

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

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

Decision [2022] NZEnvC 119

IN THE MATTER OF an appeal under clause 14 of Schedule 1
of the Resource Management Act 1991

BETWEEN

MANGAWHAI HARBOUR
RESTORATION SOCIETY

(ENV-2019-AKL-110)

FEDERATED FARMERS OF NEW
ZEALAND

(ENV-2019-AKL-114)

HORTICULTURE NEW ZEALAND

(ENV-2019-AKL-116)

MINISTER OF CONSERVATION

(ENV-2019-AKL-122)

Appellants

AND

NORTHLAND REGIONAL
COUNCIL

Respondent

Court: Environment Judge J A Smith
Commissioner R M Bartlett

Hearing: On the papers
Last case event: 29 April 2022

Date of Decision: 30 June 2022
Date of Issue: 30 June 2022



DECISION OF THE ENVIRONMENT COURT

- A: In relation to Rule C.8.2.1 Land preparation – permitted activity, the Proposed Regional Plan for Northland is to be amended as set out in **Appendix 1**.
- B: In relation to Rule C.8.3.1 Earthworks – permitted activity, the Proposed Regional Plan for Northland is to be amended as shown in **Appendix 1**.
- C: In relation to Rule C.8.4.1, the Proposed Regional Plan for Northland is to be amended as set out in **Appendix 2**. There is no order as to costs in relation to this matter.

REASONS

Introduction

[1] On 3 June 2021, the Court issued a consent order relating to the provisions that had been resolved prior to the hearing on Topic 7 Discharges to land and water and Topic 9 Land use and disturbance activities of the Proposed Regional Plan for Northland (**Proposed Plan**).

[2] The Court also made an interim decision on 3 June 2021 on the Topic 7 and 9 provisions that were heard in September 2020.¹ The parties filed a memorandum outlining their final preferred provisions and reasons on 6 August 2021. The determination of the final provisions was pending the Court’s final decision, including the Court’s determination on the definition of “īnanga spawning site”. This definition was also relevant to Topic 16 on which parties made extensive submissions on the definition and application of “īnanga spawning sites”.

¹ [2021] NZEnvC 77.

[3] The Court has now confirmed that the definition of inanga spawning site is as follows:²

The margins of rivers and estuaries that are inundated by spring high tides.

Advice Note: In the context of this definition “margins of rivers and estuaries that are inundated at spring high tide” refers to the area of land adjacent to the water in a river or estuary that is not normally covered in water, but that is covered in water during high tides near full and new moon, when the tidal range is at its highest. This occurs twice a month all year round

Rule C.8.2.1 Land preparation – permitted activity

Agreed changes

[4] The parties are agreed on some minor changes to Rule C.8.2.1 Land preparation – permitted activity. These include:

- (a) the wording of the chapeau in the Decisions Version of Rule C.8.2.1(2) should be retained as “The activity is not undertaken: ...” rather than the Court’s interim decision proposal of “The setback for land preparation is: ...”. While the parties understand the Court’s concern that Rule C.8.2.1(2) contains a “double negative”,³ the parties’ proposed drafting is consistent with the rest of Rule C.8.2.1 and consistent with the framing of similar rules in the Proposed Plan;
- (b) the requirement that land preparation not occur on “erosion prone land” should be included as a general requirement in C.8.2.1(2), rather than being an exclusion in C.8.2.1(2)(b). The proposed drafting in the Interim Decision would enable land preparation on erosion prone land throughout the region, unless it occurs near a waterbody or natural wetland. The parties consider that it is inappropriate to undertake land preparation on erosion prone land as a permitted activity. No party sought to remove the general restriction on land preparation on erosion

² *Federated Farmers of New Zealand v Northland Regional Council* [2022] NZEnvC 104.

³ [2021] NZEnvC 77 at [110].

prone land and no reasons are given in the Interim Decision for the change;

- (c) the references to the 10 metre setbacks from īnanga spawning sites, lake beds, natural wetlands and beds of continually or intermittently flowing rivers have been separated to separate clauses. This approach is considered clearer and allows for easier cross-referencing;
- (d) the exception for land preparation within 10 metres of continually or intermittently flowing rivers relating to the requirements of regulations 50 and 55 of the Resource Management (Natural Environmental Standards for Freshwater) Regulations 2020 (**NES-F**) is proposed to be deleted. This is because many of the requirements of regulations 50 and 55 are specific to natural wetlands and not applicable to continually or intermittently flowing rivers. Land preparation within 10 metres of a natural wetland is expressly restricted under Rule C.8.2.1 (other than for horticulture activities, as addressed below); and
- (e) the proposal to merge Rule C.8.2.1(3) into C.8.2.1(2) has not been adopted.⁴ No party sought to delete or amend Rule C.8.2.1(2) (which provides a limited exception for land preparation for horticulture activities). The parties confirmed at the hearing that there was no scope to amend that provisions.⁵ The limited exception has been amended to clarify that it does not provide an exception in relation to the new setback from īnanga spawning sites.

