

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2018-AKL-

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

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

AND

IN THE MATTER of an appeal under clause 14 of the First
Schedule to the Act in relation to
Proposed Plan Change 87 – Coastal
Areas to the Whangarei District Plan

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

Appellant

AND **Whangarei District Council**

Respondent

NOTICE OF APPEAL



ATKINS | HOLM | MAJUREY

Vicki Morrison-Shaw
PO Box 1585
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TO: The Registrar
Environment Court
AUCKLAND

1. The National Institute of Water and Atmospheric Research Limited (NIWA) appeals a decision in relation to Proposed Plan Change 87 – Coastal Areas to the Whangarei District Plan (PC87).
2. NIWA is a Crown Research Institute established in 1992. NIWA owns and operates the Bream Bay Marine Science Centre – 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 wishes to ensure that PC87 adequately provides for its Bream Bay facility both now and into the future.
5. NIWA made a submission dated 3 November 2016 and a further submission dated 13 January 2017 on PC87.
6. NIWA is not a trade competitor for the purposes of section 308D of the Act.
7. NIWA received notice of the decision on 17 January 2018.
8. The decision was made by Whangarei District Council (Council).

9. The parts of the decision that NIWA is appealing are the decision on coastal area rules relating to buildings. In particular:
- (a) Rule CA2.2.1; and
 - (b) Rule CA.2.2; and
 - (c) Rule CA2.3.1

REASONS FOR APPEAL

10. While NIWA is generally supportive of the PC87 provisions, NIWA considers that some change is required to the treatment of buildings to ensure that PC87:
- (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 reasonable foreseeable needs of future generations.
11. In particular, and without limiting the generality of paragraph 10 above:
- (a) The decision is inconsistent with the purpose and nature of development in the Business 4 environment. The Business 4 environment covers the heavy industrial areas of the District. Buildings are permitted up to 20m, and between 20 and 35m provided certain criteria are met. There are no reflectivity limits. Accordingly, a number of the existing buildings would exceed the height (8.5m) and reflectivity limits (35% exterior facades/30% roof)

set out in PC87 - including most of those on the Bream Bay facility site.

- (b) The limits in PC87 apply to new buildings within the Business 4 environment as well as alterations to exterior facades of existing buildings. Requiring consents for new buildings and extensions to existing buildings does not appropriately recognise and provide for the Business 4 environment activities – some of which – like the Bream Bay facility and the Refinery - are of national and regional significance.
- (c) There are functional and operational reasons for the Bream Bay facility's buildings' height and colour. In particular:
 - (i) the height is dictated by the size of equipment to be housed in the buildings (which in most cases requires a height in excess of 8.5m for the purposes of water reticulation and gravity feeds); and
 - (ii) the buildings are required to be white or light coloured to ensure the heat from the sun is reflected to aid temperature control and any subsequent adverse impacts on the kingfish and other species grown on-site.
- (d) NIWA is proposing to further develop the facility site and has advanced plans for a new kingfish facility – which has been recognised in Te Tai Tokerau Economic Plan as being a priority area for development and regionally significant development. The proposed new buildings will exceed the proposed height limit and reflectivity values. Requiring a discretionary consent for such a

facility is not consistent with the obligation to recognise and provide for such activities.

- (e) NIWA has no issue with the standards imposed applying to buildings outside the Business 4 environment or to residential (or other) buildings where there is not a functional or operational need for the buildings to exceed 8.5m and to be white/light coloured.
- (f) NIWA has both a functional and operational need for taller and more reflective buildings and considers an exception should be made. This is to ensure that the national and regional significance of the Bream Bay facility is appropriately recognised and provided for and the significant regional and local social and economic benefits associated with the facility (and its planned development) continue to be acknowledged and realised.

RELIEF SOUGHT

12. NIWA seeks the following relief:

- (a) NIWA seeks changes to the coastal rules to confirm that:
 - (i) new commercial or industrial buildings or those within the Business 4 environment; or
 - (ii) external alterations to existing commercial or industrial buildings or those within the Business 4 environment;are permitted and do not require consent.
- (b) NIWA considers that this could be achieved either by:

- (i) exempting non-residential buildings from the requirements and/or confirming the permitted status of such new buildings and exterior alterations to such buildings; OR
 - (ii) exempting all buildings within a Business 4 environment from the requirements and/or confirming the permitted status of such new buildings and exterior alterations to such buildings.
 - (c) NIWA recognises that an exemption applying to commercial and industrial buildings may capture those that do not have a functional or operational need to exceed the permitted height and reflectivity standards and that therefore the narrower approach of exempting just those within a Business 4 environment may be more appropriate.
 - (d) the wording of the specific relief sought (for both alternatives) is attached in **Annexure A**.
13. NIWA also seeks:
- (a) such further orders, relief, consequential amendments or other amendments as are considered appropriate and necessary to address the concerns set out above; and
 - (b) costs.

ATTACHMENTS

14. The following documents are attached to this notice:
- (a) the specific relief sought (**Annexure A**);

- (b) a copy of NIWA's submission and further submission with a copy of the submission opposed or supported by my 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: 27 February 2018



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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 that Rule CA2.2.1 be reinstated and amended to read either:

1. Construction of non habitable buildings ancillary to rural production, commercial/industrial or network utility activities outside a High or Outstanding Natural Character Area is a permitted activity.

OR

1. Construction of non habitable buildings within the Business 4 environment or ancillary to rural production or network utility activities outside a High or Outstanding Natural Character Area is a permitted activity.

2. NIWA seeks that rule CA2.2 be amended to read either:

~~1.~~ Maintenance and minor upgrading of buildings and structures including those associated with public parks and reserves, network utilities, commercial/industrial activities or community infrastructure is a permitted activity.

OR

~~1.~~ Maintenance and minor upgrading of buildings and structures including those located in a Business 4 environment or those associated with public parks and reserves, network utilities, or community infrastructure is a permitted activity.

3. NIWA seeks that rule CA2.3.1 be amended to read either:

1. Construction or external alteration of a residential building within both the Coastal Area and the Rural Countryside Production Environment but outside Business 4 environment or a High or Outstanding Natural Character Area:

a. That exceeds a height of 8.5m, and/or

b. With exterior facades (excluding joinery) coloured or painted with a colour with a light reflectance value greater than 35%, and/or

c. With a roof colour with a light reflectance value greater than 30%.

OR

1. Construction or external alteration of a building within both the Coastal Area and the Rural Countryside Production Environment but outside Business 4 environment or a High or Outstanding Natural Character Area:

a. That exceeds a height of 8.5m, and/or

- b. With exterior facades (excluding joinery) coloured or painted with a colour with a light reflectance value greater than 35%, and/or*
- c. With a roof colour with a light reflectance value greater than 30%.*