

In the Matter of the Resource Management Act 1991 (**Act**)

And

In the Matter of an appeal under clause 14 of the First Schedule of the Act with respect to decisions on the Proposed Regional Plan for Northland

Between Yachting New Zealand Incorporated
Appellant

And Northland Regional Council
Respondent

**Notice of Appeal Against Decision on Proposed Northland Regional Plan on
behalf of Yachting New Zealand Incorporated**

Dated 17 June 2019

Jeremy Brabant
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To The Registrar
 Environment Court
 Auckland

1. Yachting New Zealand Incorporated (**YNZ**) appeals part of a decision of Northland Regional Council (**Council**) on the Proposed Regional Plan for Northland (**Proposed Plan**).
2. YNZ is New Zealand's national sports body for competitive and recreational sailing and boating. YNZ represents the needs and interests of over 250 member yacht and boating clubs and class associations. YNZ gets involved at both the central and local government level when environmental and legal issues directly affecting New Zealand's recreational boat owners and operators are at issue.
3. YNZ made a submission on the Proposed Plan.
4. YNZ is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
5. YNZ received notice of the decision on 3 May 2019.
6. The decision was made by Northland Regional Council.
7. The part of the decision YNZ appeals is:

The decision of Council to reject relief sought by YNZ in its submission relating to:

- a. Definitions;
- b. General approach including objectives and policies;
- c. Aquaculture;
- d. Coastal structures;
- e. Marine pests;

f. Moorings and anchorages; and

g. Maps.

Grounds of Appeal

8. The decision to decline the relief sought in YNZ's submission:

a. Fails to promote the sustainable management of the natural and physical resources of the Council's region and does not achieve the purpose of the Act;

b. Fails to achieve the purpose of regional policy statements (section 59) as it does not provide an adequate overview of the resource management issues of the region and policies and methods to achieve the integrated management of the natural and physical resources of the whole region;

c. Is contrary to Part 2 and other provisions of the Act; and

d. Does not provide for the reasonably foreseeable needs for future generations.

9. Adoption of the relief sought by YNZ would be appropriate because:

a. It would assist Council to carry out its functions so as to achieve the purpose of the Act;

b. It would give effect to the relevant higher order documents including the New Zealand Coastal Policy Statement;

c. It would be consistent with the Resource Management (Marine Pollution) Regulations 1998;

d. The amendments sought, particularly in relation to plan structure, definitions and mapping, assist in plan interpretation and the avoidance of ambiguity; and

- e. The amendments sought by YNZ promotes the sustainable management of the natural and physical resources of the region and does not offend any matters of importance in sections 6, 7 and 8 of the Act.
10. Without limiting the generality of the grounds set out in paragraph 8 above, YNZ's additional grounds for appeal include:
- a. The Commissioners' adoption of an "exception-based" approach to addressing submissions only in circumstances where disagreement with the section 42A Report occurs is flawed as it does not adequately address the issues raised by submitters as required by clause 10 of the First Schedule;
 - b. The amendments to the general structure would assist with plan interpretation, be consistent with the "top-down" planning approach envisaged by the Act and fulfil the mandatory section 67 requirements;
 - c. **Definitions:** There was no clear assessment or reasons given for the rejection of including definitions for "Recognised Anchorages" and "Recognised Recreational Anchorages":
 - i. The section 42A Report noted that the author was "comfortable including the Recognised Recreational Anchorages" definition so long as the policy bar is 'avoid *significant* adverse effects.' That recommendation did not form part of the Commissioners' Report;
 - ii. Applying the "exclusion-based" approach to submissions, the decision did not record its disagreement with that recommendation by specifically tabling it as an "exclusion"; and
 - iii. "Recognised Anchorages" form basis of Policy D.5.12. The absence of a definition of this term is not good planning practice and has the ability to confuse readers and decision

makers. The amendment sought by YNZ will assist in plan interpretation.

iv. **Definitions:** YNZ is generally supportive of the decision to amend the definition of “Vessel” by reference to subpoint (3). However, the decision not to adopt YNZ’s submission to delete the words “but is not limited to” and reference to “a sea plane” and to not adopt the definition of “ship”¹ is inappropriate as:

1. A matter of construction, the addition of words “but is not limited to” is superfluous in the context of the term “includes”; and
2. The term “sea plane” extends the definition to an entirely different class of transport than that of a ship. A sea plane by its nature (when airbourne) does not derive full or partial support from the reaction of air against the service of earth or water. This has the potential to create interpretation issues.

d. **General structure:** The decision not to amend the plan structure:

- i. Was reached in reliance on a fundamentally flawed section 32 analysis that incorrectly interpreted the mandatory section 67 requirements;
- ii. The section 42A Report conceded that the absence of objectives is contrary to direction from the Environment Court that the Act envisages a “top-down” approach; and
- iii. The section 42A Report recommended that the Proposed Plan include specific objectives and relevant policies from higher policy documents. The decision to adopt the

¹ “Ship” as defined by section 2 of the Maritime Transport Act 1994.

recommended objectives and policies remains insufficient to fulfil the mandatory requirements of section 67 of the Act; and

