

**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              MLP LLC  
                                 ENV-2019-AKL-000109

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

                                 YACHTING NEW ZEALAND  
                                 INCORPERATED  
                                 (ENV-2019-AKL-000118)

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

                                 Appellants

AND                      NORTHLAND REGIONAL COUNCIL

                                 Respondent

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

---

**CONSENT ORDER**

---



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

- 1: The appeals are resolved in accordance with **Annexure A** as they relate to:
  - (a) Rule C.1.2.3 Placement of swing moorings in a Mooring Zone – permitted activity;
  - (b) Rule C.1.2.4 Existing mooring in a Mooring Zone – permitted activity;
  - (c) Rule C.1.2.7 Maintenance or repair of a mooring – permitted activity;
  - (d) Rule C.1.2.9 New mooring in a Mooring Zone with limited shore-based facilities – restricted discretionary activity.
  - (e) Rule C.1.2.10 Mooring in a Coastal Commercial Zone or the Marsden Point Port Zone - restricted discretionary activity;
  - (f) Rule C.1.2.11 Placement or relocation of a mooring and the occupation of space – discretionary activity;
- 2: The outstanding appeal points consist of:
  - (a) Policy D.5.11 Moorings outside Mooring Zones;
  - (b) Rule C.1.2.1 Vessels not underway – permitted activity;
  - (c) Rule C.1.2.2 Vessels – sewage management – permitted activity;
  - (d) Rule C.1.2.5 Existing swing mooring outside a Mooring Zone – permitted activity;
  - (e) Rule C.1.2.6 Relocation of a mooring by the Harbourmaster – permitted activity;
  - (f) Rule C.1.2.13 New moorings in significant areas – non-complying activity.

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



## REASONS

### Introduction

- [1] These appeals relate to the Northland Regional Council's decision on the Proposed Regional Plan for Northland, in relation to rules for mooring and anchoring in the coastal marine area. Appeal points relating to policies, rules and maps as part of the broader framework for moorings and anchorages: Policies D.5.11; Rules C.1.2.1 – C.1.2.11 and C.1.2.13 and the maps for Regionally significant anchorages, Marine pollution limits and Enclosed waters were assigned to Topic 1 – subtopic moorings and anchorages.
- [2] The parties participated in Court-assisted mediation on the appeals on 2 September 2019, 23 October 2019 and 3 December 2019. The parties have reached agreement to resolve the appeals relating to Rules C.1.2.3, C.1.2.4, C.1.2.5, C.1.2.7, C.1.2.9, C.1.2.10 and C.1.2.11 as follows:

*Rules C.1.2.3, C.1.2.4, C.1.2.5 and C.1.2.7 - appeal on general conditions*

- [3] The Royal Forest and Bird Protection Society appealed Rules C.1.2.3, C.1.2.4, C.1.2.5 and C.1.2.7, requesting an amendment to require that the activity complies with all of the Coastal General Conditions provided in Rule C.1.8 (as opposed to all "relevant" conditions, as per the decisions version).
- [4] The parties have agreed to amend the rule by deleting reference to 'all relevant' conditions, meaning that the activity now has to comply with all Coastal General Conditions.

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

- [5] Rule C.1.2.5 permits the occupation of the common marine and coastal area with a swing mooring and a vessel using the mooring. The Rule was appealed by The Royal Forest and Bird Protection Society, MLP LLC and CEP Services Matauwhi Limited.



- [6] MLP sought amendments to Rule C.1.2.5 to allow more than one existing swing mooring as a permitted activity. While the parties did not reach agreement on amendments to rule C.1.2.5, they did agree that MLP LLC's concerns could be resolved by clarifying where the rule applies. The parties agree that this clarification can be provided by a consequential amendment to the definition of "property". Property is defined as:

*One or more allotments contained in a single certificate of title. Also includes all adjoining land under the same ownership or management but contained in separate certificates of title. Where a person / owns or manages one or more allotments on the mainland and on an island(s), the allotment(s) on the island shall be considered a separate property, where the allotment has its own legal title(s).*

- [7] The amended definition improves clarity for the reader but does not materially change how the definition applies to other rules in the plan.
- [8] CEP Services Matauwhi Limited sought amendments to a number of rules and maps, including Rule C.1.2.5, to introduce Outstanding Natural Landscape provisions in the Coastal Marine Area. Discussions on this point of appeal are ongoing and it has not yet been resolved

*Rule C.1.2.9 New mooring in a Mooring Zone with limited shore-based facilities – restricted discretionary activity*

- [9] Rule C.1.2.9 seeks to manage the placement of a mooring and the associated occupation of space in the coastal marine area in mooring zones with limited facilities to serve the mooring area on the adjacent land. The rule was appealed by Royal Forest & Bird Protection Society of New Zealand Inc, seeking amendments to give effect to the New Zealand Coastal Policy Statement 2010. CEP Services Matauwhi Limited also appealed this rule, and sought amendments to manage effects of moorings on marine mammals and seabirds.
- [10] During mediation, the Royal Forest & Bird Protection Society of New Zealand Inc and CEP Services Matauwhi agreed not to pursue their respective appeal points against rule C.1.2.9.



