

**BEFORE THE ENVIRONMENT COURT**

Decision No. [2013] NZEnvC 227

**IN THE MATTER** of appeals under Clause 14 of the First Schedule  
of the Resource Management Act 1991 (**the Act**)

**BETWEEN**

MOTUROA ISLAND LIMITED  
(ENV-2008-AKL-000145)

JH DOWELL  
(ENV-2008-AKL-000148)

YACHTING NEW ZEALAND  
(ENV-2008-AKL-000167)

AUCKLAND YACHTING AND BOATING  
ASSOCIATION & OTHERS  
(ENV-2008-AKL-000168)

PAROA BAY STATION LIMITED  
(ENV-2008-AKL-000170)

WILLIAMS CAPITAL HOLDINGS NO. 1, E & K  
WILLIAMS AND WJ FALCONER  
(ENV-2008-AKL-000171)

ROBINIA INVESTMENTS LIMITED  
(ENV-2008-AKL-000172)

MINISTER OF CONSERVATION  
(ENV-2008-AKL-000176)

Appellants

**AND**

NORTHLAND REGIONAL COUNCIL

Respondent



AND

NGATI WAI TRUST BOARD

WHANGAREI HARBOUR WATCHDOG INC

BOI COASTAL WATCHDOC INC

BREAM BAY ACTION GROUP INC

FEDERATED FARMERS OF NZ

D KEYS

MOUNTAIN LANDING PROPERTIES LTD

Section 274 parties

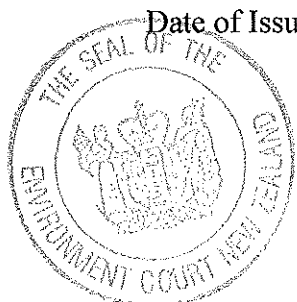
Hearing at: Paihia 12 and 13 March 2013. Final materials received 29 May 2013.

Court: Acting Principal Environment Judge LJ Newhook  
Environment Commissioner RM Dunlop  
Environment Commissioner I M Buchanan

Appearances: Mr J Burns for Northland Regional Council  
Mr J Brabant for Yachting New Zealand, Auckland Yachting and Boating Association & Northland Yachting Association  
Mr R Brabant for Moturoa Island Ltd and JH Dowell  
Ms V Morrison-Shaw for Robinia Investments Ltd, Paroa Bay Station Ltd, Williams Capital Holdings No 1 & others (Mountain Landing Properties Ltd, K & E Williams and FK Falconer)  
Mr K Volkerling for Ngati Wai Trust Board  
Mr T Grove for Whangarei Harbour Watchdog Incorporated  
Ms K Bellingham for Minister for Conservation  
Mr D Keys for himself  
Mrs M Hicks for Bream Bay Action Group

Date of Decision: 24 September 2013

Date of Issue: 24 September 2013



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**INTERIM REPORT AND RECOMMENDATIONS OF THE ENVIRONMENT  
COURT TO THE MINISTER OF CONSERVATION ON AN INQUIRY INTO  
APPEALS AGAINST NORTHLAND REGIONAL COASTAL PLAN CHANGE 4:  
AQUACULTURE, AND DIRECTIONS ON SAME TO THE NORTHLAND  
REGIONAL COUNCIL**

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- A. Policy 27.4.9 and its Advice Note are amended subject to submissions by the parties on their final form, in the areas and to the extent indicated.**
- B. Leave is granted for the parties to make submissions on an appropriate order for sequencing Policies 27.4.6 - 9.**
- C. The Regional Coastal Plan definitions are to be amended by adding new terms “recognised navigational routes” and “recognised anchorages of refuge”.**
- D. The locations where the parties agreed aquaculture should be a prohibited activity are endorsed.**
- E. Prohibited activity status is extended in the upper Te Puna Inlet only to the extent necessary to include the recognised anchorage of refuge on the west side of Kauri Point.**
- F. Aquaculture is to be a prohibited activity at the entrance to Whangaruru Harbour in the locations supported by the council and boating parties.**
- G. Aquaculture is to be a prohibited activity in the described central portion of Bream Bay subject to refinement through a process of further submissions but not in a four kilometre band inshore.**
- H. Costs are reserved.**

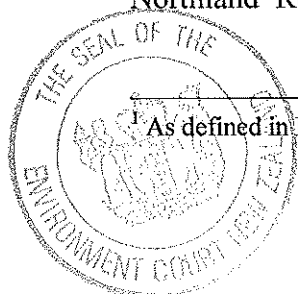
**REASONS FOR REPORT, RECOMMENDATIONS AND DIRECTIONS**

**Introduction**

[1] These appeals concern the provisions of Proposed Plan Change 4 (PC4) to the Northland Regional Coastal Plan (NRCP) for aquaculture.<sup>1</sup> PC4 sets out how existing

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<sup>1</sup> As defined in PC 4 Definitions.



aquaculture will be managed, and guides the location of new aquaculture activities in the Region's coastal marine area for the future.

### **Why so long to resolve ?**

[2] PC4 was publicly notified in October 2006. Decisions on submissions were released in April 2008. Appeals were lodged and alternative dispute resolution (ADR) processes conducted, including a Court-annexed mediation in July 2009. Without prejudice agreements were made amongst the parties but no official settlements were entered into. In late 2009 the Government signalled that changes to the aquaculture laws were likely, so the council requested postponement of further processing until after the Resource Management Amendment Act (No 2) 2011 came into effect<sup>2</sup>. In March 2012 the council requested that the Court set the appeals down for hearing and proposed that exchange of evidence be completed by mid August 2012<sup>3</sup>. Competing demands for judicial resources on the allocated panel prevented the appeals being heard until March 2013. Final materials were received from the council at the end of May 2013.

[3] PC4 deleted Section 27 (Marine 3 [Marine Farming] Management Area) from the operative NRCP and proposed a new Section 27 for aquaculture. The hearing was concerned with what came to be known as "Topic 1" matters, comprising the wording of Policy 27.4.9, the rules in PC4 that state the areas in which aquaculture is to be a prohibited activity, and what exceptions to the rules might apply in some or all of those areas. "Topic 2" matters comprise the remaining PC4 provisions under appeal, including objectives and policies other than Policy 27.4.9. Their resolution will be assisted by the prior finalisation of Policy 27.4.9, and await determination through a further hearing or some other process.

### **The essence of the case**

[4] In Opening submissions, Mr Burns for the respondent council provided the following summary of the statutory history of the proposed Change:

.....PC 4 was initiated by the Council in response to the aquaculture-specific provisions introduced by the Resource Management (Aquaculture Moratorium) Amendment Act 2002 and ss165A – 165ZJ of the Resource Management Amendment Act (No 2) 2004. As notified, [PC4] established a framework for determining Aquaculture Management Areas (AMA's), which under that legislation were areas in which aquaculture might be allowed to locate.

..... PC4 as notified did not adopt the excluded area mechanism which was at that time provided for under ... the Act but rather proposed a policy-based approach to identify AMA's. .... a number of submitters sought that PC4 identify specific locations to be excluded from consideration as AMA's, in order to provide

<sup>2</sup> Hill, EIC Annexure 2 [10].

<sup>3</sup> Counsel for Respondent, Memorandum to Court 30 March 2012.



certainty for both the aquaculture industry and others. .... The Council in its Decision accepted a number of these submissions, and included in PC4 a suite of AMA restriction areas ..... based upon existing policy areas in the RCP where aquaculture is already a prohibited activity. .... The Council Decision left the special Marine 3 (Marine Farming) Management Area and parts of the Marine 2 (Conservation) Management Area in the RCP as areas where marine farming might occur.

[5] The version of PC 4 before the Court contained references to aquaculture management areas (AMA). That term is now repealed from the Act<sup>4</sup>. The implications of its repeal for PC 4 were not traversed in the hearing and we leave the subject for subsequent determination as a Topic 2 matter.

[6] A number of submitters appealed the council's decision seeking that aquaculture be classified as a prohibited activity in additional locations. It is these appeals which require determination. Notably, a number of major participants in the Northland aquaculture industry, who initially lodged appeals and s.274 notices against the further prohibited areas sought by the appellants, withdrew their appeals and took no part in the hearing.

[7] Many of the additional areas where prohibited activity status is sought were ultimately conceded by opposing parties including the council. All are located in the Plan's Marine 2 (Conservation) Management Area (MM2) or zone. Mr D Hill, a planning witness for the council, described MM2 as the "default option" amongst the plan's suite of Management Areas which are variously concerned with specific values or activities (protection, moorings, wharves etc). The MM2 is not, as one might anticipate, a Conservation zone as such<sup>5</sup>.

### Relevant law

[8] We accept Mr Burns's submission that, as distilled from *Long Bay – Okura Great Parks Society v North Shore City Council*<sup>6</sup> and succinctly re-stated in subsequent decisions,<sup>7</sup> the statutory factors that the Court is charged with considering are whether the terms of the Plan Change:

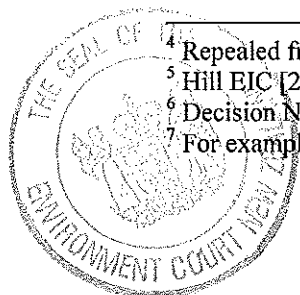
- accord with and assist the Council in carrying out its functions so as to meet the requirements of Part 2 of the Act;
- take account of effects on the environment;

<sup>4</sup> Repealed from 1 October 2011 by s4(3) RM Amendment Act (No 2) 2011 (2011 No 70).

<sup>5</sup> Hill EIC [25]

<sup>6</sup> Decision No. A078/2008

<sup>7</sup> For example, *Fairley v North Shore City Council*, NZEnvC 208/2010 [7]



- are consistent with, or give effect to (as appropriate) applicable national, regional and local planning documents; and
- meet the requirements of s.32 RMA<sup>8</sup>, including whether the policies and rules are the most appropriate for achieving the objectives of the plan.

[9] To those matters we specifically add s.66(2A)RMA which provides that a regional council when changing a plan must take into account any relevant planning document recognised by an iwi authority. During the hearing Mr Volkerling tabled a copy of the *Ngatiwai Aquaculture Plan (June 2005)* which he deposed was both lodged with the council prior to PC4 being notified<sup>9</sup> and relevant to determining PC4, including specifically at the entrance to Whangaruru Harbour and in Bream Bay<sup>10</sup>.

[10] Clause 15(3) of the First Schedule provides that where the Court hears an appeal against a provision of a proposed regional coastal plan, that appeal is an inquiry and the Court shall report its findings to the appellants, the council and the Minister of Conservation, and may include a direction under s293(1) to the council to make modifications to, deletions from or additions to the proposed plan.

[11] No party disagreed with Mr Burns's submission<sup>11</sup> that the tests for imposing prohibited activity status include the following:

- "There is no need for a local authority to consider that an activity be forbidden outright, with no contemplation of any change or exception, before prohibited activity status is appropriate: *Coromandel Watchdog*<sup>12</sup>.
- Prohibited activity status may be imposed where it is determined to be the most appropriate option under s.77A on completion of a s.32 analysis: *Coromandel Watchdog*.
- There is no bright line test that requires a local authority to determine whether or not there might be some scenarios where the activity might be considered via a plan change process: *Coromandel Watchdog*.
- The prohibition must reflect the relevant policies and objectives and be the most appropriate option in that context: *Thacker*<sup>13</sup>.

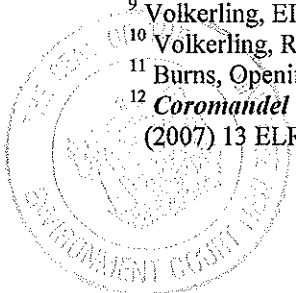
<sup>8</sup> As PC4 was notified in 2006, the relevant version of s.32 is that which existed before the RMA Amendment Act 2009 came into force 1 October 2009.

<sup>9</sup> Volkerling, EIC [3]

<sup>10</sup> Volkerling, Rebuttal [27]ff

<sup>11</sup> Burns, Opening submissions [29]

<sup>12</sup> *Coromandel Watchdog of Hauraki Inc v Chief Executive of the Ministry of Economic Development*, (CA) (2007) 13 ELRNZ 279.



[12] We record that in *Coromandel Watchdog* the Court of Appeal found that the conservative approach taken by the High Court and the Environment Court (essentially that prohibited activity status should only be used when a planning authority is satisfied that within the life of the Plan the activity in question should in no circumstances ever be allowed in the area under consideration) was wrong<sup>14</sup>. The Court of Appeal held that in the case of at least some examples suggested by counsel the technique could be employed, for instance (amongst others):

(a) Where the council takes a precautionary approach. If the local authority has insufficient information about an activity to determine what provision should be made for that activity in the local authority's plan, the most appropriate status for that activity may be prohibited activity. This would allow proper consideration of the likely effects of the activity at a future time during the currency of the plan when a particular proposal makes it necessary to consider the matter, but that can be done in the light of the information then available; and...

(e) Where it is intended to restrict the allocation of resources, for example where a regional council wishes to restrict aquaculture to a designated area. ... if prohibited activity status could not be used in this situation, regional councils would face pressure to allow marine farms outside the allocated area through non-complying activity consent applications" ... the Environment Court in **Golden Bay Marine Farmers v Tasman District Council EC W43/2001** ... "accepted that prohibited activity status for the areas adjacent to the area for marine farming was appropriate."<sup>15</sup>

We recognise and are bound by those findings of the Court of Appeal.

[13] Mr R Brabant submitted that for PC4, where the First Schedule processes had been followed, it was open to the Court to direct the prohibited activity requested by his clients, in reliance on the Court of Appeal decision in *Coromandel Watchdog* just discussed, and the "most appropriate" test adopted by the High Court in *Rational Transport*<sup>16</sup>. He referred the Court to salient findings in *Sangram Investments v Franklin DC*, which we respectfully adopt, namely that:

... on a reference appeal no party has a formal onus of proof, there is no presumption that the Respondent's policy is necessarily appropriate or correct, and the proceedings are more in the nature of an inquiry into the merits in accordance with the statutory objectives and existing provisions of the policy statements and plans"<sup>17</sup>.

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<sup>13</sup> *Thacker v Christchurch City Council*, EnvC C 026/2009.

