BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

I MUA I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKAURAU

Decision No. [2020] NZEnvC 039

IN THE MATTER	of the Resource Management Act 1991
AND	Topic 11 Biodiversity Appeal issues under Clause 14 of the Schedule 1 of the Act
BETWEEN	CEP SERVICES MATAUWHI LTD (ENV-2019-AKL-111) ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED (ENV-2019-AKL-127) MANGAWHAI HARBOUR RESTORATION SOCIETY INCORPORATED (ENV-2019-AKL-110) Appellants
AND	NORTHLAND REGIONAL COUNCIL Respondent

Court:	Judge J A Smith Commissioner K Prime Commissioner R M Bartlett
Hearing:	23-25 November 2020 at Onerahi
Last case event:	Consent Documents and Revised Table Filed by Mr Doesburg 14 December 2020
Appearances:	S T Shaw for CEP Services Matauwhi Limited and Patuharakeke Te Iwi Trust Board (**CEP**) and as agent for The Bay of Island Maritime

P D Anderson for Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest & Bird**)

K R M Littlejohn for the Mangawhai Harbour Restoration Society Incorporated (**MHRS**)

S J Ongley and M Downing for the Minister of Conservation (**the Minister**)

M J Doesburg for Northland Regional Council (**the Council**) and as agent for New Zealand Transport Agency, Transpower Limited, Top Energy Limited, Yachting New Zealand, Aquaculture New Zealand Limited and Northpower

K R M Littlejohn and T J Baker for Northport Limited (**Northport**)

P R Gardner for Federated Farmers of New Zealand Incorporated (**Federated Farmers**)

H Rogan for the Fairy Tern Trust Incorporated (**Fairy Tern**)

Date of Decision: 1 April 2021

Date of Issue: 1 April 2021

DECISION OF THE ENVIRONMENT COURT

A: The Plan is to be modified by the Council in accordance with this decision and circulated to parties **within 30 working days**.

B: The parties are to seek to settle the wording by agreement within a further **20 working days** and file a joint memorandum.

C: If no agreement is reached, the Council is to file a memorandum within a further **10 working days** setting out its preferred wording and reasoning.

D: Other parties are to comment within a further **10 working days** with:

(a) their wording;

(b) their reasoning.

E: The Court will then conclude the wording on the papers or make directions to a hearing.

REASONS

Introduction

[1] This decision concerns appeals related to Topic 11 of the Northland Regional Council's proposed Northland Regional Plan (**PRP**), being biodiversity issues. Some issues have been the subject of separate decisions and directions of this Court under s 293 (now Topic 17 Outstanding Natural Landscapes (**ONL**) Mapping).

[2] Agreement was reached prior to the hearing on matters in the following categories. We identify these first then address the issues remaining for determination.

Matters agreed in advance and subject to consent order

[3] Federated Farmers' appeal had sought additional clarification over the plan change process for incorporating additional sites. At mediation they agreed not to pursue this appeal point and all parties agreed with the policy text remaining unchanged.

[4] The parties had resolved several appeals in advance of the hearing. At the hearing they agreed to provide a memorandum and draft consent order after the hearing. The appeals resolved were as follows, with brief descriptions of each:

> Objective F.1.3 Indigenous ecosystems and biodiversity;
>
> Objective F.1.11 Natural character, outstanding natural features, historic heritage and places of significance to tangata whenua;
>
> Policy D.2.16 Managing adverse effects on indigenous biodiversity; and
>
> Policy D.2.17 Managing adverse effects on land-based values and infrastructure.

[5] After the hearing a memorandum setting out the appeals and agreements (attached as **A**) was provided along with a draft consent order (attached as **B**) on 14 December 2020. We are satisfied with the reasoning and outcomes set out in the memorandum. Evidence at the hearing either supported the outcome and/or relied on them in considering the matters remaining in contention. We approve the consent order and direct that these changes be incorporated into the Regional Plan.

Matters agreed but not resolved in Consent documents

[6] Other matters progressed to agreement before the hearing but not to the point of a draft consent order. All parties agreed by joint memorandum to amend the mapping of high natural character areas in Mangawhai Harbour, excluding parts of areas that were agreed to contain lower natural character than previously depicted. These are shown on Appendix 1 to the Joint Memorandum of 20 November 2020, attached as **C** to this decision.

[7] Further, the parties agreed that the worksheets that describe certain high natural character areas within Mangawhai Harbour, namely Units 36/25, 36/39, 36/40 and 36/45 should be modified to improve the descriptions provided. The revised wording is also shown in attachment **C**.

[8] The parties requested that the Court confirm in this decision the amendments in attachment **C**. We are satisfied that the changes reflect the agreed position of the parties and by consent approve attachment **C** showing the maps, worksheets and modified wording.

MHPS and High Natural Character

[9] As a result of the agreement above, MHPS provided a memorandum confirming that the agreement reflected in Attachment **C** had settled its appeal in respect of high natural character. MHPS supported the Council's version of Policies D.2.15 and D.2.18 and said it would abide the Court's decision on both.

[10] We understand that the evaluation of provisions under s 32AA for these matters remaining in contention also assesses the provisions agreed between the parties. Given the range of interests involved in these matters, we conclude a strong iterative process has carefully maximised the benefits and minimised costs.

The remaining appeals at issue

[11] By the time of the hearing two general issues remained:

(a) The final wording of policies D.2.15 and D.2.18 of the plan;

(b) The mapping and means of protecting certain areas of significant biodiversity and outstanding natural features.

[12] We address each in turn.

Policy D.2.15

[13] Policy D.2.15 lists the places/values for which adverse effects are to be avoided, including areas of outstanding natural character, outstanding natural features, outstanding natural landscapes, natural character (including high natural character) and other natural features and landscapes. It lists the locations within which adverse effects on these places/values are to be avoided and the effects to be avoided in each.

[14] Forest & Bird's appeal sought additions to the list of places/values, changes to some of the locations described and changes to the descriptions of effects to be avoided. Before the hearing Northland Regional Council had modified the Decisions version of this policy with suggested changes in response to Forest & Bird's appeal. The proposed versions were debated during the hearing. By the end of the hearing the parties had agreed the final wording to Policy D.2.15 then proposed by Forest & Bird. It was agreed the parties' original table of preferred wording should be updated to reflect the agreement. The updated copy was provided to the Court on 15 December. It is attached to this decision as **D**.

[15] The agreed wording of Policy D.2.15 is as follows:

> **D.2.15 Managing adverse effects on natural character, outstanding natural landscapes and outstanding natural features**
>
> Manage the adverse effects of activities on natural character, outstanding natural landscapes and outstanding natural features by:
>
> 1) Avoiding adverse effects of activities as follows:

Table 15: Adverse effects to be avoided

Place/value	Location of the place	Effects to be avoided
Areas of outstanding natural character Outstanding natural features Outstanding natural landscapes	Coastal marine area and fresh waterbodies in the coastal environment.	Adverse effects on the characteristics, qualities and values that contribute to make the place outstanding.
Natural character (includes high natural character) Other natural features and landscapes	The coastal marine area and freshwater bodies in the coastal environment.	Significant adverse effects on the characteristics, qualities and values that contribute to natural character or other natural features.
Natural character Outstanding natural features Outstanding natural landscapes	Fresh waterbodies outside the coastal environment.	Significant adverse effects on the characteristics, qualities and values that contribute to natural character or which make the natural character or landscape outstanding

2) Recognising that, in relation to natural character in waterbodies and the coastal environment (where not identified as outstanding natural character), appropriate methods of avoiding, remedying or mitigating adverse effects may include:

    a) ensuring the location, intensity, scale and form of activities is appropriate having regard to natural elements and processes, and

    b) in areas of high natural character in the coastal environment, minimising to the extent practicable indigenous vegetation clearance and modification (seabed and foreshore disturbance, structures, discharges of contaminants), and

    c) in freshwater, minimising to the extent practicable modification (disturbance, structure, extraction of water and discharge of contaminants), and

3) Recognising that, in relation to outstanding natural features in water bodies outside the coastal environment, appropriate methods of avoiding, remedying or mitigating adverse effects may include:

    a) requiring that the scale and intensity of bed disturbance and modification is appropriate, taking into account the feature's scale, form and vulnerability to modification of the feature, and

    b) requiring that proposals to extract water or discharge contaminants do not significantly adversely affect the characteristic, qualities and values of the outstanding natural feature, and

4) Recognising that uses and development form part of existing landscapes features and waterbodies and have existing effects.

[16] Further detailed analysis under s 32AA of the Act is not required given the working changes are minor and agreed by all parties.

[17] Given the parties agree to the wording and we are satisfied that the above wording of Policy D.2.15 reflects the agreement of the parties, we consider it appropriate. We direct the plan to be amended accordingly.

Policy D.2.18 – precautionary approach

[18] This remaining policy at issue applies a precautionary approach to the management of effects on significant indigenous biodiversity. The Decisions version of this policy is as follows:

> **D.2.18 Precautionary approach to managing effects on significant indigenous biodiversity**
>
> Where there is scientific uncertainty about the adverse effects of activity on:
>
> 1) Species listed as Threatened or At Risk in the New Zealand Threat Classification System including those identified by reference to the Significant Bird Area and Significant Marine Mammal and Seabird Area maps (Refer Maps),
>
> or
>
> 2) Any values ranked high by the Significant Ecological Areas maps (Refer Maps), then the greatest extent of adverse effects reasonably predicted by science must be given the most weight.

D.2.18 – the issues

[19] Several parties reworked and extended this policy in submissions and one party in submissions and evidence. Attachment **D** (revised Exhibit A referred to earlier) provides the parties' positions. They address, variously, the need to include:

(a) Reference to any other areas assessed as significant under Appendix 5 of the RPS besides those already identified significant ecological areas (**SEA**), significant bird areas (**SBA**) and significant marine mammal seabird areas (**SMMSA**);

(b) Reference to the coastal environment as being a location where adverse effects are potentially significantly adverse;

(c) Reference to the management of coastal resources that are potentially vulnerable to climate change;

(d) Definition of what a precautionary approach involves.

[20] One party at the hearing considered that Policy D.2.18 should be deleted, as the general precautionary principle is established at law and in higher order documents, and further explanation is unnecessary and could be confusing.

[21] A particular issue addressed in evidence and submissions was the wording of Decisions version D.2.18(2), in relation to giving "most weight" to the greatest extent of adverse effects identified. Parties noted that this could lead to the unintended consequence of the most "extreme forecast of the future" being adopted regardless of the validity of the methods or outcome. The direction as to weight could also remove the impartiality of an evaluation required to be given to the identification of significant areas.

[22] We comment first that D.2.18(2) as written appears to have conflated the matter on which adverse effects could occur, being "any values ranked high by the Significant Ecological Areas map (Refer Maps)" with the outcome required if either D.2.18(1) or (2) applies. The requirement "then the greatest extent of adverse effects reasonably predicted by science, must be given the most weight" is the outcome. We conclude that separating the two clauses would make better sense of the wording. The latter clause should properly appear below the numbered points at the conclusion. This would mean the Decisions Version would read:

> Where there is scientific uncertainty about the adverse effects of activity on:
>
> 1) Species listed as Threatened or At Risk in the New Zealand Threat Classification System including those identified by reference to the Significant Bird Area and Significant Marine Mammal and Seabird Area maps (Refer Maps),
>
> Or
>
> 2) Any values ranked high by the Significant Ecological Areas maps (Refer Maps),

> then the greatest extent of adverse effects reasonably predicted by science must be given the most weight.
>
> (Decision version modified)

[23] Having said that, the only party that expressed confidence in the Decisions version was the Minister of Conservation, who in attachment **D** preferred either that version or a longer and explicit policy that would remove any doubt as to what was intended. This longer wording, and all the other parties' preferred wording, removed reference to any requirement as to how an assessment should be weighted.

[24] Evidence on Policy D.2.18 was provided only by Forest & Bird, whose appeal sought reinstatement of the notified version of the plan. In evidence, however, Ms N Sitarz argued that the notified version was limited to indigenous biodiversity, and did not give effect to Policy 3 of the New Zealand Coastal Policy Statement, which is not limited in that way. Policy 3 includes reference to climate change, where a precautionary approach is particularly important. Counsel for Forest & Bird noted that climate change is not addressed in Policy D.2.18, or elsewhere in the plan, and "absent reference to matters within the ambit of Policy 3 of the NZCPS the plan does not give effect to the NZCPS".

[25] The parties have now agreed to include explicitly not only those areas already mapped as significant using Appendix 5 of the Regional Policy Statement, but any other areas that might later be included within such maps by future mapping. We conclude that this change is appropriate. Most regional plans have an element of flexibility when it comes to the identification of SEAs under criteria such as those in RPS Appendix 5. It is very difficult to ensure that all such areas have been mapped when an RPS is prepared. Detail is added over time, for example, when resource consent applicants are required to carry out ecological surveys and as a result identify new areas that meet such criteria. If all SEAs were known at the outset such investigations and reporting would not be needed.

