

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENVC-

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under Clause 14, Schedule 1 of the Act

BETWEEN **AQUACULTURE NEW ZEALAND**, the trading name of New Zealand Aquaculture Limited a duly incorporated company having its registered office at Level 1, Wakatu House, 28 Montgomery Square, Nelson 7010, New Zealand

Appellant

AND **NORTHLAND REGIONAL COUNCIL**

Respondent

NOTICE OF APPEAL
Dated this 17th day of June 2019

Next Event Date:
Judicial Officer:

GASCOIGNE WICKS
LAWYERS
BLENHEIM

Solicitor: Amanda L Hills
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Notice of Appeal to Environment Court against decision on a proposed Plan

To: The Registrar
Environment Court
Auckland

Name of Appellant and Decision Maker

- 1 Aquaculture New Zealand (AQNZ), the trading name of New Zealand Aquaculture Limited, of Nelson, appeals against part of the decision of the Northland Regional Council on the Proposed Regional Plan for Northland (proposed Plan).
- 2 AQNZ is the representative body for the New Zealand aquaculture industry, and is an industry organisation under the Commodity Levies Act 1990.
- 3 AQNZ made a submission on the proposed Plan.

Trade Competition

- 4 The Appellant is not a trade competitor for the purposes of s 308D of the Act.

Date of Decision appealed against

- 5 The decision was made on 16 April 2019.

Date on which Notice of Decision was received by Appellant

- 6 The Appellant received notice of the decision on Saturday 4 May 2019.

The Decision

- 7 The parts of the decision that AQNZ is appealing is:
 - (a) Rule C.1.3.1 – Re-consenting aquaculture (not finfish) – controlled activity;
 - (b) Rule C.1.3.2 – Re-consenting aquaculture (not finfish) in a significant area – restricted discretionary activity;
 - (c) Rule C.1.3.5 – Re-consenting finfish aquaculture – discretionary activity, in relation to whether these rules encompass all consents necessary for aquaculture activities; and
 - (d) Rule C.1.3.11 – Relocation of aquaculture within the Waikare Inlet and Parengarenga Harbour – discretionary activity, in relation to the words “extended structures”.

Reasons for the Appeal

- 8 The reasons for the appeal are as follows:
- (a) Rules C.1.3.1., C.1.3.2, and C.1.3.5 are intended to enable aquaculture which complies with identified standards as controlled, restricted discretionary and discretionary activities respectively. However, the rules refer only to enabling *occupation* of the CMA (as well as some ancillary activities). The *activity* of aquaculture and ancillary matters such as *structures* are not expressly provided for; and
 - (b) Rules C.1.3.1, C.1.3.2 and C.1.3.5, read literally, are internally inconsistent, in terms of the error outlined in paragraph 8(a) and the matters of control/discretion; and
 - (c) Rule C.1.3.11 makes an incorrect reference to extended structures being covered by the rule.

Incorrect interpretation of s 12(1)

- 9 The approach taken to rules C.1.3.1, C.1.3.2 and C.1.3.5 is inconsistent with the definition of “occupy” in s 2(1) of the Act. The occupation of the coastal marine area and the activity are two different things. No person may occupy the coastal marine area for the purposes of an aquaculture activity in terms of s 12(2), without also having consent to undertake relevant activities in terms of s 12(1).
- 10 The Council failed to include in the re-consenting rules all of the necessary elements under s 165ZH of the Act, which relates to the processing of applications for existing permit holders. For there to be a valid application for a new coastal permit for aquaculture, s 165ZH(1)(c) of the Act requires an applicant to seek:
- (a) A consent for occupation;
 - (b) A consent for an aquaculture activity; and
 - (c) All other ancillary consents necessary.
- 11 Rules C.1.3.1, C.1.3.2 and C.1.3.5 in the Decisions Version of the proposed Plan, read literally, only cover occupation (in terms of s 12(2)) and ancillary consents (deposition incidental to the activity under s 12(1)(d), and discharges incidental to the activity under s 15(1)). To enable a complete application for a new

coastal permit for an existing aquaculture activity, the relevant rules should include the activity itself, which includes the structures.

- 12 It may be that the rules as drafted, if interpreted in light of their purpose, encompass the activity and ancillary elements such as structures. This appeal seeks to clarify the matter.

Internal inconsistency

- 13 Rules C.1.3.1, C.1.3.2 and C.1.3.5, read literally, are internally inconsistent. The matters of control/discretion include the “Integrity of the structure” and “The need to upgrade, replace or remove any derelict or disused structures,” but the rules do not expressly enable those structures.

