

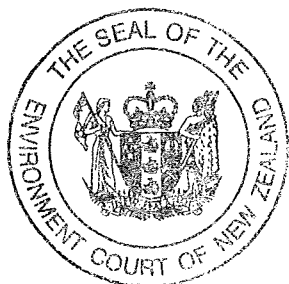
BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER of the Resource Management Act 1991
AND of appeals under clause 14 of Schedule
BETWEEN TRANSPOWER NEW ZEALAND LIMITED
(ENV-2019-AKL-000294)
MINISTER OF CONSERVATION
(ENV-2019-AKL-000296)
ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INCORPORATED
(ENV-2019-AKL-000298)
MINISTER OF DEFENCE
(ENV-2019-AKL-000301)
Appellants
AND TARANAKI REGIONAL COUNCIL
Respondent

Environment Judge MJL Dickey sitting alone under s 279 of the Act
In Chambers at Auckland

CONSENT ORDER

- [A] Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:
- (1) the appeals are allowed in part subject to the amendments to the proposed Taranaki Coastal Plan set out in **Appendix A** to this order.
 - (2) Topic 2 (Coastal Management Approach) is resolved by this order. Topic 1 (Biodiversity) and Topic 3 (Infrastructure and Industry) remain extant.
 - (3) The appeals by the Minister of Defence and Transpower New Zealand are resolved by this order. The appeals by Minister of Conservation and Royal Forest and Bird Protection Society of New Zealand remain extant.



[B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

- [1] This order relates to some of the appeals filed against the Council's decision on the proposed Taranaki Coastal Plan. It resolves appeal points under Topics 1 (Biodiversity), Topic 2 (Coastal Management Approach) and 3 (Infrastructure and Industry).
- [2] Following Court assisted mediation the parties have reached an agreement that will resolve Topic 2 in its entirety, and Topic 1 and Topic 3 in part.
- [3] In making this order the Court has read and considered the notices of appeal and the memorandum of the parties dated 1 April 2020.
- [4] The following parties joined these appeals under s 274 of the Act and have signed the memorandum of the parties in support of this order:
- Transpower NZ
 - Minister of Conservation
 - Royal Forest and Bird Protection Society of NZ
 - Minister of Defence
 - Port Taranaki Limited
 - PowerCo Limited
 - BP Oil NZ Ltd
 - Mobil Oil NZ Ltd
 - Spark NZ Trading Ltd
 - Z Energy Ltd
 - Federated Farmers of NZ
 - Petroleum Exploration and Production Association of New Zealand
 - Trans-Tasman Resources Limited
- [5] The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:
- (a) all parties to the proceedings with an interest in the matters to be resolved by this order have executed the memorandum of the parties requesting this order; and



- (b) all parties are satisfied that all matters proposed for the Court's endorsement are within the scope of relief sought in the appellants' notices of appeal, fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Act, including in particular Part 2.

Order

- [6] Therefore, the Court orders, by consent, that the proposed Taranaki Coastal Plan is amended as set out in **Appendix A** to this order.
- [7] Topic 2 (Coastal Management Approach) is resolved by this order. Topic 1 (Biodiversity) and Topic 3 (Infrastructure and Industry) remain extant.
- [8] The appeals by the Minister of Defence and Transpower New Zealand are resolved by this order. The appeals by Minister of Conservation and Royal Forest and Bird Protection Society of New Zealand remain extant.
- [9] There is no order for costs.