[26] We accept that other areas may be identified as meeting criteria of Appendix 5. This may require changes to the plan in due course. In any event we are not troubled by the reference to this within Policy D.2.18 to ensure such areas are given appropriate cognisance.

[27] We conclude that the wording of the Decisions version does not properly give effect to the precautionary principle in Policy 3 of the NZCPS, and that that existing policy and case law provide guidance on the application of that approach. We see no need to set out the implications of the approach within Policy D.2.18. However, we agree that changes to the wording are required to remove direction as to weight. We are persuaded that reference to the potential vulnerability of the coastline to climate change is appropriately included.

[28] In relation to the inclusion of wording that could in future be considered a "definition" of the precautionary approach, we agree that this is unnecessary and may lead to confusion and conflict as noted in attachment **D** for the Mangawhai Harbour Protection Society and argued in submissions.

[29] We do not agree that must necessarily lead to the deletion of Policy D.2.18, and instead our conclusion is to remove the final sentence from the wording provided in attachment **D** by both Northland Regional Council and Forest & Bird.

[30] Policy D.2.18 should read as follows:

> **D.2.18 Precautionary approach to managing effects on significant indigenous biodiversity**
>
> Decision makers adopt a precautionary approach where the adverse effects of proposed activities are uncertain, unknown or little understood, on:
>
> - Indigenous biodiversity, including significant ecological areas, significant bird areas and other areas that are assessed as significant under the criteria in Appendix 5 of the Regional Policy Statement;
> - The coastal environment where the adverse effects are potentially significantly adverse, particularly in relation to coastal resources vulnerable to the effects of climate change.

The mapping of biodiversity

[31] The balance of biodiversity issues relate to the mapping of some particular sites where the appellants contend these meet the SEA criteria.

[32] The appeals raise questions as to how the mapping of sites to identify which contained significant values under Appendix 5 of the Regional Policy Statement (**RPS**)and under Policy 11 of the NZCPS was undertaken. This in turn raises issues as

to the extent of the Court's powers to modify on these appeals. We commence by examining background issues, before looking at the superior documents and then the Plan.

Water and boundaries

[33] The Court sees the separation of ecosystems between the land and freshwater (terrestrial) environment and those within the Coastal Marine Area (**CMA**) and marine environment as a fundamental problem in assessing/evaluating biodiversity. It is clear to us that Policy 11(a) and 11(b), and indeed the NZCPS as a whole, are written with the coastal environment in mind, not just the CMA.

[34] The coastal marine area is a defined legal term:

> ...means the foreshore, seabed, and coastal water, and the air space above the water –
>
> (a) of which the seaward boundary is the outer limits of the territorial sea:
>
> (b) of which the landward boundary is the line of mean high water springs except that where that line crosses a river, the landward boundary shall be whichever is the lesser of:
>
> (i) 1 kilometre upstream from the mouth of the river; or
>
> (ii) the point upstream that is calculated by multiplying the width of the river mouth by 5.

[35] In other appeals in relation to freshwater, we have been told that there are something in the order of 1,700 rivers in Northland, with, we assume, at least that many connections with the sea. The determination of the CMA boundary in harbours, around harbour entrances and at the mouths of rivers can be problematic if identified in accordance with the definition above.

[36] As a result, many Councils have set CMA limits within their plan documents and maps by way of diagrams or description, often using roads or bridges as reference points.

[37] The short point is that the specificity of these definitions, and the demarcation of responsibility between regional and district councils, turn on that CMA divide. This divide includes a large and important area, being that area between the terrestrial freshwater and marine saline environments. The ecotone across the intersection of the

fresh and saline environments provides a highly diverse environment. Defining the separation between these environments by a line on a map and labelling one CMA and one terrestrial risks excluding elements of high biodiversity value from mapping exercises such as the one that concerns us here.

How this results in ONC, ONL and SNA decisions (land and water)

[38] We understand from Mr Kerr's evidence that the SEA worksheets were prepared based on areas of CMA, land and freshwater. Over this are divisions for indigenous vegetation or habitats, biological values and wider marine values.

[39] We are not assisted by the recently issued National Policy Statement for Freshwater Management (2020), which defines 'natural wetlands' broadly as being in any environment – saline or fresh or brackish; but distinguishes 'natural inland wetlands' as being "outside the coastal marine area". Neither does the National Environmental Standard for Freshwater assist. However, neither is strictly relevant to this case.

Te Taiao Aotearoa

[40] We conclude it is important to ensure the continuum of biodiversity across the saltwater-freshwater ecotone is appropriately recognised at this regional planning level. In discussion during his legal submissions, Mr Doesberg for the Council indicated that all district councils in the region are currently engaged in the identification of significant natural areas (**SNAs**) in their districts. The means by which the integration of that SNA information with the SEA information, which might ensure that ecotones such as those that we have referred above are not undervalued, are not clear to us. Hence, we remain concerned that an appropriate level of recognition and protection of those areas may not be achieved.

[41] The RMA has identified various elements within the environment which it pays particular attention to. The focus of recent cases has been on the coastal environment, and particularly Policy 11(a) areas of particular importance. Nevertheless, s 6(c) of the Act itself identifies areas of indigenous vegetation and habitat as being of particular importance. We conclude there can be no artificial 'divisions' within such important or significant areas of biodiversity. When we deal with issues such as ecology it is important

that we understand that each of the elements we are dealing with forms part of a whole environment (sustainable management or Te Ao).

[42] We are fortunate to have as a member of our Court Commissioner Prime, who is familiar with issues of tikanga and has summarised the position in respect of the Māori world view. We set this out in some detail below as we consider there is a direct connection between this world view and the ethic that is needed to ensure adequate and appropriate protection of the country's important and unique biodiversity:

(a) Te Ao Māori (the Māori world view) acknowledges the interconnectedness or inter-relationship of mankind with Te Taiāo (the environment) or the interconnectedness between living and non-living organisms.

(b) In the beginning there was tē kore (the void). Rangi and Papa clung close to each other with their 70 children between them. After many efforts by his siblings to separate their parents, it was Tane the God of the forests who with his back on Papa and his feet on Rangi, after several attempts, managed to push his parents apart creating te ao mārama (the world of light).

(c) Māori have long maintained their genealogical connection to Te Taiāo (the environment) since Tāne created Hineāhuone (earth formed maiden); breathed life into her; mated with her; and gave birth to the first human being Hinetītama (dawn maiden).

(d) Hence Māori cosmology see themselves as being a natural part of the land and waters since the beginning of mankind.

(e) Within Māoridom are often heard aphorisms like "Kō au tē awa, kō tē awa kō au" (I am the river, the river is me), "Kō au tē maūngā, kō tē maūnga kō au" (I am the mountain, the mountain is me), or "Kō au tē whēnua, kō tē whēnua kō au" (I am the land, the land is me). These long held traditional and cultural beliefs have endured with iwi Māori maintaining an ongoing connection with the natural environment.

(f) In the modern context, when a child is born the whenua (placenta) is buried in the land severing that connection between the baby and the maternal mother and connecting with Papatuanuku (the Earth Mother).

(g) Because of this interrelationship Māori feel an enduring responsibility of kaitīakitanga (stewardship).

(h) This ethic of "kaitīakitanga" instils an ongoing cultural obligation of caring for tē taiāo - the natural environment - who, to Māori are their forebearers or ancestors.

(i) As a consequence, some modern-day iwi experience extreme embarrassment or even shame arising from their inability to provide food for which their hapū or iwi are renowned – which in turn reflects on their performance as inadequate kaitiaki. This is regardless of the fact that the absence of the particular food may have arisen from the effects of pollution, sedimentation, overfishing or other environmental factors over which iwi have no control.

(j) Iwi Māori in the cycle of nature have long recognised themselves as part of the natural environment. Consumption or harvesting of these food resources provided by Tānemahūta (the God of forests), Rongomātāne (the God of cultivated foods) and Tangarōa (the God of the sea and fish) is seen as a very important part of maintaining the ecological balance of tē taiāo – the natural environment.

(k) Proximity to natural resources (fresh water, building materials, transportation, fertile soil for gardens, seafood) meant that most kainga (villages) or pa (fortified villages) were established in the takutai moana areas close to where rivers met the sea.

[43] When we consider the world-view of Māori in terms of an inter-relationship between the people and the environment, we begin to understand the inter-connectedness of the various elements of the ecosystems in which we live. That informs our thinking on the need to avoid defining "limits" to the marine and terrestrial

ecosystems.

[44] Commissioner Prime further describes this freshwater/saltwater ecotone as not only constituting a source of life and refreshment, i.e., water and the ability to grow plants essential for survival, but also giving access to a wide range of fresh and saltwater species. The confluence of salt and fresh water supports particular plants such as karengō (seaweed), manawā (mangroves), and animal species including several varieties of pūpū (snails), pāpaka (crabs), tiō (oysters), tipa (scallops), kina (sea urchins), pipi (cockles), kūtai (mussels), pātiki (flounder), kānae (mullet), tāmure (snapper), and inanga which were of particular value, not only to the diet of Māori but to the mana and also to the mauri of the area in which they existed. This takutai moana area where saltwater and fresh water mixed was deemed by tohunga as a highly significant area for karakia, healing, cleansing or communication with te taha wairua (the spiritual side) as it was considered the interface of the realm of many of the Gods like Tangaroa (God of the sea and fish), Tumatauenga (God of war), Tanemahuta (God of forests), Tawhirimatea (God of winds and storms) Haumiatiketike (God of fernroot and uncultivated foods) and Rongomatane (God of cultivated foods).

[45] To increase the "potency" of water for special karakia, cleansing and healing rituals, tohunga were known to take water from this intertidal area inland to mix with freshwater to increase the potency for special blessing, cleansing and healing ceremonies.

[46] This inter-connectedness of land, freshwater, saltwater and the ocean and the transitions between these would be known in the English system as "ecotones". However, in a sense of wholeness these would be Te Taiāo, and would be seen as a wider part of Te Ao, the wholeness of things; and thus even whales or fish that inhabit a wide area of CMA are seen in part as connected to the land and the freshwaters because of the use of the various elements of the environment benthic, other prey species and the like. This is not only in an ecological sense (part of the ecotone) but in a personal, relational sense tikanga (connection), in that they are caring for their tupuna (ancestors).

[47] In an area such as Northland, it is very important that we try and understand this interconnectedness when assessing the various elements of importance within the

environment. We do not understand the sustainable management purpose of the Act, or the policies of the NZCPS or the RPS, or the proposed Plan to derogate from this Te Ao approach to the environment.

[48] Given that we have the opportunity in this proceeding, we comment that there is a need to see sustainable management generally as part of a wider view of the law, taking into account the cultural concepts as part of that analysis rather than peripheral to it. Justice Williams describes this in more detail in his article *Lex Aotearoa.*[1] For our part, we would describe it for the purposes of the RMA as Te Taiao Aotearoa. This is not to derogate from the human values but to recognise that humans form part of an ecosystem.

[49] Various elements of that ecosystem require direct protection while enabling the purposes of s 5 to be borne out generally. In Māori cosmology, this is in part because of the personal relationship each person has to the environment. We see no conflict between providing this wider sense of unity and wholeness within plans. In fact, we conclude it is a clear intention of the Act, Plans, National Policy Statements and National Environment Standards.

[50] When we turn to look at the particular impact of these plans, we can see that much of this critical ecosystem between the freshwater environment and the CMA has been the main focus for human modification. It represents the most fertile lands and has freshwater available. It also creates preferred areas for human occupation, as it does for the many species of birds, fish and other animals that occupy it.

[51] We have concluded that the essential missing link within the various layers that have been identified by the Council is the interconnection of these various elements to constitute an ecotone or Te Taião within the Northland Region. We realise that, in doing so, we may be recognising much of the biodiversity left in Northland as comprising significant habitat. In addition, many important species that are threatened or endangered occupy/breed/migrate/feed in many parts of the coastal and inland areas.

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[1] Justice Joseph Williams "Lex Aotearoa: An Heroic Attempt to Map the Māori Dimension in Modern New Zealand Law" (2013) 21 Waikato Law Review 1.

[52] At the same time, we recognise that the burden of protection of these large areas of significant habitat falls disproportionately on the Northland Region and the West Coast Region of the South Island in particular. In both cases these areas are less densely populated, and the councils have less funding to provide for the important natural elements that exist within them.

