

IN THE ENVIRONMENT COURT AT AUCKLAND

IN THE MATTER

**of an appeal under Clause 14 of
Schedule 1 of the Resource
Management Act 1991**

AND IN THE MATTER

**of the Proposed Regional Plan for
Northland**

BETWEEN

**Bay of Islands Maritime Park
Incorporated**

Appellant

AND

Northland Regional Council

Respondent

Notice of Appeal by the

Bay of Islands Maritime Park Incorporated

Dated 17 June 2019

To: The Registrar
Environment Court
Auckland

1. The Bay of Islands Maritime Park Incorporated ('BOIMP) appeals against Northland Regional Council's decision on the Proposed Regional Plan for Northland (PRPN or Proposed Regional Plan).
2. BOIMP made a submission on the Proposed Regional Plan and made further submissions on the submissions of others.
3. BOIMP is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. BOIMP was informed by Council via an email sent at 4.11pm on Friday 3 May 2019 that Council's decisions and the amended plan were available online. Council's website states that new 'decisions version' of the Proposed Regional Plan was officially publicly notified on Saturday, 04 May 2019 (<https://www.nrc.govt.nz/news/2019/may/updated-proposed-regional-plan-for-northland-publicly-notified/>)
5. The decisions were made by the Northland Regional Council.

PARTS OF DECISION APPEALED, REASONS FOR APPEAL, AND RELIEF SOUGHT

6. The parts of the decision that BOIMP is appealing are provisions relating to
 - a. Section C Rules- C1 Coastal activities
 - b. Section D Policies- D5 Coastal
 - c. Section D Policies- D6 Natural hazards
7. In addition to the reasons set out below, the general reasons for BOIMP's appeal are that the provisions appealed against:
 - a. do not give effect to the New Zealand Coastal Policy Statement (NZCPS);
 - b. are not consistent with Part 2 of the Resource Management Act ('the Act');
 - c. do not implement the Council's functions under s 30 of the Act; and/or

- d. do not represent best resource management practice.
8. The parts of the decision appealed, reasons for the appeal and relief sought are set out below. Where specific wording changes are proposed by way of relief, BOIMP seeks in such alternative wording only that which would adequately address the reasons for its appeal. BOIMP also seeks any consequential changes made necessary by the relief sought below.

SECTION C- RULES C1 COASTAL ACTIVITIES C.1.4 MANGROVE REMOVAL AND SECTION D.5.26 MANGROVE REMOVAL PURPOSE

Grounds of Appeal

9. The rules addressing mangrove removal in the Proposed Regional Plan – Decisions Version do not adequately recognise the value of the New Zealand mangrove as an indigenous species that has been in New Zealand for about 19 million years, nor that it primarily grows on public land within the upper intertidal of the coastal marine area. Mangroves (especially stands of larger trees growing along estuarine stream margins) are important for marine food webs. They play an important role in controlling shoreline erosion by reducing the speed of currents and moderating wave impacts. Mangrove primary productivity is high and their decomposition in sediment is relatively slow. They are important for sequestering carbon.
10. While the rule addressing the use of vehicles on the foreshore and seabed as part of mangrove removal is C.1.5.1, there should be greater specificity around situations where the use of vehicles is not allowed for this activity, especially given the likely resulting damage in many estuarine environments.
11. As they stand the rules around mangrove removal do not adequately address Part II of the Resource Management Act and, the NZCPS policies 11, 13, 14 and 15. For areas of outstanding natural character adverse effects are to be avoided (NZCPS 13 (1) (a)), rather than being mitigated or remedied. The Proposed Regional Plan -Decisions version considerably expanded the scope of areas and situations where mangrove removal would be a controlled activity (compared to the 2017 notified version). Allowing clearance as a controlled activity up to 200m² is not consistent with the NZCPS. Allowing the clearance of up to 500m² mangroves as a controlled activity outside of mapped areas of outstanding natural character or significant ecological areas is inappropriate given

that controlled activities cannot be declined even they are likely to result in significant environmental damage. In the notified proposed plan the 500m² allowance applied only to private land. The clearance allowances are not linked to time periods and so potentially large areas on both public and private land could be cleared as controlled activities.

12. Policies D.5.26 Mangrove removal-purpose; and D.5.27 Mangrove removal adverse effects need to be tightened to better protect natural character and ecological values.

