

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

Decision [2021] NZEnvC 093

IN THE MATTER OF

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)

Appellant

AND

NORTHLAND REGIONAL
COUNCIL

Respondent

On the papers: Judge J A Smith

Hearing: On the papers at Auckland

Last case event: Consent Memorandum filed 24 June 2021

Appearances: S T Shaw for CEP Services Matauwhi Limited and
Patuharakeke Te Iwi Trust Board and as agent for The Bay of
Island Maritime
M J Doesburg and E S Lake for Northland Regional Council
P D Anderson for Royal Forest and Bird Protection Society of
New Zealand Incorporated
K R M Littlejohn, J A Carnie and G E Gamboni for
Mangawhai Harbour Restoration Society Incorporated
S J Ongley and M Downing for the Minister of Conservation



CEP SERVICES MATAUWHI & ORS v NORTHLAND REGIONAL COUNCIL

K R M Littlejohn and T Baker for Northport Limited
P R Gardner for Federated Farmers of New Zealand
Incorporated
H Rogan, I Southey and S Plowman for New Zealand Fairy
Tern Charitable Trust

Date of Decision: 1 July 2021

Date of Issue: 1 July 2021

FINAL DECISION OF THE ENVIRONMENT COURT

- A: The Plan maps are to be modified with the addition of the maps annexed hereto in Appendix 1.
- B: The wording of the Plan is to be amended to the extent shown in the underlined version wording and strike out wording replaced in Appendix 2 hereto.
- C: The parties have not addressed questions of cost but no applications have been filed to date.
- D: Any application for costs to be filed within 10 working days. Any reply within a further 10 working days and the final reply, if any, five working days thereafter. An application for costs is not encouraged.

REASONS

Introduction

[1] In its substantive decision¹ issued on 1 April 2021, this Court concluded that the Plan should be modified in accordance with its decision, with provisions to be circulated between the parties on the basis that if no agreement could be reached the Court would finalise the wording.

Progress

[2] The parties sought and obtained an extension to the date for filing a consent

¹ *CEP Services Matanwhi Limited & Ors v Northland Regional Council [2021] NZEmC 039.*

agreement. A joint memorandum providing agreed final provisions on significant ecological area maps in relation to Topic 11: Biodiversity and Outstanding Natural Features/Landscapes was filed on 24 June 2021. It is filed by all the substantive parties to this matter and agrees on both the Significant Ecological Area maps (SEA) which are annexed hereto and marked as Appendix 1 and agreed Policies D.2.15 and D.2.18 which is now renumbered as Policies D.2.17 and D.2.20 respectively.

[3] In short, the parties are satisfied that the provisions represent a resolution in terms of the Court's decision in relation to both SEA maps, for Russell Peninsula and Hokianga Harbour and also the final wording now renumbered for Policies D.2.17 and D.2.20 which are Appendix 2.

[4] The SEA maps are shown in two colours, being blue for the areas within the CMA and red for those on land. We have no particular comment in this regard and it appears sensible that they be differentiated for practical purposes even though there is an ecotone between the land and CMA areas. The maps and Appendix 1 are confirmed and I directed that they are to be substituted and placed within the Regional Plan as soon as practicable.

Evaluation

[5] In respect of the final agreed wording provisions, these are intended to reflect the decision of the Court, although the final wording has been the matter of further negotiation between the parties. In my view, there is nothing that is contrary to the decision in the wording and its term seem to provide additional clarity.

[6] I am also satisfied that in considering these provisions, the various aspect of the public interest have been represented.

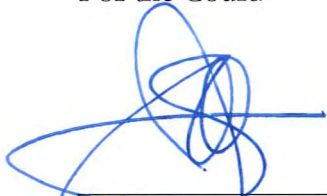
Outcome

[7] Accordingly, I am able to confirm the consent memorandum and incorporate these provisions in this final decision.

[8] Accordingly:

- (a) The Plan maps are to be modified with the addition of the maps annexed hereto Appendix 1;
- (b) The wording of the Plan is to be amended to the extent shown in the underlined version wording and strike out wording replaced in Appendix 2 hereto; and
- (c) The parties have not addressed questions of cost but no applications have been filed to date.
- (d) Any application for costs to be filed within 10 working days. Any reply within a further 10 working days and the final reply, if any, five working days thereafter. An application for costs is not encouraged.