Relevant Planning Provisions

[53] The NZCPS states objectives and policies to achieve the purpose of the RMA. It applies to the coastal environment, a broader area than the CMA (which is limited to the area seaward of mean high water springs (MHWS) and the delineation of MHWS). The most relevant objective to the mapping of significant natural areas pertinent to these appeals is Objective 1, which seeks to safeguard the integrity, form and functioning of the coastal environment and sustain its ecosystems by, inter alia, protecting significant natural ecosystems and sites of biological importance and maintaining the diversity of New Zealand's indigenous coastal flora.

[54] Policy 11 of the NZCPS is to protect indigenous biological diversity (biodiversity). Policy 11(a) of the NZCPS covers the highest biodiversity values over defined areas, requiring the avoidance of adverse effects. Policy 11(b) is less stringent, requiring avoidance of significant adverse effects and the avoidance remediation or mitigation of other adverse effects on biodiversity. Policy 11(b) thus applies to areas of high, but not the highest, biodiversity values in the coastal environment.

[55] The objectives and policies of the NZCPS are given effect to in the Regional Planning Statement (made operative between May 2016 and June 2018). Key objectives of the RPS relating to this appeal include (following Mr Griffin's useful summary[2]):

(a) Objective 3.4 which relates to indigenous ecosystems and biodiversity and seeks to safeguard ecological integrity, maintain the extent and diversity of indigenous ecosystems and habitats in the region;

(b) Objective 3.14, which seeks the identification and protection of natural character, features/landscapes and historic heritage from inappropriate activities;

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[2] Griffin EIC at [4.9].

(c) The Policies in section 4.4, which are focussed on indigenous ecosystems and species to provide detail on how maintenance and protection of significant ecological areas and habitats is to occur.

[56] The policies take a tiered approach to areas of different significance:

(a) Policy 4.4.1(1) requires that in the coastal environment adverse effects are avoided on threatened or at-risk indigenous taxa, areas of significant indigenous vegetation and habitats of indigenous fauna, and areas set aside for full or partial protection under other legislation.

Outside the coastal environment, such effects must be avoided remedied or mitigated so that they are no more than minor:

(b) Policy 4.4.1(2) requires that in the coastal environment, significant adverse effects are avoided on areas of predominantly indigenous vegetation, important habitats and vulnerable ecosystems. As with Policy 4.4.1(1) for areas outside the coastal environment, such effects must be avoided, remedied or mitigated so that they are not significant.

(c) The Policies in sections 4.5 and 4.6 which cover the identification and management of effects on, amongst other matters, natural character, outstanding features and landscapes. This includes:

(i) Policy 4.5.1 regarding identification of natural values including natural character;

(ii) Policy 4.5.2 providing for the reassessment of identified values; and

(iii) Policy 4.6.1 requiring management of effects on the characteristics and qualities of identified sites of natural character, natural features and landscapes.

[57] We conclude the RPS adopts a similar approach to the NZCPS in the context of the Topic 11 matters with the RPS giving effect to the directive policies 11, 13 and 15 of the NZCPS.[3] It establishes methodologies for the identification of SEAs in its Appendix 5, and for the identification of sites with ONL, HNC and ONC and ONF in Appendix 1.

[58] The provisions that are the subject of this hearing (Topic 11) (and the agreements previously made in relation to these appeals) then give effect to the provisions of the RPS, including Appendix 5 for the establishment of SEAs.

[3] Griffin EIC at [4.10]; Sitarz EIC at [7.1].

[59] In particular, Policy F.1.3 (final wording agreed as per Attachment **B**) requires the following:

> **F.1.3 Indigenous ecosystems and biodiversity**
>
> In the coastal marine water and in fresh waterbodies, safeguard ecological integrity by:
>
> 1) protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna, and
> 2) maintaining regional biodiversity, and
> 3) where practicable, enhancing and restoring indigenous ecosystems and habitats to a healthy functioning state, and reducing the overall threat status of regionally and nationally Threatened or At Risk species, and
> 4) preventing the introduction of new marine or freshwater pests into Northland and slowing the spread of established marine or freshwater pests within the region.

[60] An explicit requirement for the use of Appendix 5 to the RPS in the identification of SEAs is provided by Policy D.2.16 (1)(a)(ii) as follows:

> **D.2.16 Managing adverse effects on indigenous biodiversity**
>
> Manage the adverse effects of activities on indigenous biodiversity by:
>
> 1) in the coastal environment:
> a) avoiding adverse effects on:
> i) indigenous taxa that are listed as Threatened or At Risk in the New Zealand Threat Classification System lists, and
> ii) the values and characteristics of areas of indigenous vegetation and habitats of indigenous fauna that are assessed as significant using the assessment criteria In Appendix 5 of the Regional Policy Statement, and
>
> ...[remainder of wording as agreed per Attachment **B**].

[61] The PRP thus requires significance to be assessed under Appendix 5 to the RPS. Appendix 5 to the RPS contains criteria for assessing significance of indigenous vegetation and significant habitats of indigenous fauna in terrestrial, freshwater and marine environments. It sets out four criteria each with a list of values for each:

(a) Representativeness;

(b) Rarity/Distinctiveness;

(c) Diversity and Pattern; and

(d) Ecological context.

[62] Appendix 5 states that, for an area to be deemed "significant" it must contain one or more of the values listed and thus meet one of the criteria. Assessment of significance under Appendix 5 relies on factual information, evaluative judgement, or both, and generally requires input from a qualified ecologist.

[63] Appendix 5 is not solely aimed at terrestrial or water-based values. It reflects a more holistic approach to values wherever they occur. It reflects the ecotones/Te Ao approach we discussed earlier. The relationship between indigenous vegetation, significant habitats of indigenous fauna is open and applies in terrestrial, freshwater and marine environments (all or any). It appears to be agreed that the Appendix 5 criteria are intended to apply to the coastal marine area (CMA), and to identify areas covered by Policy 11(a) of the New Zealand Coastal Policy Statement (**NZCPS**). It would also apply to freshwater and terrestrial under the NPS-FM and s 6(c) of the RMA.

[64] It was accepted by all parties that all the significant ecological areas (**SEA**) identified and mapped in the plan meet one or more of the Appendix 5 criteria for significance. It was also generally agreed that not all SEAs in the CMA have yet been identified and mapped, and that some mapping is inaccurate despite there having been a considerable effort applied to the work by the Council.

[65] In relation to the areas mapped as significant bird areas (**SBA**) and significant marine mammal seabird areas (**SMMSA**), it was acknowledged that less detailed investigation and mapping has been carried out than for the SEAs, given the very large areas of such habitat this fauna occupy in Northland.

[66] It was not agreed that these areas meet the Appendix 5 criteria for significance in their entirety, and thus come under the protection of NZCPS Policy 11(a) (avoidance of adverse effects) or of 11(b) (avoidance of significant adverse effects). This issue is still for determination by this Court in later proceedings under the Plan appeals. Forest & Bird, the Minister and CEP services seek that SBAs are not afforded less protection in the plan than the SEAs,[4] as the same values are evident and the SBAs meet the Appendix 5 criteria. It was noted that Forest & Bird initially sought that important bird areas (IBA

[4] Transcript page 36.

– the International bird database) be included in the SBAs and afforded the same protection as SEAs. However, Forest & Bird is not pursuing the inclusion of the IBAs as these are very extensive.[5] We also understand the grounds of appeal are such that the SMMSA would also have greater protection through rules and are treated in a similar nature to SEA. These issues are reserved for later hearings on this Plan.

SEA, ONC and NZCPS

[67] Appendix 5 applies to areas landward of the CMA; that is, to that part of the coastal environment that is not within the CMA (whether freshwater or saline), and to the terrestrial environment inland, giving effect to RMA s 6(c). Thus an SEA could cover areas both under the NZCPS and under the Act for non-coastal areas. Furthermore, we were advised the Plan does not distinguish in its rule application between NZCPS 11(a) and 11(b) areas.[6] This again reflects our conclusion that the Act and Appendix 5 are agnostic as to where these values occur.

[68] There is an argument that, where natural character values are high or outstanding in a terrestrial environment, adjacent coastal marine environments are likely to have similar values.

[69] In relation to the agreed incompleteness of SEA mapping, it was contended by CEP that CMA wetlands and saltmarshes adjacent to terrestrial HNC/ONC areas should be provisionally mapped as SEAs to assure them of protection under Appendix 5/Policy 11(a). This was to be a default until full assessment could occur.

[70] The parties were not in agreement that such an approach is necessary or useful, or that the HNC/ONC mapping is advanced enough to allow such extrapolation. At the hearing, Ms Shaw noted that Ms Collins' evidence did address this issue, but acknowledged that she had told parties that they would not pursue this issue for decision in this hearing. We note this matter has been agreed to constitute part of the Topic 1 hearing as to the application of rules and other provisions and we make no further

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[5] Transcript pages 39-40.

[6] *Royal Forest & Bird Protection Society of New Zealand Incorporated v Northland Regional Council* [2021] NZEnvC 21 at [7].

reference to it in this decision.

[71] Thus, while we acknowledge there are still some broad issues at play, all parties agreed we can deal with these at a later hearing. We discuss this here, however, because it is relevant to issues of the scope of the CEP appeal to include further areas of SEA mapping. The intention of the CEP appeal was to use extrapolation (up to 1,000m) for ONC or ONL areas as a temporary protection for Appendix 5 values. Accordingly, the issue requiring determination in this decision is whether several identified sites should be included in the Plan as SEA on the basis they meet the Appendix 5 criteria.

Scope and Appendix 5

[72] The fundamental issue is an argument by CEP and Forest & Bird that the plan does not comply with s 6(c) RMA and with Policy11(a) of the NZCPS, because not all the significant indigenous flora and fauna and habitats of indigenous flora and fauna in the coastal environment have been identified and mapped as SEAs. Their appeal seeks the recognition of certain parts of the Russell peninsula and Hokianga Harbour as SEAs because they meet the Appendix 5 criterion.

[73] We immediately say that it is acknowledged by all parties that the Council has put considerable effort into seeking to identify significant flora and fauna and their habitats in Northland. The task is enormous. The number of species and areas supporting rare and otherwise threatened birds and flora present in Northland is considerable.

[74] Given the concession that there are areas within the SMMSAs and SBAs that also meet Policy 11(a), a clear question arises as to how the mandatory obligation to avoid adverse effects on these areas will be addressed. All currently identified SEA, saltmarshes and wetlands appear to be classified under Policy 11(a) (or under s 6(c)), and thus require avoidance of adverse effects, but protection may need to be extended to the other areas identified by CEP's experts and to other areas that may subsequently be identified, as well as, potentially, SBAs.

[75] A further issue that arose during the hearing on the part of the Court, is that parts of some wetlands or other ecosystems that may have values that are significant under

Appendix 5 / require protection under NZCPS Policy 11(a) are not being mapped as single units, but separately for CMA and terrestrial environments, even though part of their value lies in the fact that there is a continuum of biodiversity across the transition between terrestrial and marine influence (i.e., across the transition from freshwater to seawater environments). This is inconsistent with the connectedness of environments we have discussed already and may lead to an underestimation of the value of the separate parts when the whole is not being considered, as we go on to discuss later.

The Council approach and issues arising

[76] The Council has approached this matter by using different "layers" in its mapping and assessment of the values and attributes of different parts of the coastal and marine biodiversity of the region, namely (and as we have referred to earlier) significant ecological areas (SEAs); significant bird areas (SBAs) and significant marine mammal and seabird areas (SMMSAs). The reason for these divisions is a matter of particular concern to the Appellants. It is accepted that this was an honest attempt by the Council to try and capture the various values and deal with the scale and complexity of the coastline and the species and habitats present. The danger is that, in expressing layers of value, overlapping values and those that are wholistic can be missed. A clear example would be habitat of fairy tern, which includes terrestrial (sandspit and seashore), freshwater (Te Arai Stream) and marine elements such as open sea, channels and wetland areas (Mangawhai Harbour and surrounding sea). The division between regional and district functions further complicates the approach.

[77] The fundamental issues between the parties are:

(a) whether the areas and values should be treated equally. Specifically, whether SEAs should contain SBAs and have the same status under Appendix 5 and NZCPS Policy 11, or if different methods should be used for different biodiversity categories, and justified;

(b) whether there are areas that meet the Appendix 5 criteria that have not been included in one of the mapping categories; and

(c) what should happen until all the sites that are significant against the Appendix 5 criteria have been identified and mapped.

[78] Some of these issues (such as (a)) are for later determination.

[79] The PRP has established the following categories:

*a) Significant ecological areas (**SEA**)*

This mapping includes areas of indigenous flora and fauna that have been identified as significant under the Appendix 5 criteria in relation to their values and size in the CMA. It does not include land areas for the reason, explained in the Council's submission, that the Council does not have a function to manage indigenous biodiversity on land generally. Under RMA sections 30(1)(ga) and 31(1)(b)(iii) it falls to both regional and district councils to maintain indigenous biodiversity. The division of the role in Northland is established under the Northland Regional Council's regional policy statement (RPS). S 1.6 of the RPS gives the Council responsibility for water bodies (including wetlands in, on or under the beds of river and lands and in the coastal marine area). The district councils have responsibility for all other land and surface water in lakes and rivers. The identification of SEAs for the PRP was undertaken through a process guided by Mr Kerr, a senior ecologist retained by the Council, with input from other ecologists. SEAs cover some 30.3% of the Northland Region in the proposed plan.