Outstanding issue

[5] One issue remains outstanding between the parties in relation to Rule C.8.2.1 Land preparation – permitted activity. The issue is whether a further clause should be added to require horticulture activities to comply with regulation 55 of the NES-F, if such activities are undertaken within 10 metres of a natural wetland.

⁴ [2021] NZEnvC 77 at [111].

⁵ Legal submissions for the Minister of Conservation at [16].

The Council's position

- [6] The Council does not support including a further clause as described above:
- (a) as noted above, the parties confirmed that there was no scope to alter the application of Rule C.8.2.1(3). A new clause that changes the application of Rule C.8.2.1(3) is beyond the scope of appeals;
 - (b) the further clause is intended to remove potential conflict between Rule C.8.2.1 and the NES-F (which requires horticulture activities within 10 metres of a natural wetland to comply with regulations 50 and 55). It is the Council's role under section 44A of the RMA to remove duplication and conflict between its plans and the NES-F, rather than the role of the Court on appeal. There is no gap to be plugged in the meantime. Until duplication and conflict is removed, section 43B of the RMA provides that the NES-F prevails; and
 - (c) the Council's intended approach to removing duplication and conflict is different to that in the proposed further clause. Rather than providing detailed exclusions in every rule of the Proposed Plan, the Council intends to provide a provision at the start of each relevant chapter clarifying how the Proposed Plan and NES-F integrate. Including the proposed further clause will cut across the Council's proposed approach.

Horticulture New Zealand's position

[7] Horticulture New Zealand supports the position of the Council. As while in principle, Horticulture New Zealand is not opposed to the further clause (on the basis that it effectively restates the requirements of the respective provisions in the NES-F), it agrees that it is the Council's role under section 44A of the RMA to remove duplication and conflict between its plans and the NES-F, rather than the role of the Court on appeal.

Federated Farmer's position

[8] Federated Farmers supports the Council's position.

Minister of Conservation's position

[9] The Minister seeks to add clause 3A) and considers that the Council's position takes an unduly narrow approach to scope. The Minister considers that if the opportunity is not taken to remove inconsistency with the NES-F at this time, readers of the plan will be unaware that the 'exception' contained in Rule C.8.2.1⁶ is not unconstrained.

Evaluation

[10] This issue has now been addressed in other topics including Topic 15. Provided the general qualifier clause is identified in the Plan relating to Council adopting the stated interim position pending the review to remove conflicts we see no need for further alterations.

[11] As a matter of record, though strictly unnecessary in light of the above, we conclude we have no jurisdiction to make the addition sought by the Minister. Quite simply the issue was not addressed in the Plan or in any submission.

[12] We conclude that there should be no further change beyond those agreed as are shown in **Appendix 1**.

Rule C.8.3.1 Earthworks – permitted activity

[13] The parties have agreed on the wording of Rule C.8.3.1 Earthworks – permitted activity, as shown in **Appendix 1**.

Rule C.8.4.1

[14] It came to the parties' attention that the wording of Rule C.8.4.1 Vegetation clearance and coastal dune restoration within the coastal riparian and foredune management area – permitted activity had been agreed, but was inadvertently omitted from the consent order drafted by the parties and subsequently approved by the Court in June 2021.

⁶ For persons that comply with the Erosion and Sediment Control Guidelines for Vegetable Production 2014 (Horticulture New Zealand).

[15] The parties filed a joint memorandum dated 29 April 2022 seeking that the Court make an order under section 279(1)(b) of the Act and approve the agreed wording for Rule C.8.4.1.

Agreement reached

[16] Rule C.8.4.1 enables vegetation clearance and coastal dune restoration in the coastal riparian and foredune management area and any associated damming, diversion and discharge of stormwater onto or into land where it may enter water as a permitted activity, subject to conditions.

[17] Rule C.8.4.1 was appealed by the Public and Population Health Unit of the Northland District Health Board (**NDHB**) and Mangawhai Harbour Restoration Society (**MHRS**). Following mediation, NDHB agreed to no longer pursue their appeal.