Relief sought

13. Amend rule C.1.4.1 Mangrove seedling removal as follows:
 - a. The use of vehicles and other motorised machinery on the foreshore to transport people, tools and removed mangrove vegetation should not be a permitted activity. Refer to relief sought for C 1.5.1.
 - b. The maximum height of seedling removal as a permitted activity should be 40cm rather than 60cm.
 - c. The removal of seedlings in areas of high or outstanding natural character and/or areas of significant ecological value should be a discretionary activity to allow Council to consider the effects on natural character and ecological values.
14. Amend rule C.1.4.3 Mangrove removal as a controlled activity as follows
 - a. Areas of outstanding and high natural character and/or significant ecological sites, and/or outstanding natural landscapes or features should be excluded from this rule and instead any proposals to clear mangroves from these areas should generally be a discretionary activity
 - b. In areas of outstanding natural character, proposals for clearance should be treated as non-complying as adverse effects in these areas are to be avoided (NZCPS policy 13)
 - c. The clearance of mangroves on private intertidal land as a controlled activity should be restricted to 50m². This should also apply to public land as Northland Regional Council -decisions version changed this provision from what was notified.
15. Amend rule C.1.4.5 Mangrove removal as a discretionary activity as follows

The removal of mature mangroves within areas of outstanding natural features, outstanding landscapes, outstanding natural character and significant ecological areas should be a non-complying activity

16. Amend policies D. 5.26 Mangrove removal purpose and D.5.27 Mangrove removal-adverse effects to :
- a. Clearly distinguish between the effects caused by the removal of seedlings versus mature trees and shrubs
 - b. Include a requirement for applicants to demonstrate that the proposed mangrove removal would deliver the asserted benefits/ purpose(s) of mangrove removal

SECTION C-RULES C.1.5 Dredging, disturbance and disposal

Rule C.1.5.1 Use of vehicles on beaches and other activities that disturb the foreshore and seabed-permitted activity

Grounds of Appeal

17. Notwithstanding the list of nine “conditions” in C.1.5.1 there should be specified areas where vehicles are not allowed. The nine “conditions” do not adequately address wildlife disturbance including dotterel and other seabird nesting areas; nor do they make it clear that vehicles should not be used in duneland ecosystems except where there is an existing legal well -formed access road; nor should vehicles use the foreshore to access supratidal duneland ecosystems; and there is not adequate protection for estuarine habitats. While “condition 9” requires that vehicles do not drive over pipi and cockle beds, the location of these is not necessarily obvious to a casual observer driving a vehicle. This condition does not address other shellfish, although “condition 1” requires that there be no destruction of shellfish beds. Again this would be difficult for the casual vehicle driver to ascertain.
18. In addition “condition 1 requires that the use of a vehicle and other disturbance to the foreshore and seabed outside mapped areas of seagrass do not destroy “indigenous vegetation”. Indigenous vegetation is defined in the Proposed Regional Plan- Decisions Version (page 19) as: “ *Vegetation that occurs naturally in New Zealand or that arrived without human assistance*”. This is contrary to the rules providing for mangrove removal (section C.1.4). A New Zealand mangrove is an indigenous plant and collectively they form indigenous vegetation. New Zealand mangroves have been in New Zealand for approximately 19 million years and so clearly they were here well before humans.

Relief sought

19. That the Regional Plan delineate specific areas of foreshore and seabed (the intertidal and subtidal) where vehicles are not permitted. These areas include:

- a. The foreshore and seabed within and adjoining all wildlife sanctuaries, refuges and reserves under the Wildlife Act 1953, all conservation areas and other protected areas under the Conservation Act 1987 and all reserves under the Reserves Act 1977 except for surf lifesaving activity and similar
- b. Foreshore and seabed adjoining other identified native wildlife breeding and roosting sites identified in the Regional Plan maps
- c. Estuarine foreshore and seabed excluding boat launching sites and legal roads, as identified by Land Information New Zealand in cadastral mapping.

SECTION D-POLICIES D5 COASTAL

Grounds of Appeal

20. The Proposed Regional Plan- decisions version does not contain policies addressing the Regional Council's role in protecting marine ecosystems from the adverse effects of fishing activities. It has not adequately addressed section 30 and Part II of the Resource Management Act, nor policies 3, 11, 13, and 14 of NZCPS. The proposed plan is inconsistent with recent case law ([2018] NZEnvC 067 Motiti Rohe Moana Trust versus Bay of Plenty Regional Council).
21. Northland's rocky reefs are examples of marine ecosystems whose natural character and biodiversity values have been considerably reduced from their natural state, especially since the 1950's. Primary reasons for this are the removal or harvesting of marine biota; and in some locations increased sedimentation, increased suspended sediment and nutrients. One of the consequences of the high levels of fishing pressure has been the removal of a very high proportion of the predators of the sea urchin (*Evechinus chloroticus*) or kina. As a result urchin barrens have significantly increased in extent across Northland's shallow reefs at the expense of habitat-forming tall kelp forests. In northern New Zealand the only mechanism that has allowed the tall kelp forests to return over time has been the establishment of no-take protected areas.

Relief sought

22. Given that our submission 1) sought the inclusion of policies addressing the preservation of natural character and the regional Council's role in protecting marine ecosystems from the adverse effects of fishing activities; and (2) the plan does not include any methods; and (3) a policy that includes statements of action that would be performed by Council has been viewed by the Council & the Commissioners as a method rather than a

policy; therefore the inclusion of rules is a necessary consequence of the policy relief that we seek.