DATED at Auckland this 30 day of July 2020





MJL Dickey
Environment Judge



Appendix A: Approved Amendments to the Proposed Taranaki Coastal Plan (based on *Track changes version: Council's decisions*)

Provision	Amendments (additions are identified with underlined text; deletions are identified with struck out text)
<p>Section 1.7.1</p>	<p>1.7.1 Outstanding Value</p> <p>These are the coastal areas of outstanding value <u>that lie in the coastal marine area as</u> identified in Schedule 1. They include areas that have outstanding natural character and areas identified as having outstanding natural features and landscapes.</p> <p>These areas contain values and attributes considered exceptional based on their characteristics, including landforms, land cover, cultural and historic heritage associations and visual qualities</p> <p><u>Of note, values associated with these areas may extend onto the landward component of the coastal environment or beyond, as identified in Schedule 2.</u></p>
<p>Policies 5 to 6A</p>	<p>Policy 5: Appropriate use and development ...</p> <p>(j) the degree and significance of actual or potential adverse effects of the activity on the environment, including consideration of:</p> <p>(i) ...</p> <p>(iii) <u>the efficacy of measures to avoid, remedy or mitigate such effects, or provide environmental compensation where effects cannot be avoided, remedied or mitigated.</u></p> <p>Policy 6: Benefits of regionally important infrastructure Recognise the benefits of new and existing regionally important infrastructure to the social, economic and cultural well-being of people and communities in Taranaki and, provide for the safe and efficient operation of regionally important infrastructure subject to the appropriate avoidance, remediation or mitigation of adverse environmental effects, <u>provide for the safe and efficient operation and development of regionally important infrastructure.</u></p> <p>Policy 6A: Management of adverse effects of the National Grid <u>Recognise and provide for the benefits of the National Grid.</u></p> <p>Where the National Grid has a functional need or operational need to locate in the coastal environment, manage the adverse effects arising from their activities by:</p> <p>(a) ...</p>
<p>Policy 8</p>	<p>Policy 8: Areas of outstanding value Protect the visual quality and the physical, ecological and cultural integrity of coastal areas of outstanding value identified in Schedules <u>1 and 2</u> from inappropriate subdivision, use and development by:</p>



Provision	Amendments (additions are identified with underlined text; deletions are identified with struck out text)				
	(a)	avoiding adverse effects of activities on the values and characteristics including those identified in Schedules <u>1 and 2</u> that contribute to areas:			
	(i)	...			
Policy 33	Policy 33: Hard protection structures in coastal areas of outstanding value				
	Hard protection structures located within the coastal management area – Outstanding Value (identified in Schedule 2) must not have an adverse effect on the values and characteristics <u>including those</u> identified in Schedule 2 that contribute to an area having outstanding value, in accordance with Policy 8.				
Policies 37 and 38	Policy 37: Major alteration or extension of existing structures				
	Major alteration or extension of existing lawful structures will be allowed in locations where the activity will not have significant adverse effects on other lawfully established structures or uses and values subject to appropriate avoidance, remediation or mitigation of adverse effects, and must:				
	(a)	result in greater, more efficient, or multiple use of the structure for marine activities; or			
	(b)	reduce the need for a new structure elsewhere.			
	Policy 38: Removal of coastal structures				
	...				
	(c)	the structure, or part of the structure, is permanent or has reuse value that is considered appropriate in accordance with Policy 5; <u>designed for permanence, and has:</u>			
		<ul style="list-style-type: none"> • <u>ongoing use value to the applicant; or</u> • <u>reuse value that is considered appropriate in accordance with Policy 5;</u> 			
	(d)	the removal of the structure is technically unfeasible <u>not technically feasible based on:</u>			
		<ul style="list-style-type: none"> • <u>applicable regulations, standards, guidelines; or</u> • <u>recognised industry best practice; or</u> 			
	(e)	...			
Rule 18 and new Rule 18A	Activity	Rule	Coastal Management Area	Classification	Standards/terms/conditions
	Placement or erection of an outfall structure	18	Outstanding Value	Permitted	(aa) <u>Taranaki Regional Council is informed of the activity at least five working days before commencement by entering details of the activity at</u>