[18] Rule C.8.4.1 requires any person undertaking coastal dune restoration or vegetation clearance on coastal dunes to give 10 working days' notice to the Council and the Department of Conservation (**DOC**) before starting the works.

[19] MHRS sought to reduce the timeframe for that notice from 10 working days to five working days. MHRS also sought to amend condition (4) as follows:

(4) There is no disturbance of indigenous or migratory bird nesting sites between 1 September and 28 February (inclusive) to avoid disturbance of birds during breeding, roosting and nesting periods

[20] Following mediation, the parties agreed to amend the notification requirements in condition (6) and (7) so that the Council and DOC is given:

... at least 10 working days' notice (in writing or by email) of the week when any works will start ~~date of any works~~ ...

[21] The parties agreed not to amend condition (4).

Sections 32 and 32AA

[22] In terms of section 32 and section 32AA, the parties consider that the amendments are appropriate because:

- (a) they are minor amendments which retain the intent of the provision;
- (b) the amendments preserve the 10 working days' notice timeframe, meaning that sufficient notice is still provided to the Council and DOC; and
- (c) the amendments provide a level of flexibility to persons undertaking activities in accordance with the rule so that the activity may occur during a nominated week, as opposed to a precise start date. This is desirable as the precise start date may change after notice is given, for example due to inclement weather.

[23] Overall, the changes meet the concerns of the Court expressed in its earlier interim decision and in light of the determined definition of inanga spawning sites.

Section 44A

[24] Section 44A of the Act provides that where there is conflict or duplication between rules in a plan or proposed plan and a National Environmental Standard (**NES**), the Council is required to amend the proposed plan to remove the conflict or duplication without using the process in Schedule 1 and as soon as practicable.⁷ A conflict arises where a rule is more stringent or more lenient than a NES and the NES does not expressly say that it can be.⁸

[25] The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-F**) is relevant to Rule C.8.4.1 as it contains regulations relating to vegetation clearance in proximity to natural wetlands, which rules in the Proposed Plan must not conflict with.

⁷ Resource Management Act 1991, section 44A(5).

⁸ Resource Management Act 1991, section 44A(2).

[26] Rule C.8.4.1 has the potential to conflict with the NES-F as Rule C.8.4.1 enables vegetation clearance within the “coastal riparian and foredune management area”, which is defined by the Proposed Plan as:

- 1) any land within a horizontal distance of 10 metres landward from the coastal marine area, or
- 2) the land between the coastal marine area and the bottom of the landward side of the foredune, where the land adjacent to the coastal marine area is vegetated or unvegetated sand dunes.

[27] Given the location of the coastal riparian and foredune management area, it is possible that vegetation clearance may be enabled within or within 10m of a natural wetland (whether that wetland is on land or in the coastal marine area).

[28] The parties acknowledge the Court’s comments in its decision on Topics 3 and 4 that the obligation to remove conflict is imposed on the Council rather than on the Court, but that “it would be unrealistic of this Court to include Plan provisions which would immediately need to be changed by the Council without using the Schedule 1 process”.⁹

[29] The parties consider that the amendments sought by consent to resolve Rule C.8.4.1 do not create conflict with the NES-F nor increase any existing conflict with the Proposed Plan. In other words, conflict between Rule C.8.4.1 and the NES-F will need to be addressed by the Council under section 44A of the Act at a later stage. This reasoning also applies to the disputed change to C.8.2.1 discussed earlier.

[30] The parties requested that the Court approve the agreed amendments, rather than wait for the Council to amend the Proposed Plan to remove conflict and duplication under s 44A of the Act.

Consideration

[31] Rule C.8.4.1 is about vegetation clearance on vegetated coastal dunes and coastal dune restoration in the coastal riparian and foredune management area. The

⁹ *Minister of Conservation v Northland Regional Council* [2021] NZEnvC 001 at [48].

wording as proposed concerns the Court somewhat as it refers to simply “vegetation clearance and coastal dune restoration” which to our minds does not clearly limit vegetation clearance to the dunes but includes the riparian and foredune management area. Also, the rule uses variable terminology: “coastal sand dunes”, “dunes”, “coastal dunes”.

[32] The Court concludes that:

- (a) the rule should read: “vegetation clearance of coastal dunes and coastal dune restoration...”;
- (b) terminology should be consistent and unambiguous throughout;
- (c) according to paragraph [18] above, both the Council and the Department of Conservation are to be given 10 days’ notice of both vegetation clearance of coastal dunes or coastal dune restoration. 7) as agreed by the parties has the Department of Conservation being informed of dune restoration but not vegetation clearance.

