

BEFORE THE ENVIRONMENT COURT

Decision No. [2013] NZEnvC 173

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

File No.	BETWEEN	
File Confirmed / Amended		
BOP Regional Council		
Received	09 AUG 2013	
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Name	Signed	

BASIL GRAEME
(ENV-2012-AKL-000081)

THE ROYAL FOREST & BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED
(ENV-2012-AKL-000078)

Appellants

AND

BAY OF PLENTY REGIONAL
COUNCIL

Respondent

AND

VARIOUS SECTION 274 PARTIES

Topic: *Appeals against decisions by BOPRC in relation to the Coastal Environment (Mangrove Management) sections of the Proposed Bay of Plenty Regional Policy Statement*

Hearing: At Tauranga, 8 – 10 July 2013, including site visits

Court: Environment Judge J A Smith presiding
Environment Commissioner R Howie
Environment Commissioner I Buchanan

Appearances: K M Barry-Piceno for B Graeme (**Mr Graeme**)



P H Cooney and R C Zame for Bay of Plenty Regional Council
(**the Regional Council**) and as agent for The Royal Forest & Bird
Protection Society Incorporated (**Forest & Bird**)

J S Collie for Welcome Bay Catchment Care Group Incorporated
– Section 274 Party

S Morris for Uretara Estuary Managers Incorporated – Section
274 Party

E Coleman for Waikareao Estuary Care Group – Section 274
Party

P Callow for Waikaraka Estuary Managers Incorporated – Section
274 Party

D & R Lind for themselves – Section 274 parties

DECISION OF THE ENVIRONMENT COURT

- A. The relevant provisions proposed to be amended are set out in Annexure C hereto, and with amendments set out at [61] of this decision.
1. The parties are to consult within 10 days. If they cannot agree:
- a. Each party is to file a memorandum as to their position, within 15 working days, with their final proposed wording.
 - b. The Court will make the final decision as to the wording.
- B. This does not appear to be an appropriate case for costs. Nevertheless:
1. Any party wishing to file an application for costs within 15 working days:
- a. Any response, a further 10 working days; and
 - b. Final response, if any, 5 working days thereafter.



REASONS FOR DECISION

Introduction

[1] Mangroves are well recognised indigenous vegetation constituting part of the natural character of the harbours of the upper North Island, and are endemic to the Tauranga Harbour.

[2] Since the 1950s/60s mangroves have spread outwards from established areas and proliferated in some new areas of Tauranga Harbour. As an inter-tidal species, it occupies an ecological niche within the upper portion of the tide which requires a covering with salt water on every tide. The tidal ecotone also includes species of salt marsh grasses at the shoreward margin that are partially or occasionally inundated, and species in areas that are more regularly covered with water, such as *Zostera* sea grass.

[3] There does not appear to be significant dispute as to the reasons for their spread. Increased sedimentation within this and many other harbours of the world has led to a proliferation of mangrove utilising the sediments, because:

- [a] It makes more and different areas of the inter-tidal zone available; and
- [b] It provides appropriate nutrients and footing for the mangrove plants.

[4] The value of mangroves, and particularly their proliferation, is the subject of significant divisiveness in communities, reflected in the evidence in this case. The scientific evidence is very clear that mangroves provide valuable ecological habitat and have ecological values. Amongst many members of the public however, the value of mangroves is disputed. There are significant concerns raised as to their impact upon visual amenity, recreation, and access to water, as well as their impact upon the sediments within the harbour.

BACKGROUND

[5] The Regional Council, along with other regional councils in the northern North Island, has faced increasingly strident demands by residents for the removal of



mangroves. Throughout Tauranga Harbour a number of estuary care groups have arisen who had as their original objective the removal of mangroves.

[6] Over time these groups have broadened their focus and now provide a valuable contribution to the eco-systems of the harbour in which they have an interest, beyond management of mangroves, but also in sediment reduction, riparian improvements, rubbish removal, and an educative role.

[7] Faced with the threats of, and occasional illegal, removal of mangroves, the Regional Council received applications for, and has granted, a number of resource consents to estuary care groups for removal of mangroves.

[8] More recently, this has included the mechanised “mowing” of mangroves within the Tauranga Harbour. This has been left as a mulch on the surface of the substrate leading to significant problems, which we will discuss later.

[9] Some 110ha of mangroves have now been removed, and the Court understands that there is currently an application before the Regional Council for the removal of a further 400ha.

[10] Consent applications for mangrove removal were considered in the absence of any explicit provisions within the Bay of Plenty Regional Policy Statement (**the RPS**) or Bay of Plenty Regional Coastal Plan (**the Coastal Plan**) in relation to mangroves.

[11] The change to the RPS, the subject of this appeal, is the Regional Council’s first step in seeking to establish a comprehensive framework for the consideration of such applications into the future.

Settlement with Forest & Bird

[12] Given the diverse and strongly held views in respect of mangroves, there have been negotiations between the parties to see if matters could be resolved.

[13] In the end, all but one party have reached an agreement as to acceptable wording. It would be fair to say that neither Forest & Bird or the residents are entirely happy with the compromise that this agreement represents. Nevertheless, they all agree that it is a



reasonable compromise in the circumstances. Annexed hereto as Annexure **A** is a tracked change version of *Decisions Version of Policy CE 6B and AER* showing those portions that have been changed through the agreement process.

[14] This agreement is endorsed by all parties with the exception of Mr Graeme. He seeks a different outcome which is largely in accordance with Annexure **B**, hereto, which marks in red the tracked changes that he seeks.

The Regional Council Decision

[15] No witnesses addressed the Regional Council decision per se, although several did say that the original untracked version represented a reasonable balance between the concerns of the parties.

