

**BEFORE THE ENVIRONMENT COURT
AT AUCKLAND**

ENV-2013-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

BETWEEN

**ENVIRONMENTAL DEFENCE SOCIETY
INCORPORATED**

Appellant

AND

NORTHLAND REGIONAL COUNCIL

Respondent

NOTICE OF APPEAL

14 November 2013

Environmental Defence Society
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TO: The Registrar
Environment Court
AUCKLAND

INTRODUCTION

1. The Environmental Defence Society Incorporated (“**Appellant**”), appeals part of the decision of Northland Regional Council (“**Council**”) on the Proposed Northland Regional Policy Statement (“**pRPS**”).
2. The Appellant is a not-for-profit environmental advocacy organisation, comprised of resource management professionals who are committed to improving environmental outcomes within New Zealand.
3. The Appellant made a submission and further submission on the pRPS and presented submissions to the Hearings Committee.
4. The Appellant is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (“**RMA**”).
5. The Appellant received notice of the decision on 4 October 2013.
6. The decision was made by the Council.

PARTS OF THE DECISION BEING APPEALED

Objective 3.15

7. The deletion of *the amenity of estuaries and harbours*.

Method 4.1.2

8. The deletion of the requirement to establish interim and/or default freshwater quality limits.
9. The failure to refer to including regulatory methods in regional plans to phase out any existing over-allocation.

Method 4.2.2

10. The failure to refer to setting limits and/or targets and establishing regulatory methods to avoid and/or phase out over-allocation.
11. The deletion of *enhanced controls on earthworks*.
12. The deletion of *controls on land use changes and intensification*.
13. The addition of *providing for the use of contaminant offsetting for direct and diffuse discharges of sediments and non-toxic forms of nitrogen and phosphorus*.

Policy 4.3.2

14. The deletion of the requirement to phase out existing over-allocation.

Method 4.3.5

15. The deletion of *Include methods to assist in the phasing out of over-allocation, including by providing for the review of water permits and consents to help ensure that the total amount of water allocated in the water body is reduced to achieve any relevant freshwater objective*.
16. The deletion of *the regional council will require applications for resource consents to take and use freshwater to demonstrate ... (a) That the water will be used efficiently, including how losses of water through leaks and wastage will be minimised; (b) Water conservation measures*.
17. The deletion of clause (4) setting out requirements for metering of consented water takes.

Policy 4.4.1

18. The failure to refer to all indigenous ecosystems and habitats in the heading.

19. In clause (1), the weakening of the policy so that outside the coastal environment effects can be avoided, remedied or mitigated.
20. The deletion of *Indigenous ecosystems and vegetation types that are threatened or are naturally rare, Habitats of indigenous species where the species are at the limits of their natural range, or are naturally rare, Areas containing regionally or nationally significant examples of indigenous community types, Habitats that are important during the vulnerable life stages of indigenous species, Habitats, including areas and routes, important to migratory species, Ecological corridors and areas important for linking or maintaining biological values identified under this policy.*
21. The failure to include policy direction that will achieve Objective 3.4, in particular *b) Maintaining the extent and diversity of indigenous ecosystems and habitats in the region; and c) Where practicable, enhancing indigenous ecosystems and habitats, particularly where this contributes to the reduction in the overall threat status of regionally and nationally threatened species.*

Policy 4.5.1

22. The inclusion of *Where an area in the Regional Policy Statement – Maps has been amended in accordance with Method 4.5.4(a), and the amended area is operative in the relevant district or regional plan, it shall supersede the relevant area in the Regional Policy Statement – Maps.*

Policy 4.5.2

23. The inclusion of *The maps of these areas identify where caution is required to ensure activities are appropriate.*
24. The inclusion of *However, suitably qualified assessment at a site or property-specific level can be used to demonstrate lesser (or greater) sensitivity to particular subdivision, use and development proposals given the greater resolution provided.*

Method 4.5.4

25. The inclusion of clause (2) which allows for amendment of the Regional Policy Statement – Maps through regional or district plan processes.

Policy 4.6.1

26. The inclusion of *unless the adverse effects are not significant, minimised and (i) directly associated with significant improvement in public access to the coast, lake or river; or (ii) temporary and directly associated with enhancement or restoration of landscape / natural character; or (iii) It can be demonstrated that the adverse effects on the subject site will be offset by net beneficial effects for the affected resource that are unlikely to otherwise occur.*
27. In respect of (1)(b), the inclusion of *in the following ways* which limits how significant adverse effects may be avoided and other adverse effects may be avoided, remedied or mitigated.
28. In respect of (2), the inclusion of *in the following ways* which limits how significant adverse effects may be avoided and other adverse effects may be avoided, remedied or mitigated.
29. The inclusion of clauses (3)(a), (3)(b) and (3)(c) which are exceptions to clauses (1) and (2).