Provision	Amendments (additions are identified with underlined text; deletions are identified with struck out text)					
	<p>and any associated:</p> <p>(a) occupation of space in the common marine and coastal area;</p> <p>(b) disturbance of the foreshore or seabed;</p> <p>(c) deposition in, on or under the foreshore or seabed; and</p> <p>(d) discharge of sediment.</p> <p><i>Note: (1) If the activity does not come within or meet the standards, terms and conditions in this Rule refer to <u>Rule 18A 22 or 23 for a network utility structure or Rule 34 or Rule 35 for other outfalls depending on the coastal management area involved.</u></i></p> <p><i>Note (2): this rule does not authorise a discharge from the outfall structure. The discharge rules are Rules 1 to 7 and 13 to 14.</i></p> <p><i>Note (3): Iwi authorities that have requested to be informed of this activity will be advised by the Council.</i></p>	<p>Estuaries Unmodified</p> <p>Estuaries Modified</p> <p>Open Coast</p> <p>Port</p>		<p>www.trc.govt.nz/informcouncil</p> <p>(a) structure has a maximum internal diameter of 300 mm and extends a maximum of 0.5 m seaward of the line of mean high water springs;</p> <p>(b) the activity does not cause erosion or scour;</p> <p>(c) the extent of disturbance of the foreshore and seabed is limited to the minimum required to undertake the activity;</p> <p>(d) the structure is not placed or erected in any Marine Reserve or Marine Protected Area;</p> <p>(da) <u>in Estuaries Modified, the activity does not involve the placement or erection of an outfall structure within 50 m of any other outfall structure in the coastal marine area;</u></p> <p>(e) the activity does not have an adverse effect on the values associated with historic heritage identified in Schedule 5A and B [Historic heritage];</p> <p>(f) the activity does not have an adverse effect on significant indigenous biodiversity, including those identified in Schedule 4 [Significant indigenous biodiversity]; <u>and</u></p> <p>(fa) the activity does not have a significant adverse effect on the values associated with taonga species identified in Schedule 5 [Taonga species]; <u>and</u></p> <p>(g) Taranaki Regional Council is informed of the activity at least one working day before commencement by entering details of the activity at www.trc.govt.nz/informcouncil</p>		
	<p>Activity</p> <p><u>Placement or erection of an outfall structure</u></p> <p>and any associated:</p> <p>(e) <u>occupation of space in the common marine and coastal area;</u></p> <p>(f) <u>disturbance of the foreshore or seabed;</u></p> <p>(g) <u>deposition in, on or under the foreshore or seabed; and</u></p> <p>(h) <u>discharge of sediment;</u></p> <p><u>that does not come within or comply with Rule 18.</u></p>	<p>Rule</p> <p><u>18A</u></p>	<p>Coastal Management Area</p> <p><u>Outstanding Value</u></p> <p><u>Estuaries Unmodified</u></p> <p><u>Estuaries Modified</u></p> <p><u>Open Coast</u></p> <p><u>Port</u></p>	<p>Classification</p> <p><u>Discretionary</u></p>	<p>Standards/terms/conditions</p>	<p>Policy Reference</p> <p><u>General Policies</u></p> <p><u>1 to 21</u></p> <p><u>and</u></p> <p><u>Activity-based Policies</u></p> <p><u>31, 32, 36, 37,</u></p> <p><u>38, 39, 40, 41,</u></p> <p><u>42, 44, 49</u></p>
Rule 31: Temporary military training	Coastal management area					