[33] The Court has amended Rule C.8.4.1 to reflect the above.

Order

[34] In relation to Rule C.8.4.1, the Court orders that the Proposed Regional Plan for Northland be amended as set out in **Appendix 2**.

[35] There is no order as to costs in relation to this matter.

Outcome

[36] In relation to:

- (a) Rule C.8.2.1 Land preparation – permitted activity, the Proposed Regional Plan for Northland is to be amended as set out in **Appendix 1**;
- (b) Rule C.8.3.1 Earthworks – permitted activity, the Proposed Regional Plan for Northland is to be amended as shown in **Appendix 1**; and

- (c) Rule C.8.4.1, the Proposed Regional Plan for Northland is to be amended as set out in **Appendix 2**. There is no order as to costs in relation to this matter.

For the Court:



J A Smith
Environment Judge



Appendix 1

Parties' positions on outstanding issues – 6 August 2021

The parties proposed amendments are shown highlighted yellow in underline and strikethrough as changes to the Court's interim decision version.

Amendments agreed by all parties and approved by consent order dated 3 June 2021 are shown highlighted green in underline and strikethrough.

Decisions version	Environment Court interim decision (3 June 2021)	Northland Regional Council position	Federated Farmers of New Zealand	Horticulture NZ	Minister of Conservation
<p>Rule C.8.2.1 Land preparation – permitted activity</p> <p>Land preparation and any associated damming and diversion of stormwater, and discharge of stormwater into water or onto or into land where it may enter water, are permitted activities, provided:</p> <ol style="list-style-type: none"> the activity is not undertaken in the catchment of an outstanding lake or a dune lake with outstanding or high ecological value, and the activity is not undertaken: <ol style="list-style-type: none"> on erosion-prone land, or within five metres of a natural wetland, the bed of a lake, or the bed of a continually or intermittently flowing river, and if the land preparation is associated with horticulture and clause 2) is not complied with, it is undertaken in accordance with the Erosion and Sediment Control Guidelines for Vegetable Production 2014 (Horticulture New Zealand), and any associated diversion and discharge of stormwater does not give rise to any of the following effects in the receiving waters beyond the zone of reasonable mixing: <ol style="list-style-type: none"> any conspicuous change in colour or visual clarity, or rendering fresh water unsuitable for consumption by farm animals. <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> Land preparation (s9(2)) Damming and diversion of stormwater associated with land preparation (s14(2)). Discharge of stormwater associated with land preparation into water or onto or into land where they may enter water (s15(1)). 	<p>Rule C.8.2.1 Land preparation – permitted activity</p> <p>Land preparation and any associated damming and diversion of stormwater, and discharge of stormwater into water or onto or into land where it may enter water, are permitted activities, provided:</p> <ol style="list-style-type: none"> the activity is not undertaken in the catchment of an outstanding lake or a dune lake with outstanding or high ecological value, and The setback for land preparation is: <ol style="list-style-type: none"> 10 metres from inanga spawning sites, lakes beds and natural wetlands; 10 metres from the bed of a continually or intermittently flowing river unless: <ol style="list-style-type: none"> the land preparation area is not on erosion prone land; and the mean slope of the paddock adjoining the riverbed is 10 degrees or less; and sediment control measures are installed and maintained in accordance with the Erosion and Sediment Control Guidelines for Vegetable Production 2015 (Horticulture New Zealand); and the relevant requirements of standards 50 and 55 of the Resource Management (Natural Environmental Standards for Freshwater) Regulations 2020 are complied with; any associated diversion and discharge of stormwater does not give rise to any of the following effects in the receiving waters beyond the zone of reasonable mixing: <ol style="list-style-type: none"> any conspicuous change in colour or visual clarity, or 	<p>Rule C.8.2.1 Land preparation – permitted activity</p> <p>Land preparation and any associated damming and diversion of stormwater, and discharge of stormwater into water or onto or into land where it may enter water, are permitted activities, provided:</p> <ol style="list-style-type: none"> the activity is not undertaken in the catchment of an outstanding lake or a dune lake with outstanding or high ecological value, and the activity is not undertaken. The setback for land preparation is: <ol style="list-style-type: none"> <u>on erosion-prone land; or</u> <u>within 10 metres from of inanga spawning sites, lakes beds and natural wetlands; or</u> <u>within 10 metres of lake beds; or</u> <u>within 10 metres of natural wetlands; or</u> <u>within 10 metres from of the bed of a continually or intermittently flowing river unless:</u> <ol style="list-style-type: none"> the land preparation area is not on erosion prone land; and <u>the mean slope of the paddock adjoining the riverbed is 10 degrees or less; and</u> sediment control measures are installed and maintained in accordance with the Erosion and Sediment Control Guidelines for Vegetable Production 2015 (Horticulture New Zealand); the relevant requirements of standards 50 and 55 of the Resource Management (Natural Environmental Standards for Freshwater) Regulations 2020 are complied with; <p>in which case the setback may be reduced to 5 metres.