

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

**Decision [2023] NZEnvC 127**

IN THE MATTER OF appeals under Clause 14 of Schedule 1 of  
the Resource Management Act 1991

BETWEEN

MANGAWHAI HARBOUR  
RESTORATION SOCIETY

(ENV-2019-AKL-000110)

CEP SERVICES MATAUWHI  
LIMITED

(ENV-2019-AKL-000111)

MINISTER OF CONSERVATION

(ENV-2019-AKL-000122)

NORTHPOWER LIMITED

(ENV-2019-AKL-000123)

ROYAL FOREST AND BIRD  
PROTECTION SOCIETY OF NEW  
ZEALAND INCORPORATED

(ENV-2019-AKL-000127)

Appellant

AND

NORTHLAND REGIONAL  
COUNCIL

Respondent

Court: Environment Judge J A Smith sitting alone under s 279 of the  
Act

Next case event: 9 June 2023

pNRP – Topic 1 – Coastal Activities – C.1.8



Date of Order: 21 June 2023

Date of Issue: 21 June 2023

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## CONSENT DETERMINATION

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

- (1) the appeals are allowed in accordance with Annexure A to this Determination; and
- (2) the Determination resolves the appeals relating to Rule C.1.8 and the definition of “adaptive management”. No appeals remain outstanding in relation to those provisions.

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

## REASONS

### Introduction

[1] The Appellants have appealed provisions of the Proposed Regional Plan for Northland as they relate to Rule C.1.8 Coastal works general conditions (Topic 1 – Coastal activities).

[2] The appeals were lodged by:

- (a) Mangawhai Harbour Restoration Society (**MHRS**);
- (b) CEP Services Matauwhi Limited (**CEP Services**);
- (c) Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest & Bird**);
- (d) The Minister of Conservation; and

(e) Northpower Limited.

[3] The following people gave notice of their intention to become parties to one or more of the appeals under section 274 of the Act and have signed the memorandum of the parties dated 9 June 2023:

- (a) CEP Services;
- (b) Forest & Bird;
- (c) Minister of Conservation;
- (d) Federated Farmers of New Zealand;
- (e) New Zealand Fairy Tern Charitable Trust;
- (f) Bay of Islands Maritime Park Incorporated;
- (g) Northport Limited;
- (h) Channel Infrastructure NZ Limited;
- (i) Top Energy Limited;
- (j) Waka Kotahi NZ Transport Agency;
- (k) Patuharakeke Te Iwi Trust Board;
- (l) Transpower New Zealand; and
- (m) Atlas Quarries Limited and Atlas Concrete Limited.

[4] This Determination also relates to the appeal lodged by Forest & Bird against the definition of “adaptive management”. The definition of “adaptive management” has been agreed between the parties,<sup>1</sup> but it was inadvertently omitted from previous consent memoranda.

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<sup>1</sup> Federated Farmers of New Zealand, Channel Infrastructure NZ Limited, Patuharakeke Te Iwi Trust Board, Transpower New Zealand, Forest & Bird and the Council.

### Rule C.1.8 Coastal works general conditions

[5] Rule C.1.8 sets out the general conditions that apply to activities when referred to in coastal rules set out in section C.1 Coastal activities of the Proposed Plan.

[6] Rule C.1.8 was appealed by:

- (a) MHRS, who sought that a number of conditions be amended, including:<sup>2</sup>
- (i) *condition 7*, which requires (among other things) that refuelling must not be carried out in the coastal marine area (**CMA**) and that for the duration of the activity, no vehicle or equipment is to be left in a position where it could come into contact with coastal water. MHRS sought to delete these requirements from the condition. The rationale for MHRS' appeal is that these restrictions are impractical and inappropriate;
  - (ii) *condition 8*, which requires that there must be no damage to shellfish beds in mapped Significant Ecological Areas (**SEAs**) and no damage to saltmarsh or seagrass meadows, except as necessary for the installation of an aid to navigation under Rule C.1.1.4.<sup>3</sup> MHRS sought to amend the condition so that "shellfish bed" is defined using the definition developed by NIWA (2013) or another similar definition, in order to provide certainty as to what constitutes a "shellfish bed";
  - (iii) *condition 9*, which requires any visible disturbance of the foreshore or seabed to be remedied or restored within 48 hours of completion of works in a high value mapped area. MHRS sought to include an exception so that where an objective of the activity is to support, maintain, enhance or restore the area or feature or part of it, compliance with condition 9 is not required. The

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<sup>2</sup> Mangawhai Harbour Restoration Society – Notice of Appeal – 17 June 2019 at row 5 of Schedule 1.