Amenity values

30. The failure to include an objective, policy and method relating to amenity values.

Policy 4.8.4

31. The failure to require a net gain in environmental and / or public benefit from persons occupying space in the common marine and coastal area.

Policy 4.8.5

32. The failure to include as a relevant consideration the adverse environmental effects of aquaculture activities.

Policy 5.3.3

33. In respect of (1)(a), the failure to cross-reference all relevant provisions which the proposal should be consistent with if it is to be allowed.

Method 5.4.3

34. The inclusion of *Generally, larger proposals even in more sensitive environments can be adequately managed through discretionary activity status while some small-scale activities can be permitted activities.*

REASONS FOR THE APPEAL

35. The Appellant says:

- 35.1. The Decision represents a failure of the Council to establish and implement objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region in accordance with its function under section 30(1)(a) of the RMA.
- 35.2. The Decision does not provide for objectives which are the most appropriate way to achieve the purpose of the RMA and does not provide for policies which are most appropriate way to achieve those objectives in terms of their efficiency and effectiveness and therefore is not appropriate in terms of section 32 of the RMA.
- 35.3. The Decision is inconsistent with the New Zealand Coastal Policy Statement 2010.
- 35.4. The Decision is inconsistent with the National Policy Statement on Freshwater Management 2011.

- 35.5. The Decision does not have regard to the proposed National Policy Statement for Indigenous Biodiversity.
- 35.6. The Decision does not establish objectives, policies and methods for maintaining indigenous biological diversity in accordance with section 30(1)(ga).
- 35.7. The Decision does not give particular regard to the efficient use and development of natural and physical resources (section 7(b)), the maintenance and enhancement of amenity values (section 7(c)), the intrinsic values of ecosystems (section 7(d)), the maintenance and enhancement of the quality of the environment (section 7(f)), and any finite characteristics of natural and physical resources (section 7(g)).
- 35.8. The Decision does not recognise and provide for matters of national importance under section 6 of the RMA including; the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development (section 6(a)), the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development (section 6(b)), and the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna (section 6(c)).
- 35.9. The Decision does not promote the sustainable management of natural and physical resources under section 5 of the RMA.
- 35.10. The Decision does not reflect the hierarchy of planning documents put in place by the RMA.
- 35.11. The Decision does not reflect good resource management practice.

RELIEF SOUGHT

36. The Appellant seeks:

- 36.1. In Objective 3.15, reinstate *(e) the amenity of estuaries and harbours.*
- 36.2. In Policy 4.1.1, provide for the establishment of interim and/or default freshwater quantity and quality limits to apply until catchment-specific objectives, limits, flows, levels, and targets are collaboratively established.
- 36.3. In Method 4.1.2, provide for the establishment of interim and/or default freshwater quantity and quality limits.
- 36.4. In Method 4.1.2, amend (4) by adding *or phase out.*
- 36.5. In Method 4.2.2, amend to provide for the setting of limits and/or targets and require the establishment of regulatory methods to avoid or phase out over-allocation.
- 36.6. In Method 4.2.2, reinstate *Enhanced controls on earthworks.*
- 36.7. In Method 4.2.2, reinstate *Controls on land use changes and intensification.*
- 36.8. In Method 4.2.2, delete *(g) Providing for the use of contaminant offsetting for direct and diffuse discharges of sediments and non-toxic forms of nitrogen and phosphorus.*
- 36.9. In Policy 4.3.2, amend by adding *or phase out.*
- 36.10. In Method 4.3.5, reinstate *Include methods to assist in the phasing out of over-allocation, including by providing for the review of water permits and consents to help ensure that the total amount of water allocated in the water body is reduced to achieve any relevant freshwater objective.*

