

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**ENV-2019-AKL-**

**I MUA I TE KOOTI TAIAO  
I TĀMAKI MAKĀURAU ROHE**

**IN THE MATTER** of the Resource Management Act 1991  
(the Act)

**AND**

**IN THE MATTER** of an appeal pursuant to clause 14 of  
Schedule 1 to the Act in relation to a  
decision on the Proposed Northland  
Regional Plan

**BETWEEN** **The National Institute of Water and  
Atmospheric Research Limited**

Appellant

**AND**

**Northland Regional Council**

Respondent

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**NOTICE OF APPEAL**

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**ATKINS | HOLM | MAJUREY**

Vicki Morrison-Shaw  
PO Box 1585  
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AUCKLAND 1140

**TO:** The Registrar  
Environment Court  
AUCKLAND

1. The National Institute of Water and Atmospheric Research Limited (**NIWA**) appeals a decision on the Proposed Northland Regional Plan (**Proposed Plan**).
2. NIWA is a Crown Research Institute established in 1992. NIWA owns and operates the Northland Marine Research Centre at Bream Bay– a nationally and regionally significant aquaculture and marine science facility - which is located on an 8.4 ha site bordered by Station Road and Te One Street in Ruakaka.
3. NIWA has operated the Bream Bay facility since 2002 and has invested significant time, effort and expense into developing the facility which is acknowledged as a leader in its field. It is New Zealand's largest and most fit for purpose facility. It undertakes cutting edge research that has significantly contributed to the commercial development of aquaculture and marine science in New Zealand.
4. NIWA made a submission dated 27 October 2017 and two further submissions dated 23 March 2018 and 7 June 2018 respectively on the Proposed Plan.
5. NIWA is not a trade competitor for the purposes of section 308D of the Act.
6. NIWA also has an interest greater than the public generally as it owns and operates the Bream Bay facility, a regionally significant marine science and aquaculture facility, that relies on coastal water takes and discharges for its operation.
7. NIWA received notice of the decision on 3 May 2019.

8. The decision was made by Northland Regional Council (**Council**).
9. The parts of the decision that NIWA is appealing are:
  - (a) C.6.9 other discharges of contaminants;
  - (b) C.8.3.1 earthworks and Table 13 permitted activity earthworks thresholds;
  - (c) D.4.1 Maintaining overall water quality; and
  - (d) H.3.3 coastal water quality standards.

#### **REASONS FOR APPEAL**

10. While NIWA is generally supportive of the Proposed Plan provisions, NIWA considers that some change is required to ensure that the Proposed Plan:
  - (a) promotes the purpose of the Act being the sustainable management of resources (section 5);
  - (b) is not contrary to Part 2 and other provisions of the Act;
  - (c) is not contrary to other relevant planning documents; and
  - (d) will meet the reasonably foreseeable needs of future generations.
11. In particular, and without limiting the generality of paragraph 10 above:

#### **Proposed new discharge rule**

- (a) Provision of a separate discharge rule for water, aquaculture wastewater, stormwater is consistent with the approach taken by Council in providing a specific rule applying to discharges from other

aquaculture activities - shellfish harvesting, washing and sorting (C.6.9.5) and for stormwater (C.6.4.2).

- (b) Given the similarities in the discharge –mixed coastal water, organic material for marine fauna and stormwater - it is appropriate to use the same permitted activity standards that have been included in the shellfish rule (C.6.9.5). However, to ensure any such discharge does not cause any scouring or erosion a standard requiring that was also included in NIWA's proposed rule.
- (c) Inclusion of such a rule is consistent with the policy direction in the New Zealand Coastal Policy Statement 2010, and in particular:
  - (i) Policy 8, which requires that provision be made for aquaculture activities in appropriate places in regional coastal plans; and
  - (ii) Policy 12 which requires that appropriate controls (here the proposed permitted activity standards) be put in place for activities occurring in the coastal marine area with the potential for adverse effects.
- (d) Inclusion of such a rule is also consistent with policies in the Proposed Plan including:
  - (i) the requirement to maintain overall water quality (D.4.1);
  - (ii) the recognition of aquaculture benefits (D.5.1); and

- (iii) the avoidance of adverse and significant adverse effects of aquaculture (D.5.3 and D.5.4).

### **Earthworks**

- (e) While the Council's role in managing contaminated land is limited to discharges (C.6.8) with territorial authorities controlling contaminated land thresholds, an advice note to that effect in the permitted activity earthworks rule (C.8.3.1) would clarify that for all plan users.

### **Maintaining overall water quality and coastal water quality standards**

- (f) While the Council's decision on the Proposed Plan has sought to clarify that the relevant water quality standards (now in H.3.3) are guidelines and not standards, the revised wording of D.4.1. and H.3.3, has not achieved that.
- (g) The Council as a decision maker is only required to 'have regard to' the guidelines, it is not required to ensure their achievement. Policy D.4.1.(2) recognises this and just refers to Council having regard to the "coastal sediment quality guidelines in H.3". However, policy D.4.1(3) then goes on to state that the Council will "generally not grant a proposal if it will, or is likely to, exceed or further exceed a water quality standard in H.3". Confusingly, the relevant 'guidelines' are referred to both in D.4.1.(3) as a standard and again in H.3 as both "standards and guidelines" in the Policy hearing and "standards" in the policy itself. Further changes are required to clarify that the matters are guidelines not standards to be achieved.

