

**BEFORE THE ENVIRONMENT COURT
AT WELLINGTON**

ENV

IN THE MATTER of the Resource Management Act
1991.

AND

IN THE MATTER of an appeal under clause 14(1) the Resource
Management Act 1991

BETWEEN **THE MINISTER OF
CONSERVATION**

Appellant

AND **HAWKE'S BAY REGIONAL
COUNCIL**

Respondent

NOTICE OF APPEAL

The Minister of Conservation
Department of Conservation
59 Marine Parade
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Conservancy Solicitor: Kevin Smith

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST
DECISION ON PROPOSED PLAN**
Clause 14(1) of First Schedule, Resource Management Act 1991

To the Registrar

Environment Court

P O Box 5027

Wellington

I, Stephanie Anne Chadwick, Minister of Conservation, appeal part of a decision on the following matter:

Hawke's Bay Regional Council decisions on submissions on the Proposed Regional (Hawke's Bay) Coastal Environment Plan.

I received notice of the decision on 22 July 2008.

The decision was made by the Hawke's Bay Regional Council.

The part of the decision that I am appealing is:

1. Hawke's Bay Regional Council Decision # 84 which rejects my Further Submission # F12/67.
2. Hawke's Bay Regional Council Decision # 277 which rejects my Submission #98/12.
3. Hawke's Bay Regional Council Decision # 753 which accepts in part my Submission #98/18.
4. Hawke's Bay Regional Council Decision # 880 which rejects my Submission # 98/24.
5. Hawke's Bay Regional Council Decision #914 which my Further Submission #F12/352.
6. Hawke's Bay Regional Council Decision #'s 1035 & 1036 which rejects my Submission #'s 98/45 and 98/46, respectively.
7. Hawke's Bay Regional Council Decision #'s 796, 908, and 909 which reject the Minister of Conservation's Submissions #'s 98/63, 98/64 and 98/65 respectively.

The reasons for the appeal are as follows:

Generally:

The decisions do not meet the requirements of section 55(2) of the Resource Management Act 1991 (RMA), in that they do not give effect to relevant provisions of the New Zealand Coastal Policy Statement.

The decisions do not meet the requirements of Part 2 of the RMA.

Specifically:

1. Decision # 84 which rejects Further Submission # F12/67.

This matter relates to giving effect to provisions of to the NZCPS.

I made a further submission (Further Submission # F12/67) supporting the submission by ECHB Conservation Board (Submission #34/4) requesting the addition of policies in Chapters 2, 3, and 4 for the need for re-establishment and enhancement of natural character, outstanding natural features and landscapes, and indigenous vegetation and habitats, respectively, to achieve the desired (anticipated) environmental outcomes stated for those chapters.

The Council's decision rejected these submissions as in its view the policies in Chapters 2, 3, and 4 generally already address these concerns.

The proposed plan policies do not however specifically address "re-establishment" in relation to these matters; and the policies in Chapters 2, 3, and 4 should be amended to give effect to NZCPS Policy 1.1.5 that states, "It is a national priority to restore and rehabilitate the natural character of the coastal environment where appropriate".

The Councils decision fails to give effect to the NZCPS Policy 1.1.5, and policies should be included to:

Address restoration and rehabilitation of the natural character of the coastal environment where the natural character of the coastal environment has been degraded by past activities or may be degraded by proposed activities.

Identify areas, and restore and rehabilitate areas where outstanding natural features and landscapes within the coastal environment have been degraded by past activities or may be degraded by proposed activities.

Identify areas, and restore and rehabilitate areas where significant indigenous vegetation and significant habitats of indigenous fauna of the coastal environment have been degraded by past activities or may be degraded by proposed activities.

2. Decision # 277 which rejects Submission #98/12

This relates to an important jurisdictional matter.

I requested that Policies 7-1, 7-2, and 7-3, which relate to protection of historic heritage, be amended by replacing the words “coastal marine area” in each with the words “coastal environment” and that the associated Explanation and Reasons are consequently amended to reflect the requirement of Section 6(f) RMA and to give effect to NZCPS Policies 1.1.3, 2.1.1, and 2.1.2.

The Historic Places Trust (HPT) made a similar submission (Submission#109/9).

The Council’s decision fails to provide for the protection of historic heritage in the coastal environment. Section 6(f) RMA requires all local authorities which have functions and powers under the RMA to recognise and provide for protection of historic heritage from inappropriate subdivision, use, and development.

HBRC has a number of relevant statutory functions under the RMA above MHWS and within the coastal environment, as indicated in Section 1.2.3 of the proposed plan.

Policies 7-1, 7-2, and 7-3 should be amended to provide for the protection of historic heritage in the coastal environment from inappropriate subdivision, use, and development.

3. Decision # 753 which accepts in part Submission #98/18
Amendment to Policy 17-1 Guideline 2(b)

This matter relates to giving effect to provisions of the NZCPS.

Policy 17-1 Guideline 2(b) is inconsistent with the RMA and fails to give effect to the NZCPS (in particular NZCPS 1.1.2(b)); and that “beaches and dune systems” are added to the list of items where adverse effects are avoided, remedied, or mitigated, and avoided where they form part of the habitats of threatened or vulnerable indigenous species.

The Council decision in respect of Policy 17-1 Guideline 2(b) fails to address adverse effects in a manner that gives effect to items (iv) to (viii) in NZCPS 1.1.2(b) and avoided or remedied with respect to items (i) to (iii) in NZCPS 1.1.2(b).