For the Court:

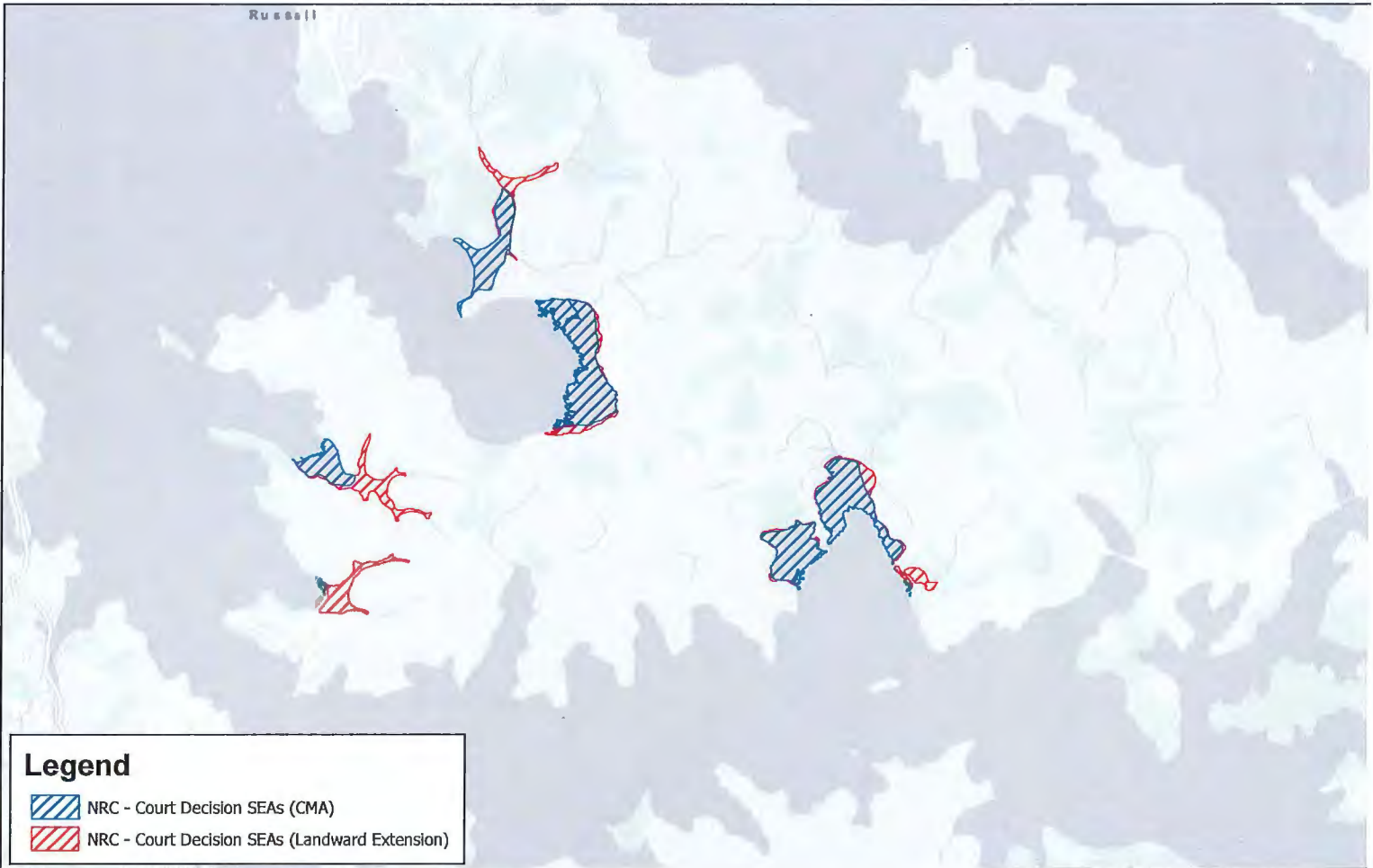


J A Smith
Environment Judge





**APPENDIX 1: FINAL AGREED SIGNIFICANT ECOLOGICAL AREA
MAPPING**

Russell





Legend

-  NRC - Court Decision SEAs (CMA)
-  NRC - Court Decision SEAs (Landward Extension)

