

BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

I MUA I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

Decision No. [2020] NZEnvC 203

IN THE MATTER of the Resource Management Act 1991

AND of appeals under clause 14(1) of Schedule 1
of the Act in particular Topic 14 Marine
Spatial Mapping provisions

AND Application for further and better particulars
by s274 parties

BETWEEN Bay of Islands Maritime Park Incorporated
(ENV-2019-AKL-117)

The Royal Forest and Bird Protection
Society of New Zealand Incorporated
(ENV-2019-AKL-127)

Appellants

AND Northland Regional Council

Respondent

Court: JA Smith sitting alone in Chambers in Auckland pursuant to s 279 of
the Act

Hearing: on the Papers

Submissions: N McIndoe and E J Hudspith for Te Runga-A-Iwi O Ngapuhi and Te
Ohu Kai Moana Trustee Limited (**TRAION** and **TE OHU** the
applicant s 274 parties)
P Anderson for Forest and Bird Protection Society of New Zealand
Inc (**Forest & Bird**) and S Gepp for Bay of Islands Maritime Park Inc
(**BOIMP**) – joint memorandum

Date of Decision: 8 December 2020

Date of Issue: 8 December 2020

Bay of Islands Maritime Park Inc & Ors-v-Northland Regional Council (Decision)



DECISION OF THE ENVIRONMENT COURT

A: The Court concludes that:

- 1) the two Appellants have sufficiently clarified their Appeal by providing Appendix 1 Maps and Appendix 2 Schedule of Values.
- 2) the appeal itself does sufficiently set out the grounds of appeal and the outcome sought.

When read in conjunction with the Appendices now produced, the Court is satisfied that this is sufficient for parties to prepare and advance evidence before the Court.

B: Costs are reserved for consideration on the conclusion of the substantive hearing independent of the outcome.

REASONS

Introduction

[1] This is an Application by counsel for two s 274 parties Te Runga-A-Iwi O Ngapuhi and Te Ohu Kai Moana Trustee Limited. They seek further and better particulars from the Appellants.

[2] Further particulars have been provided by the applicant by way of Maps and Provisions sought on the Topic 14 hearing and the Schedule of Values. The Application for further particulars does not specify or refer to these documents and instead refers to the Notice of Appeal.



Proceedings before the Environment Court on Plans

[3] Appeals in complex areas such as Regional Plans are by their very nature an iterative process. They are affected by other sub-topics and other main-topics and are generally the subject of extensive discussion between parties.

[4] These Plan appeals are no exception and have been subject to mediation and identification and refinement of the Topic through that process. This is not a matter in which the Court becomes involved and it is understood by all parties that matters can be refined through this process. In fact, that is the very purpose of mediation where it cannot achieve settlement and it is therefore expected that the parties will refine their original appeal as the process continues.

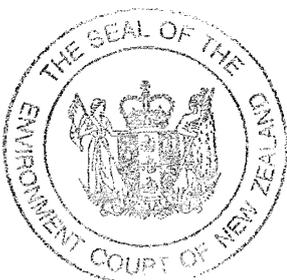
[5] To this end the Court has not undertaken a strict interpretation of the Notice of Appeal Rules where matters proceed to mediation and are part of a complex inter-related series of appeals. This Case concerns the particularly difficult area of controls that may apply within the CMA in relation to particular features or values.

Current situation

[6] It is unclear from the Application if Te Runga-A-Iwi O Ngapuhi (TRAION) and Te Ohu Kai Moana Trustee Limited (Te Ohu) have seen the maps and provisions that the Appellants have filed recently. They do not refer to them in the application.

[7] TRAION and TE OHU were earlier subject to a direction for further particulars although this was by consent. TRAION and TE OHU seek that the Appellants sufficiently precisely identify the relief sought, so as to fairly inform the Court and the parties of the substance of what is sought by way of changes to the provisions of the proposed Plan and include (and without limitation):

- (1) The detail of any controls or restrictions that are sought in relation to fishing activities (including the drafting of Policies and Rules); and
- (2) Mapping sufficient to show such controls and restrictions will apply and lodge the same with the Court.