</p> <p><u>3) if the land preparation is associated with horticulture and clause 2)a), 2)c), 2d) or 2)e) is not complied</u></p>	<p>Rule C.8.2.1 Land preparation – permitted activity</p> <p>Land preparation and any associated damming and diversion of stormwater, and discharge of stormwater into water or onto or into land where it may enter water, are permitted activities, provided:</p> <ol style="list-style-type: none"> the activity is not undertaken in the catchment of an outstanding lake or a dune lake with outstanding or high ecological value, and the activity is not undertaken. The setback for land preparation is: <ol style="list-style-type: none"> <u>on erosion-prone land; or</u> <u>within 10 metres from of inanga spawning sites, lakes beds and natural wetlands; or</u> <u>within 10 metres of lake beds; or</u> <u>within 10 metres of natural wetlands; or</u> <u>within 10 metres from of the bed of a continually or intermittently flowing river unless:</u> <ol style="list-style-type: none"> the land preparation area is not on erosion prone land; and <u>the mean slope of the paddock adjoining the riverbed is 10 degrees or less; and</u> <u>sediment control measures are installed and maintained in accordance with the Erosion and Sediment Control Guidelines for Vegetable Production 2015 (Horticulture New Zealand);</u> the relevant requirements of standards 50 and 55 of the Resource Management (Natural Environmental Standards for Freshwater) Regulations 2020 are complied with; <p>in which case the setback may be reduced to 5 metres.</p> <p><u>3) if the land preparation is associated with horticulture and clause 2)a), 2)c), 2d) or 2)e) is not complied</u></p>	<p>Rule C.8.2.1 Land preparation – permitted activity</p> <p>Land preparation and any associated damming and diversion of stormwater, and discharge of stormwater into water or onto or into land where it may enter water, are permitted activities, provided:</p> <ol style="list-style-type: none"> the activity is not undertaken in the catchment of an outstanding lake or a dune lake with outstanding or high ecological value, and the activity is not undertaken. The setback for land preparation is: <ol style="list-style-type: none"> <u>on erosion-prone land; or</u> <u>within 10 metres from of inanga spawning sites, lakes beds and natural wetlands; or</u> <u>within 10 metres of lake beds; or</u> <u>within 10 metres of natural wetlands; or</u> <u>within 10 metres from of the bed of a continually or intermittently flowing river unless:</u> <ol style="list-style-type: none"> the land preparation area is not on erosion prone land; and <u>the mean slope of the paddock adjoining the riverbed is 10 degrees or less; and</u> <u>sediment control measures are installed and maintained in accordance with the Erosion and Sediment Control Guidelines for Vegetable Production 2015 (Horticulture New Zealand);</u> the relevant requirements of standards 50 and 55 of the Resource Management (Natural Environmental Standards for Freshwater) Regulations 2020 are complied with; <p>in which case the setback may be reduced to 5 metres.</p> <p><u>3) if the land preparation is associated with horticulture and clause 2)a), 2)c), 2d) or 2)e) is not complied</u></p>	<p>Rule C.8.2.1 Land preparation – permitted activity</p> <p>Land preparation and any associated damming and diversion of stormwater, and discharge of stormwater into water or onto or into land where it may enter water, are permitted activities, provided:</p> <ol style="list-style-type: none"> the activity is not undertaken in the catchment of an outstanding lake or a dune lake with outstanding or high ecological value, and the activity is not undertaken. The setback for land preparation is: <ol style="list-style-type: none"> <u>on erosion-prone land; or</u> <u>within 10 metres from of inanga spawning sites, lakes beds and natural wetlands; or</u> <u>within 10 metres of lake beds; or</u> <u>within 10 metres of natural wetlands; or</u> <u>within 10 metres from of the bed of a continually or intermittently flowing river unless:</u> <ol style="list-style-type: none"> the land preparation area is not on erosion prone land; and <u>the mean slope of the paddock adjoining the riverbed is 10 degrees or less; and</u> <u>sediment control measures are installed and maintained in accordance with the Erosion and Sediment Control Guidelines for Vegetable Production 2015 (Horticulture New Zealand);</u> the relevant requirements of standards 50 and 55 of the Resource Management (Natural Environmental Standards for Freshwater) Regulations 2020 are complied with; <p>in which case the setback may be reduced to 5 metres.</p> <p><u>3) if the land preparation is associated with horticulture and clause 2)a), 2)c), or 2)e) is not complied with, it is undertaken in accordance with</u></p>