<sup>3</sup> Rule C.1.1.4 provides that the erection, placement, alteration or extension of an aid to navigation structure in the coastal marine area and any occupation of the common marine and coastal area by the structure are permitted activities, provided certain conditions are met.

rationale for the appeal is that where the disturbance is the deposition of material for beneficial purposes, it should be excluded;

- (iv) *condition 10*, which provides that there must be no disturbance of indigenous or migratory bird nesting or roosting sites. MHRS sought to amend the condition so that it only applies during 1 September – 28 February (the bird breeding or roosting season);
- (v) *condition 11*, which requires that outside of outstanding natural character, outstanding natural feature or SEAs, visible disturbance of the foreshore or seabed must be remedied or restored within 7 days. MHRS sought to include an exception so that if adverse circumstances arise that make it unsafe to remedy or restore visible disturbance within 7 days, such works shall be carried out within 10 working days or a time period agreed with the Council's compliance manager. The rationale is that it is not always possible for visible disturbances to be remedied or restored within 7 days;
- (vi) *condition 13(a)*, which provides that any discharge must not occur for more than 5 consecutive days and for more than 12 hours per day, or cause certain effects in the receiving waters beyond the zone of reasonable mixing. MHRS sought to include an exception for discharges as part of, or incidental to, an activity covered by Rule C.1.5.11 Deposition of material for beneficial purposes – restricted discretionary activity.<sup>4</sup> The rationale for the appeal is that some activities such as maintenance dredging need to be carried out over an extended period of time (i.e., longer than the 5 consecutive days timeframe, allowed by the condition); and

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<sup>4</sup> Rule C.1.5.11 provides that the deposition of material for beneficial purposes onto land is a restricted discretionary activity, provided that, within the CMA the deposited material is not water or other matter which is dumped from a ship, aircraft or offshore installation.

- (vii) For completeness, MHRS also sought to amend conditions 15, 17 and 19 of Rule C.1.8. However, those appeal points have been resolved as part of Topic 15 – Mangrove removal.<sup>5</sup>
- (b) CEP Services, who sought the addition of “Outstanding Natural Landscape Buffer” as a further identified mapped area and to replace the reference to “Significant Ecological Area” and/or “Significant Bird Area” in conditions 9 and 11 with “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”.<sup>6</sup> CEP Services’ appeal points have been resolved as part of separate topics in the Proposed Plan.<sup>7</sup>
- (c) Forest & Bird, who sought to delete the general conditions and provide specific conditions in relevant rules.<sup>8</sup> As alternative relief, Forest & Bird sought to redraft the conditions to address the reasons for its appeal. Forest & Bird’s appeal points has been resolved as part of separate topics in the Proposed Plan;<sup>9</sup>
- (d) The Minister of Conservation, who sought to replace condition 8 with a new condition requiring that there be no damage to shellfish beds in mapped SEAs and no damage to saltmarsh or seagrass meadows, rhodolith and bryozoan beds, sponge gardens or other sensitive biogenic habitats except as necessary for the installation of an aid to navigation under Rule C.1.1.4 Aids to navigation – permitted activity.<sup>10</sup> The

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<sup>5</sup> *Mangawai Harbour Restoration Society Inc v Northland Regional Council* [2022] NZEnvC 114.

<sup>6</sup> CEP Services Matauwhi Limited – Notice of Appeal – 17 June 2019 at [7.11] and [8]- [8.15].