*b) Significant bird areas (**SBA**)*

This mapping includes not only areas of core bird habitat, i.e., areas of regularly or daily feeding and nesting, but also wider areas that are used by coastal birds on a regular basis. It covers birds that are critically endangered, such as the fairy tern, under Policy 11(a) of the NZCPS, those under Policy 11(b)(ii) and (iii) and (iv) and (v) and (vi) of the NZCPS, being coastal habitats and breeding (vulnerable lifestyles). This includes habitats and ecological corridors. As a result, the SBA covers most of Northland's coastal areas, with some curious exceptions. It excludes certain areas, including Whangarei Harbour and the Russell peninsula in the Bay of Islands, inner harbours, and also other areas outside the CMA but which are brackish or tidal environments. SBAs cover most of the coast otherwise, and around 10% of the region.

c) Significant marine mammal and seabird area (SMMSA)

This is a generalised categorisation which goes further into the territorial waters of New Zealand and includes essentially all of the CMA. Within this area a number of taxa have been identified including, for example, whales, Maui's dolphin and New Zealand fairy tern. We suspect this larger zone also includes benthic elements such as black coral, species of fish that are regionally or nationally rare, and habitat within existing marine reserves such as Poor Knights Island and other features. The categorisation appears to be based upon a generalised concern that use of the marine area may involve impacts on these threatened marine mammals but without the specific identification of particularly important habitat within that area. SMMSAs

cover some 7.9% of the region.

[80] While the SBA status is not the subject of this hearing directly, the application of Appendix 5 is in relation to mapping. This is relevant to what mapping remedies are available to this Court for additional SEA areas.

The assessments of significance under Appendix 5

[81] The appeal seeks that SBAs should be considered to have the same level of significance as SEAs under Policy 11(a) based on assessment under Appendix 5. In determining the SBAs, the very large areas of habitat used by threatened bird species posed some difficulties when evaluating their significance, as described by Mr Kerr. When carrying out the Northland surveys of birds, it become evident to Mr Kerr that most of the marine area constituted a significant area under Appendix 5. Under the criteria, there was no way of distinguishing between, for example, Mangawhai Harbour, which is a critical and frequently used habitat for fairy tern (one of the most highly endangered species in New Zealand) and the open ocean, any specific area within which may be used by threatened species but only infrequently. The SBA encapsulates all those areas.

[82] For the marine area, this led the Council team to demarcate the high, medium and low significance groups initially for further assessment. If Threatened or At Risk species were present in these low or moderate areas in the marine areas they were not put into SEAs, they remained as SBAs. The rankings were used as a means of discussing the significance of areas between the ecologists; however, we were told there was no justification for or intention of considering the SBA layer as being more or less significant that the SEA layer. They were both considered significant[7].

[83] It was noted that, apart from bird species, there are very few marine species listed as Threatened or At Risk, as those species are simply not recognised in this context.[8]

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[7] Transcript page 83, line 23.
[8] Transcript page 82, line 24 – page 83, line 6.

[84] In relation to how the criteria and values in Appendix 5 were used in assessment, it became clear that qualifiers were used in evaluations that were not strictly part of the Appendix 5 assessment criteria. For certain of the values within each criterion a working definition of the term "significant" was developed that was not strictly as set out in Appendix 5.

[85] Because birds were being assessed under the SBA layer of work, SEA worksheets did not necessarily record any information about threatened species that might have been present, simply recording "not assessed" because the birds were being evaluated under the SBA worksheets. Somewhat confusingly, when questioned by Judge Smith Mr Kerr said they used the same process and criteria (Appendix 5) to assess SEA and SBA, but because they had adopted the two separate processes they did not record the same data on each worksheet, i.e., the SEA worksheets did not have anything on them about birds even if bird values were significant under the criteria.

[86] We conclude this led to SEA valuations that were incomplete vis a vis threatened species. This became important as CEP's expert ecologists, Ms L Collins and Dr RM Bellingham, described in their evidence they had carried out SEA evaluations at sites the Council's ecologists had not assessed as significant under Appendix 5.

[87] Following from the evidence of the Council's ecologists, particularly Mr Kerr, we noted[9] that it appears that the SBA contains at least some areas of SEA, and they are either justified in their own right or in combination with the various criteria when viewed together. The problem is that there is currently no easy way to separate SBA areas that meet Policy 11(a) criteria and those that meet 11(b) criteria, as Mr Kerr accepted.

Including new modified SEA

[88] Given this evaluative lapse, we conclude that the CEP appeal seeking to add Appendix 5 areas by extension to ONC/ONL, or correction of other layers, must enable this Court to identify and map areas that are established as being Appendix 5 SEA sites.

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[9] Transcript page 157, line 24-29.

[89] The task is a contained one, with six sites on the Hokianga harbour and six sites on the Russell peninsula. Any reasonable reading of the appeal would alert submitters to this possibility as:

(a) most are within the extension to ONC/ONL sought;

(b) the issues related to SEA and SBA and their interconnectedness are clearly signalled; and

(c) the priority of Policy 11(a) of the NZCPS is clearly signalled.

The Russell peninsula sites

[90] CEP sought that some specific areas identified by their ecology expert witnesses as being significant under Appendix 5 be included as SEAs forthwith as the evidence shows they meet the appropriate Appendix 5 criteria.

[91] At the commencement of the hearing the Council in its legal submission (and in the evidence of Mr Kerr and Mr J H Griffin for the Council) agreed that an area at Uruti Bay on the Russell peninsula should be included as a SEA. The evidence of Ms L Collins, who surveyed the Uruti Bay site, was accepted by the Council for that site.

[92] Ms Collins also provided evidence about five other sites on the Russell peninsula that were not included as SEA or SBA in the proposed Regional Plan. She considered them to be SEAs following her evaluation of them under the Appendix 5 criteria. These were:

(a) Orongo Bay, estuarine and almost entirely within the CMA

(b) Te Wahapu, estuarine, within the CMA

(c) Te Wahapu, palustrine wetland inland of the CMA and not included in the proposed Regional Plan

(d) Pipirao/Okiato, estuarine and palustrine wetlands partially within the CMA, none of which is included in the proposed regional plan

(e) Mid-Waikare, estuarine and palustrine wetland almost entirely within the CMA.

These were also adjoining or new ONC or ONL mapped areas.

[93] Her evaluations used the natural character worksheets, online data sources including aerial photographs, and advice from local practitioners. She herself lives locally to the sites, had visited the sites and has observed[10] most of the fauna that were reported to her by local practitioners, including bittern, banded rail, brown teal and marsh crake. These are all endangered birds and would constitute a value requiring protection under Appendix 5 RPS. The practitioners were described by Ms Collins[11] as people with ornithological experience associated with land care groups and conservation projects.

[94] Mr Kerr did not agree that the other five Russell peninsula sites (classified as having High Natural Character) should be classified as SEA. He did agree that the importance of the saltmarsh/riparian connectivity for each of the area was well stated, and that he had "no problem with the information she offered".[12] If that was taken as an absolute trigger for ecological significance, then he agreed those areas should be SEAs, or at least the saltmarsh/mangrove component. The approach he had taken, however, was to look at estuaries at a larger scale and as a whole, if possible, and this did not lead to an SEA result. Ms Collins' assessments, using the Appendix 5 criteria, appeared to us to be faithful to the method described in Appendix 5. Mr Kerr has agreed that Ms Collins presented further information about the sites at a finer resolution than had previously been available.[13] For those reasons, we conclude that the inclusion of the five other Russell peninsula sites should not need to await more detailed evaluation, and they should be included in the plan as SEAs. These sites clearly meet one or more of the criteria of Appendix 5 as demonstrated by Ms Collins, and thus are to be protected as SEA.

The Hokianga Harbour sites

[95] CEP sought that six sites in the Hokianga Harbour be reclassified as SEAs as they meet the Appendix 5 criteria:

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[10] Transcript page 282, line 23.
[11] Transcript page 278, lines 8-28
[12] Kerr reply at [7](b).
[13] Transcript page 93, lines 5-10.

(a) Mangamuka River,

(b) Waihou Orira River,

(c) Takehe River,

(d) Mouti-Panguru River, and

(e) Whirinaki-Oue River

[96] Dr Bellingham provided evidence on the values of the sites, demonstrating that each meets not one but many of the criteria and their values. His opinion was that the mapping exercise carried out by the Council should have included "coastal vegetation and habitat sequences that may have fringing freshwater wetlands, straddling the MHWS and outside the CMA but in the coastal environment".[14] We agree with Dr Bellingham that this was not the case. Mr Kerr and Mr Griffin agreed that the sites identified by Dr Bellingham should be added to the SBA list, but not the SEA list for the Hokianga Harbour.

[97] The reason for inclusion only as SBA turns on the bird values rather than ecological values. However, as we have noted, it is the habitat which is protected under Appendix 5, and at least one Appendix 5 criteria is met. Ignoring fringe benthic and terrestrial vegetation does not accord with Appendix 5 approach. These sites meet the SEA criterion and thus should be included.

[98] Mr Doesburg for the Council argued that the CEP Services and DOC appeals did not seek SEA status for these areas. We conclude that the appeals are sufficiently clear that the status of the area is in dispute. If the areas meet the criteria of Appendix 5 then they are to be protected under NZCPS 11(a) and (b) and s 6(c) RMA.

[99] We conclude the issue is one of merit and that any reasonable reading of the submissions would make it clear the status of these areas was in dispute. The delineation between SEA and SBA is a Council construct not reflected under the NZCPS or RMA.

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[14] Bellingham EIC at [20].

Additional SEAs

[100] The evidence of the witnesses confirms that the values of the Hokianga sites asserted by Dr Bellingham under Appendix 5 are not disputed. Similarly, the Appendix 5 values of Uruti Bay near Russell asserted by Ms Collins in her brief were not disputed by Mr Kerr or any other witnesses.

[101] Given our discussion on these issues it follows that these areas should be included as SEAs as they have values identified in Appendix 5. The SBA status does not preclude SEA if they meet the criteria.

[102] This leaves us with the five sites in the Russell peninsula not accepted by Council witnesses as meeting an Appendix 5 criteria. Several are confined by human habitation, roads, walkways, pipelines and even an oyster farm.

[103] Ms Collins was clear that, at each site, she had viewed rare and endangered species that meet the NZCPS 11(a) criteria and would qualify under s 6(c) RMA. We conclude that the connection between species and habitat is a critical one.

[104] However, Appendix 5 does not require multiple criteria to be met. While this means areas occasionally visited by rare or endangered species can become protected, this is the consequence of Appendix 5 and is not under appeal. It also reflects that some species, e.g. godwit, have a wide habitat range for feeding and breeding.

[105] We conclude that the areas identified by Ms Collins meet an Appendix 5 criteria and therefore require protection as SEA.

Section 32 evaluation

[106] We now consider the most appropriate provisions before us in this hearing. When discussing the provisions agreed and D.2.15 and D.2.18, we were looking at a balance of efficiency and effectiveness. In those cases, no issues of costs or benefits were argued, beyond those generally relevant to better wording. We have set out briefly why we conclude the environmental, economic, social and cultural effects and costs are raised in the different versions proposed by the parties. The benefits of clearer wording are

difficult to assess, but we conclude they are realised in this case.

[107] In relation to the mapping of areas, we must conclude that provisions that achieve and implement superior documents, including the NZCPS, must be the most appropriate. Given the primacy of Policy 11(a) of the NZCPS and Appendix 5 of the RPS, the benefits of "avoid adverse effects on important habitats and taxa" is clear. The benefits of such a course must be assumed, given the approach of the Act. Given our views on the integrated nature of these habitats and taxa, we must also conclude it better achieves Te Taiao Aotearoa and the sustainable management of the environment.

[108] The issues in this case appear to be within a clear range. Section 32AA is addressed by recognition that, for matters under Policy 11(a) and (b) and s 6(c), the Regional Plan asserts priority. The use of SEA, SBA and SMMSA to divide these values is a matter to be addressed at a later hearing.

[109] For current purposes, the changes to D.2.15 and D.2.18 and the mapping are either agreed or within narrow confines of differences. We accept Ms Collins and Dr Bellingham as having appropriate experience to identify values under Appendix 5 to this Plan.

[110] Given the sites achieve at least one criterion under Appendix 5, it follows they should properly be instituted as SEAs under the Proposed Plan. Wider issues will be addressed at further hearings.