[16] The fundamental position for the Regional Council was that this policy must be considered in the context of the policies and the Plan as a whole. In other words, mangrove management must be seen as part of the entire approach of the Regional Council to coastal matters and the recognition of significant habitat areas (including mangrove), the natural character of the coast, cultural matters, access to the coast, and other matters highlighted in Sections 6 & 7 of the Act.

[17] We do not believe that there was any serious contention before us that this proposed policy does not address the issues raised by the New Zealand Coastal Policy Statement 2010 (NZCPS) which led to the introduction of the change. To the extent that there was any argument to the contrary, we have concluded that the plan changes do reflect the NZCPS.

[18] As is clear from the NZCPS itself, it represents a whole series of diverse issues, many of which are conflicting. It is important that any regional policy statement and plan recognise and reflect those tensions and seek to find a regional expression of the communities' conclusions in respect of the NZCPS.

[19] The issue before the Court was whether or not the proposal now endorsed by most of the parties, including Forest & Bird, was appropriate. If not, to what extent could the changes sought by Mr Graeme properly be incorporated.



THE NZCPS AND PART 2 OF THE ACT

[20] The NZCPS recognises many of the tensions inherent in the Act. For example, Objective 2 of the NZCPS:

Objective 2

To preserve the natural character of the coastal environment and protect natural features and landscape values through:

- recognizing the characteristics and qualities that contribute to natural character, natural features and landscape values and their location and distribution;
- identifying those areas where various forms of subdivision, use, and development would be inappropriate and protecting them from such activities; and
- encouraging restoration of the coastal environment.

[21] This does not always fit neatly with *maintain[ing] and enhanc[ing] the public open space qualities and recreation opportunities* under Objective 4 of the NZCPS, or Objective 6 of the NZCPS:

Objective 6

...

- the protection of the values of the coastal environment does not preclude use and development in appropriate places and forms, and within appropriate limits;
- some uses and developments which depend upon the use of natural and physical resources in the coastal environment are important to the social, economic and cultural wellbeing of people and communities;

...

[22] Thus, words such as *within appropriate limits* and *inappropriate* give a sense of proportionate response to the Objective's wording.

[23] This theme is carried through to the policies which seek to adopt an *integrated* approach to the management of natural and physical resources in the coastal environment (Policy 4), *strategic planning* (Policy 7), the tensions inherent in *development* (Policy 7), *aquaculture* (Policy 8), *Ports* (Policy 9), *reclamation* (Policy 10), in protecting *indigenous biological diversity* (Policy 11), and *preservation of natural character* (Policy 13). Later policies recognise use of *public open space* (Policy 18) and *walking access* (Policy 19).



[24] We conclude that these various elements and tensions have been recognised in the Variation to the RPS.

[25] Thus from Section 6 of the Act:

(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

...

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:

[26] In addition to those relevant matters from Section 6 of the Act, issues of amenity from Section 7 of the Act may also be relevant. The anthropogenic nature of the question of amenity is well recognised in other decisions. Accordingly, it is people's perception of the environment, and by its very nature, this involves how the public react to the environments in which they live and visit.

THE BAY OF PLENTY REGIONAL POLICY STATEMENT (RPS)

[27] The RPS is intended to give an oversight to the issues within the region, and relevantly in this case, those relating to the coastal environment.

[28] Variation 1 (Coastal Policy) was introduced by the Regional Council as a response to the variations introduced to the NZCPS late in 2010. Provision 2.2.1 of the Variation introduces the question of *Integrated Management of the Coastal Environment*, the challenges which arise, and the way in which *the objectives and policies focus on identifying and providing for consistent management and for a collective approach to integrated management across the wet and dry parts of the coastal environment*.

[29] Provision 2.2.2 recognises that the:

... [i]ncreased sediment and nutrient has the capacity to change ecosystem dynamics, encouraging the growth of some naturally occurring but rapidly colonising species, such as mangroves, which can displace other native plant



species and providing additional nutrient for nuisance species, such as sea lettuce, which can be a detrimental impact.

[30] This discussion goes on to mention:

While the Bay of Plenty Coast Care and Estuary Care groups are making significant progress in restoring the form and function of the region's dune systems and estuaries, the natural character of the coast continues to face challenges from incremental loss and degradation in the face of pressure to meet the demands of the growing population.

[31] In Provision 2.2.5 *Regionally significant coastal environment issues*, the effects on land use on Tauranga Harbour and Ohiwa Harbour are recognised in the following statement:

2 Effects of land use on Tauranga Harbour and Ohiwa Harbour

A number of land uses surrounding Tauranga and Ohiwa Harbours and estuaries throughout the region, have resulted in increased rates of sedimentation. Sedimentation can affect harbours and estuaries by making navigation channels shallower, degrading habitats, such as sea grass, shellfish beds and spawning sites, and changing the environment to favour mangrove growth.

[32] It follows Objective 2 of the Proposed RPS – Variation 1 (Coastal Policy):

Objective 2

Preservation, restoration and, where appropriate, enhancement of the natural character and ecological functioning of the coastal environment

together with the following policies:

- Policy CE 1B - Extent of the coastal environment;
- Policy CE 2B - Managing adverse effects on natural character within the coastal environment;
- Policy CE 3A - Identifying the key constraints to use and development of the coastal marine area;
- Policy CE 4A - Protecting and restoring natural coastal margins;
- Policy CE 6A – Protecting indigenous biodiversity;
- Policy CE 6B – Providing for the management of mangroves;



- Policy CE 7B – Ensuring subdivision, use and development is appropriate to the natural character to the coastal environment;
- Policy CE 8B – Safeguarding the life-supporting capacity of coastal ecosystems;
- Policy CE 9B – Managing adverse effects of land-based activities in the coastal environment on marine water quality;
- Policy CE 10B – Allocating public space within the coastal marine area
- Policy CE 11B – Avoiding inappropriate hazard mitigation works in the coastal environment; and
- Policy CE 10XB – Discouraging hard protection structures.

