

**BEFORE THE ENVIRONMENT
COURT
AT AUCKLAND**

ENV-2020-AKL-

**I TE KOTI TAIAO
TAMAKI MAKAURA ROHE**

IN THE MATTER of an application under section 76 of the
Biosecurity Act 1993 in relation to the proposed
Regional Pest Management Plan for the Bay of
Plenty Region

AND

IN THE MATTER of a Notice of Motion under section 291 of the
Resource Management Act 1991

BETWEEN **ROYAL FOREST AND BIRD PROTECTION SOCIETY
OF NEW ZEALAND INCORPORATED**

Appellant

AND **BAY OF PLENTY REGIONAL COUNCIL**

Respondent

**NOTICE OF MOTION BY THE ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND INCORPORATED**

24 November 2020

Royal Forest and Bird Protection Society of New Zealand Inc.
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Ph 03 9405524
Solicitor acting: Peter Anderson / William Jennings

**NOTICE OF MOTION BY THE ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED**

1. Under the Biosecurity Act 1993, s 76 and the Resource Management Act 1991, s 291, Royal Forest and Bird Protection Society of New Zealand Incorporated (Forest & Bird') applies to the Environment Court in relation to the decision of Bay of Plenty Regional Council ("Council") dated October 2020 on the Decisions Version of the Regional Pest Management Plan for the Bay of Plenty Region (the decision, the Respondent and the Plan).
2. Forest & Bird made a submission on the Plan.

THE SUBJECT OF THIS APPLICATION

3. The matters that are subject of this application relate to the management of pest plants and kauri dieback.

THE ORDER SOUGHT

4. Forest & Bird applies for an order from the Environment Court to include additional provisions in the Plan, including objectives, principal measures and rules related to pest plants and kauri dieback.
5. The new provisions would be set out in two sections relating to:
 - a) Pest plants; and
 - b) Kauri dieback.

ISSUE 1 PEST PLANTS

Grounds

6. There are 80 environmental plant pests that are not included as pests in the Plan but are included in Appendix 1 to the Plan as “Advisory Pests”. These Advisory Pests are not subject to any rules under the Plan. The National Pest Plant Accord (“NPPA”) lists 133 species which are declared Unwanted Organisms and banned from sale. Approximately 25 of these are included in the Plan, out of 43¹ plant pests managed in the Plan.
7. There are many community habitat restoration projects in the Bay of Plenty that are removing environmental pests that can be undermined because species are able to be propagated, distributed and sold.
8. Forest and Bird seeks regulation to ban these from propagation, sale and distribution because:
 - a) The impacts of environmental plant pests are a biodiversity threat such that they need to be listed as a managed pest species so that the Biosecurity Act 1993, ss 52 & 53 apply; and
 - b) It is counterproductive and inefficient to run plant pest removal projects if those same species are freely available.
9. A ban from sale is an effective advocacy/educative tool to persuade people not to plant or to remove certain species. This

¹ There are 11 Wilding conifer species in the plan but Forest & Bird has counted them as 1 as they are managed collectively.

will also assist district councils who are generally guided and may focus managing species defined as pests in regional pest plans.

10. There is a need to have a regulatory backstop to provide for situations where land occupiers are either unwilling or unable to participate in community led programs as long term non co-operation can prevent the success of a control measure to the detriment of the wider community and biodiversity. A purely voluntary approach cannot give this assurance, and would result in ad hoc and inconsistent results.
11. Methods to achieve the objectives are: providing information and advice, and enforcing restrictions on sale and distribution. (Note costs of enforcing non-proliferation are unlikely to be a significant cost as surveillance for NPPA is already undertaken)
12. Previously such species were included in the Plan as “Restricted” species banned from sale or propagation. Numerous subdivision and land use consents have been issued with conditions that state that species listed in a regional pest management plan either cannot be planted and/or must be removed. If the majority of those species are no longer defined as pests, those conditions become difficult to enforce or in essence unenforceable.
13. To address the issue of nullifying resource consent conditions, the Council has included the following statement in the Plan in Unwanted Organisms and again in Appendix 1 which states²:

² Plan, Section Unwanted organisms, page 21; and Appendix 1, page 112

Rules in regional and district plans and provisions in land management agreements that refer to pests specified or listed in the RPMP apply to Advisory pests included in Appendix 1 as well as other pests directly managed under this RPMP.

14. Forest and Bird considers such an approach is unenforceable and seeks the following relief.

Cost implications

15. Regional Councils support the NPPA by managing surveillance of nurseries, garden centres and the like so there would be little additional cost of including additional species in the Plan with rules similar to the current ones in the Plan. The Council will have to publicise the new Plan, so again there would be little, if any, additional costs to including additional species. The Council already provides advice to landowners on management of pests.

Relief sought for issue 1 pest plants

16. Include the Advisory Pests as “Sustained Control³ . The advantage of Option 2 is that it doesn’t require extensive scheduling and/or mapping. The rationale for the Sustained Control species applies equally to the excluded species, especially where there are several species at the same site.

Suggested New Rule 5A

³ National Policy Direction, section 4, clause 1(b)(iv) “means to provide for ongoing control of the subject to reduce its impacts and its spread to other properties”

17. Generic Rule 6⁴ *almost* covers the widespread environmental plant pest effects but there needs to be an additional action to apply to all the “Advisory” pests.
18. Add a rule requiring “removal if required by an authorised person.” Including all Advisory pests. Contentious species (Taiwan cherry, agapanthus and phoenix palm) could be phased in if necessary, similar to the Auckland Council approach.