<sup>14</sup> At paragraphs [34], [36] and [40]

<sup>15</sup> At paragraph [34]

<sup>16</sup> *Rational Transport Society v New Zealand Transport Agency* [2012] NZRMA 298 at [45] and [46], in particular at [45] that the word "appropriate" in s32RMA means suitable, without any gloss that it be superior.

<sup>17</sup> *Sangram Investments v Franklin DC*, 3 ELRNZ 406.



[14] Ms Morrison-Shaw expressly adopted the submissions of Mr Burns, Mr J Brabant and Mr R Brabant including on the law relevant to plan change appeals and prohibited activity status<sup>18</sup>.

[15] We accept Mr Burns's submission that *Long Bay* and *Suburban Estates*<sup>19</sup> provide authority for the proposition that where an operative Plan contains settled objectives that are not proposed to be amended by the plan change "... Part 2 RMA considerations are largely subsumed in those settled objectives and policies of the [plan]". Following that authority, we would not normally identify at length relevant provisions of the superior instruments. On the current appeals, however, we are faced with the NZ Coastal Policy Statement 2010 (NZCPS) having come into effect after the NRCP (June 2004). In this situation the proposition relied on in the cited authorities cannot be assumed to hold. It is accordingly necessary that we identify those provisions in the NZCPS that contested PC4 Policy 27.4 must give effect to (s.67(3)). There are also Northland Regional Policy Statement (NRPS) and settled higher order NRCP provisions that PC4 must, respectively, give effect to (s.67(3)) and be "the most appropriate for achieving" (s.32(3)(b)). It is necessary that these provisions also be identified.

## **The Statutory instruments**

### ***NZ Coastal Policy Statement***

[16] The NZCPS has objectives concerned with maintaining and enhancing the public open space qualities and recreation opportunities of the coastal environment (Objective 1) as well as enabling communities to provide for their social, economic and cultural wellbeing and safety through the use and development of coastal resources (Objective 6). The following summarised Policies have particular relevance to PC4:

- (a) Recognise the traditional and continuing cultural relationships that tangata whenua have with particular areas;
- (b) Adopt a precautionary approach towards proposed activities whose effects are not clear but potentially could be significantly adverse;
- (c) Recognise the need to maintain and enhance public open space and recreation qualities and values, and at the same time recognise that some activities have a functional need to be located in the coastal marine area and need to be provided

<sup>18</sup> Morrison-Shaw, Opening submissions [12] and [13].

<sup>19</sup> *Suburban Estates v Christchurch City Council*, EnvC C217/2001 [36] and [40].





for in appropriate locations, with the existing and potential contribution of aquaculture specifically identified;

- (d) Ensure that development does not adversely affect the efficient and safe operation of ports servicing national and international shipping;
- (e) Protect indigenous biological diversity, natural features and natural landscapes (including seascapes) and avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes; and
- (f) Preserve natural character and specifically avoid adverse effects of activities in areas with outstanding natural character.

In addition to the requirements relating to outstanding natural features, natural landscapes and natural character in e) and f), the NZCPS requires in cascading fashion the avoidance of significant adverse effects and the avoidance, remedy or mitigation of other adverse effects of activities on other natural features, natural landscapes and natural character<sup>20</sup>.

### ***Northland Regional Policy Statement***

[17] The most potentially relevant provisions are those in Section 22: Coastal Management which happen to predate the NZCPS. Noting the cascading provisions of NZCPS Policies 13 and 15, Mr J Brabant particularly identified NRPS Policy 22.4(a) Preservation of Natural Character, which, summarised, provides that:

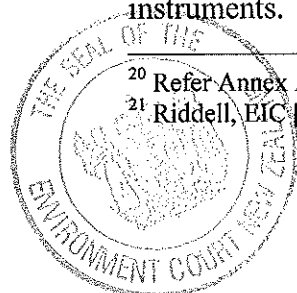
- (1) In plan preparation to preserve the natural character of the coastal environment by, as far as practicable, avoiding adverse effects on:
  - (i) Significant landscape values, including seascapes and significant landforms which impart a distinctly coastal character; and...
  - (vi) Intrinsic and amenity values, ... [*underlining supplied*]

[18] Mr Riddell, planning witness called by the Minister of Conservation, also identified Policy 22.4(c)(2) which is to limit the occupation of space in areas of high cultural, ecological, landscape or recreational value. Also Policy 22.4(c)(4) which promotes the “reservation” of areas with outstanding amenity, heritage, landscape, ecological or other intrinsic natural values<sup>21</sup>.

[19] Absent information on qualifying resources, the policies add little to the superior instruments. We find P22.4(a)(1) somewhat problematical. Mixing natural character,

<sup>20</sup> Refer Annex A for especially relevant Policies unedited.

<sup>21</sup> Riddell, EIC [34] – [39]



landscape, landforms and amenity values (s.7) in one provision seems contrary to NZCPS (2010) Policy 13(2). We also consider Mr J Brabant was correct to acknowledge that when the corresponding NZCPS (2010) provision is considered, the NRPS goes too far in its postulation of “no adverse effects” by extending that outcome to “significant” as opposed to outstanding natural landscapes.<sup>22</sup> For these reasons we place little weight on Policy 22.4(a)(1). Mr Brabant noted that the proposed NRPS notified in October 2012 has related provisions that better align with NZCPS Policies 13 and 15. However, as submissions on the proposed RPS have not been decided it can also as yet be given little weight.<sup>23</sup>

### ***Northland Regional Coastal Plan***

[20] The NRCP has settled higher order objectives and policies that PC4 is to implement but we find that they simply and generally repeat relevant aspects of Part 2 and, in particular, s.6 without adding to the statutory framework.<sup>24</sup> We note, however, that Objective 8.3 has a policy for the protection of ONF/ONL identified in district council assessments of named landscapes, which relevantly include the “*Whangaroa Harbour entrance, including Pekapeka Bay*”, the “*Cavalli Islands*”, the “*islands of the outer Bay of Islands*”, “*Cape Brett Peninsula including Motukokako (Piercy) Island*” and “*Bream Head and Mount Manaia*”. A similar policy for Outstanding Natural Features (albeit expressed as significant landforms) follows for features “*wholly or partially within Northland’s coastal marine area*” but no features are named<sup>25</sup>. Policy 8.4.3 is concerned with protecting other regionally outstanding features and landscapes in the coastal marine area (CMA).

[21] Objective 16.3 provides for recreational uses of the CMA subject to specified limits. The Explanation to related Policy 16.4.1 notes that “*Recreation is arguably the most significant way in which the general public gain direct benefit from the CMA*”.

[22] Objective 29.3 provides for commercial port operations and has Policy 29.4.1 to “*recognise and provide for the operational requirements of existing ports ...*” which we interpret as including navigation routes.

### **Plan Change 4**

[23] By the hearing the parties had agreed through ADR, albeit informally,<sup>26</sup> a number of changes to the PC4 Decisions Version leaving the previously described Topic 1 matters for

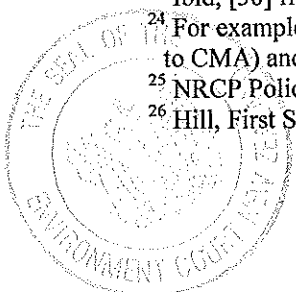
<sup>22</sup> J Brabant, Opening submissions [28].

<sup>23</sup> Ibid, [30] ff

<sup>24</sup> For example, Objectives 7.3 (natural character of coastal environment), 8.3 (ONF/ONL), 10.3 (public access to CMA) and 11.3 (Maori cultural values/traditions).

<sup>25</sup> NRCP Policies 8.4.1 and 8.4.2.

<sup>26</sup> Hill, First Supplementary Statement [13].



determination. We anticipate that the agreed changes will be the subject of proposed consent order(s) in time. The Court was ultimately assisted by Mr Burns providing a copy of updated Decisions Version (17 July 2012) with the agreed changes marked and, where agreement had not been reached, showing what we understand to be the council's preferred wording at that date.<sup>27</sup> We say "at that date" because council subsequently led evidence by Mr Hill on related aspects, which was its case before us. We refer to the 17 July 2012 document as Decisions Version 5 (DV5).

[24] DV5 relevantly identifies as issues that "In some locations, aquaculture will be one of many competing activities for use of Northland's coastal marine area" and that "Aquaculture activities can have adverse effects, including cumulative effects, on other processes, values and uses of the coastal environment."<sup>28</sup> It includes the objectives and policies in Annex 1 attached. While some of the provisions may come within Topic 2 they are potentially relevant to and provide context for the matters before us.

[25] Relevant objectives (summarised) include enabling the development of sustainable aquaculture activities in Northland, and that such activities provide socio-economic and cultural benefits for the Region and its communities and are located "in areas where there are no significant adverse effects on important natural, social, economic and cultural values and uses."

[26] The policies (summarised) recognise that enabling aquaculture can provide social, cultural and economic benefits to local communities and the Northland Region, including local employment and enhancing Maori development, supplementing natural fish and shellfish stocks and providing a good indicator of the quality of coastal waters. There is specific provision for the significant opportunity that marae-based aquaculture provides Maori to enhance their wellbeing (through improving traditional customary kaimoana provision) to be considered when determining plan changes and coastal permit applications for marae-based aquaculture. A cascade of policies specify sequentially the circumstances in which aquaculture should have no adverse effects, no more than minor adverse effects, and avoid significant effects on named values and resources. The policies provide guidance on areas where aquaculture activities may or may not be appropriate, and requirements for managing effects on the environment in the different areas.<sup>29</sup>

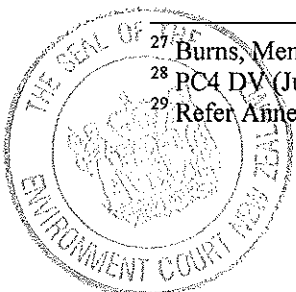
### **Matters in Dispute**

[27] In broad terms two principal matters were in dispute:

<sup>27</sup> Burns, Memorandum to the Court following consultation with the parties dated 29 May 2013.

<sup>28</sup> PC4 DV (July 2012) Section 27.2 Issues 3 and 4.

<sup>29</sup> Refer Annex A for a fuller list of especially relevant Policies.



- (i) The wording of Policy 27.4.9. (Although it was agreed that criteria in the Policy's Explanation, which determine where aquaculture is a prohibited activity are better included in the main body of the policy, the wording of the criteria remained in dispute).<sup>30</sup>
- (ii) The locations where aquaculture should be a prohibited activity.

### Agreed Matters

[28] No party contradicted Mr Burns's submission that the Court has jurisdiction to extend the prohibited activity status of aquaculture to additional locations should it so determine.<sup>31</sup>

[29] No party disagreed with the council and YNZ et al cases that the word "conflicts" in DV5 Explanation at [4] and Appendix 12(c) should be deleted and replaced with "adverse effects" to better align with the language of the Act and avoid potential interpretation difficulties.<sup>32</sup> We find accordingly.

[30] All parties accepted the evidence of Mr A Riddell that the following criterion should be added to Policy 27.4.9 for determining MM2 locations where new aquaculture is prohibited:<sup>33</sup>

(ca) Areas of high marine biodiversity, habitat or species value.

We return to the criterion's wording below.

[31] No party opposed aquaculture being a prohibited activity in the vicinity of Stephenson Island and Mahinepua as sought by Yachting New Zealand (YNZ), Auckland Yachting and Boating Association (AYBA), Northland Yachting Association (NYA) and Mr Keys.<sup>34</sup> More specifically Mr Keys, who participated in his own right whilst also being an authorised spokesperson for the proposed Whangaroa Maritime Recreation Park steering group,<sup>35</sup> sought that prohibited activity status apply "... out [into] Whangaroa Bay, around Stephenson Island [and] down from the Cavalli Islands to the Takou River ...". Mr Keys

<sup>30</sup> For example, Burns, Opening submissions [17], Ms Morrison-Shaw, Opening submissions [9(a)], R Brabant, Opening submissions [36] and J Brabant, Opening submissions [12].

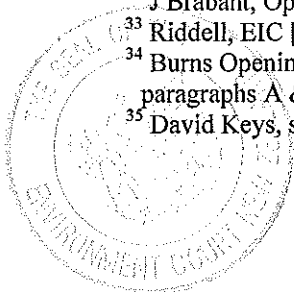
<sup>31</sup> Burns Opening submissions [13] and Closing [TOP p 239], Morrison-Shaw Opening submissions [19]

<sup>32</sup> J Brabant, Opening submissions [24] and Hill First Supplementary Statement [15] and [104].

<sup>33</sup> Riddell, EIC [73]

<sup>34</sup> Burns Opening submissions [41], R Brabant, Opening submissions [21], Keys Opening submissions p 1 paragraphs A & B, and Hill EIC Annex 1 Map Sheet 06.

<sup>35</sup> David Keys, s.274 notice 3 July 2008.



gave specific co-ordinates for the areas that he sought be included in Whangaroa Harbour, out to Whangaroa Bay and around Stephenson Island.<sup>36</sup>

[32] No party opposed prohibited activity status for aquaculture in the central part of the Bay of Islands as sought by JH Dowell and Moturoa Island Limited, the landowners represented by Ms Morrison-Shaw, and YNZ and others, and illustrated on Map Sheet 08 to Mr Hill's EIC at Annex 1.<sup>37</sup>

[33] There was no disagreement with the council's position or the evidence of Mr T Groves for the Whangarei Harbour Watchdog Inc. that the Whangarei Harbour and its entrance should have prohibited activity status as shown in DV5 Appendix 12: Map Sheet 12.<sup>38</sup>

### **Specific matters that remained in dispute and parties' positions**

[34] The parties with an interest in the wording of Policy 27.4.9 generally fell into two groups:

- (i) One aligned with the wording proposed by YNZ based on the evidence of its planning witness Mr P Thomas as amended in opening submissions by Mr J Brabant. The group included the parties represented by Mr R Brabant, Ms Morrison-Shaw and Mr Keys.<sup>39</sup>
- (ii) The other group comprised the council, which opposed the amended wording sought by the preceding parties except to the extent that Mr Hill agreed with some detailed aspects, and the Ngatiwai Trust Board.<sup>40</sup>

[35] Prohibited activity status remained in dispute in three locations, namely:

- (i) The Te Puna Inlet in the northwest Bay of Islands. The council opposed a substantial extension in the upper part of the Inlet sought by YNZ, AYBA, JH Dowell and Moturoa Island Limited, and Ms Morrison-Shaw's landowner

<sup>36</sup> Keys, Opening submission A p3.