4. Decision # 880 which rejects Minister of Conservation’s Submission # 98/24

This matter relates to giving effect to provisions of the NZCPS.

The MoC requested that Policy 18-1 Guideline 2(b) (iv) be amended to fully give effect to NZCPS Policies 1.1.2(a) and (b).

NZCPS Policy 1.1.2(a) relates to species which, in a national context are vulnerable or more threatened and requires avoidance of any adverse effects on areas or habitats where they are found. NZCPS Policy 1.1.2(b) relates to species which, in a national context are rare, or in a regional context are rare or more threatened and requires avoidance or remedy of any adverse effects on areas where they are found.

The Council decision in respect of Policy 18-1 Guideline 2(b)(iv) fails to fully give effect to NZCPS Policies 1.1.2(a) and (b), and should be amended to specifically make the distinctions above.

5. Decision #914 which rejects Minister of Conservation’s Further Submission #F12/352

The MoC made a Further Submission in support of the submission by Ngati Kahungunu Iwi Inc (NKII) (Submission #110/195) requesting an amendment to Rule 104 that in the proposed plan it provides for network utility activities over the foreshore or seabed as a permitted activity.

NKII requested these activities be Restricted Discretionary, as specified in their submission, rather than Permitted.

The Council's decision fails to appropriately manage the adverse effects of utility structures e.g. on natural character, which may be significant (and possibly more significant than this activity occurring under the foreshore or seabed) in the CMA and appropriate control and discretion to manage the effects of those activities is required to promote sustainable resource management.

This would be better achieved if the activity is Restricted Discretionary rather than Permitted.

The plan and rules are internally inconsistent in the management of effects that may arise for similar activities.

6. Decision #'s 1035 & 1036 which rejects Minister of Conservation's Submission #'s 98/45 and 98/46,

The MoC requested that Issue 25-1 and Objective 25-1 be amended by adding the words "wildlife and recreational values" after "amenity values" in both.

At hearing it was accepted that "amenity values" could encompass recreational values.

However the emission of noise within the coastal marine area may also adversely affect wildlife and the plan fails to address this issue.

Issue 25-1 and Objective 25-1 should be amended to add "wildlife values" after "amenity values".

7. Decision #'s 796, 908, and 909 which reject Minister of Conservation's Submission #'s 98/63, 98/64 and 98/65, respectively.

This matter relates to giving effect to Schedule 1 of the NZCPS.

Rules 95, 110 and 111 take advantage of the provision in Schedule 1 of the NZCPS to classify some activities as discretionary activities and not RCAs at a larger threshold than the normal RCA criteria so long as certain requirements are met. These requirements are specified in the Schedule, and include matters such as permissible location, construction materials and end usage. The MoC requested that these rules be amended to clearly give effect to all of the required criteria listed in Schedule 1 when using the higher RCA thresholds.

With respect to Rule 95, either the rule itself or the Environmental Guidelines in Table 13 (Chapter 19 Reclamation and Drainage in the CMA) needs to provide for all the criteria listed in S1.1(b)(iii) of Schedule 1 of the NZCPS.

With respect to Rule 110, either the rule itself or the Environmental Guidelines in Table 12 (Chapter 18 Structures and Occupation of Space in the CMA) needs to provide for all the criteria listed in S1.3(b)(iv) and (iv) of Schedule 1 of the NZCPS.

With respect to Rule 111, either the rule itself or the Environmental Guidelines in Table 12 (Chapter 18 Structures and Occupation of Space in the CMA) needs to provide for all the criteria listed in S1.4(b) (v) and (vi) of Schedule 1 of the NZCPS.

I seek the following relief:

- That the provisions of the proposed plan be amended to give effect to the relevant provisions of the NZCPS, and to provide for the plan amendments sought above;
- Any further or consequential amendments as a result of the above amendments;
- Such other relief that the Court considers appropriate.

I attach the following documents* to this notice:

- (a) a copy of my submissions and further submissions (with a copy of the submissions supported);
- (b) a copy of the relevant parts of the decision (*or* part of the decision):

(c) a list of names and addresses of persons to be served with a copy of this notice.

*These documents must be attached and lodged with the notice in the Environment Court. The appellant does not need to attach copies of these documents to copies of the notice served on other persons if the copy served lists these documents and states that copies may be obtained on request from the appellant.

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Peter Williamson – Conservator

East Coast Hawkes Bay Conservancy Department of Conservation

Acting pursuant to delegated authority on behalf of the Minister of Conservation

.....

Date

Address for service of appellant:

The Minister of Conservation

c/- Department of Conservation, East Coast Hawkes Bay Conservancy

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NAPIER

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Contact person: **Kevin Smith, Conservancy Solicitor.**

Note to appellant

You may use this form for any appeal for which you cannot identify a prescribed form.

You must lodge the original and 1 copy of this notice with the Environment Court. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

Advice to recipients of copy of notice of appeal

How to become a party to proceedings

If you wish to be a party to the appeal, you must lodge a notice in [form 33](#) with the Environment Court within 30 working days after this notice was lodged with the Environment Court.

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).

Advice

If you have any questions about this notice, contact the Environment Court Unit of the [Ministry of Justice] in Auckland, Wellington, or Christchurch.

“A”

List of persons to be served:

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