- 36.11. In Method 4.3.5, reinstate *The regional council will require application for resource consents to take and use freshwater to demonstrate ... That the water will be used efficiently, including how losses of water through leaks and wastage will be minimised; ... Water conservation measures.*
- 36.12. In Method 4.3.5, reinstate *The regional council will require consented water takes to have a device or system installed to continuously record the volume of water taken in cubic metres that (a) Has an accuracy of: (i) Plus or minus five percent for water taken by a full pipe; or (ii) Plus or minus ten percent for water taken by another method (including an open channel or a partially full pipe); (b) Is able to provide data in a form suitable for electronic storage; (c) Is suited to the qualities of the water it is measuring (such as temperature, algae content, and sediment content); (d) Is sealed and is as tamper proof as practicable; and (e) Is installed: (i) At the location from which the water is taken; or (ii) At the location specified by council. This device or system will be maintained in the above working order for the duration of the consent.*
- 36.13. In Policy 4.4.1, amend the heading of the policy to read *Maintaining indigenous biodiversity and protecting significant ecological areas and habitats.*
- 36.14. In Policy 4.4.1, reinstate the notified wording of the policy.
- 36.15. In Policy 4.4.1, amendments to ensure the achievement of Objective 3.4.
- 36.16. In Policy 4.5.1, delete *Where an area in the Regional Policy Statement – Maps has been amended in accordance with Method 4.5.4(a), and the amended area is operative in the relevant district or regional plan, it shall supersede the relevant area in the Regional Policy Statement – Maps.*

- 36.17. In Policy 4.5.2, delete the entire policy.
- 36.18. In Method 4.5.4, delete *The coastal environment, high and outstanding natural character within the coastal environment, and outstanding natural features and outstanding natural landscapes as shown in the Regional Policy Statement – Maps may be changed, provided the changes are: (i) Consistent with the relevant methodology used to identify the areas in the Regional Policy Statement – Maps (see Appendix 1); or (ii) Exclude areas identified by the relevant regional and/or district council in accordance with Policy 4.6.1(3)I and (iii) Shown in the regional or district plan.*
- 36.19. In Policy 4.6.1, delete *unless the adverse effects are not significant, minimised and (i) directly associated with significant improvement in public access to the coast, lake or river; or (ii) temporary and directly associated with enhancement or restoration of landscape / natural character; or (iii) It can be demonstrated that the adverse effects on the subject site will be offset by net beneficial effects for the affected resource that are unlikely to otherwise occur.*
- 36.20. In Policy 4.6.1, in clauses (1)(b) and (2), replace *in the following ways* with *through methods which will include.*
- 36.21. In Policy 4.6.1, delete *(3) Despite the above: a) Clauses 1 and 2 do not apply where the ability to achieve consolidated development and efficient use of land and infrastructure would be constrained in areas specifically identified in operative plans for urban development* and/or specific uses by way of zoning or designations; or b) Clauses 1 and 2 do not apply where natural hazards threaten the viability of regionally significant infrastructure and/or public health and safety; or c) Regionally significant infrastructure proposals that cannot meet 4.6.1(1) or 4.6.1(2) may still be appropriate after assessment against the matters in Policy 5.3.3.(3).*

- 36.22. In Objective 3.14, insert a new paragraph requiring the maintenance and enhancement of amenity values. In Policy 4.6.1, insert a new clause (3) providing for the maintenance and enhancement of amenity values outside identified areas through the management of subdivision, land use and development, earthworks, vegetation removal, and water takes and discharges.
- 36.23. In Policy 4.8.4, delete *Encourage activities to provide* and reinstate *There will be*.
- 36.24. In Policy 4.8.5, insert a new clause *The potential for aquaculture to cause adverse environmental effects, including effects on water quality, indigenous biodiversity, natural character, and outstanding natural landscapes and features*.
- 36.25. In Policy 5.3.3, insert cross-references to all parts of all policies and methods relating to adverse environment effects (4.1 to 4.8).
- 36.26. In Method 5.4.3, delete from the explanation *Generally, larger proposals even in more sensitive environments can be adequately managed through discretionary activity status while some small-scale activities can be permitted activities* and replace with the following *In sensitive environments proposals should be managed through a non-complying or prohibited activity status, while in less sensitive environments discretionary activity status will be appropriate for large proposals*.
- 36.27. Consequential amendments to the explanations to reflect requested changes to the objectives, policies, and methods.
- 36.28. Such consequential or further relief as may be necessary to fully give effect to the relief sought above;
- 36.29. Costs.

ANNEXURES

37. The following documents are attached to this notice:

37.1. a copy of the Appellant's submission;

37.2. a copy of the Appellant's further submission;

37.3. a copy of the Respondent's decision; and

37.4. a list of names and addresses of persons to be served with a copy of this notice.

DATED at Auckland this 14th day of November 2013

Signed for and on behalf of the
**ENVIRONMENTAL DEFENCE SOCIETY
INCORPORATED** by its duly authorised
agent



Nicola de Wit

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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 and you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court within 15 working days after the period for lodging a notice of appeal ends.

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 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.