<sup>37</sup> Burns, Opening submissions [43], R Brabant, Opening submissions [5], Ms Morrison-Shaw, Opening submissions [9(c)] and J Brabant, Opening [65(g)].

<sup>38</sup> Groves, EIC [12] and Hill Second Supplementary Statement corrected Map Sheets 12, 26 and 27.

<sup>39</sup> Thomas, EIC [41], J Brabant, Opening submissions [22] and Closing TOP p 219 line 29, R Brabant [36] and Ms Morrison-Shaw, Opening submissions [9(b)] and [16], and Mr Keys Closing TOP p 212 line 11.

<sup>40</sup> Burns, Closing submissions TOP p 240 line 13 and Volkerling Rebuttal [9] ff and Closing submissions TOP p 213 line 8.

clients<sup>41</sup>. Council's opposition was conditional on the Court accepting its case that Policy 27.4.9 should limit prohibited activity status to areas with outstanding natural character and/or outstanding natural landscapes as opposed to high natural character/landscape and amenity values, which the appellants' planning witness supported<sup>42</sup>. The council accepted that, if the Court were to prefer the appellants' wording, prohibited activity status could be extended as sought<sup>43</sup>.

(ii) The environs of Henry Island at the entrance to Whangaruru Harbour. YNZ and AYBA sought with council support prohibited activity status in the vicinity of the Island and Harbour approaches<sup>44</sup>. The Ngatiwai Trust Board opposed that relief<sup>45</sup>.

(iii) Bream Bay proved a contentious area possibly because of its size, varied resource base, onshore features and the range of activities conducted in it. Submissions and evidence were heard for different parts of the Bay, which can be summarised as offshore from Bream Head at the approach to Whangarei Harbour, including Peach Cove and a designated ships' anchorage; Bream Bay from Bream Head to Bream Tail including another ships' anchorage<sup>46</sup>; and an area 4 kilometres offshore from Ruakaka. The parties' positions at the conclusion of the hearing were:

(a) The council accepted the Minister of Conservation's case (DOC) for prohibited activity status offshore from Bream Head including the Harbour approaches and Anchorage A<sup>47</sup> with the area's seaward limits defined by co-ordinates. In Bream Bay council's case was a little at sixes and sevens but we understood it ultimately supported an inshore extension of the area to incorporate all of Anchorage B extending as far west as the rhumb line between Marsden Point and a location off Bream Tail (the western yellow line on Exhibit 4). Mr Burns indicated that the council would abide the decision of the Court in respect of a further area inshore of the rhumb line north and south of Bream Tail (the pink alternative lines on Exhibit 4 explained by Mr B Lee a council officer in attendance<sup>48</sup>)<sup>49</sup>. The council's

<sup>41</sup> J Brabant, Opening submissions [65(f)], R Brabant, Opening submissions [5] and Ms Morrison-Shaw, Opening submissions for her clients Mountain Landing Properties, E & K Williams, Williams Capital Holdings No 1 Limited, W Falconer, Paroa Bay Station Limited and Robinia Investments Limited [23]. Area illustrated on Mr Hill's EIC Annex 1 Map Sheet 08.

<sup>42</sup> Hill, First Supplementary Statement [13], Thomas EIC [41] and J Brabant, Opening submissions [22]

<sup>43</sup> Burns, Opening submissions [42] and TOP p 241 line 14ff.

<sup>44</sup> Burns Opening submissions [44] and J Brabant Opening submissions [65(i)].

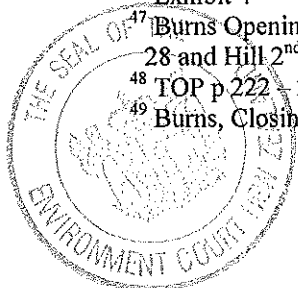
<sup>45</sup> Volkerling EIC [11], Rebuttal [24]ff and Closing submissions TOP p 212 line 30.

<sup>46</sup> Exhibit 4

<sup>47</sup> Burns Opening submissions [45] and Closing TOP p 241 line 26, Riddell supplementary statement Map Sheet 28 and Hill 2<sup>nd</sup> supplementary Map Sheet 28.

<sup>48</sup> TOP p 222-223.

<sup>49</sup> Burns, Closing submissions TOP p 241 line 27ff



final position offshore from Ruakaka shifted from that accepted during pre-hearing negotiations and shown on Map Series 28 attached to Mr Hill's second supplementary statement. While Mr Burns submitted that there is jurisdiction for prohibited activity status in a four kilometre band immediately offshore,<sup>50</sup> he advised that when the council reviewed the exchanged evidence it could see no basis for such and altered its position to enable aquaculture<sup>51</sup>.

- (b) YNZ and the other boating interests supported prohibited activity status in the area offshore from Bream Head including the Harbour approaches shown in Mr Hill's second supplementary statement Map Sheet 12<sup>52</sup>. In Bream Bay, Mr J Brabant in closing submissions supported including all of Anchorage B with its buffer area in the area, the inshore extension of the area shown on Exhibit 4 (the western yellow line) and "the navigation route where people work close to Bream Tail", which we interpret as the inshore pink lines at Bream Tail<sup>53</sup>. YNZ and related parties did not oppose a 4 kilometre wide strip offshore from Ruakaka<sup>54</sup>.
- (c) DOC supported prohibited status for an area some 4 kilometres off Bream Head. The area sought was clarified relative to the balance of Bream Bay in map form in supplementary evidence by Mr Riddell<sup>55</sup>. DOC did not lead evidence on the activity status of aquaculture in other parts of the Bay.
- (d) The Ngatiwai Trust Board accepted prohibited activity status off Bream Head and the entrance to Whangarei Harbour where there are shipping lanes and aquaculture would significantly compromise natural character and landscape values, including in Peach Cove<sup>56</sup>. In the main body of Bream Bay, Ngatiwai accepted that seaward of the Exhibit 4 western yellow line aquaculture would not be appropriate because of potential conflicts with other activities<sup>57</sup>. However prohibited activity status was expressly opposed in the 4 kilometre strip off Ruakaka<sup>58</sup> and by inference between the strip and the Exhibit 4 western yellow line.

<sup>50</sup> Burns Closing TOP p 242.

<sup>51</sup> TOP p 99 line 9ff

<sup>52</sup> J Brabant, Opening submissions [65((k)].

<sup>53</sup> TOP pp 220 and 223.

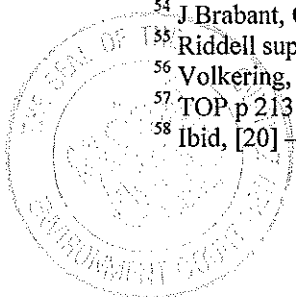
<sup>54</sup> J Brabant, Opening submissions [66].

<sup>55</sup> Riddell supplementary statement Map Sheet 28 attachment

<sup>56</sup> Volkerling, Rebuttal [2], [5] and [23].

<sup>57</sup> TOP p 213 line 6

<sup>58</sup> Ibid, [20] – [23] and Volkerling, Closing submissions TOP p 212-213.



- (e) The Bream Bay Action Group (BBAG) sought that aquaculture be a prohibited activity in all of Bream Bay<sup>59</sup>.

**Which version of Policy 27.4.9 better implements the superior instruments and is most appropriate for achieving PC 4 Objectives?**

[36] We commence this section by setting out the competing versions of Policy 27.4.9, related submissions and evidence. The settled wording is used subsequently to decide the appellants' cases for adding areas to the Appendix 12: Aquaculture Prohibited Area Maps. We are mindful that the Policy will have a central place in determining any future proposals for amendment of the Appendix 12 Prohibited Area Maps initiated by Plan Change. In addition, it needs to be consistent with the Aquaculture Prohibited Area Maps not in dispute which will become operative in due course.

*The council's version*

[37] For the council Mr Hill proposed the following version of P27.4.9, which incorporates the DV5 Explanatory material together with other amendments that he supported:<sup>60</sup>

**9. Aquaculture activities are not appropriate in the following areas:**

(a) – (b) DV5

- (c) Locations within Marine 2 (Conservation) Management Areas where the adverse effects (actual or potential) of aquaculture activities on the following are unavoidable:
- (i) areas of significant urban development; or
  - (ii) significant tourism and/or recreation areas; or
  - (iii) outstanding natural character and/or outstanding natural landscapes; or
  - (iv) significant recognised vessel routes (commercial and recreational), significant anchorages of refuge, and/or port or harbour approaches;
  - (v) existing aquaculture (either because there is no/limited space or the area is at its production or ecological carrying capacity).

(d) – (f) DV5

(g) DV5

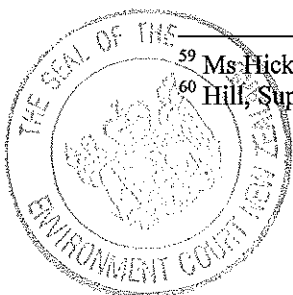
There follow five exceptions to (b) and (c) above that include in summary marae-based aquaculture in limited circumstances, aquaculture in specific circumstances/locations and currently authorised aquaculture activities.

[38] Although Mr Hill did not expressly say, we understand that the version of Policy 27.4.9 he supported would retain the following DV5 Explanation or words to similar effect:

Explanation: These areas contain identified values which are considered to be generally incompatible with aquaculture activities, have been through a robust statutory and/or public process, and therefore aquaculture activities should generally be prohibited in these areas. The above areas are shown in the Aquaculture Prohibited Areas Maps – Appendix 12.

<sup>59</sup> Ms Hicks, submissions p 2 [3].

<sup>60</sup> Hill, Supplementary evidence [104]





Marine reserves and aquaculture activities are generally incompatible.

Marine 1 (Protection) Management Areas (MM1 areas) are those identified for their significant environmental values.

The locations within Marine 2 (Conservation) Management Areas (MM2 areas) in Appendix 12 are those unsuitable for new aquaculture activities because of actual or potential conflicts with [the matters listed in Policy 27.4.9].

### *YNZ's version*

[39] For YNZ Mr J Brabant in consultation with Mr R Brabant proposed an alternative wording to the council's sub-section (c) and a new sub-section (d). Other parts of council's Policy 27.4.9 were not challenged. Mr J Brabant's proposed wording is:<sup>61</sup>

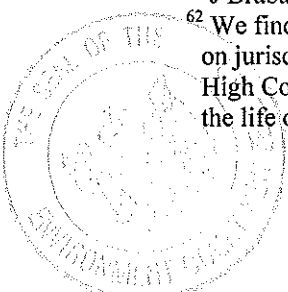
#### Policy 27.4.9

- (c) Locations within Marine 2 (Conservation) Management Areas shown in the aquaculture prohibited areas maps and Appendix 12 where the adverse effects (actual or potential) of aquaculture activities on the following are assessed as unavoidable:
  - (i) Outstanding natural character and/or outstanding natural landscapes.
- (d) Locations within Marine 2 (Conservation) Management Areas shown in the aquaculture prohibited areas maps and Appendix 12 where the adverse effects (actual or potential) of aquaculture activities on the following are assessed as significant and unavoidable:
  - (i) Residential, tourism and recreational activities; or
  - (ii) natural character and/or high landscape or amenity values; or
  - (iii) Recognised navigational routes (commercial and recreational), anchorages of refuge and/or port or harbour approaches; or
  - (iv) Existing aquaculture (either because there is no/limited space or the area is at its production or ecological carrying capacity).

[40] Mr J Brabant submitted that sub-sections (c) and (d) reflect the NZCPS approach of having different policies for outstanding natural character and/or outstanding natural landscapes (criterion c(i)) from those for other areas in the coastal environment with lesser qualities (criterion d(ii)). NZCPS Policy 13 (preservation of natural character) and Policy 15 (natural features and natural landscapes) require that adverse effects be avoided on areas in the coastal environment with outstanding natural character and on outstanding natural landscapes (including seascapes)<sup>62</sup>. Those provisions derive from s.6 RMA. Mr J Brabant

<sup>61</sup> J Brabant, Opening submissions [22]

<sup>62</sup> We find that the NZCPS 2010, containing as it does no transitional provisions, and there being no limitations on jurisdiction of the sort identified in *Auckland Regional Council v Roman Catholic Diocese of Auckland*, High Court Auckland, CIV-2007-404-2019, Andrews J (concerning new plan provisions promulgated during the life of a case referred back from HC to EC), full due consideration of the new NZCPS is required.



submitted that the YNZ wording avoids a problem that Mr Thomas anticipated in following RPS Policy 22.4.1, which speaks of avoiding adverse effects on significant landscape values (i) and on amenity values (iv), and that d(ii) would be consistent with the descriptor “high natural character and landscape values” used in the proposed RPS. He did not address us on the origins or purpose of including “amenity values” in d(ii) but we note its inclusion in the operative RPS policy cited.<sup>63</sup>

[41] Mr R Brabant largely supported the YNZ case including the alternative wording it proposed for P27.4.9.<sup>64</sup> More particularly he submitted that “high” was an appropriate threshold to qualify landscape and amenity values and implements PC 4 Objective 27.3.4.<sup>65</sup> He supported combining the council’s (c)(i) and (ii) into a single criterion “Residential, tourism and recreational activities” and deleting the qualifier “significant”. His reasoning was that “activities” better aligns with the language of the Act and Objective 27.3.4 than “areas”. He submitted that with “activities” deleted, “significant” is both unnecessary and inappropriate. He submitted the reference should qualify the scale of effects not “the area,” whether used for residential, tourism or recreation purposes, and that in considering if aquaculture should be prohibited “it is the potential effects of that activity on those other activities or values which is the issue”. Mr R Brabant also considered it appropriate that “residential activities” be substituted for “urban development” because the council’s wording did not recognise the widespread presence of residential activity throughout the Bay of Islands and on some offshore islands. In his submission the effects of aquaculture on these activities is no less important or relevant than effects on existing areas of urban development within the inner Bay.