[33] Each of these policies then refers to a series of Methods. In respect of *Policy CE 6B: Providing for the management of mangroves*:

Method 3: Resource consents, notices of requirement and when changing, varying or replacing plans

Method 26: Facilitate and support community based ecological restoration programmes

Method 35: Take a whole of catchment approach to the management of natural and physical resources within the coastal environment

Method 35A: Integrated catchment management

[34] Although the policy is listed as derivative of Objective 2, we are not able to conclude that this means that other policies would not also be relevant. For example, *Policy CE 2B: Managing adverse effects on natural character within the coastal environment*, and *Policy CE 4A: Protecting and restoring natural coastal margins*; or *Policy CE 6A: Protecting indigenous biodiversity* and *Policy CE 8B: Safeguarding the life-supporting capacity of coastal ecosystems*.

[35] Certain other policies are also relevant to the sedimentation issue in the harbour, such as protecting against hard surfaces and managing land-based activities that discharge to the coastal environment.

[36] The lack of full cross-referencing in the tables is perhaps a shortcoming in the Proposed RPS, but would be easily remedied by cross-referencing to the other policies



and other relevant Methods. However, this does not change the basic premise that this policy must be viewed in the context of the Variation, and in fact the whole of the RPS.

Recognising Significant Habitat and Vegetation

[37] We use an example, *Policy CE 6A: Protecting indigenous biodiversity*. We understand that some of the mangrove areas are recognised as significant indigenous habitat, or significant indigenous vegetation in the Operative Coastal Plan. In those cases these should be properly identified. There was a suggestion that this had been done using draft maps annexed to the Coastal Environment Plan. However, these maps refer to natural character rather than vegetation for the whole of the harbour area and it cannot be intended that all mangrove would be identified as significant habitat and/or vegetation.

[38] It does appear to us that the Policy intends that areas of outstanding features or natural character will be identified and significant areas of indigenous vegetation and/or habitat will be identified. Any decisions in relation to managing of mangroves would be taking place in the context of a recognition of the value of these areas. We would expect to see these areas identified in the Coastal Environment Plan.

[39] Looking at the whole of the RPS, we must conclude that the Regional Council in making its decisions was looking at the management of mangroves within the context of the broader RPS, and particular, Variation 1. In particular, it was not intended that all mangroves within the Tauranga Harbour would be removed. It is implicit from the reading of the provisions that areas of mangrove that offered significant habitat or vegetation would be subject to identification in terms of the Policy, and that questions of management (which may include removal) would be addressed as part of the more detailed approach of the Coastal Environment Plan.

Drafting Issues

[40] As originally drafted, we accept that there are portions of the Policy which might give the impression that the Regional Council had reached a conclusion that mangroves should be removed. Use of words such as *manage mangroves to avoid the adverse effects of mangrove proliferation* appears to involve an assumption that proliferation has adverse effects.



[41] However, an overall reading of Policy CE 6B and the Explanation in the context of the other policies, leads to the view that this is unlikely to be the intention of the Regional Council. Nevertheless, we consider that any potential ambivalence in regard to the wording should be clarified, and to this extent we consider that the agreement reached with Forest & Bird does represent a significant improvement in clarity in this regard.

[42] Essentially the difference between Mr Graeme and the other parties is that Mr Graeme still believes that the policy shows a bias against mangroves and an assumption that they will be removed. However, his interpretation of the wording is coloured to a large extent by the consents that have been previously granted by the Regional Council allowing large tracts of mangroves to be removed with little or no regard, in his opinion, to questions of amenity, access or recreation.

Previous Consents

[43] It was clear that a major motivator for Mr Graeme's continuation of this appeal was his significant and genuine concern that the mulching of large areas of mangroves within the Tauranga Harbour was likely to have a detrimental long-term effect on the ecosystem in the harbour itself.

[44] We undertook site visits, and in several places it was most difficult for us to understand any amenity, recreational or access basis for the removal of large tracts of mangroves. In some cases, this had released sediments which, in our view, would simply join those within the harbour until they settled out in another position. In many cases it had made no difference to the sediments which had simply remained in place without the mangroves. Areas that particularly concerned us in this regard were portions of the Omokoroa Peninsula, and also the area between James Cook Drive and Waitaha Road at Welcome Bay.

[45] On the other hand, there were several higher activity environments where we noted that there had been, at least partial, success with the removal of mangroves and a return to a sandier substrate. This was most marked at the Judea Marae at Waikareao Estuary. There was also a significant improvement at Tye Park in Welcome Bay. Both sites have nearby streams and we suspect those, in addition to relative openness to wind and wave action from certain directions, enables these areas to clean up over a period of



time. At both Tye Park and Waikareao, the benefits of public access for recreation and the amenity improvements were also clear.

[46] At Waikaraka Estuary we saw several of the properties where the estuary exhibited low activity, and the sediments had remained in place. In other places affected by streams, wind or tide, there had been more clean up of the underlying strata. In those areas, at least, it could be argued that the removal of the mangroves is a significant amenity impact for the benefit of the adjacent residents, and may have also assisted overall with the flushing of the estuary and clean up of other areas of the estuary closer to its outlet.

[47] Overall, we cannot see these previous consents as examples of the correct application of the Policy before the Court. We suspect that these decisions have been driven by the lack of opposition and desire to support estuary care groups. We do not think any assumption can be made that consent will continue to be granted in the same way in the future.

The Principles for Mangrove Control

[48] It appears to us that the basis of the management of mangroves must recognise that they are indigenous vegetation and part of the natural character of the coast. There is nothing that we can see in the wording of the Policy which fails to recognise and provide for them in this way.