<sup>7</sup> See the Consent Order for Topic 17 – Outstanding natural landscapes dated 11 May 2023: *CEP Services Matauwhi Limited v Northland Regional Council* [2023] NZEnvC 89, and Consent Order for Significant Ecological Areas and Significant Bird Areas dated 12 May 2023: *CEP Services Matauwhi Limited v Northland Regional Council* [2023] NZEnvC 93.

<sup>8</sup> Royal Forest & Bird Protection Society of New Zealand Inc – Notice of Appeal – 17 June 2019 at pages 20 – 21.

<sup>9</sup> Forest & Bird’s appeal has been resolved as part of several different topics in the Proposed Plan, including Topic 1 – Moorings and anchorages and Significant Ecological Areas and Significant Bird Areas (Topic 1 – Coastal activities).

<sup>10</sup> Minister of Conservation – Notice of Appeal – 17 June 2019 at [7.3].

rationale for the Minister's appeal is that the decision to omit reference to a wider range of ecosystem, habitats and species in condition 8 leaves a gap in the management of the coastal environment and does not give effect to the New Zealand Coastal Policy Statement 2010 (**NZCPS**);

- (e) Northpower Limited, who sought to exclude from Rule C.1.8 activities undertaken in relation to electricity and telecommunication networks which are:<sup>11</sup>
- (i) necessary in circumstances of probable danger to life or property;
  - or
  - (ii) immediately necessary to maintain the continuity or safety of the supply or distribution of electricity or the supply of telecommunications.

[7] Following mediation and subsequent discussions, the parties agreed to:

- (a) Amend condition 1, which requires that prior to undertaking activities on private land, written approval must be obtained from the landowner and provided to the Council's Compliance Manager upon request. The proposed amendments provide an exception for works that are being undertaken for emergency remedial works and entry upon the land is necessary in circumstances of probable danger to life or property, or immediately necessary to maintain the continuity or safety of the supply and distribution of electricity. The parties consider that the amendments are appropriate as they ensure that Northpower is able to undertake works efficiently and effectively in order to comply with its statutory obligations under other legislation, such as the Electricity Act 1992, Telecommunications Act 2001 and Health and Safety at Work Act 2015;
- (b) Amend condition 5, which requires that disturbance, construction, alteration, addition, maintenance or removal activities must only be carried out during specific hours, with some exceptions. The proposed amendment relates to clause (a), which provides an exception for

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<sup>11</sup> Northpower Limited – Notice of Appeal – 17 June 2019 at [15(a)].

emergency remedial works. The amendment clarifies that such emergency remedial works are not limited to situations where structures are damaged by a natural hazard event. The parties consider that this minor amendment provides helpful clarification;

- (c) Amend condition 6, which requires the owner of a structure to notify in writing the Council's Compliance Manager upon completion of a new structure. The proposed amendments clarify that this does not include a structure which replaces an existing structure and meets certain requirements set out in Rule C.1.1.7 Reconstruction replacement, maintenance or repair of a structure – permitted activity.<sup>12</sup> The parties consider that it is appropriate to exclude existing structures that already meet the more detailed requirements under Rule C.1.1.7;
- (d) Amend condition 7, which relates to refuelling in the CMA. The amendments recognise that there may be instances where works are being undertaken a long distance offshore and it will be impractical to refuel outside of the CMA. The amendments enable the refuelling of equipment or machinery onboard a vessel or on a structure in the CMA, but only in circumstances where there is a functional or operational need to do so, and provided that leak-proof containers and contained spill capture areas or bunds are used. "Functional need" and "operational need" are defined in the Proposed Plan and the National Planning Standards and are generally well understood. The parties consider that the provisions will be effective in ensuring that discharges of fuel in the CMA are prevented;
- (e) Include a new condition, which provides that there must be no damage to rhodolith beds, bryozoan beds, sponge gardens or vermetid reefs, except as necessary for the installation of an aid to navigation under Rule C.1.1.4 Aids to navigation – permitted activity. The parties consider that