[42] Ms Morrison-Shaw endorsed the revised YNZ P27.4.9 wording generally for the reasons given by Messrs Brabant. She particularly supported the natural character and landscape threshold being “high” rather than “outstanding”. While she acknowledged that this would prohibit aquaculture in a greater number of areas, the amendment was considered to be justified by the need to protect the special nature of Northland’s coastal environment. Mr Keys similarly supported the P27.4.9 amendments proposed by YNZ.<sup>66</sup>

[43] Ms Bellingham for the Minister of Conservation, noted that the Planners’ Joint Statement records Messrs Riddell, Hill and Volkerling support “outstanding” as the natural character and landscape threshold as opposed to “high” (Mr Thomas’ preference). Ms Bellingham submitted that the council’s wording aligns with the requirements of NZCPS

<sup>63</sup> Thomas EIC Appendix 1 p 36

<sup>64</sup> R Brabant, opening submissions [31]ff

<sup>65</sup> Objective 27.3.4: “Aquaculture activities are located in areas where there are no significant adverse effects on important natural, social, economic and cultural values and uses”.

<sup>66</sup> TOP p 61 line 28



Policies 13 and 15 (with respect to avoiding adverse effects on areas of outstanding natural character and on outstanding natural landscapes) and that prohibited activity status provides certainty that adverse effects will be avoided. She continued:

... with respect to areas of high natural character or landscape values the [NZCPS] policies imply that adverse effects [on these] may be acceptable as long as significant adverse effects are avoided. ... this suggests that aquaculture activities in areas of high natural character or landscape values should be addressed by the resource consent process for discretionary or non-complying activities.<sup>67</sup>

Without derogating from that view, Ms Bellingham indicated in a verbal interpolation to her written submissions that the revised wording proposed by YNZ “does appear to address this concern and in the Minister’s submission [aligns] with the New Zealand Coastal Policy Statement.”<sup>68</sup> We interpret that submission as endorsing YNZ’s proposal that aquaculture be prohibited both where the adverse effects on outstanding natural character and outstanding natural landscapes are unavoidable (criterion c(i)) and where the adverse effects are significant and unavoidable in areas of high natural character or high landscape value (criterion d(ii)).<sup>69</sup> We apprehend that this approach would see proposals in “high” locations and not having “significant and unavoidable” adverse effects being classified as something other than prohibited.

### The evidence

[44] Mr Hill commented on the YNZ formulation of P27.4.9 in evidence, substantial examination in chief<sup>70</sup> and cross examination; making the following points:

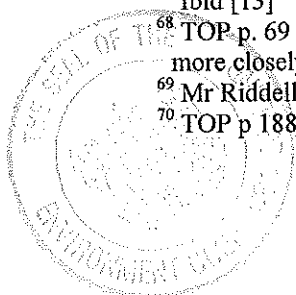
- (a) Policy 27.4.9 is one of four policies which comprise a “cascade” specifying the degree of adverse effects that trigger different activity statuses. Policy 27.4.6 provides that aquaculture activities are to have no adverse effects on identified existing uses and values with greater priority (than aquaculture). Aquaculture applications are possible but to succeed the effects must be *de minimis*. Policy 27.4.7 provides that aquaculture activities are to have no more than minor adverse effects on a different set of existing uses and values including coastal areas displaying high natural character and outstanding landscapes. Policy 27.4.8 takes the same approach for a further list of existing uses and values with the threshold set at applications avoiding significant adverse effects. As we have seen, Policy 27.4.9 provides that aquaculture will not be appropriate in specified areas including some in Marine 2

<sup>67</sup> Ibid [13]

<sup>68</sup> TOP p. 69 line 16. We note also Mr A Riddell’s evidence that ‘the wording put forward by Mr J Brabant more closely aligns with the NZCPS, particularly Policies 13 and 15’

<sup>69</sup> Mr Riddell in reply to a question from the Court expressed the same view.

<sup>70</sup> TOP p 188 line 27ff



(Conservation) Management Areas where it is prohibited. These areas are mapped in Appendix 12: Aquaculture Prohibited Areas.

- (b) Unlike YNZ's criteria (c) and (d), the Council's wording does not reference Appendix 12 and its related maps which Mr Hill emphasised are Methods for implementing the policy. The Appendix and maps attach to a rule<sup>71</sup> which provides that aquaculture is a prohibited activity at the mapped locations. Mr Hill deposed that the Appendix does not need to be drawn into the policy and its provisions may change over time.<sup>72</sup>
- (c) The test in YNZ's limb (c)(i) of outstanding natural character and/or outstanding natural landscapes is the same as the council's (c)(iii) and presents no difficulty subject to the concern in (b) above.<sup>73</sup>
- (d) As we received his evidence Mr Hill understood, and by inference accepted, the reasoning behind YNZ's use of "significant and unavoidable" adverse effects in its criterion (d). To not have done so would invite questions about the efficacy of P27.4.8 which requires "significant" adverse effects be avoided. However he anticipated difficulties with YNZ limb (d)(i). He was concerned about the uncertain scale of residential, tourism or recreational activities that would be caught by the YNZ wording in the absence of a "qualifier". Similar issues arise with the term "amenity values" (s.2) in YNZ's (d)(ii). Based on Mr R Brabant's rules of interpretation it would read "high amenity values" but that might not be accepted by all persons. We understood Mr Hill to express reservations about what type, and possibly "degree" of amenity effects the broadly defined term might invoke; resulting in aquaculture being prohibited.<sup>74</sup>
- (e) Mr Hill noted that YNZ's d(ii) adopts a lesser standard for prohibited activity status than council by including significant and unavoidable adverse effects on "high natural character and/or high landscape". He was concerned about the practical workability of an applicant<sup>75</sup> having to undertake the necessary assessment and, importantly we think, setting the test for prohibited activity status at an inappropriate (low) threshold. He applied the council's and appellants' versions of the Policy to the evidence of other witnesses to illustrate the potential region-wide difference in prohibited areas that would

<sup>71</sup> We think Rule 31.4.10(e) at DV5 p 41.

<sup>72</sup> Hill at TOP 189 line 34. Mr A Riddell in reply to a question from the Court expressed the same opinion.

<sup>73</sup> TOP p 190 line 24

<sup>74</sup> TOP p 190 line 13

<sup>75</sup> Be it for a Plan Change or a concurrent application for a Plan Change and specific proposal under s.165ZK.



result.<sup>76</sup> Of particular note was his evidence, suitably qualified as to accuracy, that:

If the [YNZ] criterion of "High" is adopted, then a further 28% of the East coast and 30% of the West coast would be deemed off-limits to aquaculture on that criterion alone – or 44% and 49% of those coasts respectively adding the *high* and *outstanding* [criteria] together.

He considered that the high natural character and/or high landscape component of d(ii) might be better included in P27.4.8 which is concerned with avoiding significant adverse effects.

f) Navigational routes and vessel routes were considered to be interchangeable with either satisfactory. Mr Hill accepted YNZ's limb (d)(iii) including with "recognised" inserted before "anchorage of refuge" to provide a qualifying standard.

[45] Mr Thomas supported the revised P27.4.9 wording submitted by counsel for YNZ.<sup>77</sup> In answer to questions put in cross examination by Mr R Brabant<sup>78</sup> he deposed that the words "significant" and "unavoidable" in YNZ's revised criterion (d) are capable of effective application in a policy context provided evidence was available to base an assessment on. He also considered it unnecessary for a qualifier (like "significant") to precede the terms residential, tourism and recreational activities because the focus should be on environmental effects (as opposed to areas); although the "significance" of a potentially affected activity might form part of a rational assessment. In answer to Mr Burns, Mr Thomas conceded that it would require an assessment that included every high natural character/high landscape area in coastal Northland, in relation to every potential form of aquaculture that might locate there, to determine whether or not in those areas aquaculture should or should not be a prohibited activity. Mr Thomas acknowledged that an investigation of this type had not been undertaken and was not within jurisdiction.

### *Evaluation and findings*

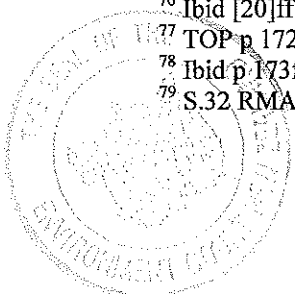
[46] We remind ourselves that broadly the RCP is to assist the council to carry out its functions (s.30RMA) in conjunction with the Minister of Conservation to achieve the purpose of the Act (s.5RMA) in relation to the coastal marine area (s.63RMA). The applicable version of s.32RMA provides that in making our decision we must evaluate which of the competing versions of P27.4.9 having regard to their efficiency and effectiveness is the most appropriate for achieving the [relevant] objectives. The evaluation must take into account as appropriate the benefits and costs of the policies and the risk of acting or not acting should there be uncertain or insufficient information about the subject matter of the policy.<sup>79</sup>

<sup>76</sup> Ibid [20]ff

<sup>77</sup> TOP p 172 line 21.

<sup>78</sup> Ibid p 173ff

<sup>79</sup> S.32 RMA in force 10 August 2005 – 1 October 2009.



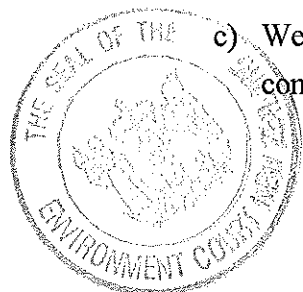
[47] By s.67(3)RMA the RCP must give effect to the NZCPS, which relevantly includes objectives and policies summarised above. The PC 4 objectives that we must have particular regard to for the purposes of s.32 are those in Section 27.3. Objective 27.3.1 is that “The development of sustainable aquaculture activities in Northland is enabled”. There follow objectives concerned with providing socio-economic and cultural benefits for the region and its communities through aquaculture and the objective which Mr R Brabant drew to our attention that aquaculture is “located in areas where there are no significant adverse effects on important natural, social, economic and cultural values and uses” (O27.3.4). The PC 4 policies most relevant to the appeals are those in P27.4.6 - .9 which together determine where, and the circumstances in which, aquaculture may establish. As stated, the purpose of P27.4.9 is to identify where aquaculture will not be appropriate.

[48] The contested parts of P27.4.9 are its MM2 provisions. The differences between the parties are distilled into the following matters:

*Should aquaculture be prohibited where it has significant and unavoidable adverse effects on areas of high natural character and/or high landscape or amenity values?*

[49] YNZ’s proposal to this effect was one of the most contentious aspects of the hearing. It reflects the scheme of NZCPS Policies 13(b) and 15(b) and was proposed with the expectation that aquaculture would be prohibited in additional parts of the CMA, including potentially in areas used for recreational boating and offshore from land owned by supporting parties. The following factors arise:

- a) As Mr Burns established, because no assessment has been made for current purposes of “high” natural character/ “high” landscape areas in coastal Northland there is no evidential basis for knowing with any degree of certainty what total area might be caught by the amended wording. This uncertainty is compounded in his submission by having to factor in the different effects of different types of aquaculture (some of which might be “significant and unavoidable” and others which might not).
- b) The proposed NRPS is of little assistance as there is no certainty about whether, or in what form, its high natural character/high landscape provisions might come into effect. What can be ascertained from the unchallenged evidence of Mr Hill is that if areas of outstanding and high natural character/high landscape were both included aquaculture would potentially be prohibited in a very significant part of the Region’s CMA on these two criteria alone.
- c) We recognise that proposals to change the Appendix 12 maps, be it by Plan Change or concurrent applications (s.165ZK), might never arise for all areas with high natural



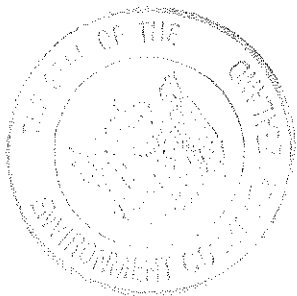
character/high landscape values. However, consideration must be given to the potential consequences of progressively moving towards that point in terms of the total area where aquaculture is prohibited.

- d) It appears that, without further amendment of PC 4, YNZ's wording would overlap with P27.4.7 creating a potential inconsistency between it and P27.4.9. We do not wish to venture into a potential Topic 2 matter, but note that Policy 27.4.7 provides aquaculture should have no more than minor adverse effects on (d) "*coastal areas where both the marine environment and the adjoining land have high natural character*". The inclusion of "should" in P27.4.7 creates the possibility that in some circumstances such effects may be acceptable, possibly where they are avoided or found to be sufficiently mitigated. YNZ and those who support its case, however, propose a P27.4.9 wording where "significant and unavoidable" adverse effects on areas with high natural character would cause aquaculture to be prohibited.

[50] The Court has very significant reservations about whether the YNZ and supporters' wording would better implement NZCPS Objective 6 (first 2 bullets) and Policy 8, or the PC 4 aquaculture Objectives 27.3.1 and .2, than DV5 including when O27.3.4 is taken into account. We think it would not. Inclusion of "high" amenity values in YNZ's d(ii) would potentially increase the prohibited area further and in our judgement create severe interpretation challenges around application of the term. We have determined that its inclusion in P27.4.9 would not be an efficient way of implementing the relevant objectives. Nor in our judgment would the costs of doing so be likely to exceed the benefits in terms of either implementing the objectives or in transaction terms. For these reasons we find inclusion of high natural character and/or high landscape or amenity values would not be the most appropriate formulation.

*Should Policy 27.4.9 include Methods?*

[51] We accept Mr Hill's evidence that Appendix 12 and the aquaculture prohibited maps are Methods which in conjunction with DV5 Rule 31.4.10(e) implement Policy 27.4.9. The policy must be capable of application to a given set of facts (for example, location and production type) to determine whether aquaculture should be prohibited, or remain prohibited, in a given area. The scheme of PC4 is that that the answer to either of these two questions is to be implemented through Appendix 12, its related maps and the Rule. For these reasons we find that the Method should not form part of the policy.