Other Relief

19. Along with any other consequential relief as required.

ISSUE 2 KAURI DIEBACK (KDB)

Grounds

20. In Bay of Plenty, kauri is found only in the northern Kaimai ranges. Most are found on public conservation land, with some on private land. There is no known kauri dieback in the region.
21. The Regional Council has included KDB as an Advisory Pest (see Issue 1) with no mandated action or regulation.
22. KDB has been declared by government an ‘unwanted organism’. The powers under the Biosecurity Act are held by central government (the Ministry for Primary Industries). While council can still manage Unwanted Organisms, enforcement relies on delegation of powers from the ministry to council.

⁴ Rule 6 no interference with any, plant, object or substance placed by an authorised person, no movement of pest including objects containing or contaminated with the pest, no keeping, propagation including tending, feeding or sheltering any pest in the RPMP.

23. Unwanted Organisms can also be included in Pest Management Plans if that will enable more effective and transparent management responses.
24. If and when a National Pest Management Plan for KDB is operative a partial plan review under the Biosecurity Act, s 100D may be required to better align the Plan with any national plan.
25. Council, by not promoting its own management regime for KDB in its Plan, is relying on development and implementation of a National Pest Management Plan. Council provides in the Plan through strategic direction that it will work with the Department of Conservation and Biosecurity New Zealand to monitor for KDB. Beyond listing KDB as an Advisory Pest and that it will work to identify KDB there is no further direction or management. Forest & Bird seeks that the Plan have provisions to deal with KDB.

Relief Sought for Issue 2 KDB

26. Forest and Bird seeks to mirror the Auckland Regional Pest Management Plan, for the Hauraki Gulf islands and Hunua Ranges which are also free of KDB, and make KDB an Exclusion pest in the Plan.⁵ Proposed text below:

Objective: to exclude kauri dieback (*Phytophthora agathidicida*) from establishing within the Bay of Plenty region to prevent adverse effects on economic well-being, the

⁵ See Auckland Regional Pest Management Plan, clauses 7.1.3.1, 7.1.3.1.1, 7.1.3.1.2 and Principles Measure of achievement page 121

environment, enjoyment of the natural environment and the relationship between Māori, their culture, their traditions and their ancestral lands, waters, sites, wāhi tapu, and taonga.

Intermediate outcome: “exclusion” which means to prevent the establishment of kauri dieback within the region. (Auckland RPMP p111)

Rules:

7.1.3.1.1 No person shall distribute, move or release kauri dieback disease in the Bay of Plenty region or introduce it from outside the region.

7.1.3.1.2 No person shall move untreated kauri plant material into or within the region unless the purpose of the movement is to dispose of the infected material to an approved disposal site and is authorised by the council.

Principal measures of achievement:

| | |
|-----------------------------|--|
| Service delivery (control) | Enter any property within the natural range of kauri and carry out management of this species. Manage known vectors, including feral pigs. |
| Monitoring and surveillance | Undertake inspections, monitoring and surveillance, to determine the presence of incursions. Collaborate with other agencies in design of data collection and storage to ensure effective, integrated monitoring and surveillance across kauri lands. |
| Enforcement | Enforce restrictions on the movement of the pest and kauri plant material. |
| Education and advice | Provide information and advice on identification and impacts of kauri dieback, and how to avoid spreading the pest. |
| Requirement to act | All persons to take practicable steps to avoid transport and distribution of kauri dieback e.g. ensure all footwear and other equipment are free of soil, especially when exiting areas known to be infected with kauri dieback disease or entering any island. ⁶ |
| Research and development | Contribute to multi-agency facilitation of research, including mātauranga Māori, and development in detection and control tools, understanding pathways of spread, and ecological impacts of kauri dieback disease in kauri and its ecosystem. |

⁶ Although no kauri on offshore islands in Bay of Plenty, the risk of the pathogen infecting other species or environments should be avoided.

27. Amendments to clauses 6.4 and 6.1 are also required. This is because if kauri dieback is found in the region, it should be managed as a Sustained Control pest in the vicinity of where it exists, but the rest of the region should retain Exclusion status. This dual category approach is already used in the Plan for other pests, as well as by Auckland Council.

Other relief

28. Along with any other consequential relief as required.

PARTIES TO THE APPLICATION

29. Forest and Bird has, contemporaneously with this application, sought directions as to service.

Dated this 24th day of November 2020



William Jennings

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Inc.

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Advice to recipients of copy of notice of motion

How to become party to proceedings

If you wish to become a party to the proceedings, you must lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant within 15 working days after—

- (a) the period for lodging a notice of appeal ends, if the proceedings are an appeal; or
- (b) the decision to hold an inquiry, if the proceedings are an inquiry; or
- (c) the proceedings are commenced, in any other case.

You must serve copies of your notice on all other parties within 5 working days after the period for lodging this notice with the Environment Court ends.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (*see* form 38).

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

How to be heard on this application

If you wish to be heard on this application, you must lodge a notice (in form 37) with the Environment Court and serve a copy of the notice on the applicant within 15 working days after you were served with this notice.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.