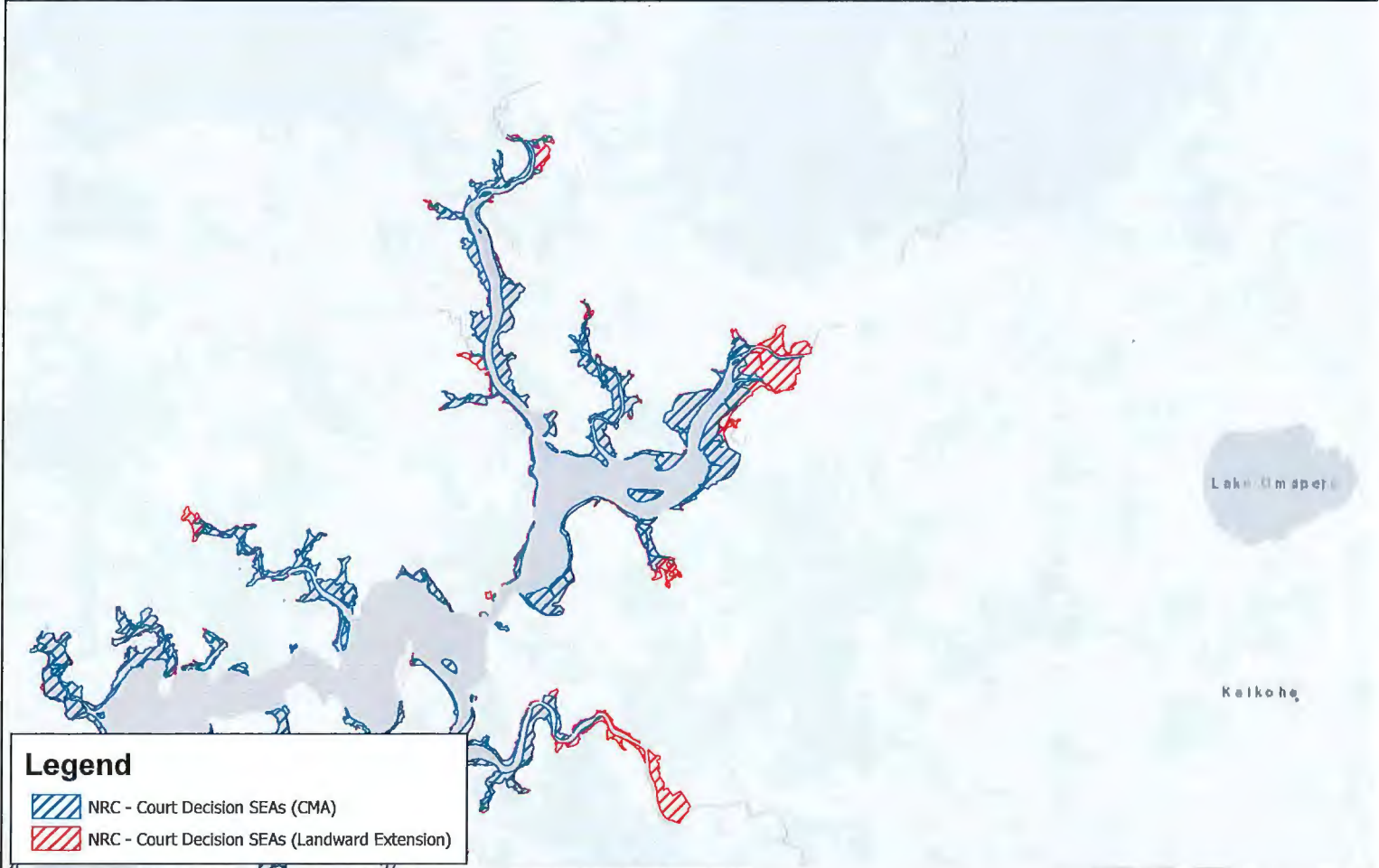


Russell Peninsula - SEA



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June 23 201





Legend

-  NRC - Court Decision SEAs (CMA)
-  NRC - Court Decision SEAs (Landward Extension)