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<sup>12</sup> Rule C.1.1.7 provides that the reconstruction, replacement, maintenance or repair of a structure, or part of a structure, in the coastal marine area is a permitted activity, provided that certain conditions are met.



it is appropriate to include a new condition as it will better give effect to the NZCPS by ensuring that the specific habitats and species listed in the condition are protected;

- (f) Related to the new condition, the parties have also agreed to include a new controlled activity rule that provides a consenting pathway for specified infrastructure that does not comply with the new condition (Rule C.1.1.X Reconstruction, replacement, maintenance or repair of specified infrastructure – controlled activity). Rule C.1.1.X provides that the reconstruction, replacement, maintenance or repair of a structure, or part of a structure, in the CMA that does not comply with the new condition in C.1.8 is a controlled activity, subject to certain conditions being met. The parties consider that it is appropriate to exempt certain activities which are associated with specified infrastructure from complying with the new condition in C.1.8. Transpower New Zealand wishes to record that it accepts new Rule C.1.1.X and does not seek a specific exemption on the basis that it has no existing assets in the CMA in Northland;
- (g) Amend condition 10 and include a corresponding footnote, as follows:

There must be no disturbance of indigenous ~~or migratory~~ bird nesting ~~or roosting~~ sites (during the period 1 August and 31 March, (inclusive), and no disturbance of flocks of roosting coastal sea and shorebirds within two hours of high tide,<sup>1</sup> unless the activity is undertaken in accordance with Rules C.1.4.1, C.1.4.2, C.1.5.1, C.1.5.3, C.1.5.5 or C.1.5.7, in which case this condition does not apply.

<sup>1</sup>For the purpose of condition 10, a “flock” is 10 birds of the same species that are roosting together.

[8] In summary, the proposed changes to condition 10:

- (a) Decouple breeding and roosting in the condition. Breeding and roosting are separate activities, and it is appropriate to differentiate between them. The proposed changes provide that there must be no disturbance of

nesting sites during the period of 1 August and 31 March (which is consistent with the period approved by the Court in the Topic 15 – Mangrove removal rules) and no disturbance of flocks of roosting sea and shorebirds within two hours of high tide. The requirement that flocks of coastal sea and shorebirds are not disturbed within two hours of high tide recognises that suitable roosting habitat at high tide might not be available, therefore protection at that time is vital. The parties consider that decoupling these activities is appropriate as it is a nuanced approach that still enables some works to occur during the summer months;

- (b) Include a reference to “flocks” of roosting coastal sea and shorebirds in the condition, to reflect the fact that the concern is with disturbance of groups of birds (not one or two birds);
- (c) Include a footnote, which defines how many birds are considered to be a “flock” for the purposes of the condition. This provides certainty for plan users applying the condition; and
- (d) Provide an exception for permitted activity rules in the Proposed Plan which condition 10 applies to that already include a condition requiring protection of bird breeding, nesting and roosting sites, to avoid any overlap or conflict between rules.<sup>13</sup>

[9] Amend condition 11 to:

- (a) Clarify that visible disturbances must be remedied or restored within 7 days of completion of works; and
- (b) Include an exception where there are adverse circumstances that arise which make it unsafe to conduct remediation and restoration work in the CMA. In such cases, remediation or restoration work shall be carried out within 10 working days.

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<sup>13</sup> Rules C.1.4.1, C.1.4.2, C.1.5.1, C.1.5.3, C.1.5.5 or C.1.5.7.

The parties consider that the minor amendment in (a) provides helpful clarification. In terms of (b), the parties consider that the amendments are appropriate as they provide flexibility in situations where it is not possible for visible disturbances (to the foreshore and seabed) to be remedied or restored within 7 days. By way of example, weather can often be a factor, particularly during winter months when most harbour restoration activities are required to occur.

### **Definition of “adaptive management”**

[10] “Adaptive management” is defined in the Proposed Plan as follows:

#### **Adaptive management**

A means of managing activities whose effects are uncertain and the outcome of methods to avoid, remedy or mitigate those effects is also uncertain; primarily through the setting of consent conditions that enable activities to be managed in response to monitoring of the effects of the activity.

