



IN THE ENVIRONMENT COURT

IN THE MATTER OF

An appeal to the Environment Court under clause 14 of the First Schedule to the Resource Management Act 1991

AND IN THE MATTER OF

Proposed Kaipara District Plan

BETWEEN

THE ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INC

Appellant

AND

KAIPARA DISTRICT COUNCIL

Respondent

NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISIONS ON THE PROPOSED KAIPARA DISTRICT PLAN

Clause 14(1) of First Schedule To The Resource Management Act 1991

To: The Registrar
Environment Court
PO Box
Auckland

1. APPELLANT

The Royal Forest and Bird Protection Society of New Zealand Incorporated (*Forest and Bird*) appeals decisions of the Kaipara District Council on the Proposed Kaipara District Plan (*Council decisions*).

2. SUBMISSION

Forest and Bird made a submission on the Proposed Kaipara District Plan (attached)

3. DATE OF RECEIPT OF THE DECISION

Forest and Bird received notice of the Council decisions on 7 October 2011.

4. RESPONDENT

3807.06.04

The Council decisions were made by the Kalpara District Council (*Council*).

5. DECISIONS APPEALING

The Council decisions that Forest and Bird is appealing are as follows:

Mapping SNAs

A. Chapter 6:– Decision 4.7,

B. Chapter 6:– Decision 4.16

C. Chapter 6:– Decision 4.21

Vegetation Clearance Exemptions

D. Decision 4.3 [PAN SR2.4] –Vegetation Clearance Rules – General

6. REASONS FOR THE APPEAL

The Council decisions:

- a) Are unreasonable, impractical and inconsistent with the purposes and principles of the Resource Management Act 1991 (*RMA*),
- b) do not promote the sustainable management of natural and physical resources;
- c) do not promote the protection of natural and physical resources;
- d) are contrary to good resource management practice and fail to provide appropriate advice to landowners and the public on significant natural values in the district; and
- e) otherwise inconsistent with the relevant provisions of the RMA including the purposes and principles of the RMA under Part 2.

The provisions of the Proposed Plan controlling land use activities affecting significant natural areas are inadequate to provide for their protection, maintenance and enhancement of their indigenous biological diversity in terms of section 30 of the RMA. The particular reasons for Forest and Bird's appeal are set out below.

7. RELIEF SOUGHT

Mapping SNAs

Chapter 6:– Decision 4.7, 4.16 & 4.21

Include in the Proposed Plan the following changes as set out below or provisions to like effect.

Issue 6.4.5 Available databases of the District's significant ecological areas to assist the Council with the development of District Plan methods and monitoring cover most of the district.

Reason:

Issue 6.4.5 is incorrect as there is more than sufficient information to identify, map and schedule all of the ecological sites in the district that meet the criteria in 6.7.1 and the requirements of the Plan and the Act.

6.7.1 District Plan Methods

Include in the Proposed Plan the following changes as set out below or provisions to like effect.

6.7.1.7 The significance of indigenous vegetation and habitats will be assessed by reference to the criteria in Appendix III of the Northland Regional Policy Statement, and also contained within Appendix 25G, Part D of this Plan and mapped in Appendix F to the Maps, when processing applications for Resource Consent for land use or subdivision. These criteria are:

The SNA areas proposed to be added to the plan maps are those In Forest & Bird's submissions of the plan and are attached or may be provided as an electronic file on CD.

Reason:

The approach of identifying SNAs on the plan maps in the operative plan, provides greater certainty of outcomes for landowners, council planning and compliance staff, the public and nature. Although this does not address the competence of the Council to properly administer the Plan.

If there is no information in the District Plan about the presence or location of sites of ecological significance, their protection is at risk. Further, the application of the relevant assessment criterion in 12.10.1 and 12.10.2 for a restricted discretionary activity becomes difficult without information about where these areas might be. Most of the ecological features in the district that meet the criteria in Appendix 25G are mapped on the Department of Conservation's PNAP database.

Vegetation Clearance Exemptions

Decision 4.3 [PAN SR2.4] –Vegetation Clearance Rules – General

Relief Sought

12.10.2 Vegetation Clearance

Delete the phrase: "or a sustainable management permit or personal use approval" from 12.10.2.4(j)

Reason:

Environment Court decisions regarding the relationship between the RMA and the Forests Act
Two cases have come before the Environment Court addressing the relationship between the RMA and the Forests Act:

- Royal Forest & Bird Protection Soc. of NZ Vs Gisborne District Council ENV-2008-WLG-000090
- Minister Of Conservation & Ors Vs Southland District Council (RMA 90 2195)

In the case of Royal Forest & Bird Protection Soc. Vs Gisborne DC ENV-2008-WLG-000090 on 7TH April 2009, the key points of the judgement are that the RMA takes a broader approach than the Forests Act and consent authorities have their own responsibilities under the RMA assessing the effects on the environment and cannot abdicate these to MAF officials.

Judge Sheppard's earlier decision (Min of Conservation vs Southland DC RMA 90 2195) identified clear differences in the purposes of the two pieces of legislation:

"The stated purpose of each Act refers to sustainable management. The definition of sustainable forest management in Part IIIA shows that it is concerned with the sustainability of the forest. By comparison, the definition of sustainable management in the 1991 Act shows that it is concerned with effects on all natural and physical resources of the environment, particularly effects on resources that are external to those being managed."

Also he pointed out that the Forests Act expressly stipulates that any resource consent required under the RMA 1991 is to be obtained, contemplating additional controls for environmental effects.

By providing an exemption for indigenous logging in the plan (as a permitted activity) as proposed, the Council would be out of step with the decisions of the Environment Court on this matter.

Dr Mark Bellingham
 North Id Conservation Manager
 For and on behalf of the Royal Forest and Bird Protection Society NZ Inc

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 Date

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Contact person: *[name and designation, if applicable]* Dr Mark Bellingham
 North Island Conservation Manager

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 the appellant's submission and (or or) the decision (or part of 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.

Contact details of Environment Court for lodging documents

Documents may be lodged with the Environment Court by lodging them with the Registrar. The **Auckland address** of the Environment Court is:

*Specialist Courts and Tribunals Centre
Level 2, 41 Federal Street (Corner Wyndham Street)
Auckland 1010*

*PO Box 7147
DX: CX10086
Wellesley
Auckland*

Street

Significant Natural Areas in Kaipara District