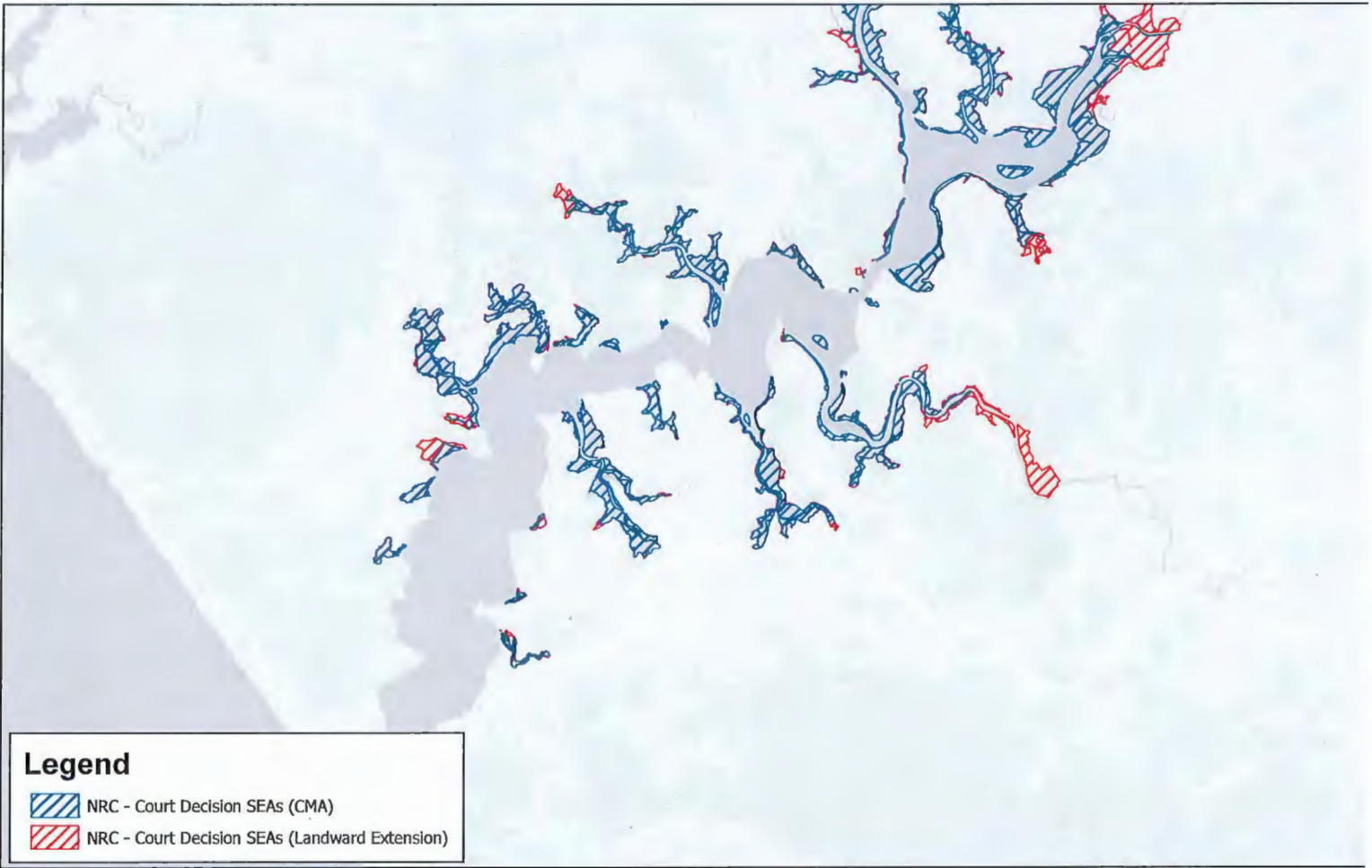


Hokianga Harbour - SEA



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Legend

-  NRC - Court Decision SEAs (CMA)
-  NRC - Court Decision SEAs (Landward Extension)



Hokianga Harbour - SEA

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APPENDIX 2: FINAL AGREED PROVISIONS

D.2.17 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 <u>Outstanding natural landscapes</u>	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.
<u>Outstanding natural Seascapes</u>	<u>Coastal marine area.</u>	
Natural character (includes high natural character) <u>Other natural features and landscapes</u>	The coastal marine area and freshwater bodies <u>in the coastal environment.</u>	Significant adverse effects on the characteristics, qualities and values that contribute to natural character <u>or other natural features and landscapes.</u>
<u>Natural character</u> Outstanding natural features <u>Outstanding natural landscapes</u>	Fresh waterbodies outside the coastal environment.	Significant adverse effects on the characteristics, qualities and values that contribute to <u>natural character or which</u> make the natural feature <u>or landscape</u> outstanding.

- 2) recognising that, in relation to natural character in water bodies 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 marine area, minimising to the extent practicable indigenous vegetation clearance and modification (seabed and foreshore disturbance, structures, discharges of contaminants), and
 - c) in fresh water, 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
 - 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 water bodies and have existing effects.

D.2.20 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:

- 1) 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
- 2) the coastal environment where the adverse effects are potentially significantly adverse, particularly in relation to coastal resources vulnerable to the effects of climate change.