Evaluation

[8] The first answer raised by the Appellants to this contention is that information has been supplied and the further information has now been sent to the parties. The Application for Further Particulars is dated 17th November 2020 and the Reply by the Appellants is dated 4th December 2020. These schedules appear to provide the further detailed information as sought by the s 274 parties.

[9] As matter of broader principle, the Court cannot see a highly technical approach to pleading as assisting in the advancement, processing or resolution of these types of complex cases before the Environment Court. We take into account the parties in question are s 274 parties rather than Appellants in their own right. They are limited to the terms of any appeals before the Court as to whether they support or oppose the provisions. They cannot seek a separate outcome as they are not appellants.

[10] Furthermore, no other party has raised objection to the pleadings from either Appellant and on the face these Appeals appear to the Court to be relatively standard for pleadings on cases of this sort (in fact much more detailed than many others the Court has seen).

[11] The matter is already set down on a process to hearing and all parties have agreed to that process. I cannot see that the making of these orders would assist or expedite the hearing of this matter. There is already a timetable for exchange evidence and to the extent that there is any lack of full explanation within the pleadings to date, this will either be overcome by the evidence or form a basis for submission or cross-examination before the Court in due course.

Outcome

[12] The Court makes no Directions against the Appellants for Further Particulars. It notes, the two Appendices provided now by the Appellant in its Statement are the Mapping and Values outcomes that it seeks before the Court.

[13] As is often the case, positions between that notified in the original plan and that now sought by the Appellant are always impossible and the parties need to keep in mind that this is a complex area and the Court and other parties may have their own view as



to how these matters might best be approached.

Costs

[14] The Appellants have specifically sought that the Court reserves the question of costs as they consider that this application has led to costs and delays for no particular purpose in the circumstances. Given the delay between the date of the Application, 17th November 2020 and the date on which the information appears to have been supplied (at least to the Court), being the 4th December 2020, there may be some difficulty in advancing that argument on a Plan appeal.

[15] Nevertheless, I conclude, in the circumstances, I should reserve the costs on this matter until after the conclusion of the substantive topic but irrespective of the outcome of that Topic.

[16] Parties are to file any Applications for Costs within 20 working days of the date of the issue of the Decision on Topic 14.

[17] The Court confirms that the Directions already given to a hearing in July 2021 are in effect and have not been opposed by any party. Those Directions are:

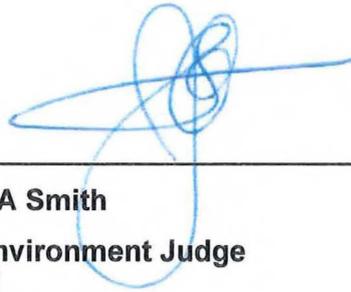
- (1) Appellants and Te Uri O Hīkīhiki Hapu to circulate relief by **4 December 2020**;
- (2) Council to circulate position on its relief by **5 February 2021**;
- (3) All parties to circulate a list of the number and specialities of witnesses by **19 February 2021**;
- (4) Appellants and Te Uri O Hīkīhiki Hapu to circulate evidence-in-chief by **19 March 2021**;
- (5) Council to circulate evidence-in-chief by **16 April 2021**;
- (6) Section 274 parties to circulate evidence-in-chief by **14 May 2021**;
- (7) Rebuttal to be circulated by **18 June 2021**; and



(8) All evidence to be filed with the Court by **25 June 2021**, in the following format:

- (i) Four hard copies of all evidence, tabulated, paginated and compiled into A4 lever-arch folders; and
- (ii) An electronic copy on a USB flash drive of all the evidence, contained in electronic folders equivalent to the physical volumes of the hard copy. The electronic briefs should be named as per the following format: "Surname of witness – EIC/Reply".

For the court:



J A Smith
Environment Judge