[11] The definition of “adaptive management” was appealed by Forest & Bird, who sought that it be amended by:

- (a) deleting “A” at the beginning of the definition;
- (b) replacing “enable” with “allow”; and
- (c) including “to meet specific outcomes/objectives/limits from methods used to address those effects” at the end of the definition.

[12] The rationale for Forest & Bird’s appeal is that the term “enable” has specific meaning in a policy context which could be confusing in a definition. Accordingly, Forest & Bird suggested an alternative term (being “allow”).

[13] The following parties joined Forest & Bird’s appeal against the definition under s 274 of the Act:

- (a) Federated Farmers of New Zealand;
- (b) Channel Infrastructure NZ Limited;

- (c) Patuharakeke Te Iwi Trust Board; and
- (d) Transpower New Zealand.

[14] Following discussions, the parties agreed to amend the definition of adaptive management as follows:

**Adaptive management**

A means of managing activities whose effects are uncertain and the outcome of methods to avoid, remedy or mitigate those effects is also uncertain; primarily through the setting of consent conditions that ~~enable~~ allow activities to be managed in response to monitoring of the effects of the activity to meet specific outcomes/objectives/limits specified in the conditions.

[15] The parties consider that the term “allow” is more appropriate than “enable”, for the reasons specified in Forest & Bird’s appeal. The parties also consider that the remaining amendments are appropriate as they are consistent with case law on adaptive management. In *Sustain Our Sounds Inc v King Salmon Company*,<sup>14</sup> the Supreme Court found that adaptive management requires (among other things) consent conditions to provide for effective monitoring of adverse effects using appropriate indicators and that thresholds are set to trigger remedial action before the effects become overly damaging.

**Consideration**

[16] The Court has now read and considered the consent memorandum of the parties dated 9 June 2023.

[17] In terms of an assessment under section 32AA of the Act, the parties have advised that the proposed changes were discussed at length between the parties through an iterative process involving mediation and subsequent discussions. The parties consider that the proposed changes are the most appropriate way to achieve the objectives of the Proposed Plan as well as give effect to the relevant higher-order documents, including the RPS and the NZCPS.

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<sup>14</sup> [2014] NZSC 40.

[18] I conclude the changes to C.1.8 agreed are fitting. The amendments to condition 1 are appropriate to allow Northpower (and such like providers) to undertake works to comply with their statutory duties. The amendments to condition 5 provide greater clarity. In relation to condition 6, I accept the exception is appropriate as existing structures are provided for under Rule C.1.1.7. Condition 7 allows for practicality while ensuring protections are in place to avoid discharge of fuel in the CMA.

[19] I conclude that the new condition and new rule have balanced the need for protection and giving effect to the NZCPS with allowing certain activities involving specified infrastructure.

[20] In condition 10, it is appropriate to differentiate between breeding and roosting and the approach that has been taken is nuanced. The changes ensure consistency with provisions decided under Topic 15 – Mangrove removal. The exceptions provided for within conditions 10 appropriately ensure there are no overlaps between this rule and others.

[21] I conclude the changes to condition 11 provide clarity around when the rule kicks in and provides appropriate exemption to cover for adverse circumstances.

[22] Finally, the adapted definition of adaptive management is appropriate to ensure consistency with case law and that the terms used are clear in their meaning.

[23] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:

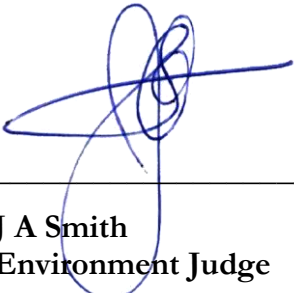
- (a) all parties to the proceedings have executed the memorandum requesting this order; and
- (b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.

[24] I am satisfied that the agreement reached is one that represents the various interests of the parties. I conclude the parties have taken a nuanced and workable approach, and the agreed amendments are the most appropriate way to achieve the purpose of the Act and the objectives in the Plan. Overall, I consider the sustainable management purpose and the other relevant requirements of the Act are broadly met.

