

**BEFORE THE ENVIRONMENT COURT
AT CHIRSTCHURCH**

ENV-2018-AKL-

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14(1) of the First
Schedule of the Act in relation to the Whangarei
District Plan

BETWEEN

**ROYAL FOREST AND BIRD PROTECTION SOCIETY OF
NEW ZEALAND INCORPORATED**

Appellant

AND

WHANGAREI DISTRICT COUNCIL

Respondent

**NOTICE OF APPEAL BY THE ROYAL FOREST AND BIRD PROTECTION SOCIETY
OF NEW ZEALAND INCORPORATED**

1 March 2018

Royal Forest and Bird Protection Society of New Zealand Inc.
PO Box 2516
Christchurch 8140
Ph 03 9405524
Solicitor acting: Peter Anderson/Sally Gepp

TO: The Registrar
Environment Court
CHRISTCHURCH

INTRODUCTION

1. The Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest & Bird) appeals against part of the decisions of Whangarei District Council (Respondent) on the following plan changes to the Whangarei District Plan (the plan changes and the plan): Coastal Area (PC87); Landscapes (PC114); Rural Area (PC 85); Rural Production Environment (PC85A) Strategic Rural Industries Environment (PC85B); Minerals (PC102).
2. Forest & Bird made a submission and further submission on the plan changes, which progressed at the same time as part of a rolling review of the District Plan.
3. Forest & Bird is not a trade competitor for the purposes of s308D of the Resource Management Act 1991 ('RMA').
4. Forest & Bird received notice of the decision on 17 January 2018.
5. The decision was made by the Respondent.
6. Forest & Bird appeals the parts of the Respondent's decision relating to Coastal Area (PC87), Landscapes (PC114), Rural Area (PC 85), Rural Production Environment (PC85A) Strategic Rural Industries Environment (PC85B); Minerals (PC102).
7. Forest & Bird is willing to participate in mediation.

REASONS FOR THE APPEAL

General reasons

8. Forest & Bird says the plan changes:

- a. Does not promote the sustainable management of natural and physical resources under s5 RMA;
- b. Does not adequately recognise and provide for matters of national importance under s6 RMA, in particular s6(a), s6(b) and s6(c);
- c. Does not have adequate regard to the matters in s7 RMA, in particular s7(b), s7(c), s7(d), and s7(f);
- d. Represents a failure of the Respondent to fulfil its functions under s30 RMA;
- e. Does not give effect to the New Zealand Coastal Policy Statement 2010 ('NZCPS') or the Northland Regional Policy Statement as required under s62(3) RMA; and
- f. Does not provide for policies which are the most appropriate way to achieve the PRPS's objectives in terms of their efficiency and effectiveness and therefore is not appropriate in terms of s32 RMA.
- g. The rules use terms which are uncertain and / or subjective, such as contiguous and predominantly. These are not appropriate and are not used consistently in the plan. For example, some rules refer to the clearance of predominantly indigenous vegetation whereas other rules refer to the clearance of indigenous vegetation.

SPECIFIC REASONS

- 9. Without detracting from the generality of the above the following, specific reasons are advanced:

Coastal area

10. The Objectives and Policies set out in CA.1.2 and CA.1.3 do not give effect to the NZCPS, particularly, Policies 11 and 15, which provide for the avoidance of certain effects on indigenous biodiversity and landscape.
11. A policy was included in the Landscapes and Features section of the notified version that partially gave effect to Policy 15 of the NZCPS, but this was deleted by decisions. No policy was included to give effect to Policy 11 of the NZCPS.
12. Coastal Rule CA.2.3 is a discretionary rule relating to the clearance of predominantly indigenous vegetation in the coastal area. The use of the word “predominantly” is subjective and uncertain and should not be used in rules.
13. The decision included a new eligibility rules that excluded the operation of the coastal rules in the Quarrying Resource Area, the Strategic Rural Environment and the Oil Refinery Overlay area. This was done on the grounds:

In the Hearings Panel's view it is consistent with NZCPS policy 6.1.e and RPS 4.6.1 to recognise that Mineral Extraction Areas and SRIE are areas of existing activities which have need to be located near the mineral physical resource.
14. While it may be that the eligibility rules are consistent with the identified provisions, they are not consistent with more directive policies, such as Polices 11, 13 and 15 of the NZCPS.