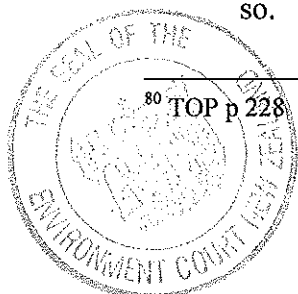
*Should the significance of activities not to be adversely affected by aquaculture be qualified?*

[52] We were troubled by the parties' differing approaches to defining the circumstances in which the adverse effects of aquaculture on urban development/residential activities, tourism and recreation would result in prohibition. The council proposes "significant" as a "qualifier" in a number of its criteria. YNZ eschews the use of a "qualifier" in its criteria (d)(i) and d(iii). The following considerations arise:

a) We think that Mr Hill was correct in identifying the absence of a "qualifier" in YNZ's criterion d(i) as problematic. How is "residential activity" in its preferred wording to be interpreted? One house, a group of houses, a small settlement or a major settlement? Would it be limited to existing activities or include unexercised consents and future development enabled by operative district plan provisions? Mr R Brabant's constructive submissions aside,<sup>80</sup> we are not sure that these interpretative challenges concerned the appellants greatly because they seek additional prohibited areas in the locations where they have an interest and sought amendments to that end. The Plan Change, however, must be capable of effective application to all nature of future proposed Appendix 12 amendments and provide a robust basis for prohibited areas not in dispute. It also needs to afford a degree of certainty commensurate with the severe limiting effect of prohibited activity status. Similar interpretation challenges can be expected for tourism and recreation activities if these terms are not qualified. PC 4 Objective 27.3.4 speaks of avoiding significant adverse effects on "important" uses (activities). That wording lends further support to the need to qualify subject activities by their significance. Mr R Brabant and Mr Thomas sought to convince us that residential activities should not be qualified by scale or location. We are not persuaded that the potential effects of aquaculture on individual or small groups of residential activities are such that it warrants including them amongst the criteria for prohibiting aquaculture. This would not be a proportionate response when:

- i) The effects of concern are generally capable of effective management through the resource consent process, and
- ii) Applicable objectives and policies, including those in superior instruments, expressly enable aquaculture.

The considerations noted suggest that the higher order provisions would be more appropriately implemented by including a "qualifier" in the policy than by not doing so.





- b) The council's criteria (c)(i), (ii) and (iv) employ "significant" to qualify areas and routes that aquaculture is to not adversely affect. YNZ's submission that council's "areas" in (c)(i) and (ii) would better read as "activities" is accepted. We set out a preferred c(iv) wording below, that removes the issue in that criterion. Returning to c(i), and focusing on activities, we consider the criterion should apply to existing activities, activities authorised by unexercised consents and urban development enabled by operative Plan provisions. The latter would include permitted, controlled, restricted discretionary and discretionary activities. Not to allow for the future environment in the way indicated would be inappropriate when formulating Plan provisions and not promote integrated management. "Urban" should be interpreted carefully and along the lines indicated in the *Monk*<sup>81</sup> and *New Zealand Sunday School* decisions cited by Mr R Brabant<sup>82</sup>, developed as follows. With the focus on activities and with urban development qualified, the criterion might then read "Activities in significant urban areas". Mr R Brabant took a step in this direction when he acknowledged the need for greater interpretative direction and proffered "Residential [activities]<sup>83</sup> and areas of urban development"<sup>84</sup>. Separating "residential activities" from "urban development", however, does not redress the identified problem in YNZ's wording.
- c) An alternative c(i) formulation might be "residential activities existing [at the date PC 4 becomes operative]<sup>85</sup>, authorised by unexercised consents or enabled by operative district plan provisions having permitted, controlled, restricted discretionary or discretionary activity status in significant urban areas". Having said that, we are not entirely certain the policy should be limited to residential activities, although it is probable they are the activity most susceptible to adverse effects in this context. The provision is lengthy but not disproportionately so when the strictures of prohibited activity status are taken into account. The wording is offered with Mr Burns's comment in mind that the council was receptive to Court guidance on the matter.<sup>86</sup> As we did not have the benefit of submissions or evidence on the point, leave is granted to lodge further submissions on the detailed expression taking into account our findings in (d) below.

<sup>81</sup> 2013 NZEnvC 12

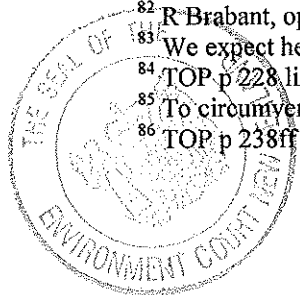
<sup>82</sup> R Brabant, opening submissions [42]ff

<sup>83</sup> We expect he may prefer "activities" to "housing" given his support elsewhere for such.

<sup>84</sup> TOP p 228 line 6 and p 233ff

<sup>85</sup> To circumvent the RCP definition of "existing" being 20.12.1994. Refer TOP p 239.

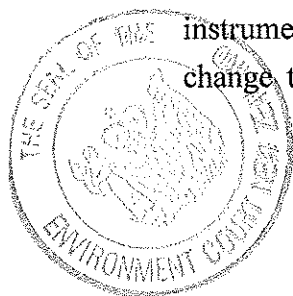
<sup>86</sup> TOP p 238ff



- d) That leaves the question of how the term “significant urban areas” is to be understood and applied in P27.4.9. Or for that matter, “significant” tourism and/or recreation activities. Although not the subject of submissions and evidence, we consider that an indication of the size of intended settlements can be discerned from the locations where there is no dispute about aquaculture being prohibited offshore. For example, the Doubtless Bay settlements and Mangonui (Map Sheet 05); the Whangaroa coast settlements (Map Sheet 06); the Bay of Islands settlements (Map Sheet 08); the Whangarei coast settlements (Map Sheets 10 and 11); and Whangarei City and Heads settlements (Map Sheet 12). We expect that each of these settlements has an urban zoning in the relevant district plan that enables residential activities on relatively small lots (as opposed for example to countryside living). These are also the locations where factors such as diminished water quality, concentrated navigation, recreation and possibly tourism coincide sufficiently offshore to potentially militate against aquaculture. If we are generally correct in these regards, the council is to file submissions with an Explanation that describes how c(i) is to be interpreted by reference to factors of the preceding type. If we are not correct, the council is to file submissions with an alternative Explanation. Either way, interpretation guidance is required to support the Policy.
- e) A similar approach to (d) above is required and we expect available for explaining “significant” areas of tourism and recreation activity, for example, in the Bay of Islands and the Stephenson - Cavalli Islands areas.

*Are outstanding natural character and ONL appropriate criteria for inclusion in Policy 27.4.9?*

[53] We find that the short answer is yes. Both the council and YNZ propose that aquaculture be prohibited where it would have unavoidable adverse effects on areas of outstanding natural character and/or outstanding natural landscapes (ONC/ONL). The criterion is consistent with and implements NZCPS Policies 13 and 15. And significantly, this criterion was not in dispute. We recognise that with aquaculture prohibited in these locations the extent of CMA potentially available for the activity is reduced. However with “high” natural character/landscape value areas excluded from the P27.4.9 criteria we find that an appropriate balance is struck between the aquaculture-enabling objectives/policies in both NZCPS and PC 4 and the preservation/protection of natural values (the s.6 matters). We understand that ONC/ONL areas are not currently mapped in an operative regional instrument but do not see this detracting from the policy’s efficacy. A person initiating a change to the Appendix 12 maps will need to assess whether the subject area has ONC



qualities or is an ONL and have that assessment tested through the First Schedule process. Finally, we find that the council's criterion would more appropriately read "outstanding natural landscapes (including seascapes)" to better reflect NZCPS Policy 15.

[54] Before leaving this criterion we note that there is an apparent overlap between Policy 27.4.7(e) and an undisputed aspect of P27.4.9. The former provides that aquaculture should have no more than minor adverse effects on "outstanding landscapes". For current purposes we assume the latter to be short hand for ONL. Both the council and YNZ are agreed that in Policy 27.4.9 where adverse effects are unavoidable on ONL aquaculture should be prohibited. In this instance we have found that ONC and ONL are matters properly included in Policy 27.4.9. Without prejudging any aspect of Topic 2, which may involve further and different parties we ask whether Policy 27.4.7(e) requires attention.

*Are the criteria concerned with vessel routes, anchorages and harbour approaches framed suitably?*

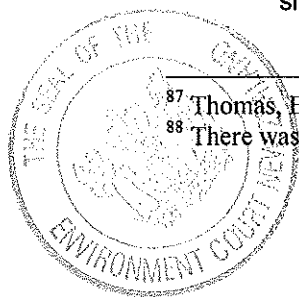
[55] There was no in-principle dispute about the relevance of this matter or its component parts. No party proposed that "port or harbour approaches" be qualified. The principal difference between the council and YNZ cases was the use of "significant" and "recognised" as qualifying terms for the other components. In one instance the council proposes that both terms be deployed, namely "significant recognised vessel routes". YNZ generally preferred "recognised". Absent an explanation, council's "significant" begs the questions "determined by whom and on what basis"? Without supporting explanatory material the term creates the same potential interpretation difficulties as council's c(i) and (ii). We were not assisted by submissions or evidence on how this difficulty, which we view as inimical to efficient implementation, would be avoided. The same questions arise in respect of "recognised". Counsel for YNZ, relying on the evidence of Mr Thatcher, a deputy harbourmaster (northern area) for the Auckland Council, experienced boat operator and Northland boating guide author, and Mr Thomas,<sup>87</sup> submitted that it would be appropriate to adopt the terminology used in the MSA Aquaculture Management Area and Marine Farming Guidelines (2005), which include the following definitions:

**Recognised navigational route**<sup>88</sup> is a safe sea passage and commonly used by vessels navigating within that area. The recognised navigational route may be one used by commercial vessels to and from ports, and may also include pleasure craft routes which are normally used to navigate between popular destinations.

**Recognised anchorages** means an anchorage which is referred to in cruising guides, pilot books and similar publications as being suitable shelter for small/larger craft in adverse weather.

<sup>87</sup> Thomas, EIC [40] and Thatcher EIC [21]ff

<sup>88</sup> There was no dispute about the merits of "vessel" vis-a-vis "navigational" routes.



[56] We accept that these terms are better for the reasons Mr J Brabant submitted<sup>89</sup> than council's alternatives, including that "recognised navigation route" has been considered and applied by the Court in the *MacLab* decision.<sup>90</sup> We respectfully adopt the finding in *MacLab* that a navigational route may be a body of water in which a vessel navigates, as opposed to a distinct track, which we find apt in the circumstances of P27.4.9. The cruising guides and other publications referred to in the definition of "recognised anchorages" are known to be publicly available. Some were produced in part during the hearing. For the avoidance of doubt we find that "anchorages of refuge" in the YNZ wording should be prefixed by "recognised". We also find PC 4 should add the two terms from the MSA Guidelines set out above to the RCP's Definitions and direct accordingly.

*Is the Minister's Biodiversity criterion suitably worded?*

[57] It has occurred to the Court since the hearing that there are potential problems with Mr Riddell's wording. He considered that s.6(c) and NZCPS Policy 11 support his wording. However Policy 11(a), which is the "avoid adverse effects" provision that parallels PC 4 Policy 27.4.9, is concerned to protect threatened, at risk and rare resources. We are concerned that these resources may be less common than those likely to be caught by Mr Riddell's "high" threshold.<sup>91</sup> Notably, the criteria in NZCPS Policy 11(a) provide greater certainty than Mr Riddell's wording. We also find that adopting "high" as the threshold would not be the most appropriate provision for achieving NZCPS Objective 6, NZCPS Policy 8 and PC 4 Objectives 1 and 2. For these reasons we have included an amended criterion in our revised version of Policy 27.4.9 below. Leave is granted the parties to make submissions on the detailed wording of the amendment, but not our principal finding.

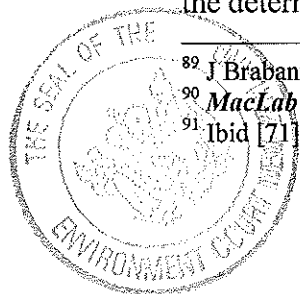
## Two General Matters

[58] We come now to two more general matters. First there is the sequence in which the cascade of Policies 27.4.6 - .9 is ordered. It occurs to the Court that the sequence might better have 27.4.6 and .9 juxtaposed as both deal with circumstances in which aquaculture is to have no adverse effects. Our preliminary view is that it is probably not critical whether the cascade proceeds from no adverse effects including where aquaculture is prohibited, to avoiding significant adverse effects, or vice versa. Adopting DV5 numbering, the order might then be 27.4.9, 27.4.6, 27.4.7 and 27.4.8. Leave is granted the parties to file and serve submissions on the sequence. Failing receipt of submissions, the sequence is to be re-ordered as indicated. We anticipate that there could be benefits in having this aspect settled ahead of the determination of Topic 2 matters.

<sup>89</sup> J Brabant, Opening submissions [35]ff

<sup>90</sup> *MacLab (New Zealand) Limited v Marlborough DC*, EnvC Wellington W16/2005

<sup>91</sup> Ibid [71]



[59] Secondly we note Mr Hill's evidence that it might be prudent to attach an Advice Note to P27.4.9 to the effect that "where an applicant wishes to propose an aquaculture activity [at a location shown on the Aquaculture Prohibited Areas Maps] that would avoid adverse effects on the matters listed in [Appendix 12] this should be made by way of private plan change for a specific location and aquaculture activity and be processed accordingly."<sup>92</sup>. It occurs to us that the words "or concurrent s.165ZK application" might be usefully added after "private plan change". No party opposed Mr Hill's suggestion. An Advice Note to the effect indicated would reinforce that a resource consent application cannot be made for a prohibited activity. Although Mr Hill gave his opinion in slightly tentative terms we find merit in the suggestion and direct that PC 4 be amended as indicated, including the words added by the Court in brackets above and, if the parties agree, our further suggestion re s.165ZK.

### **Court's findings on Policy 27.4.9(c)**

[60] We set out below Policy 27.4.9(c) amended to include our preceding findings and directions:

#### Policy 27.4.9

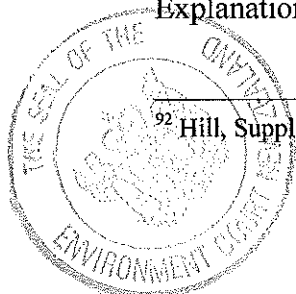
- (c) Locations within Marine 2 (Conservation) Management Areas where adverse effects (actual or potential) of aquaculture activities on the following are unavoidable:
- (i) Residential activities existing [at the date PC4 becomes operative], authorised by unexercised resource consents or enabled by operative district plan provisions having permitted, controlled, restricted discretionary or discretionary activity status in significant urban areas; or
  - (ii) Significant tourism and/or recreation activities; or
  - (iii) Areas of outstanding natural character and/or outstanding natural landscapes (including seascapes); or
  - (iv) Recognised navigational routes (commercial and recreational), recognised anchorages of refuge, and/or port or harbour approaches; or
  - (v) Areas of indigenous biological diversity listed in NZCPS Policy 11(a); or
  - (vi) Existing aquaculture (either because there is no/limited space or the area is at its production or ecological carrying capacity).

