

BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

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

AND of appeals under Clause 14 of Schedule 1 of the Act in relation to the Proposed Regional Plan for Northland

BETWEEN TRANSPOWER NEW ZEALAND LIMITED
(ENV-2019-AKL-000107)

FEDERATED FARMERS OF NEW ZEALAND
(ENV-2019-AKL-000114)

ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND INCORPORATED
(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)(b) of the Act, the Environment Court, by consent, orders that:



- (1) the Proposed Regional Plan for Northland is amended as set out in **Annexure A** to this Order.
- (2) the appeals are resolved as they relate to the definitions of earthworks and quarrying, and Policy D.4.26.
- (3) The outstanding appeal points relate to Rules C.8.3.1 and C.8.3.2. The Council is engaging with the appellants and s 274 parties in the interests of trying to resolve the appeals.

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

REASONS

Introduction

- [1] These appeals are against the Northland Regional Council's decision on the Proposed Regional Plan for Northland, in respect of provisions on Topic 9, earthworks provisions.
- [2] This consent order resolves the appeal as they relate to:
 - (a) The definition of earthworks
 - (b) The definition of quarrying
 - (c) Policy D.4.26 ("Land preparation, earthworks and vegetation clearance")
- [3] Following Court-assisted mediation the parties have reached an agreement that will resolve the above appeal points.

Definition of Earthworks

- [4] Transpower New Zealand Limited and the Royal Forest and Bird Protection Society of New Zealand sought in their appeals that the definition of earthworks be replaced with the definition of earthworks in the National Planning Standards (MfE, November 2019).



[5] Federated Farmers of New Zealand sought an amended definition that excludes: “Farm quarries where the aggregate material is used only within the farm site where the farm quarry is situated and is not otherwise disposed of”. Federated Farmers also sought changes to the related Rule C.8.3.1 (“Earthworks – permitted activity”). It sought that the following earthworks should not be subject to the rule:

- tilling or cultivation of soil for the establishment and maintenance of crops and pasture;
- harvesting of crops;
- planting trees;
- removing trees;
- horticultural root ripping;
- digging offal pits;
- burying dead stock and plant waste;
- digging post holes;
- drilling bores;
- installing and maintaining services such as water pipes and troughs; and
- farm quarries where excavated material is not removed from the farm site.

[6] The effect of the changes agreed by the parties are to distinguish other related definitions (such as land preparation and vegetation clearance) from the definition of earthworks. The parties consider that the amendments are appropriate as they improve the clarity and precision of the definition.



[7] In all other respects, the parties agreed that the appeals against the definition of earthworks would not be pursued. E.g. Implementing the definition from the National Planning Standards and making consequential amendments to the provisions (to retain their intent) is better undertaken in the future on a Plan-wide basis.

Definition of quarrying

[8] Transpower New Zealand Limited sought that the definition of quarrying be replaced “with the equivalent definitions [“quarrying activities” and “quarry”] in the National Planning Standards and that consequential amendments to the provisions be made as needed to retain their intent.

[9] Federated Farmers of New Zealand sought that the definition be amended by excluding: farm quarries where extracted aggregate is only used on the farm site that the farm quarry is situated on, and is not sold or otherwise commercially disposed of.

[10] The Royal Forest and Bird Protection Society of New Zealand sought that the definition of quarrying to be replaced with an amended definition for a quarrying site.

[11] At mediation on 5 December 2019, the parties agreed that the appeals against the definition of quarrying would not be pursued.

Policy D.4.26

[12] The Royal Forest and Bird Protection Society of New Zealand sought that the reference to “aquatic species” in clause 2(c) of the policy to be replaced with “indigenous biodiversity”. The appeal sought to recognise that land preparation, earthworks and vegetation clearance can have effects on ecosystems beyond aquatic ecosystems, such that a broader reference to “indigenous biodiversity” was appropriate.

[13] At mediation on 5 December 2019, the parties agreed to the amendment sought by Royal Forest and Bird Protection Society. The parties consider that the amendment gives effect to the Regional Policy Statement for Northland (in particular Objective 3.4 and related provisions).



[14] In making this order the Court has read and considered the memorandum of the parties dated 13 March 2020, which proposes to resolve the appeals that relate to the definitions of earthworks and quarrying, and Policy D.4.26.

[15] The following people gave notice of an intention to become parties to these appeals under s 274 of the Act and have signed the memorandum of the parties dated 13 March 2020 in support of this order:

- (a) Federated Farmers of New Zealand;
- (b) Horticulture New Zealand;
- (c) The Royal Forest and Bird Protection Society of New Zealand;
- (d) Minister of Conservation;
- (e) Northland Fish and Game Council;
- (f) Golden Bay Cement;
- (g) Winstone Aggregates;
- (h) Patuharakeke Te Iwi Trust Board; and
- (i) Transpower New Zealand Limited.

[16] 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 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

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

[18] The order resolves the appeals as they relate to the definitions of earthworks and quarrying, and Policy D.4.26. The outstanding appeal points relate to Rules C.8.3.1 and C.8.3.2. The Council is engaging with the appellants and s 274 parties in the interests of trying to resolve the appeals.

[19] There is no order as to costs.

DATED at Auckland this

20th

day of

May

2020





J A Smith
Environment Judge

Annexure A

<i>Earthworks</i>	<p>The mechanical disturbance of earth by excavation, cutting and filling, blading, ripping, contouring, quarrying or placing or replacing earth or cleanfill material, <u>and includes associated revegetation</u> but does not include:</p> <ol style="list-style-type: none">1) construction, repair, alteration or maintenance of bores, or2) the maintenance of walking and other recreational tracks and farm tracks, or3) the placement of roading aggregates during road and track works, or4) directional drilling, boring or thrusting up to 250mm diameter, or5) digging post holes, or6) <u>planting trees, or</u>7) <u>land preparation, or</u>8) <u>vegetation clearance.</u>
<i>Quarrying</i>	<p>A place where open surface extraction of rock material from the ground occurs, including the removal and placement of overlying earth, and the stacking, crushing, conveying, storing, depositing and treatment of the excavated material and the removal and placement of unwanted materials.</p>

D.4.26 Land preparation, earthworks and vegetation clearance

When assessing an application for a resource consent for an earthworks, vegetation clearance or land preparation activity and any associated discharge of a contaminant, ensure that the activity:

- 1) will be done in accordance with established good management practices, and
- 2) avoids significant adverse effects, and avoids, remedies or mitigates other adverse effects on:
 - a) drinking water supplies, and
 - b) areas of high recreational use, and
 - c) aquatic ecosystem health, indigenous biodiversity in water bodies and coastal water, ~~aquatic species~~, and receiving environments that are sensitive to sediment or phosphorus accumulation.