23. Add a new policy section

D.5.30 Protection of marine ecosystems, significant ecological values and natural character from the adverse effects of extractive fishing

1. *“Avoid adverse effects caused by the extraction of indigenous marine fauna and flora (extractive fishing) in areas with outstanding natural character and /or areas of significant ecological value (including marine SEA's).*
2. *Avoid significant adverse effects caused by the extraction of marine fauna and flora elsewhere in the coastal marine area.*
3. *Marine environments that have been significantly impacted by extractive fishing activities shall be restored to a more natural state/ higher level of natural character through restrictions on damaging activities.*

24. Include policies and/or rules to provide for the following:

4. *To provide a supportive process for considering nominations from organisations, and especially tangata whenua, of marine areas needing protection and restoration that they require being included in the Regional Plan. An additional option would be to use marine spatial planning to identify priority areas such as significant ecological sites where fishing method restrictions are required to protect and restore benthic environments and prevent damage to marine mammals and seabirds (see below).*
5. *For those areas that are agreed by tangata whenua as needing a higher level of protection/ restoration; the damage, destruction, removal of marine flora and fauna shall generally be prohibited so as to protect and restore natural character, protect indigenous biodiversity/ecosystems, and restore kaitiakitanga. An example of such an area would be the area encompassed by the current 1996 Fisheries Act s186A **temporary** closure for Maunganui Bay in the Bay of Islands. In this specific case kina or sea urchins (*Evechinus chloroticus*) can be taken.*
6. *Impose controls more generally for areas of high or outstanding natural character and /or significant ecological value, in relation to fishing methods that may damage the benthic environment or where they may impact particularly on sea birds or marine mammals.*

An example of such control could be a prohibition or non-complying status for dredging, purse-seining, Danish seining, bottom trawling, set netting and variations

to these methods). The Proposed Regional Plan - Decisions Version online maps of natural character have not been completed for parts of the open coast and so additional areas may be identified through future assessments.

SECTION D- POLICIES D6 NATURAL HAZARDS

Grounds of Appeal

- 25.** The natural hazards policies in the Proposed Regional Plan- decisions version do not adequately address future environmental challenges that may arise from climate change, including a less predictable climate, more intensive storm events and rises in sea level. The most recent research indicates that these changes may be significantly greater than those estimated in earlier assessments used by the Ministry for the Environment. The natural hazards policies do not adequately recognise the adverse effects of hard defences on coastal, aquatic and riparian natural character, and coastal and freshwater ecosystem structure and function. 'Hard defences' include: seawalls, river channelization and stop-banks, and the removal of river meanders and flood plain functioning.

Relief sought

- 26.** Amend existing D6 policies and/or include new policies that:
- a. Prioritise, in high risk locations, managed retreat over extensive and/or ongoing new hard defences
 - b. Clarify that 'soft defences' should be tried before 'hard defences' are approved. This includes retaining and restoring mangroves and saltmarsh as soft defences against sea level rise and storm surge.
 - c. Incorporate the most recent information on predicted future rates of sea level rise, storm surge and other environmental changes
 - d. Amend policy D.6.4 to recognise the significant adverse environmental effects that hard flood defences can have on wetlands and alluvial plain ecological sequences and their associated natural character
 - e. Provide for, as permitted activities, the reinstatement/restoration of natural meander channels, oxbow loops and natural floodplain vegetation and hydrosystem functioning. This approach to managing natural hazards can reduce downstream erosion and reduce the amount of sediment and nutrients discharged to the coastal marine area.

- f. Promote the removal or mitigation of hard flood defences and other infrastructural barriers preventing the inland migration of coastal ecosystems such as saltmarsh as sea levels rise.


ATTACHMENTS

26. The following documents are attached to this notice of appeal:

- a. A copy of the Report and Recommendations of the Hearing Commissioners (Appendix 'A');
- b. A copy of the relevant sections from the Proposed Regional Plan for Northland- Decisions version May 2019 – section C- rules C.1.4 mangrove removal and C.1.5.1 Use of vehicles on beaches and other activities that disturb the foreshore and seabed- permitted activity; and D policies- D5 Coastal and D6 Natural hazards (Appendix 'B')
- c. A list of names and addresses of persons to be served with a copy of this notice (Appendix 'C'); and
- d. A copy of BOIMP's submission to the Proposed Regional Plan for Northland ("Appendix 'D').
- e. A copy of BOIMP's further submissions to the Proposed Regional Plan for Northland ("Appendix 'E').

27. Parties served with a copy of this notice of appeal will not be served with the attachments, and may obtain a copy from the Appellant on request.

Dated: 17 June 2019



Chris Richmond

Co-secretary Bay of Islands Maritime Park Incorporated

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 (in [form 33](#)) 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*

The copy of this notice served on you does not attach a copy of the appellant's submission and (or or) the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.