[49] We conclude that the removal of mangroves is prima facie a breach of the preservation requirement of Section 6(a) of the Act. Accordingly, there must be some justification to remove mangroves beyond a mere public dislike.

[50] The ecological evidence before us was clear. Mangroves have ecological value and their removal has no ecological benefit. Although it may lead to change to another habitat, it is not possible to say whether the new habitat is better or worse than the old – they are simply different habitats. Of course, the Proposed RPS recognises at Provision 2.2.2 that mangroves are a response to increased sedimentation. However, sedimentation itself can be seen as an adverse effect on harbours, particularly at the high rates induced through human activities and management within the catchment.



[51] What we can say, however, is that the sandy substrate habitat is well represented in Tauranga, whereas the mangrove habitat is relatively rarely represented as a percentage of the total area available.

[52] Thus, we agree with Dr de Luca that the removal of mangrove habitat and a replacement with sandy habitat, even if achieved, would serve little benefit for the number of wading birds already present in Tauranga. We agree with her that the number of wading birds is relatively low for the available area and food.

[53] We conclude that there must be some benefits to removal in areas of amenity, recreational, cultural or access which is sufficient to justify mangrove removal.

[54] Having identified the way in which consents have been granted and utilised in the past, it would be fair to say that Mr Graeme's evidence and that of a number of witnesses, was based on an understanding that the current policy was to justify continuing the current method of granting consents. However, the facts are clear that these consents were essentially granted in a vacuum, and based upon the general principles of the Act. It is clear that the Variation to the RPS now includes a number of factors which must be borne in mind when consideration is being given to modifying mangroves. Failure to address those in future applications is likely to be fatal to an application. In the past it appears that there have been occasions when these factors have not been considered at all. For example, Mr Graeme asserts that the question of amenity has not been raised to his recollection on a number of the large consents.

Conclusion on the Purpose of the RPS Variation

[55] Thus, we must conclude that the promulgation of a policy, and eventually the Regional Coastal Plan requirements, are intended to provide an appropriate framework for the consideration of applications. The question is whether or not the framework contains the appropriate elements and ensures that the correct factors are considered prior to the granting of consent.

[56] All the witnesses for the appellant, including Mr Graeme, accepted that there would be cases where the granting of a consent for the removal of mangroves would be warranted. Accordingly, we conclude, based upon the expert evidence and the evidence before us, that there will be cases where the removal of mangrove is justifiable for



reasons of amenity, recreational, access, or cultural reasons. These will need to be considered in the context of the ecological values of the mangroves, and any ecological effects, both positive and negative, of their removal.

[57] We have concluded that all parties to this appeal seek to undertake that type of process. The question is simply the appropriate formula of words to be utilised to ensure that this is done in a way which is in accord with Part 2 of the Act and the New Zealand Coastal Policy Statement.

PRESUMPTION TOWARDS REMOVAL

[58] Mr Graeme's major concern, and that of several of the key witnesses including Ms de Luca, was that the current wording of the proposed policy gave a presumption that there was an adverse effect from mangroves and that they should be removed.

[59] We accept that there are some words that are ambivalent within the Policy, but read in its context and as part of the whole change, we consider that these concerns are over-emphasised (probably based upon the experience of the granted consents).

[60] Nevertheless, Mr Cooney recognised these concerns and at the end of the hearing formulated further changes to the wording of the Policy which seek to remove the majority of these constraints. He provided a further draft, annexed hereto as **C**.

[61] We have concluded as follows:

- [a] That the difference in wording for the criteria of *Policy CE 6B* are essentially ones of emphasis and clarity. To that end we consider that the amendments contained in the actual criteria for **C** represent a fair and reasonable weighting of the factors to be considered, taking into account the concerns of the appellants and the other parties;
- [b] When we look at the introduction, we recognise that there is the potential for this still to be seen as some sort of justification for removal. In the end we have concluded that this is due to the way in which the sentence is constructed. Upon reflection, we consider that a better wording for the first sentence would read:



In appropriate places, manage mangroves to avoid any identified adverse effects of mangrove proliferation, having regard to the positive and/or negative environmental effects of mangrove removal.

[c] In sub-paragraph (e), we would add the words suggested by Mr Cooney:

(e) Whether the mangroves would adversely affect the natural character, amenity, cultural, landscape or seascape values;

[d] In the *Explanation* we would re-word the first sentence to read:

Explanation

Mangroves are indigenous plants and play an important role in the natural character of coastal ecosystems by enhancing water quality ...

And the final paragraph to read:

It is important to emphasise the importance of having catchment management plans in place where mangrove removal is contemplated in order to achieve an integrated whole-of-catchment approach.

[62] When we look at this group of changes it appears to us to recognise the necessary balance between the various matters under Part 2 of the Act and the Coastal Policy Statement. In particular:

- [a] The natural character values of the mangrove and any species that inhabits it;
- [b] Values of other ecologically significant habitats that may be affected;
- [c] The role of mangroves in avoiding or minimising coastal erosion;
- [d] The established role of the mangroves in the ecosystem;
- [e] Effects on recreational and walking access, including navigational;
- [f] Other affects on amenity, both of the mangroves or their removal;



- [g] Sediment remobilisation; and
- [h] Allowing specific provisions for seedling removal in cleared areas or where the mangroves have not yet expanded.

[63] Underlying this is the question of catchment management plans.

CATCHMENT MANAGEMENT PLANS

[64] The Policy Statement itself recognises the importance of a catchment approach. All the witnesses, including the residents, readily acknowledged the need to reduce sediment inputs in the harbour to gain long-term improvements.