### **Order**

[25] Therefore, the Court order, by consent, that:

- (a) the appeals are allowed in accordance with **Annexure A** to this Determination;
- (b) this Determination resolves the appeals relating to Rule C.1.8 and the definition of “adaptive management”. No appeals remain outstanding in relation to those provisions; and
- (c) there are no issues as to costs.



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**J A Smith**  
**Environment Judge**



## ANNEXURE A: AMENDMENTS TO THE PROPOSED PLAN

### Key:

Yellow highlight (underlined or ~~strike through~~) = changes agreed between the parties in relation to Rule C.1.8.

Green highlight (underlined or ~~strike through~~) = changes agreed between the parties in relation to the definition of “adaptive management”.

Grey highlight (underlined or ~~strike through~~) = changes agreed as part of separate topics in the Proposed Plan.

## Definitions

<i>Adaptive management</i>	<i>A means of managing activities whose effects are uncertain and the outcome of methods to avoid, remedy or mitigate those effects is also uncertain; primarily through the setting of consent conditions that <u>enable allow</u> activities to be managed in response to monitoring of the effects of the activity <u>to meet specific outcomes/objectives/limits specified in the conditions.</u></i>
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## C.1.8 Coastal works general conditions

General conditions apply to activities, when referred to in the rules of Section C.1.1 General Structures.

### **Structures and disturbance**

#### **Note:**

*Work affecting archaeological sites is subject to an authority process under the Heritage New Zealand Pouhere Taonga Act 2014. If any activity could modify, damage or destroy any archaeological site(s), an authority (consent) from Heritage New Zealand must be obtained for the work to proceed lawfully.*

- 1) Prior to undertaking activities on private land, including land owned by a territorial authority, written approval must be obtained from the landowner and provided to the Regional Council's Compliance Manager upon request.

unless the works are being undertaken for emergency remedial works and entry upon the land is:

a) necessary in circumstances of probable danger to life or property, or

b) immediately necessary to maintain the continuity or safety of the supply and distribution of electricity.

- 2) Structures must at all times:
  - a) be maintained in good order and repair, and
  - b) except for culverts, not impede fish passage between fresh water and coastal water. For culverts, there must be no perched entry or exit which prevents the passage of fish to upstream waterbodies or downstream to coastal water, except that temporary restrictions of fish passage may occur to enable construction work to be carried out, and
  - c) not cause a hazard to navigation.
- 3) Maintenance, alteration or addition to a structure must not result in a weakening of the structural integrity or strength of the structure.
- 4) Restrictions on public access along and through the coastal marine area beyond the footprint of the structure, during construction or disturbance for reasons of public health and safety, must not last more than seven days unless an alternative access route or controlled access is provided.
- 5) Disturbance, construction, alteration, addition, maintenance or removal activities must only be carried out during the hours between sunrise and sunset or 6.00am and 7.00pm, whichever occurs earlier, and on days other than public holidays. The exceptions to this are:
  - a) the requirement to undertake emergency remedial work such as, but not limited to, if a structure is damaged by a natural hazard event, and
  - b) maintenance of regionally significant infrastructure, where the maintenance is required to be undertaken outside these times to minimise disruption to the services provided by the regionally significant infrastructure, and
  - c) the removal of nuisance marine plant debris under Rule C.1.5.3.
- 6) Upon the completion of a new structure (which does not include a structure which replaces an existing structure and meets the requirements of



paragraphs 1) to 5) of Rule C.1.1.7), the structure owner must notify in writing (including a scale plan of the completed works) the Regional Council's Compliance Manager.