Rule C.1.3.11

- 14 Council has made an incorrect reference to “extended structures” in the list of activities covered by the rule. Rule C.1.3.11 relates to relocation of aquaculture, so the list of activities should refer to “structures,” rather than “extended structures.”

Relief Sought

- 15 The Appellant seeks the following relief:
- (a) Amendments to the relevant rules as set out in Schedule A to this notice;
and
 - (b) Any necessary consequential amendments; or
 - (c) Other equivalent relief.

Attached Documents

16 The following documents are **attached** to this notice:

- (a) A copy of AQNZ's submission;
- (b) A copy of the relevant parts of the decision; and
- (c) A list of names and addresses of persons to be served with a copy of this notice (at Schedule B).



Amanda L Hills
Solicitor for the Appellant

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Advice to recipients of copy of notice of appeal*How to become party to proceedings*

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

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

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see form 38*).

How to obtain copies of documents relating to appeal

If this appeal is being served on you in hardcopy, the copy of this notice served on you does not attach a copy of the appellant's submission or part of the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

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

SCHEDULE A

- Base text is the Decisions Version, with Commissioners’ recommendations accepted to remove tracking.
- Where the Appellant seeks additional text, this is shown in underline.
- Where the Appellant seeks to delete text, this is shown in ~~strikethrough~~.

Provision	Relevant part of provision	Relief sought
Rule C.1.3.1	Main body of rule	<p>Amend body of rule to read:</p> <p>An application for a new coastal permit <u>to replace a coastal permit</u> for the occupation of the common marine and coastal area for the purposes of an aquaculture activity, <u>the associated erection or placement of structures and any associated discharge</u> to replace a coastal permit is a controlled activity provided:</p> <p>....</p>
Rule C.1.3.1	List of activities covered by rule	<p>Amend the list of activities covered by the rule to read:</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • <u>Erection or placement of structures in, on, under or over any foreshore or seabed, any incidental disturbance of the foreshore or seabed, and any incidental deposition of a substance onto the foreshore or seabed (s12(1)).</u> • Deposition of shell and other biota onto the foreshore or seabed incidental to the activity (s12(1)). • Occupation of the common marine and coastal area by the aquaculture activity (s12(2)). • Discharge of sediment or water into water incidental to the activity (s15(1)).
Rule C.1.3.2	Main body of rule	<p>Amend the body of the rule to read:</p> <p>From 1 January 2020, an application for a new coastal permit <u>to replace a coastal permit</u> for the occupation of the common marine and coastal area for the purposes of an aquaculture activity, <u>the associated erection or placement of structures and any associated discharge</u> to replace a coastal permit in a mapped (refer I Maps Ngā mahere matawhenua):</p> <p>...</p>
Rule C.1.3.2	List of activities covered by rule	<p>Amend the list of activities covered by the rule to read:</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • <u>Erection or placement of structures in, on, under or over any foreshore or seabed, any incidental disturbance of the</u>

		<p><u>foreshore or seabed, and any incidental deposition of a substance onto the foreshore or seabed (s12(1)).</u></p> <ul style="list-style-type: none"> • Deposition of shell and other biota onto the foreshore or seabed incidental to the activity (s12(1)). • Occupation of the common marine and coastal area by the aquaculture activity (s12(2)). • Discharge of sediment or water into water incidental to the activity (s15(1)).
Rule C.1.3.5	Main body of rule	<p>Amend the body of the rule to read:</p> <p>An application for a new coastal permit to replace a coastal permit for the occupation of the common marine and coastal area for the purposes of a finfish aquaculture activity, <u>the associated erection or placement of structures</u> and any associated discharge, are discretionary activities, provided:</p> <p>....</p>
Rule C.1.3.5	List of activities covered by the rule	<p>Amend the list of activities covered by the rule to read:</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • <u>Erection or placement of structures in, on, under or over any foreshore or seabed, any incidental disturbance of the foreshore or seabed, and any incidental deposition of a substance onto the foreshore or seabed (s12(1)).</u> • Deposition of a substance onto the foreshore or seabed incidental to the activity (s12(1)). • Occupation of the common marine and coastal area by the aquaculture activity (s12(2)). • Discharge of a contaminant (including feed) or water into water associated with the aquaculture activities (s15(1)).
Rule C.1.3.11	List of activities covered by the rule	<p>Amend the list of activities covered by the rule to read:</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • Erection or placement of the extended structures in, on, under or over any foreshore or seabed, any incidental disturbance of the foreshore or seabed, and any incidental deposition of substances onto the foreshore or seabed (s12(1)). • Occupation of the common marine and coastal area with aquaculture activities (s12(2)). • Discharge of contaminants (including feed) or water into water associated with the aquaculture activities (s15(1)).