[65] The condition of Tauranga Harbour has been the subject of a number of comments and decisions by this Court, including the Port of Tauranga case which implored all the stakeholders within the harbour to seek a common management plan to improve the harbour environment. The Regional Council has established a full-time liaison officer in this regard, and considerable work is being done not only through the land and estuary care groups, but with other bodies including iwi and hapu, to improve the quality of the harbour waters, streams, and riparian margins. This is not a task for the faint-hearted.

[66] This is a very large harbour with very diverse environmental circumstances throughout its range. It is also subject from time-to-time to unanticipated effects, such as the Ruahihi Dam collapse in the 1980s, and other major landslides that have occurred throughout the catchment. Beyond this are the possible inputs from volcanoes, earthquake and the like. There are also the changing land uses, including large residential populations and intensive horticultural use.

[67] There are strong pressures for improvement to the harbour, not only in the context of cultural concerns by many of the hapu living around it, but also from the residents and other users of the harbour. The Port itself has significant interest in reducing sediments, given the cost and difficulty of dredging large amounts of sediments from the Stella Basin near the town reach of the harbour.



[68] Even then, the question of sediment is a finely balanced one. It is clear from earlier plans that this Court has seen, that there have been other periods of significant erosion within the harbour. The creation and constant dredging of material for the Port creates pressure on sediment distribution within the harbour, as do the multiple land uses and increasing residential population.

[69] We agree entirely with the Regional Council that the matter should be approached on a catchment basis, and we are pleased to hear that they have subdivided the harbour into catchments, and are working with various interested parties, including estuary care groups, to formulate and initiate catchment plans.

[70] Accordingly, the reference within the Policy to a Catchment Management Plan gives us a great deal of faith that the question of mangrove management will not be addressed as an isolated issue. It is simply part of a much larger and complicated jigsaw. Where the matter is approached on this basis, it can be seen that a catchment approach will ensure that the outcomes of any changes are monitored and ongoing improvements to riparian management, land-based sedimentation and avoidance of erosion are all carefully considered as part of the integrated approach.

[71] The emphasis in the Policy on such a catchment plan means that one would anticipate that the Management Plan provisions developed in accordance with it will reiterate this approach, and that consents would be seen as part of a long-term integrated approach to individual catchments.

[72] We have gone into some length to describe the background to this matter because of the criticism that the policy will eventually be utilised for the *carte blanche* removal of mangroves. Properly interpreted, the policy could not support such an approach. Where an integrated catchment plan is in place, it is likely that the Regional Council will be satisfied that many of the steps necessary to balance modifications to mangroves are in place. It seems to us that where such a catchment plan is not in place, the Regional Council is going to be very cautious before it would proceed with mangrove removal.

[73] Nevertheless, those are largely matters for more detailed consideration in the context of the Regional Coastal Plan. If parties are dissatisfied with the provisions of that, then of course these can be appealed to this Court and finalised.



SECTION 32, SECTION 290A AND PART 2 OF THE ACT

[74] The Council decision in this matter is of limited assistance given that the parties have agreed to further amendments which modify its purpose. Nevertheless, Mr Cooney submits that viewed in the context of the RPS as a whole, the Council's decision show a balanced approach recognising the various elements of Part 2 of the Act and the NZCPS. When we examine either of the amendments, it can be seen that these also seek to achieve that balance. The question of the appropriate point to be met is essentially a judgment call and we acknowledge that Mr Graeme's amendments would err towards the preservation of the mangroves rather than a more neutral starting position.

[75] However, we consider that the Mr Cooney's amended version with the changes we have made seeks a suitably neutral position while still requiring that there be a proper and appropriate reason to depart from the preservation of the natural character of the area.

[76] At a policy statement level, these are set out in broad terms in relation to access, recreation, cultural or amenity. In our view this is a sufficient approach and does not require the more detailed or mandatory approach suggested by Mr Graeme.

Section 32 of the Act

[77] When we come to considering the most appropriate provisions, we note that all of the suggested provisions are ones which would meet the essential tests under the Act in terms of efficiency and necessity.

[78] We do consider that several of Mr Graeme's suggested provisions, including carbon sequestration and effects on the ecological health of the productivity of the harbour, would require extensive investigations and are unlikely to greatly assist with the exercise of judgment necessary.

[79] As we have noted, we consider that the identification of a Catchment Management Plan as a key device towards consideration under the policy to be a key distinction between this and the Graeme suggestions. In that way we see the holistic approach envisaged by the management plan as assisting with the balancing of the many issues which arise when considering management of the mangroves.



[80] Overall, we consider that the provisions that we have now suggested start in a suitably neutral position, but recognise that there are circumstances relating to amenity, access, recreation and cultural matters where it may be appropriate for the removal of mangroves. Criteria set out a focus towards identifying the extent of those affects and enabling a judgment to be made.

[81] It is clear that the policy is intended to be implemented through the Coastal Environment Plan with more definite criteria, status and the like. In our view, this is sufficient and the most appropriate approach under Section 32 of the Act.

Part 2 of the Act

[82] When we come to examine Part 2 of the Act, we similarly come to the conclusion that for the purposes of a RPS, this Statement sets out in sufficient detail the issues and approach to be adopted by the Regional Council.

[83] Its key features are:

- [a] Recognition that the preservation of natural character of the mangroves may be displaced in appropriate cases where amenity, recreation, access or cultural matters are at issue; and
- [b] A Catch Management Plan is generally an appropriate approach to examine the integrated issues which arise, provided they meet the various criteria identified in the balance of the Policy.

[84] The object of Section 5 of the Act:

- (2) ... enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—
 - (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment



Thus the provision in question seeks to enable people and communities to provide for access, cultural, recreational and amenity while sustaining the natural resource. Given the natural character of the coastal environment, a balance needs to be struck.