Decisions version	Environment Court interim decision (3 June 2021)	Northland Regional Council position	Federated Farmers of New Zealand	Horticulture NZ	Minister of Conservation
	<p>b) rendering fresh water unsuitable for consumption by farm animals.</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> Land preparation (s9(2)) Damming and diversion of stormwater associated with land preparation (s14(2)). Discharge of stormwater associated with land preparation into water or onto or into land where they may enter water (s15(1)). 	<p><u>with, it is undertaken in accordance with the Erosion and Sediment Control Guidelines for Vegetable Production 2014 (Horticulture New Zealand), and</u></p> <p>4) any associated diversion and discharge of stormwater does not give rise to any of the following effects in the receiving waters beyond the zone of reasonable mixing:</p> <ol style="list-style-type: none"> any conspicuous change in colour or visual clarity, or rendering fresh water unsuitable for consumption by farm animals. <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> Land preparation (s9(2)) Damming and diversion of stormwater associated with land preparation (s14(2)). Discharge of stormwater associated with land preparation into water or onto or into land where they may enter water (s15(1)). 	<p><u>with the Erosion and Sediment Control Guidelines for Vegetable Production 2014 (Horticulture New Zealand), and</u></p> <p>4) any associated diversion and discharge of stormwater does not give rise to any of the following effects in the receiving waters beyond the zone of reasonable mixing:</p> <ol style="list-style-type: none"> any conspicuous change in colour or visual clarity, or rendering fresh water unsuitable for consumption by farm animals. <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> Land preparation (s9(2)) Damming and diversion of stormwater associated with land preparation (s14(2)). Discharge of stormwater associated with land preparation into water or onto or into land where they may enter water (s15(1)). 	<p><u>with, it is undertaken in accordance with the Erosion and Sediment Control Guidelines for Vegetable Production 2014 (Horticulture New Zealand), and</u></p> <p>4) any associated diversion and discharge of stormwater does not give rise to any of the following effects in the receiving waters beyond the zone of reasonable mixing:</p> <ol style="list-style-type: none"> any conspicuous change in colour or visual clarity, or rendering fresh water unsuitable for consumption by farm animals. <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> Land preparation (s9(2)) Damming and diversion of stormwater associated with land preparation (s14(2)). Discharge of stormwater associated with land preparation into water or onto or into land where they may enter water (s15(1)). 	<p><u>the Erosion and Sediment Control Guidelines for Vegetable Production 2014 (Horticulture New Zealand), and</u></p> <p>4) any associated diversion and discharge of stormwater does not give rise to any of the following effects in the receiving waters beyond the zone of reasonable mixing:</p> <ol style="list-style-type: none"> any conspicuous change in colour or visual clarity, or rendering fresh water unsuitable for consumption by farm animals. <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> Land preparation (s9(2)) Damming and diversion of stormwater associated with land preparation (s14(2)). Discharge of stormwater associated with land preparation into water or onto or into land where they may enter water (s15(1)).

Decisions version	Environment Court interim decision (3 June 2021)	Northland Regional Council position	Federated Farmers of New Zealand	Horticulture NZ	Minister of Conservation
<p>Rule C.8.3.1 Earthworks – permitted activity</p> <p>Earthworks outside the bed of a river, lake, wetland and the coastal marine area, and any associated damming and diversion of stormwater and discharge of stormwater onto or into land where it may enter water, are permitted activities provided:</p> <ol style="list-style-type: none"> the area and volume of earthworks at a particular location or associated with a project complies with the thresholds in Table 13: 	<p>Rule C.8.3.1 Earthworks – permitted activity</p> <p>Earthworks outside the bed of a river, lake, wetland, <u>inanga spawning site</u> and the coastal marine area, and any associated damming and diversion of stormwater and discharge of stormwater onto or into land where it may enter water, are permitted activities provided:</p> <ol style="list-style-type: none"> the area and volume of earthworks at a particular location or associated with a project complies with the thresholds in Table 13: 	<p>All parties agree with the Environment Court interim decision.</p>	<p>All parties agree with the Environment Court interim decision.</p>	<p>No position.</p>	<p>All parties agree with the Environment Court interim decision.</p>

