

BEFORE THE ENVIRONMENT COURT

ENV

IN THE MATTER of the Resource
Management Act 1991

AND

IN THE MATTER of an appeal under Clause
14(1) of the First
Schedule to the Act

BETWEEN PORT OF NAPIER
LIMITED

Appellant

AND HAWKE'S BAY
REGIONAL COUNCIL

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST
DECISION ON PLAN CHANGE 1 AND ON PROPOSED
REGIONAL COASTAL ENVIRONMENT PLAN**

This document is filed by **JOHN PATRICK MATTHEWS**, Solicitor of
LANGLEY TWIGG. The address for service is at the offices of Langley
Twigg, Solicitors, 66 West Quay, Ahuriri, Napier.
Phone: 06 8358939

NOTICE OF APPEAL

To: The Registrar
Environment Court
PO Box 5027
Lambton Quay
Wellington

Name and address of appellant:

PORT OF NAPIER LIMITED
C/- Langley Twigg, PO Box 446, Napier, 4110

This appeal is against a decision by Hawke's Bay Regional Council on:

Plan Change 1 and Proposed Regional Coastal Environment Plan
The appellant is a person who filed submissions on the Plan Change and Proposed Plan.

Notice of the decision was received on.

2 July 2008

The decision that this appeal concerns is:

Decisions 186-209

Decisions 885-934

Decisions 1135-1145

Decisions 1167-1180

Decisions 1579-1609

The reasons for the appeal are as follows:

Decisions 186-209

The amendment to Policy 5-7 to limit public use and access where safety, security (including biosecurity) or other exceptional circumstances require does not adequately recognize the significant nature of ports as regularly important infrastructure where existing coastal permits give exclusive rights.

Decisions 885-934

- (a) The deletion of Rule 108 in its entirety and the amendment of Rule 106 in relation to environmental monitoring devices does not allow for devices to occupy the Coastal Marine Area for more than 28 days in any 12 month period. The Appellant maintains a wave monitoring buoy on a semi-permanent basis for environmental purposes and to calculate engineering solutions in relation to breakwaters and reclamations.

The alteration is therefore environmentally unacceptable and will not enable proper monitoring of coastal processes.

- (b) Rules 173 and 102 have been amended to permit existence of lawfully established structures in the Coastal Marine Area. However the present Coastal Plan lists approved structures such as wharves in the Port of Napier. It is considered that such a schedule will confirm that those structures have been lawfully consented to without the necessity of proving their lawful establishment. Some consents precede the Harbours Act and earlier legislation and some consents relate to the 1800's and private Acts of Parliament which are difficult to trace and it would be preferable that the Port structures were within the Port Management Area at the time of the last Plan were retained.

Decisions 1135-1145

Amendments to Maps 26, 27 and 29 do not show the South Groyne as part of the Port Management Area. The groyne has been established to manage wave action on the beach in between the gateway into the administrative area of the Port and the commencement of its main breakwater and should form part of that map.

Decisions 1167-1180

The decisions amend Chapter 26.4(g) requiring restricted coastal activities applications to be publicly notified. There is no valid planning reason why a compulsory notification is required for a restricted coastal activity, and that should remain at the discretion of the consenting authority and/or the Minister. While most applications will be notified there is no compelling reason to limit flexibility in decision-making.

Decisions 1579-1609

New Rules 114A and 115A in Chapter 27.8 have been inserted relating to coastal structures parallel to and not parallel to the shore. These were previously a discretionary restricted coastal activity. When they extend more than 300 metres (Rule 114A) parallel to the shore or 100 metres horizontally from the shore (Rule 115A), they are now a non-complying and restricted coastal activity. This has consequences for the Port at Napier in relation to the extension of breakwaters, and brings in the issue of Section 104D of the Act.

There appears to be no reason why that Section should be imposed on such activities carried out by the Port of Napier as it is likely that any breakwater development will be more than minor, or may be contrary to some of the objectives and policies of the relevant Plan but at the same time will be essential for safe navigation and future development of a regional and national facility such as the Port harbour.

The appellant seeks the following relief from the Court:

Decisions 186-209

Amend Policies to confirm that public access with the Port Management Area is prohibited.

Decisions 885-934

- (a) Amend Rule 106 to permit the permanent deployment of environmental monitoring devices.
- (b) List the Port of Napier structures as at the time of the last Coastal Plan as being lawfully established in terms of Rules 173 and 102.

Decisions 1135-1145

Amend all maps showing the Port Management Area to include the South Groyne.

Decisions 1167-1180

Delete requirement to require public notification of all restricted coastal activity applications.

Decisions 1579-1609

Amend Rule 114A and 115A to classify the Activities as Discretionary and Restricted Coastal Activities.

John Patrick Matthews on behalf of PORT OF NAPIER LIMITED

Date:

c/- Langley Twigg

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Contact person: John Matthews

The following documents are attached to this notice:

- (a) The Appellants submissions;
- (b) The relevant parts of the decision;
- (c) A list of names and addresses of persons to be served with a copy of this notice.

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission on the matter of this appeal and you lodge a notice of your wish to be a party to the proceedings (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).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of Plan change 44 and the decision appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court Unit of the Department for Courts in Auckland, Wellington, or Christchurch.