[85] We have concluded that adopting Mr Cooney's final drafting, amended slightly by the Court, is the most appropriate method to achieve that purpose in respect of mangrove management for the Tauranga Harbour.

[86] We recognise in doing so that the implementation of that policy is still to be settled through the Coastal Environment Plan, and if there are ongoing disputes as to its implementation then these can be brought to the Court for review if necessary.

OUTCOME

[87] We are satisfied that the wording that we have suggested would represent a reasonable and proper compromise of the positions of the parties. It recognises the importance of the natural resource, while at the same time the Policy allows for some mangrove modification to provide for other matters, particularly in respect of amenity, recreational access, and cultural matters.

[88] This is generally to be considered in the context of a Catchment Management Plan, which in our view would balance many of the issues we have discussed in this decision. These catchments need not be the whole harbour, but can be the smaller catchments identified by the Regional Council which capture inputs to parts of the harbour.

[89] Given that we have changed the wording slightly from Mr Cooney's final proposal annexed at C, we wish to give the parties an opportunity to comment as to whether or not they see any significant problems with the changes we have made:

- [a] **The parties are to consult on the Court's suggested changes within 10 days. If they cannot agree:**
 - [i] **Each party is to file a memorandum as to their position on the Court's suggested changes, within 15 working days.**




[ii] The Court will make the final decision as to the wording.

[90] In respect of costs, this does not appear to us to be an appropriate case for costs. There have been a number of significant amendments since the appeal was filed and the matter is clearly one of significance for residents. Notwithstanding this:

- [a] Any party wishing to file an application for costs within 15 working days;
 - [i] Any response, a further 10 working days; and
 - [ii] Final response, if any, 5 working days thereafter.

DATED at AUCKLAND this 2nd day of August 2013



J A Smith
Environment Judge



Annexure A

UNDERLINE (RED) AND STRIKETHROUGH (BLUE) DECISIONS VERSION OF POLICY CE 6B AND AER REPRESENTING CHANGES AGREED BETWEEN FOREST & BIRD, REGIONAL COUNCIL AND S274 PARTIES.

Coastal Environment Policies

Policy CE 6B: Providing for the management of mangroves

Manage mangroves to avoid the adverse effects of mangrove proliferation while considering both the positive and negative environmental effects of mangrove removal.

The following shall be taken into account when considering mangrove management;

- (a) Habitat values ~~of the site~~ including whether the mangroves provide a significant habitat for indigenous fish or bird species or provide a vegetation sequence connecting other habitats, and whether mangroves are adversely affecting habitat values of open intertidal areas or other significant native estuarine vegetation communities (e.g. saltmarsh and seagrass habitats) ~~or are providing an ecological corridor between significant habitats;~~
- (b) Whether the mangroves provide a buffer against coastal erosion;
- (c) Relative age, maturity and ~~Location of the mangroves relative to~~ historic mangrove distribution of mangroves in the 1970s;
- (d) Whether the spread of mangroves is causing significant restrictions on access to beaches, harbour and recreation areas, or having adverse effects on navigational access and safety;
- (e) Whether the mangroves are adversely affecting amenity, cultural, landscape or seascape values;
- (f) The ability for, and the effects of, sediment remobilisation at the site following mangrove removal;

- (g) The existence and implementation of a catchment management plan for the area;
- (h) The likely effects of the proposed method of mangrove removal; and
- (i) Providing for seedling removal in appropriate places in order to prevent mangrove re-establishment in cleared areas or constrain mangrove expansion into new areas.

~~Removal of seedlings shall be allowed as a permitted activity to constrain the expansion of mangroves.~~

Explanation

Mangroves are indigenous plants and can play an important role in some coastal ecosystems by enhancing water quality, protecting coastal margins from erosion, and providing habitat for coastal flora and fauna within the intertidal zone. Rapid expansion of mangrove communities into areas previously free of mangroves can have ~~has~~ adverse effects on the balance of the marine ecosystem and on human uses of the coastal marine area including through sediment entrapment, and effects on dispersal amenity, recreation values and public access. ~~and the natural character of the coastal marine area.~~

A range of drivers have been identified as contributing to the expansion of mangroves seaward of the intertidal zone in Tauranga and Ōhiwa harbours including climate change, accelerated sedimentation and increased nutrient supply. Policy CE 6B provides for decisions regarding mangrove management to be made on a case-by-case basis taking into account both the adverse effects of mangrove expansion, the ecological values of mangrove communities, and the effects of mangrove removal on the environment.

Research into the distribution of mangroves in Tauranga Harbour demonstrates that extensive



increases in the area of mangrove coverage has occurred since the late 1970s. While it is not necessarily desirable or practical to return Tauranga Harbour or other harbours and estuaries to a pre-1970s state, understanding changes in the environment since this time is important to help assess the extent of mangrove proliferation and its effects on harbour and estuary environments. Also allowing the removal of mangrove seedlings where appropriate as a permitted activity will assist in preventing ~~the~~ further expansion of mangroves into areas where they would detract from harbour existing values and maintaining previously cleared areas. Removal must avoid unnecessary disturbance of estuarine sediments. For the purposes of this policy, mangrove seedlings are defined as single stemmed mangrove plants less than 60cm in height.

In areas of significant vegetation protected by the Regional Coastal Environment Plan, Policy CE 6B provides for ~~enables~~ mangrove removal to be considered where it can be established that mangroves are adversely affecting the indigenous vegetation originally intended to be protected by the plan.