Provision	Amendments (additions are identified with underlined text; deletions are identified with struck out text)																	
Activities	<p>Estuaries Unmodified</p> <p>Estuaries Modified</p> <p>Open Coast</p> <p>Port</p>																	
Rule 35	<p>Standards/terms/conditions</p> <p>...</p> <p><u>(i) no fuelling of vehicles or machinery occurs in the coastal marine area, other than in the Port coastal management area. This restriction does not apply to ships.</u></p>																	
Rule 44:	<p>Standards/terms/conditions</p> <p>...</p> <p><u>(h) no fuelling of vehicles or machinery occurs in the coastal marine area, other than in the Port coastal management area. This restriction does not apply to ships.</u></p>																	
Section 8.6.3	<p>8.6.3 Noise</p> <p>(a) ...</p> <p>(c) Temporary military training activities</p> <p>Temporary military training activities in the coastal marine area will not create noise that exceeds the following when measured 1m from any side of any building used for accommodation <u>comply with the following noise standards:</u></p> <p>(i) All activities excluding live weapons firing, firing of blanks, or use of explosives <u>(when measured 1m from any side of any building used for accommodation):</u></p> <table border="1"> <thead> <tr> <th rowspan="2">Time (any day)</th> <th colspan="2">Limits (dB)</th> </tr> <tr> <th>L_{Aeq}</th> <th>L_{Amax}</th> </tr> </thead> <tbody> <tr> <td>0630 – 0730</td> <td>60</td> <td>75</td> </tr> <tr> <td>0730 – 1800</td> <td>75</td> <td>90</td> </tr> <tr> <td>1800 – 2000</td> <td>70</td> <td>85</td> </tr> <tr> <td>2000 – 0630</td> <td>45</td> <td>75</td> </tr> </tbody> </table>	Time (any day)	Limits (dB)		L _{Aeq}	L _{Amax}	0630 – 0730	60	75	0730 – 1800	75	90	1800 – 2000	70	85	2000 – 0630	45	75
Time (any day)	Limits (dB)																	
	L _{Aeq}	L _{Amax}																
0630 – 0730	60	75																
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1800 – 2000	70	85																
2000 – 0630	45	75																



Provision Amendments (additions are identified with underlined text; deletions are identified with struck out text)

- (ii) Noise resulting from live firing, firing of blanks, or use of explosives will comply with:
 - i. in the first instance, the following minimum separation distance; or
 - ii. where the minimum separation distance cannot be met, the following peak sound pressure limit (when measured at the notional boundary⁷ of any residential unit or other building used for a noise sensitive activity⁸):

Time (any day)	<u>Separation distances⁹</u>	Limits (dBC)	Separation distances⁷
0700 – 1900	<u>500 meters</u>	95	500 meters
1900 -0700	<u>1,250 meters</u>	85	1,250 meters

- (iii) Noise resulting from helicopter landing shall comply with *NZS6807:1994 Noise Management and Land Use Planning for Helicopter Landing Areas*.

Noise must be measured ~~assessed, managed and controlled~~ in accordance with the requirements of *New Zealand Standard NZS6801:2008 Acoustics – Measurement of Environmental Sound*.

(d) ...

⁷ ~~Distance from any side of any building used for accommodation.~~

⁷ A line 20 meters from any side of a residential unit or other building used for a noise sensitive activity, or the legal boundary where this is closer to such a building.

⁸ Includes those buildings associated with living activities, educational facilities, community facilities, major healthcare activities and visitor accommodation.

⁹ Distance from any side of any building used for a noise sensitive activity.

...



Provision	Amendments (additions are identified with underlined text; deletions are identified with struck out text)
Section 9	<p>9 Financial contributions and environmental compensation</p> <p>...</p> <p><i>Note: The Council is not operating a charging regime for occupation of the coastal area <u>has decided not to include a charging regime in the Coastal Plan at this time.</u></i></p> <p>...</p> <p>9.1.8 General environmental compensation <u>Positive effects to offset adverse effects on the environment</u></p> <p><i><u>Purpose: To provide environmental compensation where an activity will have adverse effects, which will not be adequately avoided, remedied or mitigated by protecting, restoring and/or enhancing natural and physical resources and/or amenity values elsewhere in the coastal environment in the same general locality.</u> Purpose: To protect, restore and/or enhance natural and physical resources and/or amenity values elsewhere in the coastal environment in the same general locality where an activity will have adverse effects that will not be adequately avoided, remedied or mitigated, or otherwise to ensure positive effects on the environment to offset any adverse effect.</i></p>
Definitions and acronyms	<p>...</p> <p>Heritage values mean any cultural, traditional, aesthetic, <u>natural</u> or other value related to the past.</p> <p>...</p> <p>Temporary Military Training Activities means...</p> <p>(c) the contribution of forces under collective security threats <u>treaties</u>, agreements, or arrangements;</p> <p>(e) ...</p>