

BEFORE THE ENVIRONMENT COURT
AT AUCKLAND

ENV-2013-AKL-000

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under s121 of the Resource
Management Act 1991

BETWEEN Yachting New Zealand Incorporated
Appellant

AND Northland Regional Council
Respondent

NOTICE OF APPEAL UNDER SECTION 121
OF THE RESOURCE MANAGEMENT ACT 1991

To: The Registrar
Environment Court
Auckland

1. **Yachting New Zealand Incorporated** ("YNZ") appeals a decision of the Northland Regional Council ("NRC") on the following matter:

An application by Westpac Mussels Distributors Limited for various resource consents associated with a proposed 125ha marine farm in Whangaroa Bay ("Application");

2. YNZ made a submission on the Application.
3. YNZ received notice of the decision on 1 February 2013.
4. The decision was made by NRC.

5. YNZ is not a trade competitor for the purposes of Section 308D of the Resource Management Act 1991 ("Act").
6. YNZ appeals the decision of the NRC in its entirety.
7. The resource affected is the Coastal Marine Area to the west of Stephenson Island in Whangaroa Bay.
8. The reasons for the appeal are as follows:

The decision:

- (a) Fails to manage the use, development or protection of the physical resources at the site in a way that will enable people and communities to provide for their social, economic and cultural wellbeing or for their health and safety;
- (b) Does not safeguard the life supporting capacity of any air, water, soil or ecosystem;
- (c) Does not provide for the reasonably foreseeable needs of future generations;
- (d) Does not avoid, remedy or mitigate effects on the environment of the activity proposed;

and therefore does not achieve the purpose of the Act.

By reference to the findings of the Hearing Panel and the reasons for the decision:

- (e) The Hearing Panel was in error in accepting in Section 8.11 of the decision that the public and their vessels will be able to freely navigate between the proposed marine farm blocks. This error has contributed to the Hearing Panel's failure to correctly weigh the potential adverse effects on public access and amenity resulting from the proposed marine farm. The Hearing Panel are incorrect in

their determination that effects on public access and amenity will be minor;

- (f) The Hearing Panel determined that the proposed marine farm would result in a more than minor adverse effect on safe navigation between the marine farm and Stephenson Island and associated access to anchorages, notwithstanding their finding (which YNZ says is in error) that vessels will have free rights of passage between the proposed mussel farm blocks. The reliance of the Hearing Panel upon their finding that vessels will have free rights of passage between the proposed farm blocks has resulted in the significance of the adverse effects on safe navigation being underestimated;
- (g) In Section 9 of the decision the Hearing Panel records that it agrees with conclusions reached by Ms Britton and Mr Maxwell with regard to key provisions of NZCPS 2010, the proposed Regional Policy Statement and Plan Change 4. The Hearing Commissioners reproduced extracts of evidence by Ms Britton and the officer's report prepared by Mr Maxwell in that respect, including an extract from page 204 of the officer's report regarding Plan Change 4. The quoted extract states that amendments to the Act which removed the requirement for aquaculture activities to be included within an AMA have "*... essentially made the purpose of Plan Change 4 redundant, and since it is currently under appeal and no parts of the Plan Change have been resolved, it is considered to have very low weighting in respect of this current Application*". Plan Change 4 is not redundant, and many aspects of the Plan Change have been agreed by the parties to the appeals and are no longer in dispute. It is incorrect to suggest that Plan Change 4 should have a very low weighting in respect of the Application, and the Hearing Panel is in error in agreeing

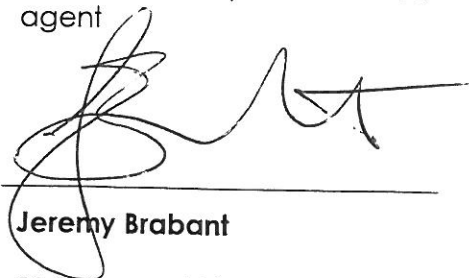
that very low weight should be attributed to Plan Change 4;

- (h) The Hearing Panel are in error in accepting Mr Colgrave's economic analysis, notwithstanding they heard no expert evidence disputing that analysis. It is evident from Mr Colgrave's evidence that the economic impact assessment adopts economic multipliers derived from assessments of Coromandel aquaculture which are not appropriate to apply to an assessment of this Application. The conclusions reached by Mr Colgrave are based on assumptions which do not reflect a proper detailed assessment of the likely operations and outcomes of the Application. By way of example there is no explanation as to how the proposed marine farm will provide fulltime employment for 87 people within the Northland region, given that the applicant's head office and processing facility is located in Auckland;
- (i) The amendments to the Application made by the Hearing Panel do not adequately mitigate the adverse effects of the proposal on navigation and safety or recreation in the Coastal Marine Area;
- (j) The location of the proposed farm, both in its original form, and its form as amended in the decision, is inappropriate because it:
 - (i) Extends in part into the recognized navigational route between the coast north of Taupo Bay and the western shore of Stephenson Island;
 - (ii) Is within 500m of the recognized navigational route referred to above, and therefore conflicts with the Maritime New Zealand Guidelines for Aquaculture Management Areas and Marine Farms;

- (iii) Will impede access to recognized anchorages and places of refuge.
 - (k) The Hearing Panel placed too much weight on alleged economic benefits of the proposal when balancing the positive and negative potential effects of the application;
 - (l) YNZ maintains its opposition to the Application for the reasons set out above, and detailed in YNZ's submission on the Application and in YNZ's evidence put before the Hearing Panel.
9. YNZ seeks the following relief:
- (a) That the decision of the NRC be reversed and the Application be declined consent;
 - (b) Such further other consequential changes as are required to give effect to the relief sought in this appeal;
 - (c) Costs.
10. YNZ attaches the following documents to this notice:
- (a) A copy of YNZ's submission;
 - (b) A copy of the NRC's decision;
 - (c) A list of names and addresses of persons to be served with a copy of this notice.

Signature:

Yachting New Zealand
Incorporated by its authorised
agent



Jeremy Brabant

Date:

21 February 2013

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Advice to Recipients of Copy of Notice of Appeal

How to become a party to proceedings

You may be a party to the appeal if 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.

If you are a trade competitor of a party to the proceedings, your right to be a party to the proceedings in the Court may be limited (see 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 relevant submission or the relevant decision. 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.