Table reference: *Objectives 2 and 20, Methods 3, 26 and 35, 35A*



Table 15 Objectives, anticipated environmental results (AER) and monitoring indicators

Objectives	Anticipated environmental results (AER)	Monitoring indicators
Coastal environment		
Objective 2 Preservation, restoration and enhancement of the natural character and ecological functioning of the coastal environment	Areas of high natural character in the coastal environment are identified and enhanced and/or preserved	Surveys comparing identified areas of high natural character against baseline assessment show positive trend in extent and quality of areas of high natural character. Regional and district council consent database shows no further consents issued for use and development within areas of high natural character.
	Water quality in harbours and estuaries is maintained or enhanced and sedimentation of the harbour is reduced	NERM water quality monitoring shows improved water quality in harbours and estuaries. Monitoring shows decreased rate of sedimentation in harbours and estuaries.
	Decisions are made to enable the removal of mangroves from areas where they have spread since the 1970s. The adverse effects of mangrove proliferation are managed sufficiently in appropriate areas.	Comparison of regional surveys of mangrove distribution using Regional Digital Aerial Mosaic (RDAM) shows a decrease in <u>any changes</u> in total regional coverage.
	Restoration of natural character and ecological functioning of the coastal environment is undertaken.	Comparison of identified areas of high natural character and areas of ecological and landscape significance shows positive trend against baseline assessments.



Annexure B

UNDERLINE AND STRIKETHROUGH AMENDED DECISIONS VERSION OF POLICY CE 6B AND AER SHOWING AMENDMENTS SOUGHT BY BASIL GRAEME TO THE POLICY IN RED.

Coastal Environment Policies

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Policy CE 6B: Providing for the management of mangroves

Manage mangroves ~~where necessary taking into account to avoid the adverse effects of mangrove proliferation while considering both their positive and negative adverse~~ environmental effects of mangrove removal.

The following shall be taken into account when considering mangrove management;

- (a) ~~Indigenous Hhabitat~~ values of the site including ~~whether the mangroves provide a provision of significant habitat for indigenous fish, invertebrate or and bird species, or provide a vegetation sequence connecting other habitats, biodiversity values, contribution to primary productivity, and estuarine vegetation habitat diversity; and whether mangroves are adversely affecting habitat values of open intertidal areas or other significant native estuarine vegetation communities (e.g. saltmarsh and seagrass habitats) or are providing an ecological corridor between significant habitats;~~
- (b) ~~Coastal processes, Whether the mangroves provide a including~~ buffering against coastal erosion;
- (c) ~~Relative age and maturity and Location of the mangroves relative to historic mangrove distribution of mangroves in the 1970s;~~
- (d) Whether the spread of mangroves ~~is are~~ causing significant restrictions on access to beaches, harbours and recreation areas, or having adverse effects on navigational access and safety;
- (e) Whether ~~the~~ mangroves ~~or mangrove removal~~ are adversely affecting amenity, cultural, landscape or seascape values;

- (f) The ability for, and the potential adverse effects of, sediment remobilisation ~~at the site~~ following mangrove removal;
- (g) The existence and implementation of a catchment management plan for the area; and
- (h) The likely effects of the proposed method of mangrove removal;
- (i) Effects on carbon storage from removal or mangroves; and
- (j) Effects of removal on future harbour ecological health and productivity.
- (k) ~~Providing for seedling removal in appropriate places in order to prevent mangrove re-establishment in cleared areas or constrain mangrove expansion into new areas.~~

Removal of seedlings shall be allowed as a permitted activity to constrain the expansion of mangroves.

Explanation

Mangroves are indigenous plants ~~and can that~~ play an important role in ~~some~~ coastal ecosystems by enhancing water quality, protecting coastal margins from erosion, and providing habitat for indigenous coastal flora and fauna within the intertidal zone. Rapid expansion of mangrove communities into areas previously free of mangroves may in some situations can have has adverse effects on the balance of the marine ecosystem and on human uses of the coastal marine area including through sediment entrapment, and effects on dispersal amenity, recreation values and public access. and the natural character of the coastal marine area.



A range of drivers have been identified as contributing to the accelerated rate of natural expansion of mangroves seaward of the intertidal zone in Tauranga and Ōhiwa harbours including climate change, accelerated sedimentation and increased nutrient supply. Policy CE 6B provides for decisions regarding mangrove management to be made on a case-by-case basis taking into account both the positive and adverse effects of mangrove expansion, the ecological values of mangrove communities, and the potential and actual positive and negative effects of mangrove removal on the environment.

~~Research into the distribution of mangroves in Tauranga Harbour demonstrates that extensive increases in the area of mangrove coverage has occurred since the late 1970s. While it is not necessarily desirable or practical to return Tauranga Harbour or other harbours and estuaries to a pre-1970s state, understanding changes in the environment since this time is important to help assess the extent of mangrove proliferation and its effects on harbour and estuary environments. Also allowing the removal of mangrove seedlings where appropriate as a permitted activity will assist in preventing the further expansion of mangroves into areas where they would detract from harbour existing values and maintaining previously cleared areas. Removal must avoid unnecessary disturbance of estuarine sediments. For the purposes of this policy, mangrove seedlings are defined as single-stemmed mangrove plants less than 60cm in height.~~

~~In areas of significant vegetation protected by the Regional Coastal Environment Plan, Policy CE 6B provides for enables mangrove removal to be considered where it can be established that mangroves are adversely affecting the indigenous vegetation originally intended to be protected by the plan.~~

Table reference: Objectives 2 and 20, Methods 3, 26 and 35, 35A



Table 15 Objectives, anticipated environmental results (AER) and monitoring indicators