Table 13: Permitted activity earthworks thresholds

Location	Earthworks thresholds
Within 10m of a natural wetland, the bed of a continually or intermittently flowing river or lake	200 square metres of exposed earth at any time, and 50 cubic metres of moved or placed earth in any 12-month period.
Catchment of an outstanding lake	2500 square metres of exposed earth at any time.
Erosion-prone land	2500 square metres of exposed earth at any time.
High-risk flood hazard area	50 cubic metres of moved or placed earth in any 12-month period.
Coastal riparian and foredune management area	Excluding for coastal dune restoration, 200 square metres of exposed earth at any time.
Flood hazard area	100 cubic metres of moved or placed earth in any 12-month period.
Other areas	5000 square metres of exposed earth at any time.

- 2) the discharge is not within 20 metres of a geothermal surface feature, and
- 3) good management practice erosion and sediment control measures equivalent to those set out in the Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region 2016 (Auckland Council Guideline Document GD2016/005), are implemented for the duration of the activity, and
- 4) batters and side castings are stabilised to prevent slumping, and
- 5) exposed earth is stabilised upon completion of the earthworks to minimise erosion and avoid slope failure, and
- 6) earth and debris are not deposited into, or in a position where they can enter, a natural

Table 13: Permitted activity earthworks thresholds

Location	Earthworks thresholds
Within 10m of a natural wetland, the bed of a continually or intermittently flowing river or lake	200 square metres of exposed earth at any time, and 50 cubic metres of moved or placed earth in any 12-month period.
<u>Within 10m of an Inanga spawning site</u>	<u>200 square metres of exposed earth at any time, and 50 cubic metres of moved or placed earth in any 12-month period.</u>
Catchment of an outstanding lake	2500 square metres of exposed earth at any time.
Erosion-prone land	2500 square metres of exposed earth at any time.
High-risk flood hazard area	50 cubic metres of moved or placed earth in any 12-month period.
Coastal riparian and foredune management area	Excluding for coastal dune restoration, 200 square metres of exposed earth at any time.
Flood hazard area	100 cubic metres of moved or placed earth in any 12-month period.
Other areas	5000 square metres of exposed earth at any time.

- 2) the discharge is not within 20 metres of a geothermal surface feature, and
- 3) except for coastal dune restoration activities, good management practice erosion and sediment control measures equivalent to those set out in the Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region 2016 (Auckland Council Guideline Document GD2016/005), are implemented for the duration of the activity, and