[61] The Policy 27.4.9 Explanation would then follow with the DV5 matters transferred to the main body of the policy excluded and a description of how "significant" is to be interpreted in criteria c(i) and (ii) added.

[62] We expect that the Advice Note to be included would logically follow the Explanation.

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<sup>92</sup> Hill, Supplementary Statement [106].



[63] We come now to the three areas where prohibited activity status remained in dispute and deal with each in turn.

### **Activity Status of Aquaculture in upper Te Puna Inlet**

[64] We heard evidence from a number of witnesses on the resources of the upper Inlet and potential for unavoidable adverse effects on relevant values and activities. Mr J Goodwin, a landscape architect briefed by Mr R Brabant and Ms Morrison-Shaw, prepared a statement of evidence that was accepted into the record without his being called. By way of background he stated that some 23.7 ha of water space is consented for aquaculture in the Inlet; all in its upper reaches.<sup>93</sup> Mr Goodwin summarised the appellants' relief in these terms:

"..... instead of the prohibited area extending horizontally through a line drawn at the southern tip of Kauri Point some of the parties wish to see this area restricted to further upstream, drawn in line between Te Tii Point and Whakapu Point. This would then include the waters of the Poukoura Inlet, Opete Creek, Oneroa Bay, Tangitu Bay and the Motuone Islands, and Hen and Chickens within the prohibited area, and leave an area around the existing two oyster farms and Dead Whale Reef outside the restricted area and available for aquaculture".<sup>94</sup>

[65] Significantly for the matter we must decide, Mr Goodwin described how the council's recent regional landscape assessment classifies much of the coastal environment within Te Puna Inlet as having high natural character.<sup>95</sup> More particularly he stated that within the mid to upper area, beyond the council's proposed MM2 prohibited area, "... this [classification] includes all the southern and western shoreline, up to the head of the inlet.., and along the northern shore ...This area of high natural character amounts to 585 hectares ...". It was Mr Goodwin's evidence that the classification "appears appropriate" when assessed on a regional scale. In subsequent sections of his evidence Mr Goodwin opined that, the natural character and landscape values of the Te Puna Inlet and Poukoura and Opete water bodies are as high or higher than many other parts of the Bay of Islands that have prohibited activity status. However we have no evidential basis for reaching a different conclusion from him on the appropriate classification of the upper Te Puna.<sup>96</sup> In short, we find that the area does not have outstanding natural character and/or outstanding natural landscapes. In reaching this conclusion we were assisted by what we saw on our site visit and Mr Goodwin's oblique aerial photographs. We are also mindful, as Mr Hill observed, that other areas where aquaculture is prohibited can have that status for multiple reasons and not solely because of their natural character and/or landscape values.<sup>97</sup>

<sup>93</sup> Goodwin, EIC [2.18].

<sup>94</sup> Ibid [3.30]. The extension Mr Goodwin describes coincides with that shown in Mr Hill's EIC Annexure 1 Map Sheet 07.

<sup>95</sup> Ibid [7.6]ff

<sup>96</sup> Ibid, [8.7]

<sup>97</sup> Hill, Supplementary Statement [33].



[66] Mr D Thatcher, whose qualifications we have given previously, appeared in a personal capacity as a witness for YNZ and supporting parties. He explained that the parties who had called him had a neutral stance with respect to the additional prohibited area in Te Puna inlet “..... because the upper reaches of the [Inlet] and Poukoura Inlet are not heavily used by boaties” save for one anchorage personally known to him in a small bay on the western side of Kauri Point. He was unable to ascertain whether the anchorage was within the prohibited area accepted by the council but opined that it warrants inclusion.<sup>98</sup>

[67] Mr D Crawford the owner of a Bay of Islands yacht charter and sailing school gave evidence for YNZ and supporting parties. He stated that the Te Puna Inlet was amongst the areas visited regularly by clients, being within the “enclosed water limits” where the majority sail. He preferred that there be no more aquaculture in the Inlet to avoid additional navigational hazards and a diminution in its tourism and recreation appeal. In other respects he agreed with Mr Thatcher’s evidence.<sup>99</sup> In answer to questions from the Court, Mr Crawford stated that in cyclonic weather conditions clients may be directed to known anchorages in the Inlet but seldom get up to the head of the two arms.<sup>100</sup>

[68] Mr R Haslar a well experienced sailor and past chairman of the Kerikeri Cruising Club Keel Boat Committee gave evidence for YNZ stating that members of this club often use Te Puna Inlet as a race area for centreboard classes and for dinghy racing south of Kauri Point in the agreed prohibited area.<sup>101</sup> Mr Haslar indicated that keel boats should not go north of the agreed horizontal “latitude line” through Kauri Point (Map Sheet 07).<sup>102</sup> Mr D Hope-Lewis a member and former office holder of the Bay of Islands Yacht Club gave evidence for YNZ corroborating Mr Thatcher’s evidence that the eastern BOI is generally more popular and has more recognised anchorages than the western Bay. The Te Puna Inlet anchorages that he favoured were in its middle sections.<sup>103</sup> His support for the proposed prohibited extension into the upper reaches might be described as tepid in that “he would not object” to such. Mr J Lyle, the Northland Regional Harbourmaster called by the council did not identify the upper Inlet as a route or anchorage for commercial vessels.

[69] The landowners represented by Ms Morrison-Shaw and Mr R Brabant also called Ms N Hampson a geographer and market economics research consultant. We agree with Mr Hill’s summation, that Ms N Hampson’s evidence relates to the comparative economic benefits to be derived from tourism in the wider Bay of Islands economy rather than anything

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<sup>98</sup> Thatcher, EIC [62]ff

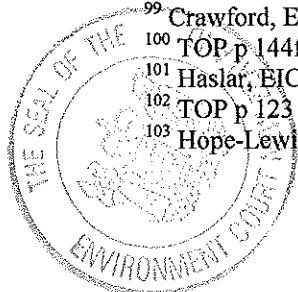
<sup>99</sup> Crawford, EIC [16].

<sup>100</sup> TOP p 144ff

<sup>101</sup> Haslar, EIC [19].

<sup>102</sup> TOP p 123 line 24.

<sup>103</sup> Hope-Lewis, EIC [13]ff



specific to the upper Te Puna Inlet.<sup>104</sup> Mr E Williams' evidence did not persuade us that potential adverse visual, economic and/or tourism effects on the Wiroa Station large-lot residential development warrant aquaculture being prohibited offshore from it. If a discretionary activity application were made,<sup>105</sup> potential effects of the type raised by Mr Williams would be assessed by the consent authority and a decision made on the merits. In this respect we note the information requirements for an aquaculture application in PC 4 27.7.1 and operative General Performance Standards for lighting and noise at 31.4.13.

### *Assessment and finding*

[70] We are unable to conclude from the evidence that aquaculture in the upper Te Puna Inlet would have unavoidable adverse effects on recognised navigational routes (commercial or recreational) or significant tourism and/or recreation activities. The evidence indicates that most recreational boating does not extend beyond the outer or middle reaches, which was reflected in the YNZ case. Similarly we heard no evidence on the potential for unavoidable adverse effects on residential activities in a significant urban area. The subject area does not have outstanding natural character and/or outstanding natural landscapes. The anchorage Mr Thatcher referred to west of Kauri Point may be a recognised anchorage of refuge. Leave is granted the parties to make submissions on extending the agreed prohibited area to include it should this be necessary. Otherwise we do not find there to be recognised anchorages of refuge in the upper Inlet. When these findings are joined with the higher level objectives enabling aquaculture we find there is no sound basis for extending the aquaculture prohibited area in the upper Inlet.

### **Activity Status of Aquaculture at entrance to Whangaruru Harbour (Henry Island)**

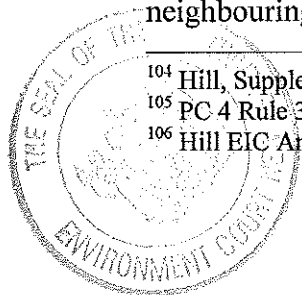
[71] The additional prohibited area that YNZ and supporting parties sought and which the council supported, is shown in Mr Hill's evidence extending seaward from the Harbour entrance around and beyond Henry Island.<sup>106</sup> There was no challenge to aquaculture's prohibited status within the Harbour.

[72] Mr Hill and Mr Thomas in planning evidence identified navigation, and to a lesser extent, natural character and landscape reasons that supported prohibition. Both relied largely on the navigation evidence of other witnesses but in Mr Hill's case this was supported by a degree of personal experience. Mr Hill referred to Henry Island being a "notable landscape" in the Whangarei District Plan and both witnesses noted the Island and neighbouring headland reserve are classified ONC/ONL in the proposed NRPS. Mr Hill

<sup>104</sup> Hill, Supplementary Statement [37]

<sup>105</sup> PC 4 Rule 31.4.10(a)

<sup>106</sup> Hill EIC Annexure 1 Map Sheet 09





deposed that the council's prohibition criteria "appear to be satisfied" for significant tourism and/or recreation (arguably), ONC and/or ONL and navigation and concluded on this basis that Henry Island should be included as a "no go" area.<sup>107</sup> Mr Thomas reached the same conclusion on similar grounds.<sup>108</sup>

[73] Mr Thatcher gave unchallenged evidence to the effect that Whangaruru Harbour is a popular recreational boating destination and safe anchorage.<sup>109</sup> He explained that the Harbour has narrow approaches from the south between Bland Rocks and Henry Island and from the north between Cape Home and Henry Island, which restrict the space for a yacht manoeuvring into the wind. More specifically in reply to questions put in re-examination and using Marine Chart NZ 5111, he scaled off the distance between Henry Island and the North Head at approximately 300m and between Henry Island and Bland Rocks at 900m.<sup>110</sup> In reply to further questions he indicated that the distance between the Black Rocks and Rugged Point (Okioire) just inside the harbour entrance was also in the order of 900m. We heard that in a difficult sea state, including when exiting, a yacht may need to utilise the full available width.<sup>111</sup> Mr Thatcher deposed that the additional prohibited areas agreed by YNZ and the council will protect the recreational vessel routes and Harbour approaches he described.<sup>112</sup>

[74] In reply to some rather vaguely worded questions put in cross examination by Mr Volkerling, Mr Thatcher gave a qualified answer that aquaculture clear of the navigation channel in the lee of Henry Island "further into the harbour" may warrant consideration by the harbourmaster.<sup>113</sup> In giving that answer we consider Mr Thatcher was disadvantaged by the lack of precision in the questions.

[75] Mr M Nelson, a past yacht club commodore with extensive sailing experience on the Whangarei coast, was also called by YNZ. He agreed with Mr Thatcher's evidence about the challenges presented by the restricted Harbour entrance under sail, especially at night, as "it's not well lit"<sup>114</sup> and opined that aquaculture structures west of Henry Island would be a navigational hazard.<sup>115</sup> In response to a more focused question, Mr Nelson stated that aquaculture in the 800m x 800m Area C on the Ngatiwai Aquaculture Plan (June 2005) inside the Harbour's northern entrance would have a significant navigation impact unless it did not

<sup>107</sup> Hill Supplementary statement [50]ff

<sup>108</sup> Thomas EIC [80]ff

<sup>109</sup> Refer "NZ's Northland Coast: A chart-based boating guide .... (2010), D Thatcher - Whangaruru Harbour p 55

<sup>110</sup> TOP p 118ff

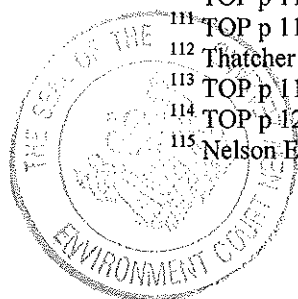
<sup>111</sup> TOP p 110

<sup>112</sup> Thatcher EIC [77]ff

<sup>113</sup> TOP p 111 line 16

<sup>114</sup> TOP p 129

<sup>115</sup> Nelson EIC [7].



protrude past a line from North Head to Black Rocks.<sup>116</sup> We note that would result in a markedly reduced Area C. We understand the evidence of Mr J Lyle, the council's harbourmaster, to be generally similar to Mr Nelson's.<sup>117</sup>

[76] Mr Volkerling, who appeared as both advocate and a witness for Ngatiwai, conceded that aquaculture west of Henry Island would reduce the navigable area but opined that this was offset by the Whangaruru Harbour entrance being far wider than other Northland harbours. No corroborating evidence was adduced to establish this assertion or to advance its relevance. Mr Volkerling pointed to PC 4 Policy 27.4.1, which is concerned with enabling aquaculture to support the social, cultural and economic wellbeing of communities and enhancing Maori development, and deposed that without compelling reasons a prohibition on aquaculture would conflict with the Policy. He also emphasised that the council (and the Court standing in its shoes) must take into account the previously mentioned Ngatiwai Aquaculture Plan which specifically "..... identifies the area west of Henry Island as a preferred site for aquaculture development". We expect that he meant northwest. Mr Volkerling deposed that there is no evidence that the iwi Plan has been taken into account "when proposing the prohibition by Henry Island"<sup>118</sup> and that there had to be a serious question over prohibition as aquaculture "... in that area would be of great importance to local people".<sup>119</sup>

#### *Assessment and finding*

[77] We have little difficulty finding on the evidence that aquaculture would have an unavoidable adverse effect on recognised recreational navigation routes either side of Henry Island and on the significant, recreational boating activities that occur at the Harbour entrance. These effects would result from a reduction in navigable water space and particularly impact yachts traversing the entrance in testing conditions to access or depart from recognised anchorages. We do not find the Policy 27.4.9 tests for ONC/ONL to be met given the current status of the proposed NRPS.

[78] We are satisfied that the direction in s.66(2A) that the Ngatiwai Aquaculture Plan be taken into account has been met by the participation of iwi representatives in the ADR processes prior the hearing in the ways described by Mr Thomas<sup>120</sup> and through the hearing conducted by the Court. We are also mindful that the direction "be taken into account" is couched in less compelling language than that found in s.6 (for example, maintenance and

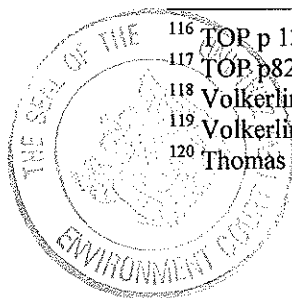
<sup>116</sup> TOP p 132 and p 133 line 19 and p 138 line 20.