*Rule C.1.2.10 Mooring in a Coastal Commercial Zone or the Marsden Point Port Zone – restricted discretionary activity*

- [11] Rule C.1.2.10 seeks to manage the erection or placement of a mooring in a Coastal Commercial Zone or the Marsden Point Port Zone, and occupation of the common marine and coastal area by the mooring and a vessel using the mooring. The rule was appealed by
- (a) Royal Forest & Bird Protection Society of New Zealand Inc, seeking amendments to give effect to the New Zealand Coastal Policy Statement 2010.
  - (b) CEP Services Matauwhi Limited, seeking amendments to manage effects of moorings on marine mammals and seabirds.
- [12] Yachting New Zealand Incorporated, who considered that the proposed rule will have significant implications upon those boating, particularly in relation to potential health and safety implications.
- [13] During mediation, the Royal Forest & Bird Protection Society of New Zealand Inc, CEP Services Matauwhi Limited and Yachting New Zealand Incorporated agreed not to pursue their respective appeal points on rule C.1.2.10.

*C.1.2.11 Placement or relocation of a mooring and the occupation of space – discretionary activity*

- (a) Rule C.1.2.11 seeks to manage the placement or relocation of a mooring and any occupation of the common marine and coastal area by the mooring and a vessel using the mooring. The rule was appealed by Yachting New Zealand Incorporated, seeking that references to “Regionally Significant Anchorage” be deleted and replaced with “Recognised Anchorages and Recognised Recreational Anchorages”.
- [14] During mediation, Yachting New Zealand Incorporated agreed not to pursue its appeal point on rule C.1.2.11.
- [15] In making this order the Court has read and considered the memorandum of the parties dated 13 March 2020 seeking this order.



- [16] Minister of Conservation, The New Zealand Refining Company Limited, Yachting New Zealand Incorporated, Northport Limited and Patuharakeke Te Iwi Trust Board have given notice of their intention to become parties under s 274 of the Act and have signed the memorandum of the parties dated 13 March 2020.
- [17] 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 consent 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

- [18] Therefore, the Court orders, by consent, that the Proposed Regional Plan for Northland are amended as set out in **Annexure A** to this Order.
- [19] This order resolves the appeals as they relate to:
- (a) Rule C.1.2.3 Placement of swing moorings in a Mooring Zone – permitted activity;
  - (b) Rule C.1.2.4 Existing mooring in a Mooring Zone – permitted activity;
  - (c) Rule C.1.2.7 Maintenance or repair of a mooring – permitted activity;
  - (d) Rule C.1.2.9 New mooring in a Mooring Zone with limited shore-based facilities – restricted discretionary activity.
  - (e) Rule C.1.2.10 Mooring in a Coastal Commercial Zone or the Marsden Point Port Zone - restricted discretionary activity;
  - (f) Rule C.1.2.11 Placement or relocation of a mooring and the occupation of space – discretionary activity;



[20] The outstanding appeal points consist of;

- (a) Policy D.5.11 Moorings outside Mooring Zones;
- (b) Rule C.1.2.1 Vessels not underway – permitted activity;
- (c) Rule C.1.2.2 Vessels – sewage management – permitted activity;
- (d) Rule C.1.2.5 Existing swing mooring outside a Mooring Zone – permitted activity;
- (e) Rule C.1.2.6 Relocation of a mooring by the Harbourmaster – permitted activity;
- (f) Rule C.1.2.13 New moorings in significant areas – non-complying activity.

[21] There is no order as to costs.

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

  
\_\_\_\_\_  
J A Smith  
Environment Judge



## Annexure A

### C.1.2.3 Placement of swing moorings in a Mooring Zone – permitted activity

The placement of a swing mooring in a Mooring Zone is a permitted activity, provided:

- 1) the Mooring Zone has space available for the swing mooring during all weather and tidal conditions such that collisions with neighbouring vessels will be avoided, and
- 2) the swing mooring is not located in a navigation channel or fairway, and
- 3) the activity complies with all relevant conditions of C.1.8 Coastal works general conditions, and
- 4) the mooring is not in any of the following mooring zones:

**Table 1: Mooring Zones (New Swing Moorings)**

Location	Mooring Zone
Mangonui Harbour	All mooring zones
Whangaroa Harbour	Totara North
Kerikeri Inlet	Opito Bay
Ōpua	English Bay, Ōpua Basin, Tapu Point, Okiato Point and Kawakawa River
Russell	Te Wahapu Inlet, Pomare Bay, Kororareka Bay and Matauwhi Bay
Te Rawhiti Inlet	Waipiro Bay and Te Uenga Bay
Whangaruru Harbour	All mooring zones
Mangawhai Harbour	Mangawhai

**For the avoidance of doubt this rule covers the following RMA activities:**

- Placement of a swing mooring in, on, under or over the foreshore or seabed and any incidental disturbance of the foreshore or seabed (s12(1)).

