

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

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

Appellants

AND NORTHLAND REGIONAL COUNCIL

Respondent

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

CONSENT ORDER

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

- (1) the appeals are allowed in part subject to the amendments set out in Annexure A to this order.



- (2) This order resolves the appeals as they relate to Rules C.1.5.2, C.1.5.4, C.1.5.6, C.1.5.8, C.1.5.9, C.1.5.10 and Policy D.5.22.
- (3) The outstanding appeal points within the sub-topic consist of Rules C.1.5.1, C.1.5.3, C.1.5.5, C.1.5.7, C.1.5.11, C.1.5.12, C.1.5.12A, C.1.5.14 and Policy D.5.24.
- [B] Under s 285 of the Resource Management Act 1991, there is no order as to costs in relation to this order.

REASONS

Introduction

- [1] These appeals relate to the Northland Regional Council's decision on the Proposed Regional Plan for Northland. This order resolves the appeals as they relate to provisions on the Dredging, disturbance and disposal subtopic within Topic 1 – Coastal Activities.
- [2] Following Court-assisted mediation on the appeals on 2 September 2019, 24 October 2019 and 4 December 2019 the parties have reached an agreement that resolves the following provisions under appeal.
- (a) Policy D.5.22 – Dredging, disturbance and disposal activities
 - (b) Rule C.1.5.2 Sampling and scientific investigation – permitted activity
 - (c) Rule C.1.5.4 Removal or recovery of wrecked vessels – permitted activity
 - (d) Rule C.1.5.6 Clearing artificial water courses – permitted activity
 - (e) Rule C.1.5.8 Burial of dead animals – permitted activity
 - (f) Rule C.1.5.9 Maintenance Dredging – controlled activity

Policy D.5.22 – Dredging, disturbance and deposition activities

- [3] The Royal Forest and Bird Protection Society sought an amendment to this policy to add the words "*In addition to any other requirement to avoid adverse effects including D.2.14, D.2.15, D.2.16 and D.5.29*" at the start of the policy.



- [4] The parties have agreed that this appeal point can be resolved by incorporating the following 'policy note' into the plan:

Policy Note:

1. Regard must be had to all the relevant objectives and policies in the Plan when considering an application for a resource consent.
2. Where policies in this plan are in conflict, the more directive policies shall prevail.
3. Regard must be had to any relevant provisions of the Regional Policy Statement and National Policy Statements, and where appropriate Part 2 of the RMA, when considering an application for a resource consent.

Rule C.1.5.2 – Sampling and scientific investigation – permitted activity

Rule C.1.5.4 – Removal or recovery of wrecked vessels – permitted activity

Rule C.1.5.6 – Clearing artificial water courses – permitted activity

Rule C.1.5.8 – Burial of dead animals – permitted activity

- [5] These four rules were appealed by Royal Forest and Bird Protection Society who requested the same amendment to all four rules – to require that the activity complies with all the Coastal General Conditions (the rules currently refer to compliance with all '*relevant conditions*' of the coastal general conditions).

- [6] The parties have agreed to amend the rule(s) by deleting reference to '*all relevant*' conditions, meaning that the activity now has to comply with all Coastal General Conditions.

Rule C.1.5.9 Maintenance dredging – controlled activity

- [7] CEP Services Matauwhi, sought to amend this rule to a restricted discretionary activity rule with the matters of control becoming matters of discretion and include 'effects on indigenous biodiversity' as a further matter of discretion.

- [8] The parties have agreed to the activity status remaining 'controlled' and to amend matter of control 5) to read:

5 Effects on indigenous biodiversity and aquatic ecosystems health and indigenous biodiversity in the coastal marine area.

Rule C.1.5.10 – Beach scraping – restricted discretionary activity

CEP Services Matauwhi sought to amend matters of discretion 7e) and 7f) of this rule to refer to "*Significant Ecological Area or Significant Bird Area or any*



other area that meets the criteria for 'significance' given in Appendix 5 of the Regional Policy Statement for Northland for any indigenous biodiversity other than marine mammals or seabirds". They also sought the addition of a 1,000m outstanding natural landscape buffer as a further identified mapped areas.

