

IN THE MATTER

of the Resource Management Act
1991

AND

IN THE MATTER

of appeals pursuant to clause 14
of the First Schedule to the Act

BETWEEN

**WESTERN BAY OF PLENTY
DISTRICT COUNCIL**

ENV-2012-AKL-000080

AND

**NEW ZEALAND TRANSPORT
AGENCY**

ENV-2012-AKL-000082

Appellants

AND

**BAY OF PLENTY REGIONAL
COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge J A Smith sitting alone under section 279 of the Act
IN CHAMBERS at Auckland.

CONSENT ORDER

Introduction

1. The Court has read and considered the appeal and the memorandum of the parties dated 26 November 2012.
2. This consent order relates to the part of the two appeals seeking relief in respect of the Topic **ENV-2012-348-000013 "Structures"** against parts of the decisions by the Bay of Plenty Regional Council on submissions to its Proposed Regional Policy Statement:
 - 2.1 Western Bay of Plenty District Council lodged an appeal **ENV-2012-AKL-000080** seeking at paragraph 8.1 changes to **POLICY CE11B** Avoiding inappropriate hard protection structures in the coastal environment and to **POLICY CEXB** to return CE11B to the original notified version of the policy, and to delete CEXB.



2.2 New Zealand Transport Agency in Appeal ENV-2012-AKL-000082 sought at paragraph 7.2.8 that **POLICY CE11B Avoiding inappropriate hard protection structures in the coastal environment** and **POLICY CEXB** be amended or deleted to give effect to the New Zealand Coastal Policy Statement 2010 (NZCPS) and recognise the importance of national and regional infrastructure.

2.3 The Director General of Conservation (EBOP) has given notice of an interest in this topic under both appeals.

3. There are no other parties that have notified a particular interest pursuant to section 274 of the Act in the above topic.

Order

4. The Court is making this order under section 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 279. The Court understands for the present purposes that:

- (a) All parties to the proceedings with an interest in this Topic have executed the memorandum requesting this order;
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and confirm to the relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

5. Therefore the Court orders by consent that the Proposed Bay of Plenty Policy Statement is amended as shown in underline (for additions) and ~~strike-through~~ (for deletions):

**Policy CE 11B: ~~Avoiding inappropriate hard protection structures~~
hazard mitigation in the coastal environment**

~~Avoid inappropriate hazard mitigation in the coastal environment~~ For hard protection structures in the coastal environment, with particular regard shall be given to:

- ~~(a) The need for hard protection structures;~~
- ~~(b) Whether non-structural or soft engineering methods are a more appropriate option;~~
- (a) (e) Analysis of the environmental and social costs and benefits of a range of long term sustainable coastal hazard risk reduction options over a 100 year time frame, including natural defences, and relocation or removal of development or structures at risk.
This analysis shall include an assessment of residual risk



- remaining after the options are implemented—mitigation-structures are in place to ensure the do not inadvertently increase the risk of natural hazards;
- (b) ~~(e) Whether hard protection structures are the best practicable option to protect existing development from intolerable risk—hard protection structures are the only practical means to protect existing infrastructure of national or regional importance;~~
 - (c) ~~Whether other long term risk reduction methods, including non-structural or soft engineering solutions, are more appropriate options;~~
 - (d) The cumulative effects of isolated hard protection structures; and
 - (e) Whether the hard protection structures would adversely affect or facilitate public access to and along the coastal marine area.
 - (f) ~~Avoiding hard protection structures on public land where they are intended to protect private assets, unless there are significant public or environmental benefits.~~

Explanation

For parts of the region's developed coastlines, there may be public demand for coastal protection measures to 'hold the line' and protect private property, regionally or nationally significant infrastructure or utilities. A range of coastal protection measures are currently in place. Hard protection measures are rarely often sought but are not always the most effective or sustainable option in the long term and can lead to a false sense of future security and encourage further development behind the structures.

Policy CE 11B recognises that it may be necessary in some circumstances to undertake structural hazard mitigation works, however hard protection structures have the potential to exacerbate the natural hazard risk and can have adverse effects including effects on natural character, amenity and public access to and along the coastal marine area. The policy establishes criteria to ensure that adverse effects on these values as well as requires that long-term costs and benefits are taken into account in decision making. Policy CE11B must be read in conjunction with other RPS provisions and the New Zealand Coastal Policy Statement 2010 - in particular NZCPS Objective 5, and Policies 25, 26 and 27.

Policy CE 10XB <<DELETED>>

Policy CE 10XB: — Discouraging hard protection structures

~~In areas potentially affected by coastal hazards over at least the next 100 years, give priority to solutions other than hard protection structures to mitigate coastal hazard risk.~~

Explanation

~~Climate change and sea level rise is likely to reduce the effectiveness of man-made coastal defences. Increased exposure to larger waves and increased frequency of overtopping structures will increase the risk of structural damage, undermining and failure.~~

~~People and communities will at times propose solutions to coastal hazards. Policy CE XB recognises that while it may be necessary in some circumstances to undertake engineering solutions to hazard mitigation works, preference should be given to non-structural solutions such as protection, restoration and enhancement of natural defences, designing for relocatability and relocating existing structures, rather than using structural methods such as seawalls. Comprehensive investigation of non-structural solutions should be exhausted before structural solutions are considered.~~



~~Hard protection structures are as defined in the New Zealand Coastal Policy Statement 2010.~~

6. The consent order disposes of the relief in Western Bay of Plenty District Council appeal **ENV-2012-AKL-000080** at paragraph 8.1 in relation to **POLICY CE11B** and **POLICY CEXB**, and resolves the New Zealand Transport Agency appeal in its entirety.
7. There is no order as to costs in relation to this order.

DATED at AUCKLAND this 10th day of January, 2012

J A Smith
Environment Judge