### C.1.2.4 Existing mooring in a Mooring Zone – permitted activity

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

- 1) the mooring is 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 licence<sup>1</sup> for the mooring, and
- 5) the mooring is not located in a designated channel or fairway, and
- 6) there is only one vessel attached to a swing mooring at any one time (except for dinghies).

**For the avoidance of doubt this rule covers the following RMA activities:**

- Occupation of the common marine and coastal area with a mooring and associated moored vessel(s) (s12(2)).

### C.1.2.7 Maintenance or repair of a mooring – permitted activity

The maintenance or repair of a mooring is a permitted activity provided:

- 1) it does not alter the position of the mooring, and
- 2) the activity complies with all relevant conditions of C.1.8 Coastal works general conditions.

**For the avoidance of doubt this rule covers the following RMA activities:**

- The maintenance or repair of a mooring in, on, under or over the foreshore or seabed and any incidental disturbance of the foreshore or seabed (s12(1) and s12(3)).

### C.1.2.9 New mooring in a Mooring Zone with limited shore-based facilities – restricted discretionary activity

The placement of a swing mooring in a Mooring Zone and the occupation of the common marine and coastal area with the swing mooring and a vessel using the mooring, are restricted discretionary activities provided:

- 1) The mooring is in one of the following mooring zones:

**Table 2: Mooring Zones (limited shore base facilities)**

Location	Mooring Zone
Mangonui Harbour	All mooring zones
Whangaroa Harbour	Totara North
Kerikeri Inlet	Opito Bay
Ōpua	English Bay, Ōpua Basin, Tapu Point, Okiato Point and Kawakawa River
Russell	Te Wahapu Inlet, Pomare Bay, Kororareka Bay and Matauwhi Bay
Te Rawhiti Inlet	Waipiro Bay and Te Uenga Bay

<sup>1</sup>A license issued by Northland Regional Council under the relevant bylaw for moorings



Location	Mooring Zone
Whangaruru Harbour	All mooring zones
Mangawhai Harbour	Mangawhai Heads (North)

2) there is only one vessel attached to the swing mooring at any one time (except for dinghies).

**Matters of discretion:**

- 1) Effects on land-based facilities associated with a mooring, including parking, toilet facilities, refuse disposal and dinghy storage.
- 2) The availability of space within the mooring area.
- 3) The location of the mooring.
- 4) The type, size and construction of the mooring.
- 5) Noise and lighting.
- 6) The positive effects of the activity.

**For the avoidance of doubt this rule covers the following RMA activities:**

- Placement of a mooring in, on, under or over the foreshore or seabed and any incidental disturbance of the foreshore or seabed (s12(1)).
- Occupation of the common marine and coastal area with a mooring and associated moored vessel(s) (s12(2)).

### C.1.2.10 Mooring in a Coastal Commercial Zone or the Marsden Point Port Zone - restricted discretionary activity

The erection or placement of a mooring in a Coastal Commercial Zone or the Marsden Point Port Zone, and any occupation of the common marine and coastal area by the mooring and a vessel using the mooring, are restricted discretionary activities.

**Matters of discretion**

- 1) The availability of space within the Coastal Commercial Zone.
- 2) The location of the mooring.
- 3) The type, size and construction of the mooring.
- 4) Effects on parking, toilet facilities, refuse disposal and dinghy storage.
- 5) Use of the mooring.
- 6) The positive effects of the activity.

**For the avoidance of doubt this rule covers the following RMA activities:**

- Erection or placement of a mooring in, on, under or over any foreshore or seabed and any incidental disturbance of the foreshore or seabed (s12(1)).
- Occupation of the common marine and coastal area with a mooring and associated moored vessel(s) (s12(2)).



### C.1.2.11 Placement or relocation of a mooring and the occupation of space – discretionary activity

The erection, placement, relocation, removal or demolition of a mooring, and any occupation of the common marine and coastal area by the mooring and a vessel using the mooring, that is not a permitted, restricted discretionary or non-complying activity in section C.1.2 of this Plan are discretionary activities.

**For the avoidance of doubt this rule covers the following RMA activities:**

- Erection, placement, relocation, removal or demolition of a mooring in, on, under or over any foreshore or seabed and any incidental disturbance of the foreshore or seabed (s12(1) and s12(3)).
- Occupation of the common marine and coastal area with a mooring and associated moored vessel(s) (s12(2)).