[111] For current purposes we conclude that the appeals do not prevent the Court from ascribing the areas as SEAs. Furthermore, the changes to the Plan will clarify its application both in certain circumstances (D.2.15 and D.2.18) and on certain sites (as in the attached mapping). The other changes are agreed and better achieve the purpose of the Act.

[112] The benefits and costs of outcomes under s 32AA turn largely on the already settled provisions (i.e., SEA and Appendix 5). Given the importance of NZCPS Policy 11 and s 6(c) we cannot see that the outcomes in this case have such significant costs as to outweigh the very significant benefit of protecting values.

Outcome

[113] The Plan is to be modified by the Council in accordance with this decision and circulated to parties within **30 working days**.

[114] The parties are to seek to settle the wording by agreement within a further **20 working days** and file a joint memorandum.

[115] If no agreement is reached, the Council is to file a memorandum within a further **10 working days** setting out its preferred wording and reasoning.

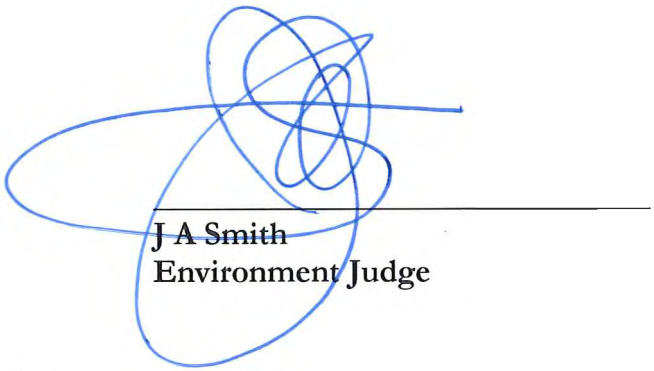
[116] Other parties are to comment within a further **10 working days** with:

(a) their wording;

(b) their reasoning.

[117] The Court will then conclude the wording or make directions to a hearing.

For the court:



J A Smith
Environment Judge

Attachment A

BEFORE THE ENVIRONMENT COURT

AT AUCKLAND

I MUA I TE KŌTI TAIAO O AOTEAROA

TĀMAKI MAKAURAU ROHE

UNDER	the Resource Management Act 1991
IN THE MATTER	of appeals under Clause 14 of Schedule 1 of the Act
BETWEEN	**CEP SERVICES MATAUWHI LIMITED** (ENV-2019-AKL-000111)

(Continued next page)

JOINT MEMORANDUM IN SUPPORT OF CONSENT ORDER

TOPIC: 11 – Biodiversity and outstanding natural features/landscapes

14 December 2020

Respondent's Solicitor
PO Box 2401, AUCKLAND 1140
Tel +64 9 300 2600
Fax +64 9 300 2609

Solicitor: M J Doesburg

WYNNWILLIAMS

ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED

(ENV-2019-AKL-000127)

NORTHPOWER LIMITED

(ENV-2019-AKL-000123)

NEW ZEALAND REFINING COMPANY LIMITED

(ENV-2019-AKL-000121)

TRANSPOWER NEW ZEALAND LIMITED

(ENV-2019-AKL-000107)

Appellants

AND **NORTHLAND REGIONAL COUNCIL**

Respondent

MAY IT PLEASE THE COURT

1 This joint memorandum relates to appeals against Northland Regional Council's decision on the Proposed Regional Plan for Northland, in respect of provisions relating to biodiversity and outstanding natural features/landscapes.

2 The parties participated in Court-assisted mediation on the appeals on 23 October 2019. The parties have reached agreement on the resolution of some of the provisions under appeal.

3 This memorandum is filed in support of a draft consent order to resolve the appeals relating to Objectives F.1.3 and F.1.11 and Policies D.2.16 and D.2.17.

4 The following persons gave notice of their intention to become parties to one or more of the appeals under section 274 of the Resource Management Act 1991 (**the Act**):

(a) Federated Farmers;

(b) The Aquaculture Industry Parties;

(c) Dean Farmer;

(d) Horticulture New Zealand;

(e) Christopher Robert Mace;

(f) Northport Limited;

(g) Transpower New Zealand Limited;

(h) Northpower Limited;

(i) New Zealand Transport Agency;

(j) Royal Forest and Bird Protection Society;

(k) Minister of Conservation;

(l) CEP Services Matauwhi Limited;

(m) Mangawhai Harbour Restoration Society; and

(n) Patuharakeke Te Iwi Trust Board.

5 This memorandum has been signed by each of the Appellants, the Respondent and each of the section 274 parties.

Draft Order

6 The agreement reached between the parties on the provisions are detailed in **Appendix 1** to this memorandum. Additions are shown in underline and deletions in strikethrough.

7 A summary of the proposed changes (including the rationale for the changes) is provided below.

8 A draft consent order dealing with the appeal is attached as **Appendix 2** to this memorandum.

Objective F.1.3 Indigenous ecosystems and biodiversity

9 Objective F.1.3 seeks to safeguard ecological integrity in the coastal marine area (**CMA**) and in fresh waterbodies by:

a. protecting areas of significance;

b. maintaining regional indigenous biodiversity;

c. enhancing and restoring indigenous ecosystems and habitats where practicable;

d. reducing the overall threat status of Threatened or At Risk species; and

e. preventing the introduction of and slowing the spread of freshwater pests.

10 Objective F.1.3 was appealed by Royal Forest and Bird Protection Society (**Forest and Bird**), seeking that the wording be amended to provide for the protection of indigenous biological diversity outside the CMA and freshwater. Forest and Bird considered that as worded, Objective F.1.3 did not give effect to the New Zealand Coastal Policy Statement 2010 (**NZCPS**) or the Regional Policy Statement for Northland (**RPS**).

11 Following mediation, Forest and Bird agreed not to pursue its appeal point.

Objective F.1.11 Natural character, outstanding natural features, historic heritage and places of significance to tangata whenua

12 Objective F.1.11 seeks to protect the following from inappropriate use and development in the CMA and in freshwater bodies:

a. the characteristics, qualities and values that make up outstanding natural features, natural character and outstanding natural seascapes;

b. the integrity of historic heritage; and

c. the values of places of significance to tangata whenua.

13 Objective F.1.11 was appealed by CEP Services Matauwhi Limited (**CEP Services**) seeking a minor wording amendment to ensure that historic heritage is protected on land and seeking an additional reference to outstanding natural landscapes (**ONL**).

14 Following mediation, CEP Services agreed not to pursue its appeal point relating to historic heritage. In relation to ONLs, the parties agreed to amend Objective F.1.11 to substitute the reference to 'seascapes' with a reference to 'landscapes' in clause (1). The amendment provides:

> **F.1.11 Natural character, outstanding natural features, historic heritage and places of significance to tangata whenua**
>
> Protect from inappropriate use and development:
>
> 1) the characteristics, qualities and values that make up:
>
> …
>
> (d) outstanding natural <u>landscapes</u> ~~seascapes~~ in the coastal marine area, and
>
> …

15 The parties consider that the amendment is appropriate as it better aligns with Policy 4.6.1 of the Regional Policy Statement for Northland (**RPS**) and Policy 15 of the New Zealand Coastal Policy Statement 2010 (**NZCPS**), both of which seek to protect outstanding natural landscapes.

Policy D.2.16 Managing adverse effects on indigenous biodiversity

16 Policy D.2.16 is an important policy in the Proposed Plan that directs how adverse effects of activities on indigenous biodiversity are to be managed.

17 Policy D.2.16 was appealed by:

a. Northpower Limited (**Northpower**), seeking that the Policy be amended to recognise that:

i. a minor or transitory effect may not be an adverse effect; and

ii. sometimes adverse effects on biodiversity cannot be reasonably avoided, remedied or mitigated in which case offsetting or compensation may be appropriate.

b. Forest and Bird, seeking various amendments including:

i. an amendment to ensure that adverse effects on mangroves to be pruned or removed for one of the purposes listed in Policy D.5.26 are avoided, remedied or mitigated;

ii. the addition of two new clauses to ensure that Policy D.2.16 recognises that damage, disturbance or loss to the characteristics and values of Outstanding Natural Character (**ONC**), High Natural Character (**HNC**) and Significant Marine Mammal and Seabird Areas (**SMMSA**) are potentially adverse effects; and

iii. the establishment of a new policy with a focus on maintaining indigenous biodiversity.

c. CEP Services seeking:

i. an amendment to ensure that adverse effects on mangroves to be pruned or removed for one of the purposes listed in Policy D.5.26 are avoided, remedied or mitigated;

ii. the insertion of a further clause to recognise that there may be more than minor cumulative adverse effects from minor or transitory adverse effects; and

iii. recognition that it may be appropriate outside the CMA to offset or compensate for any residual adverse effects on biodiversity values.

d. Federated Farmers seeking various wording amendments to Policy D.2.16, the rationale being that regional plans should have a reduced level of protection for indigenous biodiversity that is not mapped.

e. New Zealand Refining Company Limited (**NZ Refining**) seeking that the reference to SMMSA be deleted from the Policy.

f. Transpower New Zealand Limited (**Transpower**) seeking that a new Policy D.2.8A be inserted or that Policy D.2.16 be amended to include a further clause in (1)(a) of the Policy that provides:

> *Except that, in the case of the National Grid, any policy to avoid adverse effects shall be read as a policy to seek to avoid adverse effects.*

g. The rationale for Transpower's appeal is that the provisions do not give effect to the National Policy Statement on Electricity Transmission (**NPSET**) which provides a comprehensive management regime for the National Grid.

18 At mediation, the parties agreed to various amendments to Policy D.2.16, including:

a. an amendment to clause 1 of the Policy clarifying that in the coastal environment, adverse effects are to be avoided on the values and characteristics of indigenous vegetation and fauna;

b. an amendment to ensure that adverse effects on mangroves to be pruned or removed for one of the purposes listed in Policy D.5.26 are avoided, remedied or mitigated;

c. recognition in Part 5 of the Policy that:

i. a minor or transitory effect may not be an adverse effect;

ii. where effects may be irreversible, then they are likely to be more than minor;

iii. there may be more than minor cumulative effects from minor or transitory effects.

d. minor wording clarifications to Part 8 of the Policy.

19 The parties agreed to include a new National Grid specific policy – Policy D.2.8A Operation, maintenance, upgrading and development of the National Grid, as an alternative to Transpower's appeal on D.2.16. Transpower's appeal point on D.2.16 is addressed in the Topic 10 consent documents which will be filed with the Court in due course.

20 Refining NZ agreed to withdraw its appeal point on the basis of the amendment to Part 1 of the Policy. On 17 November 2020 Refining NZ gave notice that it was withdrawing its interest in Topic 11 in its entirety and on 17 November 2020 the Court confirmed that withdrawal.

21 The parties consider that the amendments are appropriate as the agreed wording:

a. improves the clarity of the Policy;

b. better achieves the purpose of the Act with respect to mangrove management; and

c. better aligns with Policy 4.4.1 of the RPS, which seeks to maintain and protect significant ecological areas and habitats.

Policy D.2.17 Managing adverse effects on land-based values and infrastructure

22 Policy D.2.17 provides direction to decision-makers when considering applications for resource consents for an activity in the CMA or freshwater body, to recognise and have regard to adverse effects on significant areas and values and land-based infrastructure.

23 Policy D.2.17 was appealed by CEP Services seeking that it apply to areas and values of ONC, HNC and ONL, rather than "significant areas and values" of those high value areas.

24 Following mediation, the parties agreed to delete "significant" from Part 1 of Policy D.2.17. The parties consider that the amendment is appropriate as it ensures that the Policy no longer limits consideration of adverse effects to effects on significant areas and values.

Orders sought

25 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 the relevant requirements and objectives of the Resource Management Act 1991 including, in particular, Part 2.

26 The parties therefore respectfully request that the Court make the order sought in Appendix 2 to this memorandum.

27 No party has any issue as to costs.

28 The order resolves the appeals as they relate to Policies D.2.16 and D.2.17 and Objectives F.1.3 and F.1.11. Transpower's appeal point on D.2.16 is resolved and is addressed in the Topic 10 consent documents which will be filed with the Court in due course.

29 Federated Farmers filed a notice of abandonment withdrawing its appeal against Policy D.1.5 on 30 October 2020.

30 Policies D.2.15 and D.2.18 and appeals in relation to Significant Ecological Area (**SEA**) mapping were heard in the week of 23 November 2020. At the hearing, the Court also heard the parties on an application for an order under section 293 in relation to ONL mapping.

31 The order sought in combination with the Court's decision on Policies D.2.15, D.2.18 and the SEA mapping will resolve Topic 11 in its entirety, subject only to the separate section 293 process in relation to ONL mapping.