- iv. While YNZ is supportive of the inclusion of further objectives and policies, there has been no consideration or assessment recognising the health and safety risks to vessels if required to discharge sewage significant distances from MHWS at the objective and policy level.
- e. **Rules:** The decision not to amend Rules C.1.1.6, C.1.1.11, C.1.1.16, C.1.1.22, C.1.2.6, C.1.2.11, C.1.3.4, C.1.3.5, C.1.3.9, C.1.3.10, C.1.3.12 and C.1.3.14 to include reference to Recognised Anchorages and Recognised Recreational Anchorages:
- i. Is flawed by reference to the grounds set out in paragraph 10 above;
 - ii. Is inconsistent with the purpose of the Act; and
 - iii. Does not adequately provide for the reasonably foreseeable needs for future generations.
- f. **Rules:** In the context of Moorings and Anchorages, the decision not to delete or amend the restriction on anchoring in Rule C.1.2.1 from 14 days is flawed as:
- i. There is no resource management requirement or purpose for limited consecutive anchoring days to 14;
 - ii. There is no viable or supportable cost-benefit analysis or factual basis which supports the proposed 14 nights maximum;
 - iii. The rule as worded is uncertain and potentially unenforceable from a practical perspective.

- g. **Rules:** The decision not to amend rules (including Rules C.1.2.2, C.1.2.6 and C.1.2.10) relating to the Marine Pollution Limit as sought by YNZ:
- i. Will have significant implications upon those boating, particularly in relation to potential health and safety implications;
 - ii. Fails to align with the Resource Management (Marine Pollution) Regulations 1998 which provide for specific and limited variations through Coastal Plan provisions to the regulatory provisions controlling these discharges;
 - iii. Is not supported by or justified by any established regionwide adverse effects;
 - iv. Is not based on any empirical, monitoring data or evidence to support the position recommended in the section 42A Report subsequently adopted by the decision.
- h. **Rules:** YNZ generally supports the decisions to amend rules relating to management of marine pests and prohibited areas as identified in the PC4 process. To the extent to which the relief in YNZ's has not been adopted, those amendments will:
- i. Be consistent with the Marine Pest Management Plan/Pathway Plan; and
 - ii. Achieve the purpose of the Act.
- i. **Rules:** In the context of marine pests, YNZ is generally supportive of the amendments made to hull biofouling including the deletion of C.1.7.1 and amendments to C.1.7.2 to provide for in-water vessel hull and niche area cleaning (light fouling standard). To the extent that the decision departs from the relief sought in YNZ's submission:

- i. The YNZ relief (i.e. less prescriptive rules) should be adopted as it is consistent with the Marine Management Plan and will achieve the purpose of the Act;
- ii. Rule C.1.7.2(5B) limiting in-water cleaning of a vessel or structure to particular zones or within 50 m of a Mooring zone is flawed as:
 - 1. There is no resource management basis for the imposition of those restrictions; and
 - 2. The decision's restriction on zones is inconsistent with the Marine Pathway Plan under which a vessel with light fouling is not subject to any limitations on movement within Northland.
- iii. YNZ is supportive of the deletion of Rule C.1.7.6 (passive release of biofouling from vessels). YNZ's submission sought to ensure that vessels (including those with ablative antifouling) did not need to apply for consent so long as the biofouling in question did not contain any marine pests.
- j. **Rules:** In the context of aquaculture, the decision to retain the discretionary activity status of extensions to existing aquaculture in significant areas and development zones in Rule C.1.3.9 is inappropriate as:
 - i. These areas have values that are important from a resource management perspective; and
 - ii. The purpose of the Act would be better achieved by requiring such activities to pass the section 104D "gateway tests".
- k. **Rules:** In the context of aquaculture, YNZ is supportive of Rule C.1.3.14 prohibiting aquaculture in significant areas and

development zones. To the extent that the decision does not adopt PC 4 in its entirety, it would be appropriate to do so as:

- i. The purpose of the Act would be better achieved; and
 - ii. The PC4 process was comprehensive and includes appropriate wording, objectives, policies, rules and aquaculture prohibited zones.
- l. **Maps:** The decision not to amend the Marine Pollution Limits as sought by YNZ are flawed for the reasons set out in subsection (g) above.
- m. **Maps:** The decision not to amend the Regionally Significant Anchorages map recognising and providing for Recognised Anchorages and Recognised Recreational Anchorages;
- i. Fails to implement Policy D.5.12 which states “recognise the value of anchorages commonly used by the boating community because of their shelter, holding or community values, as evidenced by their reference in cruising guides, pilot books or similar publications” as those anchorages are not mapped; and
 - ii. The decision version maps on the Regionally Significant Anchorages fails to identify a large number of Recognised Anchorages and Recognised Recreational Anchorages.

11. YNZ seeks the following relief:

- a. That the decisions to decline the relief sought by YNZ be cancelled;
- b. That the relief sought in YNZ’s submission on the Proposed Plan be accepted;
- c. Any other similar, consequential or other relief as is necessary to address the issues raised in YNZ’s appeal; and
- d. Costs.

12. The following documents are attached to this notice:
- a. A copy of YNZ submission on the Proposed Plan (**Attachment A**);
 - b. A copy of the relevant decision (**Attachment B**);
 - c. A list of names and addresses of persons to be served with a copy of this notice (**Attachment C**).

Signature: **Yachting New Zealand Incorporated** by its authorised agent:



Jeremy Brabant

Date: 17 June 2019

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, 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
- within 20 working days after the period for lodging a notice of appeal ends, 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 or service requirements (see form 38).

Advice

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