[10] The parties have agreed to amend the rule by inserting a new matter of discretion as follows at 10):

10 Effects on the characteristics, qualities and values of outstanding natural landscapes.

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

[12] The following parties have given notice of an interest in the matters to be resolved by this order under s 274 of the Act, and have signed the memorandum of the parties seeking this order:

- Minister of Conservation
- Northport Limited
- Royal Forest & Bird Protection Society of NZ Incorporated
- Federated Farmers
- CEP Services Matauwhi Limited
- NZ Refining Company Limited
- NZ Transport Authority
- Patuharakeke Te Iwi Trust Board

[13] 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

- [14] Therefore, the Court orders, by consent, that the Proposed Regional Plan for Northland is amended as set out in **Annexure A** to this Order.
- [15] This order resolves the appeals as they relate to Rules C.1.5.2, C.1.5.4, C.1.5.6, C.1.5.8, C.1.5.9, C.1.5.10 and Policy D.5.22. The outstanding appeal points within the sub-topic consist of Rules C.1.5.1, C.1.5.3, C.1.5.5, C.1.5.7, C.1.5.11, C.1.5.12, C.1.5.12A, C.1.5.14 and Policy D.5.24.
- [16] There is no order as to costs.

DATED at Auckland this 20th day of May 2020



J A Smith
Environment Judge



Annexure A

C.1.5.2 Sampling and scientific investigation – permitted activity

The disturbance of the foreshore or seabed and any removal of sand, shingle, shell or other natural material for the purposes of sampling and scientific investigation in the coastal marine area are permitted activities provided:

- 1) in a mapped Site or Area of Significance to tangata whenua or a mapped [Historic Heritage Area](#) (refer '[1 Maps | Ngā mahere matawhenua](#)'), no more than 0.2 cubic metres of sand, shingle, shell or other natural material is removed in any 24-hour period, and
- 2) in all other areas, no more than one cubic metre of sand, shingle, shell or other natural material is removed in any 24-hour period, and
- 3) the head size of any drilling equipment used does not exceed 250 millimetres in diameter, and
- 4) 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:

- Disturbance of any foreshore or seabed by sampling and scientific investigation (s12(1)).
- Removal of sand, shingle, shell or other natural material from the coastal marine area for the purposes of sampling and scientific investigation (s12(2)).¹

C.1.5.4 Removal or recovery of wrecked vessels – permitted activity

The removal or recovery of a wrecked [vessel](#) in the coastal marine area, including any associated disturbance of the foreshore or seabed, are permitted activities provided:

- 1) the Regional Council's Harbourmaster is notified (in writing or by email) at least 24 hours before the start of any removal or recovery, and
- 2) if the activity occurs within a mapped Site or Area of Significance to Tangata whenua (refer '[1 Maps | Ngā mahere matawhenua](#)'), the relevant tangata whenua are notified at least 24 hours before the start of any removal, and
- 3) 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:

- Disturbance of any foreshore or seabed associated with the removal of wrecked [vessels](#) (s12(1))
- The removal or recovery of a wrecked [vessel](#) in the coastal marine area (s12(3)).²

¹ Appeal to Environment Court by Royal Forest & Bird Protection Society NZ ENV-2019-AKL-000127

² Appeal to Environment Court by Royal Forest & Bird Protection Society NZ ENV-2019-AKL-000127



C.1.5.6 Clearing artificial water courses – permitted activity³

The clearing of material (excluding mangroves) from an **artificial watercourse** in the coastal marine area, including any associated disturbance of the foreshore or seabed and deposition of sediment on the foreshore or seabed, are permitted activities provided:

- 1) the original profile (width and depth) of the **artificial watercourse** is not exceeded, and
- 2) all material (except sediment) is removed from the coastal marine area, and
- 3) the Regional Council's Compliance Manager is notified (in writing or by email) at least three working days prior to work being undertaken, and
- 4) if the activity occurs within a mapped Site or Area of Significance to tangata whenua (refer **I Maps | Ngā mahere matawhenua**), the relevant tangata whenua are notified at least three working days prior to work being undertaken, and
- 5) sediment disposed of in the coastal marine area:
 - a) is deposited no more than 10 metres either side of the **artificial watercourse**, and
 - b) is not placed in individual sediment piles exceeding 25 square metres in area or 300 millimetres in height, and
 - c) does not **dam** tidal water or **stormwater** outlets, and
- 6) 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:

- Disturbance of any foreshore or seabed associated with the clearing of material (excluding mangroves) from an **artificial watercourse** and the deposition of material cleared (excluding mangroves) from the **artificial watercourse** onto the foreshore or seabed (s12(1)).
- Clearing material (excluding mangroves) from an **artificial watercourse** in the coastal marine area (s12(3)).
- Discharge of water or sediment into water incidental to the activity (s15(1)).

C.1.5.8 Burial of dead animals – permitted activity

Burying a dead animal (including marine mammals) washed up on the foreshore, including any associated disturbance of the foreshore or seabed and deposition of material on the foreshore or seabed, are permitted activities, provided:

- 1) the activity complies with ~~all relevant conditions of~~ **C.1.8 Coastal works general conditions**, and
- 2) where practicable, burial does not occur within 100 metres of a tidal stream mouth, and
- 3) where practicable, adverse effects on **indigenous vegetation** are minimised.