DATED this 14th day of December 2020

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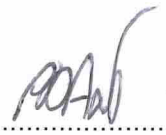
M J Doesburg

Counsel for Northland Regional Council



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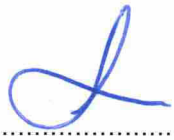
P D Anderson

Counsel for Royal Forest and Bird Protection Society of New Zealand Incorporated



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S T Shaw

Counsel for CEP Services Matauwhi Limited

.....

R M Divine / C J Sinnott / C M Woodward

Counsel for Northpower Limited

.....

L P Hinchey / N M De Wit

Counsel for Transpower New Zealand Limited

.....

P R Gardner

Counsel for Federated Farmers of New Zealand

.....

A L Hills

Counsel for the Aquaculture Industry Parties

.....

O Burn

For D Farmer and C Mace

.....

H Atkins

Counsel for Horticulture New Zealand

.....

K R M Littlejohn / T Baker

Counsel for Northport Limited

and for Mangawhai Harbour Restoration Society Inc.

.....

M G Gribben

Counsel for New Zealand Transport Agency

.....

S J Ongley / M Downing

Counsel for the Minister of Conservation

.....

S T Shaw

Counsel for Patuharakeke Te Iwi Trust Board

APPENDIX 1: AMENDMENTS TO THE PROPOSED PLAN

F.1.3 Indigenous ecosystems and biodiversity

In the coastal marine area and in fresh waterbodies, safeguard ecological integrity by:

1) protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna, and
2) maintaining regional indigenous biodiversity, and
3) where practicable, enhancing and restoring indigenous ecosystems and habitats to a healthy functioning state, and reducing the overall threat status of regionally and nationally Threatened or At Risk species, and
4) preventing the introduction of new marine or freshwater pests into Northland and slowing the spread of established marine or freshwater pests within the region.

F.1.11 Natural character, outstanding natural features, historic heritage and places of significance to tangata whenua

Protect from inappropriate use and development:

1) the characteristics, qualities and values that make up:
    a) outstanding natural features in the coastal marine area and in fresh waterbodies, and
    b) areas of outstanding and high natural character in the coastal marine area and in fresh waterbodies within the coastal environment, and
    c) natural character in fresh waterbodies outside the coastal environment, and
    d) outstanding natural landscapes ~~seascapes~~ in the coastal marine area, and
2) the integrity of historic heritage in the coastal marine area, and
3) the values of places of significance to tangata whenua in the coastal marine area and freshwater bodies.

D.2.16 Managing adverse effects on indigenous biodiversity

Manage the adverse effects of activities on indigenous biodiversity by:

1) in the coastal environment:
    a) avoiding adverse effects on:
        i. indigenous taxa that are listed as Threatened or At Risk in the New Zealand Threat Classification System lists, and

ii. the values and characteristics of areas of indigenous vegetation and habitats of indigenous fauna that are assessed as significant using the assessment criteria In Appendix 5 of the Regional Policy Statement, and

iii. areas set aside for full or partial protection of indigenous biodiversity under other legislation, and

b) avoiding significant adverse effects and avoiding, remedying or mitigating other adverse
effects on:

i. areas of predominantly indigenous vegetation, ~~other than areas of mangroves to be pruned or removed for one of the purposes listed in D.5.2S~~, and

ii. habitats of Indigenous species that are Important for recreational, commercial, traditional or cultural purposes, and

iii. indigenous ecosystems and habitats that are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, intertidal zones, rocky reef systems, eelgrass, northern wet heathlands, coastal and headwater streams, spawning and nursery areas and saltmarsh, and

2) outside the coastal environment:

a) avoiding, remedying or mitigating adverse effects so they are no more than minor on:

i. Indigenous taxa that are listed as Threatened or At Risk in the New Zealand Threat Classification System lists, and

ii. areas of indigenous vegetation and habitats of indigenous fauna, that are significant
using the assessment criteria in Appendix 5 of the Regional Policy Statement, and

iii. areas set aside for full or partial protection of indigenous biodiversity under other
legislation, and

b) avoiding, remedying or mitigating adverse effects so they are not significant on:

i. areas of predominantly indigenous vegetation, and

ii. habitats of indigenous species that are important for recreational, commercial,
traditional or cultural purposes, and

iii. indigenous ecosystems and habitats that are particularly vulnerable to modification,

iv. including wetlands, wet heathlands, headwater streams, spawning and nursery areas, and

3) recognising areas of significant indigenous vegetation and significant habitats of indigenous fauna include:

a) Significant Ecological Areas, and

b) Significant Bird Areas, and

c) Significant Marine Mammal and Seabird Areas, and

4) recognising damage, disturbance or loss to the following as being potential adverse effects:
   a) connections between areas of indigenous biodiversity, and
   b) the life-supporting capacity of the area of indigenous biodiversity, and
   c) flora and fauna that are supported by the area of indigenous biodiversity, and
   d) natural processes or systems that contribute to the area of indigenous biodiversity, and
5) assessing the potential adverse effects of the activity on identified values of indigenous
   biodiversity, including by:
   a) taking a system-wide approach to large areas of indigenous biodiversity such as whole estuaries or widespread bird and marine mammal habitats, recognising that the scale of the effect of an activity is proportional to the size and sensitivity of the area of indigenous biodiversity, and
   b) recognising that existing activities may be having existing acceptable effects, and
   ~~c) recognising that discrete, localised or otherwise minor effects impacting on the indigenous biodiversity may be acceptable, and~~
   d) recognising that ~~activities with~~ <u>minor or</u> transitory effects may ~~be acceptable~~ <u>not be an adverse effect</u>, and
   e) <u>recognising that where effects may be irreversible, then they are likely to be more than minor, and</u>
   f) <u>recognising that there may be more than minor cumulative effects from minor or transitory effects</u>
6) recognising that appropriate methods of avoiding, remedying or mitigating adverse effects may include:
   a) careful design, scale and location proposed in relation to areas of indigenous biodiversity, and
   b) maintaining and enhancing connections within and between areas of indigenous
   biodiversity, and
   c) considering the minimisation of effects during sensitive times such as indigenous
   freshwater fish spawning and migration periods, and
   d) providing adequate setbacks, screening or buffers where there is the likelihood of damage
   and disturbance to areas of indigenous biodiversity from adjacent use and development, and
   e) maintaining the continuity of natural processes and systems contributing to the integrity of
   ecological areas, and
   f) the development of ecological management and restoration plans, and
7) recognising that significant residual adverse effects on biodiversity values can be offset or
   compensated:

a) in accordance with the Regional Policy Statement for Northland Policy 4.4.1, and19

b) after consideration of the methods in (6) above, and

8) recognising the benefits of activities on biodiversity values that:

a) ~~include the~~ restore~~, ation and~~ protect or enhance~~ment of~~ ecosystems, habitats and processes, ecological corridors and indigenous biodiversity, and

b) improve the public use, value or understanding of ecosystems, habitats and indigenous biodiversity.

D.2.17 Managing adverse effects on land-based values and infrastructure

When considering an application for a resource consent for an activity in the coastal marine area or in, on or under the bed of a freshwater body, recognise that adverse effects may extend beyond the coastal marine area or the freshwater body to:

1) ~~significant~~ areas and values including:

a) Areas of outstanding and high natural character, and

b) Outstanding natural landscapes, and

c) Outstanding natural features, and

d) Historic heritage, and

e) Areas of significant indigenous biodiversity, and

f) Places of significance to tangata whenua, and

2) land-based infrastructure including:

a) toilets, and

b) car parks, and

c) refuse facilities, and

d) boat ramps, and

e) boat and dinghy storage, and

3) decision-makers should have regard to:

a) the nature and scale of these effects when deciding whether or not to grant consent for activities in the coastal marine area or on the beds of freshwater bodies, and

b) the need to impose conditions on resource consents for those activities in order to avoid, remedy or mitigate these adverse effects.

APPENDIX 2 – DRAFT CONSENT

Attachment B

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	ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED (ENV-2019-AKL-000127) CEP SERVICES MATAUWHI LIMITED (ENV-2019-AKL-000111) NORTHPOWER LIMITED (ENV-2019-AKL-000123) TRANSPOWER NEW ZEALAND LIMITED (ENV-2019-AKL-000107) Appellants
AND	NORTHLAND REGIONAL COUNCIL Respondent

Environment Judge – sitting alone pursuant to section 279 of the Act

In Chambers at Auckland

CONSENT ORDER

[A] Under section 279(1) of the Resource Management Act 1991, the Environment Court, by consent, orders that the appeal is allowed in accordance with Annexure A to this Order.

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

REASONS

Introduction

1 The Appellants listed above have appealed provisions of the Proposed Regional Plan for Northland as they relate to Topic 11 Biodiversity and outstanding natural features/landscapes.

2 The Court has read and considered the memorandum of the parties dated 14 December 2020, which proposes to resolve the appeals that relate to:

(a) Objective F.1.3 Indigenous ecosystems and biodiversity;

(b) Objective F.1.11 Natural character, outstanding natural features, historic heritage and places of significance to tangata whenua;

(c) Policy D.2.16 Managing adverse effects on indigenous biodiversity; and

(d) Policy D.2.17 Managing adverse effects on land-based values and infrastructure.

3 The following people gave notice of their intention to become parties under section 274 of the Act and have signed the memorandum of the parties dated 14 December 2020:

(a) Federated Farmers;

(b) The Aquaculture Industry Parties;

(c) Dean Farmer;

(d) Horticulture New Zealand;

(e) Christopher Robert Mace;

(f) Northport Limited;

(g) Transpower New Zealand Limited;

(h) Northpower Limited;

(i) New Zealand Transport Agency;

(j) Royal Forest and Bird Protection Society;

(k) Minister of Conservation;

(l) CEP Services Matauwhi Limited;

(m) Mangawhai Harbour Restoration Society; and

(n) Patuharakeke Te Iwi Trust Board.

4 The Court is making this order under section 179(1)(b) 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 that for the 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

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

6 The order resolves the appeals as they relate to Objectives F.1.3, F.1.11 and Policies D.1.5, D.2.16 and D.2.17. Transpower's appeal point on D.2.16 is resolved and is addressed in the Topic 10 consent documents which will be filed with the Court in due course.

7 There is no order as to costs.

DATED this day of December 2020

J A Smith
Environment Judge

Annexure A

F.1.3 Indigenous ecosystems and biodiversity

In the coastal marine area and in fresh waterbodies, safeguard ecological integrity by:

1) protecting areas of significant indigenous vegetation and significant habitats of indigenous fauna, and
2) maintaining regional indigenous biodiversity, and
3) where practicable, enhancing and restoring indigenous ecosystems and habitats to a healthy functioning state, and reducing the overall threat status of regionally and nationally Threatened or At Risk species, and
4) preventing the introduction of new marine or freshwater pests into Northland and slowing the spread of established marine or freshwater pests within the region.

F.1.11 Natural character, outstanding natural features, historic heritage and places of significance to tangata whenua

Protect from inappropriate use and development:

1) the characteristics, qualities and values that make up:
    a) outstanding natural features in the coastal marine area and in fresh waterbodies, and
    b) areas of outstanding and high natural character in the coastal marine area and in fresh waterbodies within the coastal environment, and
    c) natural character in fresh waterbodies outside the coastal environment, and
    d) outstanding natural <u>landscapes</u> ~~seascapes~~ in the coastal marine area, and
2) the integrity of historic heritage in the coastal marine area, and
3) the values of places of significance to tangata whenua in the coastal marine area and freshwater bodies.