Relief sought

15. Forest & Bird seeks new objectives to give effect to Policies 11 and 15 of the NZCPS. In relation to Policy 11 the objective sought is:

Protect indigenous biodiversity from adverse effects in the coastal area as set out in Policy 11 of the New Zealand Coastal Policy Statement 2010.

16. In relation to Policy 15 the following new objectives are sought.

Identify Outstanding Natural Features and Outstanding Natural Landscapes within the coastal area of Whangarei District in accordance with Policy 15 of the NZCPS

Avoid adverse effects on the characteristics and qualities of identified Outstanding Natural Features and Outstanding Natural Landscapes and avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment;

17. Forest & Bird also seeks a policy to give effect to Policy 11 of the NZCPS:

Protection indigenous biodiversity in the coastal environment by:

(a) avoiding adverse effects on:

- (i) indigenous taxa that are listed as threatened or at risk in the New Zealand Threat Classification System lists;
- (ii) taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;
- (iii) indigenous ecosystems and vegetation types that are threatened in the coastal environment, or are naturally rare;
- (iv) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;
- (v) areas containing nationally significant examples of indigenous community types; and
- (vi) areas set aside for full or partial protection of indigenous biological diversity under other legislation; and

(b) avoiding significant adverse effects and avoiding, remedying or mitigating other adverse effects on:

- (i) areas of predominantly indigenous vegetation in the coastal environment;
- (ii) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;
- (iii) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to

modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;

- (iv) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;
- (v) habitats, including areas and routes, important to migratory species; and
- (vi) ecological corridors, and areas important for linking or maintaining biological values identified under this policy.

18. Forest & Bird also seeks policies to give effect to Policy 15 of the NZCPS.

Avoid adverse effects of subdivision, use and development on the characteristics and qualities of Outstanding Natural Features and Outstanding Natural Landscapes in the coastal area by restricting activities to those:

- (a) Of a scale, location and design that have only minor or transitory adverse effects; or
- (b) Associated with coastal hazard management that avoids the use of hard protection structures, such as seawalls and rock armouring, along with other visible artificial elements such structures.

Avoid significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on other natural features and natural landscapes in the coastal environment

19. For clarity Forest and Bird seeks that these provisions are provided for within the Coastal section of the plan. this will provide clarify on how the plan gives effect to the NZCPS. Additional explanation and cross referencing of the chapters is also required.

20. Forest & Bird also seeks the deletion of:

- a. new Eligibility Rules CA.2.1.2-4;
- b. the word “predominantly” from Rule CA.2.3.4.

Landscapes and Features

21. The Landscape and features section includes provisions relating to the coastal area. These do not give effect to Policy 15 of the NZCPS. This is addressed in the appeal relating to the Coastal section of the plan but the relief sought may appropriately be located in the Landscapes and Feature section.
22. Rule LAN.3.1.4 provides for 150m² of contiguous indigenous vegetation clearance in certain circumstances. The use of the word “contiguous” is uncertain and should not be used in rules.

Relief sought

23. Forest & Bird as alternative relief to that set out in relation to the Coastal area section, seeks that the relief sought relating to Landscapes and features in the coastal area is included in the Landscapes and features section.
24. Forest & Bird also seek the deletion of the word contiguous from Rule LAN3.1.4.

Rural Area

25. The objectives of the Rural Area include providing for the protection of significant ecological and biodiversity values, such as indigenous bush and wetlands. To support this, indigenous vegetation clearance rules are included in relation to some environments, notably the Rural Countryside Environment. However, these are not consistently applied in all environments in the rural area.

Relief sought

26. The inclusion of a new discretionary rule applying to all environments within the rural area that provides:

The destruction of removal of indigenous vegetation where the maximum area to be cleared is more than 250m² per site over the life of the plan.