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

- The burial of a dead animal (including a marine mammal) washed up on the foreshore (s9(2)).

³ Appeal to Environment Court by Royal Forest & Bird Protection Society NZ ENV-2019-AKL-000127



- Disturbance of any foreshore or seabed associated with the burial of a dead animal (including a marine mammal) washed up on the foreshore and the deposition of material onto the foreshore or seabed resulting from the burial of a dead animal (including a marine mammal) washed up on the foreshore (s12(1)).
- Burying a dead animal (including marine mammals) washed up on the foreshore (s12(3)).⁴

C.1.5.9 Maintenance dredging – controlled activity⁵

Maintenance dredging, including the destruction, damage or disturbance of the foreshore or seabed and discharge of sediment associated with the dredging, are controlled activities.

Matters of control:

- 1) The method used to carry out the activity.
- 2) The timing of the activity in relation to tides, seasons or other activities occurring in the area to be dredged.
- 3) Effects on coastal processes, including effects on the stability of the seabed and nearby shorelines.
- 4) The destruction, damage or disturbance of the foreshore or seabed, and discharge associated with the dredging activity.
- 5) Effects on ~~indigenous biodiversity and aquatic ecosystems health~~ and indigenous biodiversity in the coastal marine area.
- 6) Navigation and safety (including requiring notification to the Regional Council's Harbourmaster and Maritime New Zealand).
- 7) Effects on the identified values of any mapped (refer [I Maps | Ngā mahere matawhenua](#)):
 - a) Nationally Significant Surf Break and Regionally Significant Surf break.
 - b) [Historic Heritage Area or Site](#).
 - c) Site or Area of Significance to tangata whenua.
 - d) Significant Ecological Area.
 - e) [Significant Bird Area](#).
- 8) Effects on the characteristics, qualities and values of mapped (refer [I Maps | Ngā mahere matawhenua](#)) areas of Outstanding Natural Character or Outstanding Natural Features that make the area or feature outstanding.
- 9) Effects on tangata whenua and their [taonga](#).

Notification:

Resource consent applications under this rule are precluded from notification (limited or public).

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

⁴ Appeal to Environment Court by Royal Forest & Bird Protection Society NZ ENV-2019-AKL-000127

⁵ Appeal to Environment Court by CEP Services Matauwhi Ltd ENV-2019-AKL-000111



- Destruction, damage or disturbance of any foreshore or seabed resulting from [maintenance dredging](#) (s12(1)).
- [Maintenance dredging](#) in the coastal marine area (s12(3)).
- Discharge of water or sediment into water associated with [maintenance dredging](#) (s15(1)).

C.1.5.10 Beach scraping – restricted discretionary activity⁶

[Beach scraping](#) in the coastal marine area, including associated destruction, damage or disturbance of the foreshore or seabed and deposition of material on the foreshore or seabed, are restricted discretionary activities.

Matters of discretion:

- 1) Volume and depth of material removed and deposited.
- 2) Methods used to carry out the activity.
- 3) Effects on coastal processes, including effects on the stability of the seabed and nearby shorelines.
- 4) Effects of the disturbance and deposition associated with the activity.
- 5) Effects on ~~indigenous biodiversity~~ and aquatic ecosystems health and indigenous biodiversity.
- 6) Effects on tangata whenua and their [taonga](#).
- 7) Effects on the characteristics, qualities and values that contribute to make any of the following mapped (refer [I Maps | Ngā mahere matawhenua](#)) places outstanding or significant:
 - a) Nationally Significant Surf Break and Regionally Significant Surf break.
 - b) Outstanding Natural Feature.
 - c) Area of Outstanding Natural Character.
 - d) Site or Area of Significance to tangata whenua.
 - e) Significant Ecological Area.
 - f) Significant Bird Area.
- 8) Effects on the characteristics, qualities and values that contribute to any mapped (refer [I Maps | Ngā mahere matawhenua](#)) [Historic Heritage Area or Site](#).
- 9) The positive effects of the activity.
- 10) Effects on the characteristics, qualities and values of outstanding natural landscapes

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

- Destruction, damage or disturbance of any foreshore or seabed and the deposition of material on the foreshore or seabed associated with [beach scraping](#), (s12(1)).
- Discharge of sediment into water incidental to the activity (s15(1)).

⁶ Appeal to Environment Court by CEP Services Matauwhi Ltd ENV-2019-AKL-000111



D.5.22 Dredging, disturbance and deposition activities⁷

Dredging, disturbance and deposition activities should not:

- 1) cause long-term erosion within the coastal marine area or on adjacent land, and
- 2) cause damage to any authorised structure.

⁷ Appeal to Environment Court by Royal Forest & Bird Protection Society NZ ENV-2019-AKL-000127