<p>wetland, a continually or intermittently flowing river, a lake, an artificial watercourse, or the coastal marine, and</p> <p>7) the earthworks activity does not:</p> <ul style="list-style-type: none"> a) reduce the height of a dune crest in a coastal riparian and foredune management area, except where dunes are recontoured to remove introduced materials or to remediate dune blow-outs as part of coastal dune restoration work, or b) exacerbate flood or coastal hazard risk on any other property, or c) create or contribute to the instability or subsidence of land on other property, or d) divert flood flow onto other property, and <p>8) any associated damming, diversion and discharge of stormwater does not give rise to any of the following effects in the receiving waters beyond the zone of reasonable mixing:</p> <ul style="list-style-type: none"> a) any conspicuous change in colour or visual clarity, or b) the rendering of fresh water unsuitable for consumption by farm animals, and <p>9) clean fill material and its location within the disposal site are recorded and provided to the Regional Council on request, and</p> <p>10) the Regional Council's Compliance Manager is given at least five working days' notice (in writing or by email) of any earthworks activity being undertaken within a high-risk flood hazard area, flood hazard area, where contaminated land will be exposed, or in sand dunes within a coastal riparian and foredune management area.</p> <p>Notes: Work affecting archaeological sites is subject to an authority process under the Heritage New Zealand Pouhere Taonga Act 2014. If any activity could modify, damage or destroy any archaeological</p>	<ul style="list-style-type: none"> 4) batters and side castings are stabilised to prevent slumping, and 5) exposed earth is stabilised upon completion of the earthworks to minimise erosion and avoid slope failure, and 6) earth and debris are not deposited into, or in a position where they can enter, a natural wetland, a continually or intermittently flowing river, a lake, an artificial watercourse, or the coastal marine, and 7) the earthworks activity does not: <ul style="list-style-type: none"> a) reduce the height of a dune crest in a coastal riparian and foredune management area, except where dunes are recontoured to remove introduced materials or to remediate dune blow-outs as part of coastal dune restoration work, or b) exacerbate flood or coastal hazard risk on any other property, or c) create or contribute to the instability or subsidence of land on other property, or d) divert flood flow onto other property, and 8) any associated damming, diversion and discharge of stormwater does not give rise to any of the following effects in the receiving waters beyond the zone of reasonable mixing: <ul style="list-style-type: none"> a) any conspicuous change in colour or visual clarity, or b) the rendering of fresh water unsuitable for consumption by farm animals, and or c) contamination which may render freshwater taken from a mapped priority drinking water abstraction point (refer to Maps Ngā mahere matawhenua) unsuitable for human consumption after existing treatment, and 9) information on the source and composition of any clean fill material and its location within the disposal site are recorded and provided to the Regional Council on request, and 				
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<p>site(s), an authority (consent) from Heritage New Zealand must be obtained for the work to proceed lawfully.</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • Earthworks (s9(2)). • Damming and diversion of stormwater associated with earthworks (s14(2)). • Discharge of stormwater associated with earthworks into water or onto or into land where it may enter water (s15(1)). 	<p>10) the Regional Council's Compliance Manager is given at least five working days' notice (in writing or by email) of any earthworks activity being undertaken within a high-risk flood hazard area, flood hazard area, where contaminated land will be exposed, or in sand dunes within a coastal riparian and foredune management area.</p> <p>Notes:</p> <p>1) Work affecting archaeological sites is subject to an authority process under the Heritage New Zealand Pouhere Taonga Act 2014. If any activity could modify, damage or destroy any archaeological site(s), an authority (consent) from Heritage New Zealand must be obtained for the work to proceed lawfully.</p> <p>2) This rule enables progressive closure and stabilisation works being utilised as part of a continuing project to remain within the permitted thresholds.</p> <p>3) The thresholds identified within Table 13 Permitted Activity Earthworks Thresholds apply to the land disturbance activity, irrespective of whether or not the activity occurs on 'contaminated land' or 'potentially contaminated land'. Discharges from 'contaminated land' or 'potentially contaminated land' are provided for under Section C.6.8 Contaminated Land, while the territorial authority is responsible for managing the disturbance of contaminated land.</p> <p>For the avoidance of doubt this rule covers the following RMA activities:</p> <ul style="list-style-type: none"> • Earthworks (s9(2)). • Damming and diversion of stormwater associated with earthworks (s14(2)). • Discharge of stormwater associated with earthworks into water or onto or into land where it may enter water 				
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APPENDIX 2

C.8.4.1 ~~Vegetation clearance and~~ Coastal dune restoration within the coastal riparian and foredune management area – permitted activity

Vegetation clearance of coastal dunes and coastal dune restoration in the coastal riparian and foredune management area, and any associated damming and diversion of stormwater and discharge of stormwater onto or into land where it may enter water, are permitted activities, provided:

- 1) indigenous coastal dune vegetation is not removed or cleared, and
- 2) ~~excluding except during~~ coastal dune restoration, the area of cleared dune vegetation does not exceed 200 square metres in any 12-month period, and
- 3) for coastal dune restoration, cleared areas are replanted during the period 1 May to 30 September with indigenous dune vegetation as soon as practicable, but no later than two months after clearance, and
- 4) there is no disturbance of indigenous or migratory bird nesting sites, and
- 5) the vegetation clearance of coastal dunes does not exacerbate coastal hazard risks on other property, and
- 6) for vegetation clearance on coastal dunes or coastal dune restoration ~~or vegetation clearance on vegetated sand dunes~~, the Regional Council's Compliance Manager is given at least 10 working days' notice (in writing or by email) of the week when any works will start ~~date of any works~~, and
- 7) for vegetation clearance on coastal dunes or coastal dune restoration, the Department of Conservation is given at least 10 working days' notice (in writing or email) of the week when any works will start ~~start date of any works~~, and
- 8) any discharge of stormwater originating from the cleared area does not give rise to any of the following effects in the receiving waters beyond a 20 metre radius of the point of discharge:
 - a) any conspicuous change in colour or visual clarity, or
 - b) the rendering of fresh water unsuitable for consumption by farm animals.

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

- Vegetation clearance of coastal dunes and coastal dune restoration (s9(2)).
- Damming and diversion of stormwater associated with vegetation clearance of coastal dunes and coastal dune restoration (s14(2)).
- Discharge of stormwater associated with vegetation clearance of coastal dunes and coastal dune restoration into water or onto or into land where it may enter water (s15(1)).