

BEFORE THE ENVIRONMENT COURT

Decision No. [2013] NZEnvC 215

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

BETWEEN 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

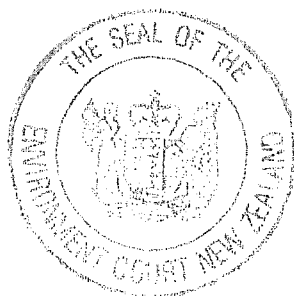
Respondent

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

Court: On the papers
Environment Judge J A Smith sitting alone, pursuant to Section
279 of the Act

Submissions: Joint Memorandum:
K M Barry-Piceno for B Graeme (**Mr Graeme**)
P H Cooney for Bay of Plenty Regional Council (**the Regional
Council**)
S Gepp for The Royal Forest & Bird Protection Society
Incorporated (**Forest & Bird**)



P Callow for Waikaraka Estuary Managers Incorporated – Section 274 Party

D & R Lind for themselves – Section 274 parties

Separate Memoranda:

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

R Steel for Waikareao Estuary Care Group Incorporated – Section 274 Party

S Morris for Uretara Estuary Managers Incorporated – Section 274 Party

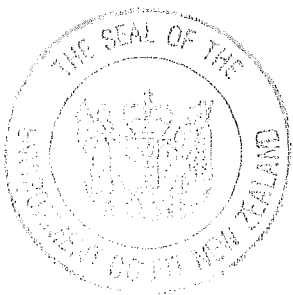
Further Separate Memorandum:

P Callow for Waikaraka Estuary Managers Incorporated – Section 274 Party

FINAL DECISION OF THE ENVIRONMENT COURT

- A. The final changes to the Plan provisions are set out in Annexure C. These are to be incorporated in the Plan provisions forthwith.**

- B. There are no applications for costs, and accordingly, the Court makes no order for costs.**



REASONS FOR DECISION

Introduction

[1] In Decision No. [2013] NZEnvC173 the parties were encouraged to consult on the Court's proposed changes to the wording to see if matters could be agreed.

[2] A Joint Memorandum has subsequently been filed for five parties, although Mr Callow for the Waikaraka Estuary Managers Incorporated has also filed a separate memorandum. A further three parties have filed separate memoranda, all essentially repeating the same concerns.

[3] The joint parties propose the wording as annexed hereto as **A & B**. Many changes are not subject of adverse submissions from the other parties. The following changes are proposed by the parties and agreed by the Court:

[a] Sub-paragraph (e) of Policy CE 6B to read:

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

[b] The last sentence of paragraph 4 of the *Explanation* should be amended to state:

Explanation

... For the purposes of this policy, mangrove seedlings are defined as single stemmed and unbranched mangrove plants less than 60cm in height.

[4] Beyond that there are two other areas where there is dispute between the parties:

[a] Whether the word *can* should be reinstated into the first sentence of the *Explanation* where the Court has deleted that word; and

[b] Whether or not the words *well recognised* in [1] of the Court's decision should properly be changed by the Court to *emphasise*.



ISSUE A

[5] The first paragraph of the *Explanation* now in dispute, as amended by the Court, now reads:

Explanation

Mangroves are indigenous plants and can play an important role in the natural character of coastal ecosystems ...

[6] The majority of parties seek the insertion of the word *can* to indicate that some mangrove plants do not play an important role. This turns upon the evidence of Dr Ryder which was contradicted by the evidence of Dr de Luca. Clearly, the Court preferred the evidence of Dr Luca on this issue to the extent that it conflicted with that of Dr Ryder. We did not understand Dr Ryder to go so far as to say that mangroves did not play an important role in the natural character of ecosystems. Rather, her evidence was that the removal of mangroves will not necessarily impact on natural character.

[7] Forest & Bird have made an interesting contribution to this discussion by suggesting that this issue might be resolved by rewording the paragraph as follows:

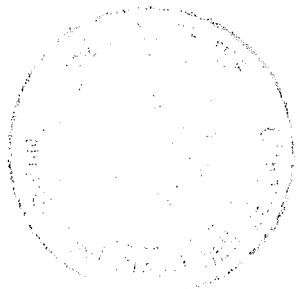
Explanation

Mangroves are indigenous plants and play an important role in coastal ecosystems by contributing to natural character, enhancing water quality, protecting coastal margins from erosion, and providing habitat for coastal flora and fauna within the intertidal zone.

[8] We have concluded that the Court's removal of the word *can* was deliberate, and this indicated that mangroves are an important part of the coastal ecosystem. However, contributions to natural character, water quality, coastal erosion, coastal flora and fauna may vary.

[9] In the end we have concluded that the Forest & Bird wording recognises the contribution to the coastal ecosystem that are made by mangroves, and the wording of that value is better than the original wording.

[10] Accordingly, we have concluded that the wording to be adopted should be that suggested by Forest & Bird as noted above.