Objectives	Anticipated environmental results (AER)	Monitoring indicators
Coastal environment		
Objective 2 Preservation, restoration and enhancement of the natural character and ecological functioning of the coastal environment	Areas of high natural character in the coastal environment are identified and enhanced and/or preserved	Surveys comparing identified areas of high natural character against baseline assessment show positive trend in extent and quality of areas of high natural character. Regional and district council consent database shows no further consents issued for use and development within areas of high natural character.
	Water quality in harbours and estuaries is maintained or enhanced and sedimentation of the harbour is reduced	NERM water quality monitoring shows improved water quality in harbours and estuaries. Monitoring shows decreased rate of sedimentation in harbours and estuaries.
	Decisions are made to enable the removal of mangroves from areas where they have spread since the 1970s. The positive and adverse effects of mangroves proliferation are managed sufficiently in appropriate areas.	Monitoring and review Comparison of regional surveys of <u>all estuarine vegetation mangrove distribution</u> using Regional Digital Aerial Mosaic (RDAM) <u>showings</u> a decrease in <u>any changes</u> in total regional coverage.
	Restoration of natural character and ecological functioning of the coastal environment is undertaken.	Comparison of identified areas of high natural character and areas of ecological and landscape significance shows positive trend against baseline assessments.



FURTHER AMENDED VERSION OF POLICY CE 6B

Coastal Environment Policies

...

Policy CE 6B: Providing for the management of mangroves

Manage mangroves where appropriate to avoid the any adverse effects of mangrove proliferation while considering both the positive and negative environmental effects of mangrove removal.

The following shall be taken into account when considering mangrove management;

- (a) Habitat values of the site including whether the mangroves provide a significant habitat for indigenous fish or bird species or provide a vegetation sequence connecting other habitats, and whether mangroves are adversely affecting habitat values of open intertidal areas or other significant native estuarine vegetation communities (e.g. saltmarsh and seagrass habitats) or are providing an ecological corridor between significant habitats;
- (b) Whether the mangroves provide a buffer against coastal erosion;
- (c) Relative age, maturity and location of the mangroves relative to historic mangrove distribution of mangroves in the 1970s;
- (d) Whether the spread of mangroves is causing significant restrictions on access to beaches, harbour and recreation areas, or having adverse effects on navigational access and safety;
- (e) Whether the mangroves, or mangrove removal are would, adversely affecting amenity, cultural, landscape or seascape values;
- (f) The ability for, and the effects of, sediment remobilisation at the site following mangrove removal;

- (g) The existence and implementation of a catchment management plan for the area;
- (h) The likely effects of the proposed method of mangrove removal; and
- (i) Providing for seedling removal in where appropriate places in order to prevent mangrove re-establishment in cleared areas or to constrain mangrove expansion into new areas.

Removal of seedlings shall be allowed as a permitted activity to constrain the expansion of mangroves.

Explanation

Mangroves are indigenous plants and can play an important role in some coastal ecosystems by enhancing water quality, protecting coastal margins from erosion, and providing habitat for coastal flora and fauna within the intertidal zone. Rapid expansion of mangrove communities into areas previously free of mangroves can have adverse effects on the balance of the marine ecosystem and on human uses of the coastal marine area including through sediment entrapment, and effects on dispersal amenity, recreation values and public access, and the natural character of the coastal marine area.

A range of drivers have been identified as contributing to the expansion of mangroves seaward of the intertidal zone in Tauranga and Ōhiwa harbours including climate change, accelerated sedimentation and increased nutrient supply. Policy CE 6B provides for decisions regarding mangrove management to be made on a case-by-case basis taking into account both the adverse effects of mangrove expansion, the ecological values of mangrove communities, and the effects of mangrove removal on the environment.

It is important to recognise the importance of having catchment management plans in place where mangrove removal is contemplated, in order to achieve an integrated whole of catchment approach.



Research into the distribution of mangroves in Tauranga Harbour demonstrates that extensive increases in the area of mangrove coverage has occurred since the late 1970s. While it is not necessarily desirable or practical to return Tauranga Harbour or other harbours and estuaries to a pre-1970s state, understanding changes in the environment since this time is important to help assess the extent of mangrove proliferation and its effects on harbour and estuary environments. Also allowing the removal of mangrove seedlings where appropriate as a permitted activity will assist in preventing the further expansion of mangroves into areas where they would detract from harbour existing values and maintaining previously cleared areas. Removal must avoid unnecessary disturbance of estuarine sediments. For the purposes of this policy, mangrove seedlings are defined as single stemmed mangrove plants less than 60cm in height.

In areas of significant vegetation protected by the Regional Coastal Environment Plan, Policy CE 6B provides for enables mangrove removal to be considered where it can be established that mangroves are adversely affecting the indigenous vegetation originally intended to be protected by the plan.

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Table 15 Objectives, anticipated environmental results (AER) and monitoring indicators

Objectives	Anticipated environmental results (AER)	Monitoring indicators
Coastal environment		
Objective 2 Preservation, restoration and enhancement of the natural character and ecological functioning of the coastal environment	Areas of high natural character in the coastal environment are identified and enhanced and/or preserved	Surveys comparing identified areas of high natural character against baseline assessment show positive trend in extent and quality of areas of high natural character. Regional and district council consent database shows no further consents issued for use and development within areas of high natural character.
	Water quality in harbours and estuaries is maintained or enhanced and sedimentation of the harbour is reduced	NERM water quality monitoring shows improved water quality in harbours and estuaries. Monitoring shows decreased rate of sedimentation in harbours and estuaries.
	Decisions are made to enable the removal of mangroves from areas where they have spread since the 1970s. The adverse effects of mangrove proliferation are managed sufficiently in appropriate areas.	Comparison of regional surveys of mangrove distribution using Regional Digital Aerial Mosaic (RDAM) shows a decrease in <u>any changes</u> in total regional coverage.
	Restoration of natural character and ecological functioning of the coastal environment is undertaken.	Comparison of identified areas of high natural character and areas of ecological and landscape significance shows positive trend against baseline assessments.