**RELIEF SOUGHT**

12. NIWA seeks changes to the Proposed Plan provisions to:
  - (a) provide parity between the treatment of discharge activities with similar minor effects;
  - (b) clarify the application of the earthworks rules to contaminated land; and
  - (c) clarify the references to water quality guidelines.
13. NIWA considers that this could be achieved by:
  - (a) including a rule which provides for discharges of sea water, aquaculture wastewater and stormwater as a permitted activity, provided certain standards are met;
  - (b) adding an advice note to C.8.3.1 to clarify that contaminated land is covered by the permitted activity earthworks rule; and
  - (c) amending D.4.1 and H.3.3 to clarify that the water quality 'standards' are guidelines rather than standards.
14. NIWA has included in **Annexure A** some wording that it considers would address these matters. NIWA seeks that this wording or wording to similar effect be adopted.
15. NIWA also seeks:
  - (a) such further orders, relief, consequential or other amendments as may be necessary to address the concerns set out above; and
  - (b) costs.

**ATTACHMENTS**

16. The following documents are attached to this notice:
- (a) the specific relief sought (**Annexure A**);
  - (b) a copy of NIWA's submission and further submissions with a copy of the submissions opposed or supported by NIWA's further submission (**Annexure B**);
  - (c) a copy of the relevant decision (**Annexure C**); and
  - (d) a list of relevant names and addresses of persons to be served with a copy of this notice (**Annexure D**).

**DATE:** 14 June 2019

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**Vicki Morrison-Shaw**

Legal Counsel for The National  
Institute of Water and Atmospheric  
Research Limited

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**ADVICE TO RECIPIENTS OF COPY OF NOTICE**

*How to become party to proceedings*

You may be a party to the appeal if,—

- (a) within 15 working days after the period for lodging a notice of appeal ends, you 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

- (b) within 20 working days after the period for lodging a notice of appeal ends, you 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 requirements (see form 38).

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.

#### *Advice*

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



## ANNEXURE A – SPECIFIC RELIEF SOUGHT

1. NIWA seeks the inclusion of a new rule following rule C.6.9.4:

C.6.9.4A Discharge [from Bream Bay aquaculture and marine science facility OR of water, aquaculture wastewater and stormwater] - permitted activity

The discharge of water, aquaculture wastewater and stormwater [from the Bream Bay aquaculture and marine science facility] to coastal water is a permitted activity provided:

- 1) the discharge occurs into the coastal marine area via an authorised outfall structure; and
- 2) the discharge does not cause an accumulation of any material or other debris on the foreshore or seabed; and
- 3) the discharge does not cause any of the following effects 20 metres beyond the outfall discharge location:
  - a. a conspicuous change in the colour or visual clarity, or
  - b. an increase the temperature of the water by more than three degrees Celsius, or
  - c. the pH of fresh water to be outside the range of 6.58.5, or
  - d. the dissolved oxygen in water to be less than five milligrams per litre, or
  - e. the production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials, or
  - f. an emission of objectionable odour; or
  - g. the discharge does not cause any scouring or erosion of the coastal marine area.

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

- Discharge of contaminants, in the form of water, biodegradable or organic matter, and stormwater to coastal waters as a result of aquaculture activities (s15(1)(a)).
- Deposition of contaminants, in the form of water, biodegradable or organic matter, and stormwater on the foreshore or seabed incidental to aquaculture activities (s12(1)(d)).

2. NIWA seeks that an advice note be inserted after Rule C.8.3.1 and/or Rule C.6.8 and/or to clarify that contaminated land is covered by the earthworks rule;

Advice Note:

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.

3. NIWA seeks that Policy D.4.1 be amended to clarify that the water quality standards in H.3.3 are guidelines rather than matters that must be achieved:

*D.4.1 Maintaining overall water quality*

*When considering an application for a resource consent to discharge a contaminant into water:*

*1) have regard to the need to maintain the overall quality of water including the receiving waters physical, chemical and biological attributes and associated water quality dependent values, and*

*2) have regard to the coastal sediment quality guidelines in H.3 Water quality ~~standards and guidelines~~; and*

*~~3) generally not grant a proposal if it will, or is likely to, exceed or further exceed a water quality standard in H.3 Water quality standards and guidelines.~~*

4. NIWA seeks that Policy H.3.3 be amended to clarify that the water quality are guidelines rather than standards:

*Policy H.3.3 Coastal water quality ~~guidelines standards~~*

*The water quality ~~standards-guidelines~~ in Table 22: Water quality ~~standards~~ guidelines for ecosystem health in coastal waters, contact recreation and shellfish consumption apply to Northland's coastal waters, and they apply after allowing for reasonable mixing.*

*Table 22: Water quality guidelines for ecosystem health in coastal waters, contact recreation and shellfish consumption...*