ISSUE B

[11] The final issue of dispute relates to the final paragraph of the Explanation, replacing the word *recognise* with the word *emphasise*:

...

It is important to emphasise the importance of having catchment management plans in place ...

[12] It appears that a number of the estuary care groups consider the word *recognise* gives a fair and more balanced approach, whereas *emphasise* means *giving special attention to*. With respect, it is quite clear from the decision that that was the Court's view, and that special attention should be paid to catchment management plans when considering the question of removal of mangroves. In the absence of this, we were concerned that there was unlikely to be a fair and fully balanced view. The various factors are relevant to mangroves and their removal, particularly their contribution to the coastal values, natural character, flora, fauna and the like. Also, there should be consideration of the other matters including recreational access, amenity, views and the like.

[13] We reject any change to that word and maintain the position of the Court as originally included in the decision.

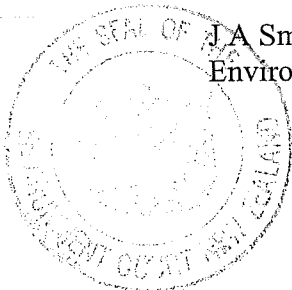
Conclusion

[14] The changes made are annexed hereto for completeness, and marked **C**. There was no comment upon *Table 15 Objectives, anticipated environment results (AER) and monitoring indicators*. Accordingly, this is retained.

[15] There was a timetable set for filing of costs applications. No applications were made, therefore the Court makes no orders as to costs.

DATED at AUCKLAND this 16th day of September 2013

J.A. Smith
Environment Judge



APPENDIX "A"

FURTHER AMENDED VERSION OF POLICY CE 6B

Coastal Environment Policies

Policy CE 6B: Providing for the management of mangroves

- (h) The likely effects of the proposed method of mangrove removal; and
- (i) Providing for seedling removal in where appropriate in order to prevent mangrove re-establishment in cleared areas or to constrain mangrove expansion into new areas.

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

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

- (a) Habitat values 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);
- (b) Whether the mangroves provide a buffer against coastal erosion;
- (c) Relative age, maturity and historic distribution of mangroves;
- (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 would adversely affect the natural character, 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;

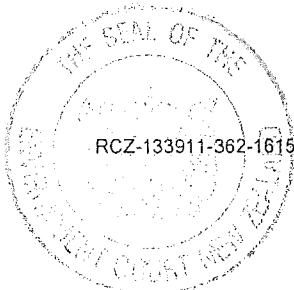
Explanation

Mangroves are indigenous plants and can can play an important role in the natural character of 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 amenity, recreation values and public access.

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 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 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.

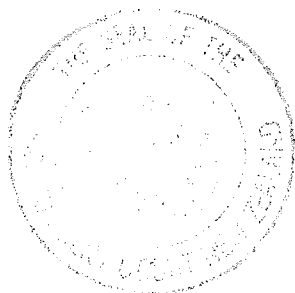
Research into the distribution of mangroves in Tauranga Harbour demonstrates that extensive increases in the area of mangrove coverage has occurred since the late 1970s. While it is not necessarily desirable or practical to return Tauranga Harbour or other harbours and estuaries to a pre-1970s state, 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 will assist in preventing the expansion of mangroves into areas where they would detract from harbour 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 **and unbranched** mangrove plants less than 60cm in height.

In areas of significant vegetation protected by the Regional Coastal Environment Plan, Policy CE 6B provides for 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.

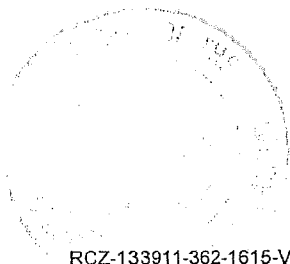
1 *Table reference: Objectives 2 and 20,
Methods 3, 26 and 35, 35A*



Annexure B

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

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



Annexure C

Coastal Environment Policies

...

Policy CE 6B: Providing for the management of mangroves

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.

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

- (a) Habitat values 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);
- (b) Whether the mangroves provide a buffer against coastal erosion;
- (c) Relative age, maturity and historic distribution of mangroves;
- (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 mangroves or mangrove removal would adversely affect the natural character, 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 where appropriate in order to prevent mangrove re-establishment in cleared areas or to constrain mangrove expansion into new areas.

Explanation

Mangroves are indigenous plants and play an important role in coastal ecosystems by contributing to natural character, 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 amenity, recreation values and public access.

A range of drivers have been identified as contributing to the expansion of mangroves seaward of the intertidal zone in Tauranga and Ohiwa 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 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 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.

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 will assist in preventing the expansion of mangroves into areas where they would detract from harbour 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 and unbranched mangrove plants less than 60cm in height.

In areas of significant vegetation protected by the Regional Coastal Environment Plan, Policy CE 6B provides for 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.