<sup>117</sup> TOP p82 and p 89

<sup>118</sup> Volkerling Rebuttal [24]

<sup>119</sup> Volkerling, TOP p 212 Closing submissions

<sup>120</sup> Thomas Rebuttal [8]



enhancement) and s.7 (for example, have particular regard to ..... maintenance and enhancement of .....). Much of the Ngatiwai case was concerned with the activity status of aquaculture in Area C of the iwi Aquaculture Plan. In this regard we note Mr Hill's evidence, which coincides with our own reading of the relevant plans, that a good portion of Area C is inside Whangaruru Harbour where aquaculture's prohibited status is not disputed. Further, we note that potential aquaculture Areas A and B in the iwi Plan in the vicinity of Whangaruru are zoned MM2 and potentially available. In addition there is provision in PC 4 for Marae-based aquaculture in MM2.

[79] We find that overall the iwi Plan has been sufficiently and appropriately taken into account and that in the environs of Henry island the navigation and recreation effects, and safety considerations that lay behind them (s.5), make it appropriate that aquaculture be a prohibited activity in the additional area shown on Map Series 09.

[80] Finally, in the interests of completeness we record that Mr Thatcher's evidence on the merits of extending the prohibited area east of Rimariki Island south of Whangaruru Harbour as shown on Map Series 09 was uncontroverted and we understand the extension to not be disputed.<sup>121</sup> We direct that PC 4 be amended accordingly.

### **Activity Status of Aquaculture in Bream Bay**

[81] As previously indicated, three areas in Bream Bay emerged during the course of the hearing where the parties sought different outcomes on the primary question. We deal with each of the areas in turn.

#### Bream Head

[82] Mr Hill in a second supplementary statement, produced a corrected Map Sheet 28 showing the prohibited activity area supported by the council. The area defined by co-ordinates extends offshore from the Whangarei Heads some four kilometres and includes Peach Cove and ships' Anchoring Zone A. It was supported by all parties including, ultimately, Ngatiwai for a combination of reasons, namely the continuum of marine-terrestrial biodiversity, recreational use, ONC/ONL and navigation (harbour approaches, ships anchorage, recreational boating) as summarised by Mr A Riddell.<sup>122</sup> Mr Riddell assisted the hearing by producing a further revised version of Map Sheet 28 that clarifies and sets a boundary between the agreed Bream Head "no go area" and the balance of Bream Bay. We have no record of any party opposing this part of Mr Riddell's evidence.

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<sup>121</sup> Thatcher EIC [82]

<sup>122</sup> Riddell EIC Section D



### *Finding and Determination*

[83] For the reasons indicated we find that aquaculture should be a prohibited activity offshore from Bream Head in the area shown on Mr Riddell's revised Map Sheet 28.<sup>123</sup>

#### Main Body of Bream Bay.

[84] The council's case at the commencement of the hearing was that aquaculture should be a prohibited activity in the eastern half of Bream Bay from the Head's "no go area" south to a point offshore from Bream Tail. The prohibited area included approximately half of Ships' Anchoring Zone B. The council proposed that the western portion of the Bay to within four kilometres of the shore be available for aquaculture.<sup>124</sup>

[85] Mr Thatcher's evidence in chief established in some detail the significance and nature of commercial shipping and recreational boating in Bream Bay, through the Harbour entrance, around Bream Head and offshore on a north-south track in the Parry Channel inside the Hen and Chicken islands.<sup>125</sup> His evidence on these matters was uncontroverted and is accepted by the Court.

[86] Mr Thatcher explained that the western edge of the Bream Bay prohibited area shown in Mr Hill's second supplementary statement (and described above) "..... covering Parry Channel reflects a rhumb line between Marsden Point ..... and Cape Rodney. Recreational traffic travelling north after rounding Cape Rodney tends to travel to the west of this rhumb line."<sup>126</sup> It occurs to us that this would place such traffic in water space where, on Mr Hill's supplementary evidence, aquaculture might potentially locate. Mr Thatcher indicated that this was not advisable from a navigation perspective.<sup>127</sup>

[87] Mr J Lyle gave evidence on commercial shipping in Bream Bay. As an experienced mariner, he was also able to assist the hearing concerning recreational boating. He expressly adopted Mr Thatcher's description of commercial vessel movements in relation to Whangarei Harbour. He illustrated, using AIS tracking data, the routes that ships predominantly follow from the harbour entrance north around Bream Head and south in Parry Channel. He offered the unqualified opinion that aquaculture and commercial shipping routes are "a definite conflict", which we accept.<sup>128</sup> He supported the prohibited areas shown on the maps attached to Mr Hill's evidence in chief (primary), but deposed that "..... a clear separation would be

<sup>123</sup> Riddell Supplementary Statement [2] – [5].

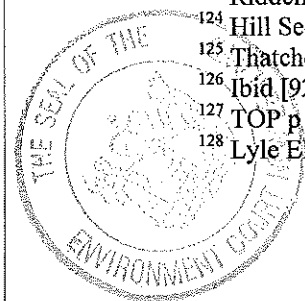
<sup>124</sup> Hill Second Supplementary Statement Map Sheet 28.

<sup>125</sup> Thatcher EIC [87]ff

<sup>126</sup> *Ibid.* [92].

<sup>127</sup> TOP p 115 line 28

<sup>128</sup> Lyle EIC [11]



needed from Anchorage Zone B of 1,000m.”<sup>129</sup> This was also the council’s case in opening.<sup>130</sup> As Mr Hill acknowledged,<sup>131</sup> the boundaries on the council’s Map Series 28 need adjustment to reflect this position, which we come to below. It was Mr Lyle’s unvarnished opinion that aquaculture “stuck out by itself in the middle of that bay isn’t ideal”. Nor in his opinion is aquaculture close to the rhumb between Marsden Point and McGregor Rock (offshore from Bream Tail) desirable. In terms of Bream Bay as a whole, we understood him to support extending the prohibited area inshore to within two kilometres of the beach.<sup>132</sup>

[88] In reply to questions put in cross examination by Mr Volkerling, Mr Lyle explained that the location of Anchorage B had been determined jointly by marine interests, on safety grounds and it could not be altered without their involvement. And that the alternative anchorage locations put to him by Mr Volkerling would create navigation issues in relation to recognised routes for all craft.<sup>133</sup> Responding to the Court’s questions, Mr Lyle clarified that use of the ships’ anchorages is not compulsory and that ships anchor at various locations, with their navigation courses varying accordingly.<sup>134</sup> On a different matter, he stated that he would not want to see a marine farm right “on the corner” at Bream Tail for navigational reasons.<sup>135</sup> Finally, we note his opinion that notwithstanding the severe sea conditions experienced at times in Bream Bay, and his personal experience with the loss of council equipment in that environment, technological advances are occurring that may make it feasible to secure aquaculture structures in the Bay.<sup>136</sup>

[89] Mr Nelson corroborated the evidence of other witnesses that in strong south westerly conditions, recreational boats on a course from the Whangarei Harbour entrance to Bream Tail, stay inshore, including when rounding the latter. He noted that McGregor Rock has 5.6m of coverage at low water and in his experience boats typically passed between it and Bream Tail, except perhaps in big seas.<sup>137</sup>

[90] Mrs M Hicks made submissions on behalf of the Bream Bay Action Group (BBAG), which dealt with aspects of the whole Bay, and are therefore dealt with in this section. She explained, with supporting materials, that the Group considers Bream Bay unsuitable for aquaculture for reasons concerned with physical limitations, water quality, marine pest organisms, commercial fishing, recreational fishing and boating, tourism, threats to the marine environment and economic factors. She submitted that the four kilometre

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<sup>129</sup> Ibid [12]

<sup>130</sup> Burn’s Opening submissions [45].

<sup>131</sup> TOP p 97

<sup>132</sup> TOP p 105

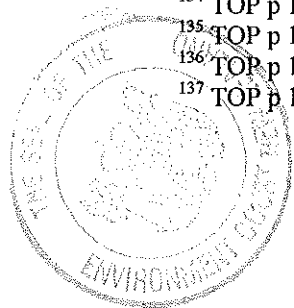
<sup>133</sup> TOP p 92

<sup>134</sup> TOP p 106

<sup>135</sup> TOP p 102

<sup>136</sup> TOP p 103

<sup>137</sup> TOP p 128



prohibited area on Map Series 28 attached to Mr Hill's second supplementary statement was insufficient to protect the interests of the community and local hapu in the Bay and its marine life. Her submission ranged broadly over many matters and generally lacked sufficient probative substance to be compelling. It was further hampered, in places, by its hearsay nature and flawed for want of evident mandate on tangata whenua matters. Overall the Group's case was materially disadvantaged by not being supported by expert evidence and inability to have Mrs Hick's opinions tested by cross examination. For these reasons we have been unable to give it any meaningful weight.

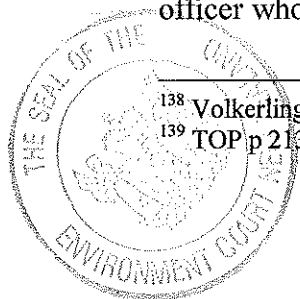
[91] Mr Volkerling deposed that prohibited activity status in Bream Bay was warranted only where it had been demonstrated "how the Ngatiwai [Aquaculture] Plan [had been] taken into account". He deposed that prohibited status may prevent spat collection for scallop enhancement, which the Iwi Plan provides for "... in the area from Marsden Point to the southern NRC boundary."<sup>138</sup> In Rebuttal evidence Mr Volkerling deposed that the deep water part of Bream Bay has special status for aquaculture and particularly for fin fish. He stated that "The NIWA research facility at Marsden Point utilises the existing pipes constructed for the Marsden A and B power stations to draw sea water from offshore". That aspect, which was not further explained, was said to be unique in New Zealand. He continued "The strategic development plan of the Northland Aquaculture Development Group ..... aims to develop fin fish farming in the region. Fin fish farms are best located close to the nursery facilities. Bream Bay has therefore a particular value for fin fish development". Mr Volkerling was little tested on these aspects of his evidence which we are nevertheless bound to observe were somewhat nebulous, but perhaps point to potential for aquaculture in parts of the Bay.

[92] In closing submissions Mr Volkerling acknowledged, constructively we think, that there are areas in the Bay where for landscape and shipping reasons aquaculture is not appropriate. However, he contended that in the absence of detailed evidence, he could not agree "... the whole of the proposed area should be one of prohibited aquaculture activity" and that "the high importance of aquaculture needs to be balanced against [the other] issues" he had identified. Ultimately, having caucused with the parties during a break in the hearing, Mr Volkerling supported the council's amended proposal [which we come to next] that the western boundary of the prohibited area be moved inshore.<sup>139</sup>

[93] As intimated, in the latter part of the hearing Mr Burns submitted an amended version of Map Sheet 28 (Exhibit 4) prepared with the assistance of Mr B Lee, a council officer who attended throughout the hearing. In short, Exhibit 4 extended the prohibited area

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<sup>138</sup> Volkerling EIC [7]  
<sup>139</sup> TOP p 213 line 3ff



inshore and provided two lines in the alternative at Bream Tail.<sup>140</sup> By way of fuller explanation, at its northern end the prohibited area would commence at Marsden Point, include all of Anchorage B inclusive of its separation area and terminate at the same southern position offshore from Bream Tail (as on Mr Hill's Map Sheet 28). Inshore of the described line, aquaculture would not be prohibited. The alternative boundaries at Bream Tail allow for the prohibited area to extend offshore south of Bream Tail and to extend inshore north of Bream Tail. This would enable recreational craft to pass close into Bream Tail, including in strong south westerly conditions, and to follow a fairly direct rhumb line from that point to or from Marsden Point.

### *Findings and determination*

[94] We find that the parties, assisted by Mr Lee's Exhibit 4, arrived at an appropriate disposition of boundaries in the main body of Bream Bay which they were all able to support save for BBAG. At the risk of repetition, we note that the outcome allows for the agreed boundaries at Bream Head, avoids potential conflicts with ships in the vicinity of Anchorage B and extends sufficiently far inshore to accommodate an appropriate rhumb line between Marsden Point and Bream Tail for recreational craft. In the latter location, we find the alternative Exhibit 4 boundaries shown in pink preferable as the cost of a slighter greater prohibited area is outweighed by the benefit of allowing recreational craft to navigate hard in on Bream Tail, especially in severe SW conditions, without the risk of encountering aquaculture structures before following a rhumb line to Marsden Point. This will enable craft to navigate between McGregor Rock and Bream Tail. However, the prohibited area boundary is to be set sufficiently offshore from McGregor Rock to allow safe passage around it for those who elect to follow that path. As we are unsure whether Mr Lee's proposal allows for this, leave is granted the council to finalise an exact position in consultation with the parties. The parties are also to consider whether the prohibited area might provide more than 1,000m separation distance around Anchorage B recognising the limited manoeuvrability of large ships<sup>141</sup> and their propensity to not always anchor in designated areas<sup>142</sup> as described in evidence, and need for an obstacle-free navigable rhumb line between Bream Tail and Marsden Point. It is relevant in this respect that the Maritime NZ Guideline (5.2.5) is expressed as a minimum figure.

### Inshore Bream Bay

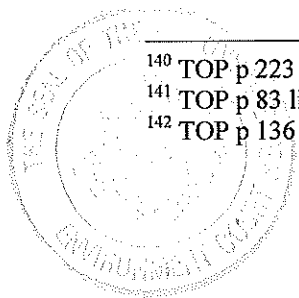
[95] The council's amended position was that aquaculture not be prohibited inshore of the line on Exhibit 4 described in the preceding section. Subject to a Final Decision, we

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<sup>140</sup> TOP p 223 lines 5-7

<sup>141</sup> TOP p 83 line 4

<sup>142</sup> TOP p 136



estimate that at its widest point this would enable aquaculture to establish up to approximately 6 kilometres offshore. The council, Ngatiwai and BBAG retained the greatest interest in this aspect of the appeals.