Rural Countryside

27. The decision significantly amends Policy RCE.1.3.1 including by adding a new (b) which provides “to directly regulating outdoor agricultural and horticultural activities, excluding intensive livestock farming”.
28. The referenced to “directly regulating” is confusing and unclear. In particular it creates doubt as the status of some activities, which fall within the ambit of outdoor agricultural and horticultural activities but are regulated by other parts of the plan. An example would be clearance of indigenous vegetation which might be part of outdoor agricultural and horticultural activities but which is directly regulated by parts of the plan could now be interpreted to be solely considered under Policy RCE.1.3.1.
29. The decision deletes Rule RCE.2.3.4, which made the destruction of wetlands a discretionary activity. There is now no management of the destruction of wetlands. The deletion of this rule is contrary to s6 of the RMA and Policy 4.4.1 of the Northland RPS.
30. The decision also amends Rule RCE.2.3.5. It requires that the indigenous vegetation be a contiguous area of 1 ha or more before clearance is restricted. The drafting is not clear but it seems to permit vegetation clearance for the following things (which were not previously permitted).
 - a. Routine maintenance within 3m of existing buildings, or
 - b. Operation, maintenance and repair of existing tracks, lawns, gardens, fences, drains and other lawfully established activities, or

- c. Pest plant removal and biosecurity works, or
 - d. Vegetation removal for customary rights, or
 - e. Conservation planting, including planting for ecological restoration purposes.
31. The inclusion of the requirement for a contiguous area of 1 ha undermines the rule.
32. The deletion of the protection for wetlands and the new permitted rules are uncertain and unclear and contrary to one of the primary purposes of the Rural Countryside Environment, specifically the protection of ecological values.

Relief sought

33. Forest & Bird seek:
- a. That a new objective and policy providing for the protection of biodiversity and landscape values is included the Rural Countryside Environment section;
 - b. Policy PCE1.3.1(b) is deleted;
 - c. Rule RCE.2.3.4 is retained
34. If the an indigenous vegetation clearance rule is not included in the Rural area rules, Rule REC.2.3.5 is amended so that it provides:
- The destruction of removal of indigenous vegetation where the maximum area to be cleared is 250m² per site over the life of the plan.

Minerals

35. Policy MIN.1.3.8 partially gives effect to Policies 13 and 15 of the NZCPS. It does not provide for avoiding significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on natural

character and natural features and natural landscapes in the coastal environment that are not outstanding. Policy MIN.1.3.8 does not give effect to Policy 11.

36. Rule MIN.2.2.1(c) addresses the measures to manage various adverse effects. It is poorly drafted as the focus should be on the effects, not the measures to manage those effects.
37. Rule MIN.2.2.1(c)(iii) is poorly drafted, seeming to provide for consideration of adverse effects on flora and fauna near the mineral extraction site but not within it.

Relief sought

38. Forest & Bird seek:
 - b. Policy MIN.1.3.8 is amended so that it:
 - a. provides for avoiding significant adverse effects and avoid, remedy, or mitigate other adverse effects of activities on natural character and natural features and natural landscapes in the coastal environment that are not outstanding; and
 - b. gives effect to Policy 11 of the NZCPS.
 - c. Rule MIN.2.2.1(c) is amended so that the matter of discretion is the effects not the measures to address them.
 - d. The deletion of the words “on the neighbouring environment including” from Rule 2.2.1(c)(iii).

RELIEF

39. Forest & Bird seeks:

- a. All references to contiguous and predominantly are deleted from the rules;
- b. The relief or alternative relief set out in this notice of appeal.
- c. Such consequential or further relief as may be necessary to fully address the reasons for appeal and give effect to the relief sought;
- d. Costs.

APPENDICES

40. The following documents are **attached** to this notice:
- a. Forest & Bird submission;
 - b. Forest & Bird further submission;
 - c. A copy of the decisions
 - d. List of parties to be served.

Dated 1 March 2018



Peter Anderson
Solicitor
Royal Forest and Bird Protection Society NZ Inc.

Address for Service Peter Anderson
Forest and Bird
P O Box 2516
Christchurch 8140

Telephone (03) 9405524

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.

Advice

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