Plan provisions to:
 - (a) allow more than one existing swing mooring as a permitted activity;
 - (b) remove the ability for small scale and short duration aquaculture to occur in aquaculture exclusion areas.

¹ One title is for an Island off the mainland of MLP's property.

14. MLP has included in Annexure A some wording that it considers would address these matters. MLP seeks that this wording or wording to similar effect be adopted.
15. MLP also seeks:
- (a) such further orders, relief, consequential or other amendments as may be necessary to address the concerns set out above; and
 - (b) costs.

ATTACHMENTS

16. The following documents are attached to this notice:
- (a) the specific relief sought (**Annexure A**);
 - (b) a copy of MLP's submission and further submission with a copy of the submission opposed or supported by my further submission (**Annexure B**);
 - (c) a copy of the relevant decision (**Annexure C**); and
 - (d) a list of relevant names and addresses of persons to be served with a copy of this notice (**Annexure D**).

DATE: 14 June 2019



Vicki Morrison-Shaw

Legal Counsel for MLP LLC

Address for Service: C/- Vicki Morrison-Shaw
Atkins Holm Majurey Ltd
Level 19, 48 Emily Place
PO Box 1585, Shortland Street
Auckland 1140

Telephone: (09) 304 0294
Facsimile: (09) 309 1821
Email: vicki.morrison-shaw@ahmlaw.nz
Contact Person: Vicki Morrison-Shaw

ADVICE TO RECIPIENTS OF COPY OF NOTICE

How to become party to proceedings

You may be a party to the appeal if,—

- (a) within 15 working days after the period for lodging a notice of appeal ends, you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

The copy of this notice served on you does not attach a copy of the appellant's submission and (or or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington or Christchurch.

ANNEXURE A – SPECIFIC RELIEF SOUGHT

1. MLP seeks that Rule C.1.2.5 relating to existing swing moorings outside a mooring zone be amended as follows (note two options are proposed):

C.1.2.5 Existing swing mooring outside a Mooring Zone –permitted activity

The occupation of the common marine and coastal area with a swing mooring and a vessel using the mooring is a permitted activity, provided:

- 1) *the mooring is not in a Mooring Zone, and*
- 2) *the mooring existed at 6 September 2017 or the erection or placement of the mooring was authorised, and*
- 3) *the activity complies with all relevant conditions of C.1.8 Coastal works general conditions, and*
- 4) *the owner of the mooring holds a current mooring licence⁵ for the mooring, and*
- 5) ~~*the mooring is the only mooring associated with a property, and*~~

OR

~~*5) the mooring is the the*~~ *there is only one mooring associated with a property with a coastal frontage less than 500m and for a property with a coastal exceeding 500m no more than one mooring per 500m of coastal frontage, and*

- 6) *there is no change in size of the existing mooring block, and*
- 7) *no part of the mooring or moored vessel is within the following mapped areas (I Maps | Ngā mahere matawhenua):*
 - a) *Regionally Significant Anchorage, or*
 - b) *Site or Area of Significance to tangata whenua, or*
 - c) *Marina Zone.*

...

2. MLP seeks that Rule C.1.3.12 relating to small scale and short duration aquaculture in significant areas and development zones be either:
 - (a) deleted in its entirety; or
 - (b) amended to remove reference to activities within an Aquaculture Exclusion Area as follows:

C.1.3.12 Small scale and short duration aquaculture in significant areas and development zones – noncomplying activity

The erection or placement of a structure in the coastal marine area, any occupation of the common marine and coastal area for the purposes of aquaculture activities, and any associated discharge, in a mapped (refer I Maps | Ngā mahere matawhenua):

~~1) Aquaculture Exclusion Area, or~~

...

are non-complying activities, provided:

...

3. MLP seeks that Rule C.1.3.14 relating to aquaculture in significant areas and development zones be amended as follows:

C.1.3.14 Aquaculture in significant areas and development zones – prohibited activity

The erection or placement of a structure in the coastal marine area, any occupation of the common marine and coastal area for the purposes of aquaculture activities, and any associated discharge, in a mapped (refer I Maps | Ngā mahere matawhenua):

~~1) Aquaculture Exclusion Area, or~~

2) Significant Ecological Area, or

3) Outstanding Natural Feature, or

4) Area of Outstanding Natural Character, or

5) Historic Heritage Area, or

6) Regionally Significant Anchorage, or

7) Mooring Zone, or

8) Coastal Commercial Zone, or

9) Site or Area of Significance to tangata whenua,

that is not a restricted discretionary, discretionary or non-complying activity in section C.1.3 of this Plan are prohibited activities.

...