D.2.16 Managing adverse effects on indigenous biodiversity

Manage the adverse effects of activities on indigenous biodiversity by:

1) in the coastal environment:
    a) avoiding adverse effects on:
        i. indigenous taxa that are listed as Threatened or At Risk in the New Zealand Threat
            Classification System lists, and

ii. the values and characteristics of areas of indigenous vegetation and habitats of
indigenous fauna that are assessed as significant using the assessment criteria In
Appendix 5 of the Regional Policy Statement, and

iii. areas set aside for full or partial protection of indigenous biodiversity under other
legislation, and

b) avoiding significant adverse effects and avoiding, remedying or mitigating other adverse
effects on:

i. areas of predominantly indigenous vegetation, ~~other than areas of mangroves to be pruned or removed for one of the purposes listed in D.5.2S~~, and

ii. habitats of Indigenous species that are Important for recreational, commercial,
traditional or cultural purposes, and

iii. indigenous ecosystems and habitats that are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, intertidal zones, rocky reef systems, eelgrass, northern wet heathlands, coastal and headwater streams, spawning and nursery areas and saltmarsh, and

2) outside the coastal environment:

a) avoiding, remedying or mitigating adverse effects so they are no more than minor on:

i. Indigenous taxa that are listed as Threatened or At Risk in the New Zealand Threat Classification System lists, and

ii. areas of indigenous vegetation and habitats of indigenous fauna, that are significant
using the assessment criteria in Appendix 5 of the Regional Policy Statement, and

iii. areas set aside for full or partial protection of indigenous biodiversity under other
legislation, and

b) avoiding, remedying or mitigating adverse effects so they are not significant on:

i. areas of predominantly indigenous vegetation, and

ii. habitats of indigenous species that are important for recreational, commercial,
traditional or cultural purposes, and

iii. indigenous ecosystems and habitats that are particularly vulnerable to modification,

iv. including wetlands, wet heathlands, headwater streams, spawning and nursery areas, and

3) recognising areas of significant indigenous vegetation and significant habitats of indigenous fauna include:

a) Significant Ecological Areas, and

b) Significant Bird Areas, and

c) Significant Marine Mammal and Seabird Areas, and

4) recognising damage, disturbance or loss to the following as being potential adverse effects:

a) connections between areas of indigenous biodiversity, and

b) the life-supporting capacity of the area of indigenous biodiversity, and

c) flora and fauna that are supported by the area of indigenous biodiversity, and

d) natural processes or systems that contribute to the area of indigenous biodiversity, and

5) assessing the potential adverse effects of the activity on identified values of indigenous
biodiversity, including by:

a) taking a system-wide approach to large areas of indigenous biodiversity such as whole estuaries or widespread bird and marine mammal habitats, recognising that the scale of the effect of an activity is proportional to the size and sensitivity of the area of indigenous biodiversity, and

b) recognising that existing activities may be having existing acceptable effects, and

~~c) recognising that discrete, localised or otherwise minor effects impacting on the indigenous biodiversity may be acceptable, and~~

d) recognising that ~~activities with~~ <u>minor or</u> transitory effects may ~~be acceptable~~ <u>not be an adverse effect</u>, and

e) <u>recognising that where effects may be irreversible, then they are likely to be more than minor, and</u>

f) <u>recognising that there may be more than minor cumulative effects from minor or transitory effects</u>

6) recognising that appropriate methods of avoiding, remedying or mitigating adverse effects may include:

a) careful design, scale and location proposed in relation to areas of indigenous biodiversity, and

b) maintaining and enhancing connections within and between areas of indigenous
biodiversity, and

c) considering the minimisation of effects during sensitive times such as indigenous
freshwater fish spawning and migration periods, and

d) providing adequate setbacks, screening or buffers where there is the likelihood of damage
and disturbance to areas of indigenous biodiversity from adjacent use and development, and

e) maintaining the continuity of natural processes and systems contributing to the integrity of
ecological areas, and

f) the development of ecological management and restoration plans, and

7) recognising that significant residual adverse effects on biodiversity values can be offset or
compensated:

a) in accordance with the Regional Policy Statement for Northland Policy 4.4.1, and19

b) after consideration of the methods in (6) above, and

8) recognising the benefits of activities on biodiversity values that:

a) ~~include the~~ restore~~, ation and~~ protect or enhance~~ment of~~ ecosystems, habitats and processes, ecological corridors and indigenous biodiversity, and

b) improve the public use, value or understanding of ecosystems, habitats and indigenous biodiversity.

D.2.17 Managing adverse effects on land-based values and infrastructure

When considering an application for a resource consent for an activity in the coastal marine area or in, on or under the bed of a freshwater body, recognise that adverse effects may extend beyond the coastal marine area or the freshwater body to:

1) ~~significant~~ areas and values including:

a) Areas of outstanding and high natural character, and

b) Outstanding natural landscapes, and

c) Outstanding natural features, and

d) Historic heritage, and

e) Areas of significant indigenous biodiversity, and

f) Places of significance to tangata whenua, and

2) land-based infrastructure including:

a) toilets, and

b) car parks, and

c) refuse facilities, and

d) boat ramps, and

e) boat and dinghy storage, and

3) decision-makers should have regard to:

a) the nature and scale of these effects when deciding whether or not to grant consent for activities in the coastal marine area or on the beds of freshwater bodies, and

b) the need to impose conditions on resource consents for those activities in order to avoid, remedy or mitigate these adverse effects.

Attachment C

Appendix 1: AMENDMENTS TO THE HNC MAPPING AT MANGAWHAI

APPENDIX 2: AMENDMENTS TO THE HNC WORKSHEETS

Unit 36/25

Unit 36/25 includes the lower and mid reaches of the Mangawhai Estuary ~~including the floodtide delta~~, including the southern part of the floodtide delta, the channel and extensive mobile intertidal sand flats. The extensive areas of intertidal flats have a largely indigenous diatom cover and infauna. Good numbers of the migratory godwit are present in season. New Zealand dotterel and royal spoonbill are present. No seagrass was observed in this unit.

The historical breach of the Mangawhai Sandspit, a largely natural event, was aggravated by reduced sand supply to the beach from sand mining off Te Arai Beach. Considerable amounts of sand (most probably from the Harbour downstream of this unit) has been suction-dredged and placed on the Spit to close the breach. Some has also been placed on the opposite shore.

The shoreline north of Jordan Street ~~and~~ within this unit ~~is eroding, probably because of the reduced sand supply resulting from the sand suction-dredging. While the houses here are set back inland of the coastal margin esplanade reserve, there are~~ has a number of informal shore protection structures in the form of retaining walls and groynes which were informally erected during the period when the breach inlet was open (1978 to 1996) and wave energy from the ocean was impacting the shoreline. This area also has patches of saltmarsh and salt meadow.

Because of the number of shoreline protection structures ~~a near shore strip of about 50m in width~~a 30m wide strip extending seaward from MHWS could be excluded from Unit 36/25 in this location (Appendix 1). ~~is now excluded from Unit 36/25 in this location. This also applies to the developed area on the western side of Moirs Point~~. The shoreline in the vicinity of Moirs Point is more natural and is included in the unit. It includes mature pohutukawa on the Moirs Point headland with *Pseudopanax lessonii.* Immediately to the west is an area of fringing saltmarsh dominated by oioi with an adjoining small freshwater wetland dominated by raupo and rushes inshore. Juvenile mangroves are being removed from this area on an annual basis.

On the opposite shore at the end of Moir Street there is a boat launching ramp and a few remnants of the old historic wharf. This has a minor localised effect on natural character.

In the vicinity of Insley Street and Black Swamp Road Causeways there has been relatively extensive recent clearance of mangroves. The stumps from cut trees and shrubs are still visible, as are vehicle tracks and other disturbance. The causeway is now eroding now that the soft defence of mangroves have been removed.

In addition there is a high level of unnatural sounds (traffic and construction noise) close to the causeways and bridges. This area is excluded from the unit (Appendix 1).

Unit 36/39

The Unit includes the upper section of the open Mangawhai Harbour, immediately below the Molesworth Drive causeway. It is an aquatic unit. Approximately 60% of the unit is intertidal flats with limited channels. The remainder of the unit is saltmarsh and mangroves. Several 1.5-2m diameter patches of sea grass were observed close to the true left shore, about half way along the unit.

In the north-west there is an extensive area of saltmarsh (oioi dominant, but also sea rush and marsh ribbonwood) with a closed mangrove canopy seaward. The mangroves are up to 5m tall close to channel edges, especially for the stream in the south-west (north-west of Kainui Street). Shorter mangroves occupy the area landward of the channel margin due to the reduced nutrient availability.

There has been some use of vehicles across parts of intertidal flats (for removing mangroves and launching/ retrieving boats). Cockles are generally small. Some pipi are present. Pacific oysters are present in some areas. There are a number of areas of eroded saltmarsh shoreline, especially along the true left shore. There are localised examples of low retaining structures of various forms and a few patchy cut mangrove stumps. At the scale of mapping these areas are too small to be removed from the unit.

All the houses and other terrestrial environment are excluded from this unit. For much of the unit there is a moderate to low level of non-natural sounds depending on conditions and time of year. Close to Molesworth Drive the level of non-natural sounds increases. Sounds from bands practising and playing at the Molesworth Tavern can carry some distance in southerly winds.

Unit 36/40

This part of Mangawhai Harbour has been partly cut-off from the main part of the Harbour by the Molesworth Drive causeway and bridge. It is predominantly an aquatic unit.

Dominant cover types or habitat types include mangrove shrubland and treeland, saltmarsh, channel and intertidal flats. There are a few small patches of salt meadow and in the uppermost reaches there are some areas of brackish and freshwater wetland.

The Molesworth Drive and its associated causeway and bridge and the immediate surrounds are excluded from the Unit because of the immediate physical impacts of the causeway and bridge construction on the characteristics of the seabed, the cover type/ biota present and the movement of sediment. The impacts of non-natural sounds (traffic noise) are higher here as well. There was an ecological reset here in the mid twentieth century after construction of the causeway and bridge. More sediment has been deposited upstream of the bridge and this has provided increased habitat for mangroves which have consequently expanded. This is a natural biological response. The reduction of naturalness in sedimentation transport and deposition patterns has been addressed in the HGNI (Hydrological and Geomorphological Naturalness Index) part of the natural character scoring.

Along the main channel and extending to the shore the cover is firstly intertidal flats and then mangroves above mid tide. Where the shore is a rocky cliff the mangroves adjoined pohutukawa trees, especially in the case of the lower true right[8] margins. Where the shoreline slopes more gradually saltmarsh (primarily oioi and sea rush (*Juncus krausii)*) and saltmarsh ribbonwood typically occur inshore of the mangroves.

In the upper parts of the true left branch of this unit closed mangrove trees and shrubs adjoin the small channel with saltmarsh and some small patches of salt meadow inland of the mangroves. New housing development is taking place relatively close to the saltmarsh, which seems to be excluded from the properties (based on current fence locations). Upstream is an area of brackish wetland with cabbage trees emergent over *Coprosma propinqua*-and manuka, and flax in the lower tier.

In the upper true right branch of the unit there is extensive oioi dominant saltmarsh with some landward migration of mangroves (probably in response to sea-level rise). ~~Good numbers of fernbird were heard here.~~ Fernbirds are abundant. Downstream on the true left bank is low-intensity lifestyle subdivision with extensive covenants covering the manuka dominant forest (6-8m tall). This adjoins an extensive area of saltmarsh within the Unit. The upper reaches of a wetland lobe downstream of this lifestyle subdivision contains a cabbage tree freshwater wetland.

There are some pest plants on the immediate margins of some wetland areas. The most obvious species here is pampas.

Vegetation adjoining the unit includes pohutukawa trees on cliff edges; kanuka dominant forest with pines and wattles; mixed alien tree species; low manuka

dominant forest; low fertility gumland with scattered manuka, tangle fern, bracken and scattered rushes (*Macherina juncea*); and introduced grasses or pasture. Across Cove Road on the corner with King Road is the Molesworth Conservation Area (part of unit 36/41) which is an upstream continuation of this unit for the true right branch of Tara Creek.

Excluded from the unit are the terrestrial margins including forest and shrubland, pasture, roads and causeways, housing and commercial developments.

Excluding the area close to Molesworth Drive and to a lesser extent Cove Road, the sound and light naturalness regime for most of the unit is high.

Unit 36/45

This part of Mangawhai Harbour has been partly cut-off from the main part of the Harbour by the Insley Street causeway and bridge. It is predominantly an aquatic unit. There are two main channels and associated intertidal flats, and a relatively extensive area of mangroves and saltmarsh. The mangrove extent has increased following the construction of the causeway.

Mangroves are up to 6m tall on the channel margins in the lower reaches of the unit with shorter mangroves landward of the channels due to reduced nutrient availability. The saltmarsh includes oioi, sea rush (*Juncus krausii*) and marsh ribbonwood. In some locations saltmarsh grades into flax (indicates more freshwater influence). There are very few pest plants.

Several areas of freshwater wetland lie just outside the unit (adjoining and south of Clarke Road, and south of the Kedge Drive residential development, and upstream of Moir Street). The freshwater ponds and their narrow wetland margins south of Kedge Drive have been established for “fish and wildlife purposes” and include the valuable native waterbird species, scaup and dabchick. Over time this area may become sufficiently natural to be included within the main unit.

Upstream of Moir Street there is an area of freshwater wetland comprising 2-4m tall manuka and cabbage trees over flax- raupo- rushes (especially *Elaeocharis*)-*Coprosma propinqua*. Apart from some weed infestation on the true right margin, most of the wetland is in good condition

Excluded from the unit are the terrestrial margins with pasture (farmland), roads, causeways and bridges, mown grass (domain and walkway), housing, a school, and other community buildings and facilities. The natural character scoring includes the adverse effects on natural character from the following human-mediated changes to hydrological and geomorphic naturalness: increased nutrients and sediment from catchment land uses; and increased local sedimentation resulting from the causeway changing estuary hydraulics.

There was an ecological reset following increased local sedimentation upstream of Insley Street following the construction of the causeway.