- 7) All machinery, equipment and materials used for the activity must be removed from the foreshore and seabed at the completion of the activity. Additionally,
- a) vehicles and equipment must be in a good state of repair and free of any fuel or oil leaks; and
  - b) Refuelling must not be carried out in the coastal marine area, except:
    - i) where there is a functional or operational need to refuel equipment or machinery onboard a vessel, in which case refuelling must be undertaken using leak-proof containers and contained spill capture areas (which prevent any fuel entering the coastal marine area); or
    - ii) where there is a functional or operational need to refuel equipment or machinery on a structure in the coastal marine area, in which case refuelling must be undertaken using leak-proof containers and bunds to prevent any fuel entering the coastal marine area; and
  - c) for the duration of the activity, no vehicle or equipment is to be left in a position where it could come into contact with coastal water, except where contact with coastal water is necessary to undertake the activity.
- 8) There must be no damage to shellfish beds in mapped Significant Ecological Areas (refer I Maps | Ngā mahere matawhenua) and no damage to saltmarsh or seagrass meadows, except as necessary for the installation of an aid to navigation under Rule C.1.1.4.
- X) There must be no damage to rhodolith beds, bryozoan beds, sponge gardens or vermetid reefs, except as necessary for the installation of an aid to navigation under Rule C.1.1.4.
- 9) Any visible disturbance of the foreshore or seabed must be remedied or restored within 48 hours of completion of works in a mapped (refer I Maps | Ngā mahere matawhenua):

- a) Area of Outstanding Natural Character Area, or
  - b) Outstanding Natural Feature, or
  - c) Site or Area of Significance to tāngata whenua, or
  - d) Significant Ecological Area, or
  - e) Outstanding Natural Landscape, or
  - f) Significant Bird Area – critical bird habitats, or
- 10) There must be no disturbance of indigenous ~~or migratory~~ bird nesting ~~or roosting~~ sites (during the period 1 August and 31 March, inclusive), and no disturbance of flocks of roosting coastal sea and shorebirds within two hours of high tide,<sup>14</sup> unless the activity is undertaken in accordance with Rules C.1.4.1, C.1.4.2, C.1.5.1, C.1.5.3, C.1.5.5 or C.1.5.7, in which case this condition does not apply.
- 11) Outside outstanding natural character, outstanding natural feature, significant ecological areas or significant bird area – critical bird habitats, any visible disturbance of the foreshore or seabed must be remedied or restored within seven days of completion of works, provided that should adverse circumstances arise that make it unsafe to conduct remediation and restoration work in the CMA, then such remediation or restoration work shall be carried out within ten working days.
- 12) The structure or activity must not:
- a) cause permanent scouring or erosion of banks, or
  - b) cause or exacerbate flooding of other property, or
  - c) materially reduce the ability of a river to convey flood flows into the coastal marine area (including as a result of debris accumulating against structures).
- 13) Any discharge must not:
- a) occur for more than five consecutive days, and for more than 12 hours per day, or

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<sup>14</sup> For the purposes of condition 10, a “flock” is 10 birds of the same species that are roosting together.

b) cause any of the following effects in the receiving waters beyond the zone of reasonable mixing:

- i. the production of conspicuous oil or grease films, scums or foams, of floatable or suspended materials, or
- ii. any conspicuous change in the colour or visual clarity, or
- iii. an emission of objectionable odour.

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## C.1.1.X Reconstruction, replacement, maintenance or repair of specified infrastructure – controlled activity

The reconstruction, replacement, maintenance or repair of a structure, or part of a structure, in the coastal marine area, that does not comply with General Condition C.1.8(X) is a controlled activity, provided:

- 1) All other conditions of Rule C.1.1.7 are complied with, and
- 2) The structure, or part of a structure, is:
  - a) in the Marsden Point Port Zone,
  - b) the submarine high-voltage cable between Opuā and Okiato such generally lying between the points 174.11557°E, 35.30966°S and 174.12065°E, 35.30532°S, or
  - c) the submarine high-voltage cable in Waikare Inlet such generally being located between the points 174.13687°E, 35.31787°S and 174.13557°E, 35.30538°S.

### Matters of control

- 1) Effects on aquatic ecosystem health and indigenous biodiversity.
- 2) Effects of disturbance, deposition and discharge associated with the activity, including use of heavy machinery.
- 3) Method, timing and notification of the activity.
- 4) Monitoring, remediation, and information requirements.