[96] We heard evidence from a number of the witnesses with marine expertise about the nature and degree of navigation in the area. Unsurprisingly it focused on recreational usage. Mr Nelson relayed his personal experience, that on one occasion he had followed a course close inshore in an old style launch.<sup>143</sup> Mr Thatcher deposed in evidence in chief that the 4 kilometre wide strip on Map Sheet 28 attached to Mr Hill's evidence "does not attract [a] significant number of boats due to its exposed nature."<sup>144</sup> However, in reply to questions put in cross examination he appeared to adjust this position saying that, while not a small boat person, when crossing Bream Bay in his yacht he had observed a reasonable amount of small boat activity in the area; "..... boats that might launch from ..... coastal beaches such as Ruakaka and head out to the Hen and Chickens and so on."<sup>145</sup> He considered there was the potential for aquaculture to conflict with navigation in the area and that, a sizable fin fish farm for example, would have to be very well marked with buoys and lights.<sup>146</sup> It was his position that hazards should not be introduced in navigable waters where none currently exist.<sup>147</sup> Like Mr Nelson, he had experience of smaller craft navigating between Bream Tail and Marsden Point that "hug the shoreline" to avoid the worst of severe SW or W sea conditions.<sup>148</sup> Mr Lyle opined that from a navigational perspective "... it's actually preferable if [aquaculture is] in close to the Bay than further out because it's further way from the shipping" and removed from "traffic passing".<sup>149</sup> As mentioned, he considered it desirable that aquaculture be enabled no further than two kilometres into the Bay, well clear of the Marsden Point – Bream Tail rhumb line.<sup>150</sup>

[97] For Ngatiwai, Mr Volkerling remained opposed to aquaculture being prohibited in the inshore area. In rebuttal evidence he cited Mr Thatcher as authority for there being no navigational grounds for such. Given the way Mr Thatcher's cross examination unfolded we expect the subject is not that one dimensional. Elsewhere in rebuttal Mr Volkerling opined that the inshore area lacks natural character and landscape values of the type which characterise Bream Head. And although the proposed NRPS apparently identifies some dune areas as having high and/or outstanding natural character or landscape value, he deposed these would not be adversely affected by aquaculture. In short it was Ngatiwai's case,

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<sup>143</sup> TOP p128

<sup>144</sup> Thatcher EIC [89]

<sup>145</sup> TOP p 112 and 116

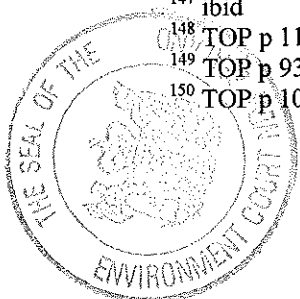
<sup>146</sup> Top p 113

<sup>147</sup> ibid

<sup>148</sup> TOP p 115 line 15

<sup>149</sup> TOP p 93

<sup>150</sup> TOP p 105





reiterated in closing submissions, that there is no evidence to support a prohibition including on the grounds of the robustness of structures in a high energy environment. Conversely, Mr Volkerling submitted that there is positive evidence going in the other direction.<sup>151</sup>

[98] For the council Mr Burns also submitted that no evidence had been provided by any party including Mrs Hicks, that supported a prohibited activity area and that it was not part of the case presented by Mr J Brabant for YNZ and supporting parties.<sup>152</sup>

### *Findings and Determination*

[99] We remind ourselves of the objectives and policies in the NZCPS and PC 4 that enable aquaculture. It is necessary there be compelling reasons if these provisions are not to be implemented. Equally there must be compelling resource management reasons to invoke the most restrictive of all activity classifications. In our findings on the main body of Bream Bay we have allowed for the unavoidable adverse effects that aquaculture might otherwise have on navigation (commercial and recreational), recognised ships anchorages and the Whangarei Harbour approaches. Those findings require the prohibited area to be moved inshore. We accept the evidence of the marine experts that small recreational craft navigate through the inshore Bay and that there are presently few if any impediments to such. However, unlike Mr Thatcher and possibly Mr Nelson, we do not consider that avoiding navigational hazards should be the single dominant consideration in managing the inshore area's resources. It is one relevant factor to be assessed alongside others, including the likely efficacy of proposed marker buoys and lights, in making a broad overall judgement on the merits of any aquaculture application. In short, we are not persuaded that a particular proposal subject to suitable conditions might not succeed. And as both Mr Burns and Mr Volkerling submitted, there was no, or at best insufficient, evidence to warrant prohibited activity status based on the criteria in Policy 27.4.9. For these reasons we decline to make aquaculture a prohibited activity in the inshore area.

### **Request for Decision on an undisputed matter**

[100] Mr R Brabant requested that the Court provide "a reasoned decision on the merits" in support of the parties' agreement that aquaculture be a prohibited activity in the Bay of Islands' Kerikeri and Waikare Inlets. He did so on the basis that this would assist opposing parties should future, concurrent applications be made for a Plan Change and coastal permits in these and/or other PC 4 Map Sheet 8 areas (ss 165ZK – ZZA RMA).<sup>153</sup> We decline the

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<sup>151</sup> Volkerling Rebuttal [12]ff and TOP p 212-213.

<sup>152</sup> TOP p 99

<sup>153</sup> R Brabant, Opening submissions [10]ff



request as the subject areas were not in dispute before us and potentially relevant evidence was not contested.

### Summary of Findings and Directions

[101] We summarise our preceding findings and directions in the following terms. In the event of any inconsistency directions in the main body of the Interim Report prevail.

- (a) Policy 27.4.9 is to be amended in the manner indicated with leave granted the council in consultation with the parties, and parties separately in the absence of consensus, to provide an Explanation to support criteria c(i) and c(ii). Submissions are not to re-litigate our principal findings.
- (b) Leave is granted the council and parties on the same basis to lodge submissions on a final wording for Policy 27.4.9(c)(v).
- (c) Leave is granted the council and parties, again on the same basis, to lodge submissions on the wording of the Advice Note to support Policy 27.4.9.
- (d) Leave is granted the council and parties to lodge submissions on the appropriate order for Policies 27.4.6 - .9. Absent submissions, the policies are to be re-ordered as indicated in the Interim Report.
- (e) The RCP Definitions are to be amended by adding the “recognised navigational routes” and “recognised anchorages of refuge” definitions contained in the MSA Aquaculture Management Area and Marine Farming Guidelines (2005).
- (f) If necessary, the aquaculture-prohibited area in the upper Te Puna Inlet is to be extended to include the recognised anchorage of refuge on the west side of Kauri Point. Otherwise the area is to remain unaltered.
- (g) The aquaculture-prohibited area around Henry Island at the entrance to Whangaruru Harbour is to be as supported by the council and YNZ and supporting parties. The aquaculture-prohibited area off Bream Head is to be as agreed between the parties. The aquaculture-prohibited area in the main body of Bream Bay is to be as shown on Exhibit 4 enlarged by adoption of the “in the alternative areas” at Bream Tail. If it does not already do so, the area is to extend seaward of McGregor Rock a suitable distance for recreational navigation determined by the council in consultation with YNZ and supporting parties. The prohibited area around ships’ Anchorage B may also be reviewed and adjusted by the council in consultation with the parties, should greater ships’ manoeuvrability be required inshore of the anchorage and to secure an



obstacle-free Marsden Point – Bream Tail rhumb line for recreational boats.  
Aquaculture is not to be prohibited inshore in the balance of the Bay.

[102] The council is to consult with the parties as directed, report, and file and serve submissions within 20 working days of the date of this Interim Report. Any submissions by other parties if required are to follow within a further 10 working days.

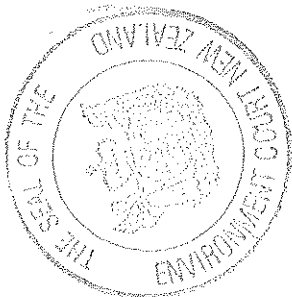
[103] Costs are reserved.

DATED at AUCKLAND this 24<sup>th</sup> day of September 2013.

*For the Court*



L J Newhook  
Acting Principal Environment Judge



## **ANNEXURE A: PARTICULARLY RELEVANT PROVISIONS FROM STATUTORY INSTRUMENTS**

### **1. New Zealand Coastal Policy Statement (2010)**

#### **Policy 2 - The Treaty of Waitangi, tangata whenua and Maori heritage**

In taking account of the principles of the Treaty and kaitiakitanga in relation to the coastal environment:

- a) Recognise that tangata whenua have traditional and continuing cultural relationships with areas of the coastal environment, including places where they have lived and fished for generations.
- b) Involve iwi authorities in the preparation of regional plans through effective consultation.

#### **Policy 3 - Precautionary approach**

Adopt a precautionary approach towards proposed activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse.

#### **Policy 6 - Activities in the coastal environment**

(2) In relation to the coastal marine area:

- b) Recognise the need to maintain and enhance the public open space and recreation qualities and values of the coastal marine area;
- c) Recognise that there are activities that have a functional need to be located in the coastal marine area, and provide for those activities in appropriate places.

#### **Policy 8 - Aquaculture**

Recognise the significant existing and potential contribution of aquaculture to the social, economic and cultural well-being of people and communities by;

- a) including in regional coastal plans provision for aquaculture activities in appropriate places in the coastal environment .....
- b) taking account of the social and economic benefits of aquaculture .....

#### **Policy 9 - Ports**

Recognise that a sustainable national transport system requires an efficient national network of safe ports, servicing national and international shipping including by ensuring that development in the coastal environment does not adversely affect the efficient and safe operation of these ports.

#### **Policy 11 – Indigenous biological diversity (biodiversity)**

To protect indigenous biological diversity in the coastal environment by avoiding adverse effects of activities on matters (i) – (vi) comprising different categories of threatened or at risk taxa, ecosystems, vegetation types, habitats, community types and areas set aside for the protection of same.

#### **Policy 13 Preservation of natural character**

(1) To preserve the natural character of the coastal environment and protect it from inappropriate use and development:

- a) avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character; and
- b) avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on natural character in all other areas of the coastal environment;

Including by:

- c) assessing the natural character of the coastal environment of the region; and
- d) ensuring that regional plans identify areas where preserving natural character requires objectives, policies and rules and including such.

(2) Recognise that natural character is not the same as natural features and landscapes or amenity values.

#### **Policy 15 - Natural features and natural landscapes**

To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate use and development:

- a) Avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment; and
- b) 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

## **2. Northland Regional Coastal Plan: Plan Change 4 – Objectives and Policies**

### **27.3 Objectives**

1. The development of sustainable aquaculture activities in Northland is enabled.
2. Sustainably managed aquaculture provides socio-economic and cultural benefits for the Northland Region and its communities.
4. Aquaculture activities are located in areas where there are no significant adverse effects on important natural, social, economic and cultural values and uses.



## **27.4 Policies: Establishment and development of AMAs and Aquaculture Activities – Matters for Consideration.**

**1. Enabling aquaculture can provide benefits to local communities and the Northland Region. When considering plan changes for AMAs and coastal permits for aquaculture, key benefits to be taken into account include:**

- Social, cultural and economic benefits, including local employment and enhancing Maori development .....
- Supplementing natural fish and shellfish stocks by providing an alternative source ....
- Providing a good indicator of the quality of coastal waters.

**2. The significant opportunity Marae-based aquaculture provides for Maori to enhance their wellbeing (through improving traditional customary kaimoana provision for Marae) should be recognised when considering plan changes and coastal permit applications for Marae-based aquaculture**

**3. All adverse environmental effects of aquaculture activities are avoided as far as practicable. Where it is not practicable to avoid significant adverse effects these should be remedied or mitigated.**

Explanation: To achieve the sustainable management of aquaculture in the Northland Region, AMAs will only be established where effects on other values and uses of the coastal environment are as far as practicable avoided. Where significant adverse effects cannot be avoided, then these should be remedied or mitigated.

**6. AMAs and any aquaculture activities should have no adverse effects on:**

- (a) The use and functioning of existing coastal structures .....
- (b) Navigation within significant commercial vessel routes (commercial vessel routes include shipping, ferries and tourist charter routes).
- (c) Access lanes [which include water ski and jet ski lanes] as referred to by the Navigation Safety Bylaw.
- (d) The management purpose or objectives [of various categories of sites established by statute].

**7. AMAs and any aquaculture activities should have no more than minor adverse effects on:**

- (a) Sites or areas of significant amenity value, including but not limited to those that demonstrate high use for recreation and/or tourism.
- (b) Coastal areas where both the marine environment and the adjoining coastal land have high natural character.
- (c) Outstanding landscapes.

Explanation: These existing uses and values are significant and should be conserved. Accordingly, plan change requests to establish AMAs and coastal permit applications for aquaculture activities that have more than minor adverse effect on these existing values and uses should not be considered favourably by Council.

**8. AMAs and any aquaculture activities should avoid significant adverse effects on:**

- (a) Significant anchorages (eg, important sites providing shelter from adverse weather).
- (b) Public access to and along the coast.
- (c) Use or functioning of coastal reserves and conservation areas.

**9: Aquaculture activities will not be appropriate in the following areas:**

- (a) Areas of the coastal marine area where a marine reserve has been established or publicly notified under the marine Reserves Act 1971.
- (b) Marine 1 (Protection) Management Areas.
- (c) Locations within Marine 2 (Conservation) Management Areas in Appendix 12.
- (d) – (f) Marine 4 (Mooring), Marine 5 (Port facilities) and Marine 6 (Wharves) Management Areas.
- (g) Places, sites and areas identified in Rarangi Taonga [a NZHPT register compiled under the HPA 1993].

Policy 27.4.9 is said to implement Objectives 1, 4 and 11 and is supported by the following summarised explanation:

Explanation:

Areas (a) – (g) above contain identified significant values which are considered to be generally incompatible with aquaculture activities, have been through a robust statutory and/or public process, and therefore aquaculture activities should generally be prohibited in the areas identified. The subject areas are shown in the Aquaculture Prohibited Areas Maps – Appendix 12. The MM2 locations listed in Appendix 12 are those unsuitable for new aquaculture activities because of actual or potential conflicts with<sup>154</sup>:

- a) Areas of significant urban development; or
- b) Significant tourism and/or recreation areas; or
- c) Outstanding natural character and/or outstanding natural landscapes; or
- d) Significant vessel routes (commercial and recreational), significant anchorages of refuge, and/or port or harbour approaches; or
- e) Existing aquaculture (either because there is no/limited space or the area is at its production or ecological carrying capacity).

<sup>154</sup> DV 5 Appendix 12 does not list the prohibited areas. They are shown in the Appendix 12: Aquaculture Prohibited Areas Maps.