Excluding the area close to Insley Street causeway and bridge, and to a lesser extent Moir Street, the sounds and light naturalness regime for the unit is generally high, although there may be exceptions from time to time such as events at the domain or the school.

Attachment D

Parties' positions on outstanding issues – post-hearing

<table>
<tr><th>Notified version</th><th>Decisions version</th><th>Northland Regional Council (closing position)</th><th>Royal Forest and Bird Protection Society of New Zealand</th><th>Minister of Conservation</th><th>CEP Services</th><th>Mangawhai Harbour Restoration Society</th><th>Federated Farmers of New Zealand</th></tr>
<tr><td colspan="8">Policy D.2.15 Managing adverse effects on natural character, outstanding natural landscapes and outstanding natural features</td></tr>
<tr>
<td>No equivalent in the notified version of the Proposed Plan.</td>
<td>D.2.15 Managing adverse effects on natural character, outstanding natural landscapes and outstanding natural features

Manage the adverse effects of activities on natural character, outstanding natural landscapes and outstanding natural features by:

1) avoiding adverse effects of activities as follows:

Table 15: Adverse effects to be avoided
<table>
<tr><th>Place / value</th><th>Location of the place</th><th>Effects to be avoided</th></tr>
<tr><td>Areas of outstanding natural character</td><td>Coastal marine area and fresh waterbodies in the coastal environment.</td><td>Adverse effects on the characteristics, qualities and values that contribute to make the place outstanding.</td></tr>
<tr><td colspan="2">Outstanding natural features</td><td>Make the place outstanding</td></tr>
<tr><td colspan="2">Outstanding natural seascapes</td><td>Coastal marine area</td></tr>
<tr><td>Natural character</td><td>The coastal marine area and freshwater bodies</td><td>Significant adverse effects on the characteristics, qualities and values that contribute to natural character</td></tr>
<tr><td>Outstanding natural features</td><td>Fresh waterbodies outside the coastal environment.</td><td>Significant adverse effects on the characteristics, qualities and values that contribute to make the natural feature outstanding.</td></tr>
</table>
2) recognising that in relation to natural character in waterbodies (where not identified as outstanding natural character), appropriate methods of avoiding, remedying or mitigating adverse effects may include:
a) ensuring the location, intensity, scale and form of activities is appropriate having regard to natural elements and processes, and
b) in areas of high natural character in the coastal marine area, minimising to the extent practicable indigenous vegetation clearance and modification (seabed and foreshore disturbance, structures, discharges of contaminants), and</td>
<td>D.2.15 Managing adverse effects on natural character, outstanding natural landscapes and outstanding natural features

[As per Forest & Bird]</td>
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<tr><td>Areas of outstanding natural character

Outstanding natural features

Outstanding natural landscapes</td><td>Coastal marine area and fresh waterbodies in the coastal environment.</td><td>Adverse effects on the characteristics, qualities and values that contribute to make the place outstanding.</td></tr>
<tr><td>~~Outstanding natural Seascapes~~</td><td>~~Coastal marine area.~~</td><td></td></tr>
<tr><td>Natural character (includes high natural character)

Other natural features and landscapes</td><td>The coastal marine area and freshwater bodies in the coastal environment.</td><td>Significant adverse effects on the characteristics, qualities and values that contribute to natural character or other natural features and landscapes.</td></tr>
<tr><td>Natural character

Outstanding natural features

Outstanding natural landscapes</td><td>Fresh waterbodies outside the coastal environment.</td><td>Significant adverse effects on the characteristics, qualities and values that contribute to natural character or which make the natural feature or landscape outstanding.</td></tr>
</table>
2) recognising that in relation to natural character in waterbodies and the coastal environment (where not identified as outstanding natural character), appropriate methods of avoiding, remedying or mitigating adverse effects may include:</td>
<td>D.2.15 Managing adverse effects on natural character, outstanding natural landscapes and outstanding natural features

[As per Forest & Bird]</td>
<td>D.2.15 Managing adverse effects on natural character, outstanding natural landscapes and outstanding natural features

[As per Forest & Bird]</td>
<td>-</td>
<td>D.2.15 Managing adverse effects on natural character, outstanding natural landscapes and outstanding natural features

[As per Forest & Bird]</td>
</tr>
</table>

Notified version	Decisions version	Northland Regional Council (closing position)	Royal Forest and Bird Protection Society of New Zealand	Minister of Conservation	CEP Services	Mangawhai Harbour Restoration Society	Federated Farmers of New Zealand
Policy D.2.15 Managing adverse effects on natural character, outstanding natural landscapes and outstanding natural features							
	c) in freshwater, minimising to the extent practicable modification (disturbance, structures, extraction of water and discharge of contaminants), and 3) recognising that in relation to outstanding natural features in water bodies outside the coastal environment, appropriate methods of avoiding, remedying or mitigating adverse effects may include: a) requiring that the scale and intensity of bed disturbance and modification is appropriate, taking into account the feature's scale, form and vulnerability to modification of the feature, and 21 b) requiring that proposals to extract water or discharge contaminants do not significantly adversely affect the characteristics, qualities and values of the outstanding natural feature, and 4) recognising that uses and development form part of existing landscapes, features and waterbodies and have existing effects.		a) ensuring the location, intensity, scale and form of activities is appropriate having regard to natural elements and processes, and b) in areas of high natural character in the coastal environment ~~marine area~~, minimising to the extent practicable indigenous vegetation clearance and modification (seabed and foreshore disturbance, structures, discharges of contaminants), and c) in freshwater, minimising to the extent practicable modification (disturbance, structures, extraction of water and discharge of contaminants), and 3) recognising that in relation to outstanding natural features in water bodies outside the coastal environment, appropriate methods of avoiding, remedying or mitigating adverse effects may include: a) requiring that the scale and intensity of bed disturbance and modification is appropriate, taking into account the feature's scale, form and vulnerability to modification of the feature, and 21 b) requiring that proposals to extract water or discharge contaminants do not significantly adversely affect the characteristics, qualities and values of the outstanding natural feature, and 4) recognising that uses and development form part of existing landscapes, features and waterbodies and have existing effects.				
D.2.18 Precautionary approach to managing effects on significant indigenous biodiversity							
D.2.8 Precautionary approach to managing effects on significant indigenous biodiversity Where there is scientific uncertainty about the adverse effects of activities on: 1) species listed as threatened or at risk in the New Zealand Threat Classification System, or 2) the values ranked high in the: a) Significant Ecological Areas, and b) Significant Bird Areas, and c) Significant Marine	**D.2.18 Precautionary approach to managing effects on significant indigenous biodiversity** Where there is scientific uncertainty about the adverse effects of activities on: 1) species listed as Threatened or At Risk in the New Zealand Threat Classification System including those identified by reference to the Significant Bird Area and Significant Marine Mammal and Seabird Area maps (refer Maps), or 2) any values ranked high by the Significant Ecological Areas maps (Refer Maps), then the greatest extent of adverse effects reasonably predicted by science, must be given the most weight.	**D.2.18 Precautionary approach to managing effects on significant indigenous biodiversity** ~~Where there is scientific uncertainty about the adverse effects of activities on:~~ ~~1) species listed as Threatened or At Risk in the New Zealand Threat Classification System including those identified by reference to the Significant Bird Area and Significant Marine Mammal and Seabird Area maps (refer Maps), or~~ ~~2) any values ranked high by the Significant~~	**D.2.18 Precautionary approach to managing effects on significant indigenous biodiversity** ~~Where there is scientific uncertainty about the adverse effects of activities on:~~ ~~1) species listed as Threatened or At Risk in the New Zealand Threat Classification System including those identified by reference to the Significant Bird Area and Significant Marine Mammal and Seabird Area maps (refer Maps), or~~ ~~2) any values ranked high by the Significant Ecological Areas maps (Refer Maps), then the greatest extent of adverse effects reasonably predicted by science, must be given the most weight.~~ Decision makers adopt a precautionary approach where the adverse effects of proposed activities are uncertain, unknown, or little understood, on: • indigenous biodiversity, including significant ecological areas, significant bird areas and other areas that are assessed as significant under the criteria in Appendix 5 of the Regional Policy Statement; and • the coastal environment, where the adverse effects are potentially significantly adverse.	**D.2.18 Precautionary approach to managing effects on significant indigenous biodiversity** **[Decisions Version]** **or** (1) Where the use and management of coastal resources are potentially vulnerable to effects from climate change; or (2) Where the adverse effects of proposed activities are uncertain, unknown or little understood, but potentially significant, on: (a) species listed as Threatened or At Risk in the New Zealand Threat Classification System including those identified by reference to the Significant Ecological Area, Sea Bird Area and Significant Marine	**D.2.18 Precautionary approach to managing effects on significant indigenous biodiversity** **[No preference in terms of general wording, but seeks that the policy applies to:** "the values and characteristics of areas of indigenous vegetation and habitats of indigenous fauna that are assessed as significant using the assessment criteria in Appendix 5 of the Regional Policy Statement including those identified by the Significant Ecological	**D.2.18 Precautionary approach to managing effects on significant indigenous biodiversity** **[Delete D.2.18]** **MHRS considers:** • The Council's revised version is an improvement on the Decisions Version, but from a fundamental planning perspective, there is no need for a policy seeking to describe the "precautionary approach" because that is established at law and in higher-order documents such as the NZCPS. • The latest revisions now proposed to Council's position	**D.2.18 Precautionary approach to managing effects on significant indigenous biodiversity** Where the adverse effects of proposed activities ~~there is scientific~~ are uncertain~~ty~~, unknown, or little understood, but potentially significant ~~about the adverse effects of activities~~ on: 1) species listed as Threatened or At Risk in the New Zealand Threat Classification System including those identified by reference to the Significant Bird Area and Significant Marine Mammal and Seabird Area maps (refer Maps), or 2) the values and characteristics of areas of indigenous vegetation and

Notified version	Decisions version	Northland Regional Council (closing position)	Royal Forest and Bird Protection Society of New Zealand	Minister of Conservation	CEP Services	Mangawhai Harbour Restoration Society	Federated Farmers of New Zealand
Policy D.2.15 Managing adverse effects on natural character, outstanding natural landscapes and outstanding natural features							
Mammal and Seabird Areas, then the greatest extent of adverse effects reasonably predicted by science, must be given the most weight.		~~Ecological Areas maps (Refer Maps), then the greatest extent of adverse effects reasonably predicted by science, must be given the most weight.~~ Decision makers adopt a precautionary approach where the adverse effects of proposed activities are uncertain, unknown, or little understood, on: • indigenous biodiversity, including significant ecological areas, significant bird areas and other areas that are assessed as significant under the criteria in Appendix 5 of the Regional Policy Statement; and • the coastal environment, where the adverse effects are potentially significantly adverse, particularly in relation to coastal resources vulnerable to the effects of climate change. The precautionary approach involves decision makers: • using the best available information; • not using the lack of scientific certainty as a reason for not imposing preventative measures; and • where there is incomplete or uncertain information, favouring environmental protection.	particularly in relation to coastal resources vulnerable to the effects of climate change. The precautionary approach involves decision makers: • using the best available information; • not using the lack of scientific certainty as a reason for not imposing preventative measures; and • where there is incomplete or uncertain information, favouring environmental protection.	Mammal and Seabird Area maps (refer Maps); or (b) the values and characteristics of areas of indigenous vegetation and habitats of indigenous fauna that are assessed as significant using the assessment criteria in Appendix 5 of the Regional Policy Statement including those identified by the Significant Ecological Areas maps (refer Maps); Persons making decisions must take a precautionary approach so that: (a) lack of scientific certainty is not used as a reason for not acting; (b) the best available information is used; (c) the information is interpreted in a way that favours environmental protection; and (d) in coastal areas potentially vulnerable to effects from climate change: (i) avoidable social and economic loss and harm to communities does not occur; (ii) natural adjustments for coastal processes, natural defences, ecosystems, habitat and species are allowed to occur; and (iii) the natural character, public access, amenity and other values of the coastal environment meet the needs of future generations.	Area maps (Refer Maps);" **or, alternatively that it applies to:** Indigenous biodiversity, including significant ecological areas and significant bird areas;]	highlight further selective amendments and compromises sought by parties seeking to include such a Policy for their own reasons, but the Policy is not consistent with the "precautionary approach" at law/NZCPS (as discussed in MHRS' submissions on this topic). • The existence of Policy D.2.18, in addition to the general precautionary principle (inherent in law), is problematic, unnecessary, and may lead to confusion and conflict. That confusion and conflict should be avoided by the deletion of Policy D.2.18.	habitats of indigenous fauna that are assessed as significant using the assessment criteria in Appendix 5 of the Regional Policy Statement including those identified ~~any values ranked high~~ by the Significant Ecological Areas maps (Refer Maps), and apply a precautionary approach ~~then the greatest extent of adverse effects reasonably predicted by science, must be given the most weight~~.