Decision No. A 29 /2005

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of references under clause 14 of the First Schedule to the Act

BETWEEN **BAY OF ISLANDS COASTAL WATCHDOG INC.**

(RMA 679/03)

AND **ENVIRONMENTAL DEFENCE SOCIETY**

RMA 677/03 and 678/03)

AND **ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NZ INC.**

(RMA 690/03)

AND **DIRECTOR-GENERAL OF CONSERVATION**

(RMA 592/03)

AND **EASTERN BAY OF ISLANDS PRESERVATION SOCIETY INC.**

(RMA 692/03)

Appellants

AND **THE FAR NORTH DISTRICT COUNCIL**

Respondent

BEFORE THE ENVIRONMENT COURT

Environment Judge L J Newhook (presiding)

Environment Commissioner R M Dunlop
Environment Commissioner B Gollop

HEARING at Paihia on 14, 15 and 16 February 2005

APPEARANCES

M A Ray and J S Baguely for Far North District Council
B I J Cowper for BOICW and EDS
A F D Cameron and S Grieve for the Director-General of Conservation
S A Wooler for EBOIPS
P Cavanagh QC for Bentzen Farms Limited, Waitoto Developments Ltd and Paroa Bay Farms Ltd
D Bauld for herself
J E Crawford for himself
H Dixon for himself

INTERIM DECISION

Introduction

[1] These appeals cover many topics, however the topic the subject of this hearing was limited to the controls to be set by rules for subdivision in the General Coastal Zone of the respondent's proposed district plan ("PDP").

[2] Early in 2004 the presiding Judge conducted a callover conference of all appeals concerning the PDP, and issued directions to the parties concerning each of the many hundreds of topics covered in all of the appeals.

[3] Most of the topics were agreed to be suitable for negotiation and/or mediation by the parties. The Judge issued an invitation to the parties to seek conferences and further directions as necessary, and indicated a willingness to convene timely sittings of the Court in the Far North for the purpose of assisting the parties to resolve any issues that they could not otherwise resolve by negotiation and/or mediation. He did this in the spirit of the understanding that he perceived existed between all parties, that the large majority of issues were readily capable of resolution by ADR methods.

[4] In late 2004 the parties in these appeals indicated that they had reached the point where they wished to avail themselves of that invitation concerning subdivision in the General Coastal Zone. The Court convened this hearing.

[5] It quickly became apparent as we embarked on the hearing that there was a danger of issues being tackled in the wrong order by starting with a hearing on rules, when appeals concerning objectives and policies were not yet finalised.

[6] The parties nevertheless invited us to hear them concerning the rules, assuring us that any guidance we might be able to give by way of an Interim Decision would be helpful to them in further negotiations concerning the objectives and policies. They indicated those negotiations were close to conclusion, and that the outcome would see a strengthened conservation approach taken in them. We agreed to continue the hearing with a view to issuing an interim decision or a minute offering the guidance the parties desired. The parties called comprehensive planning and landscape evidence which has considerably assisted us in the task.

Background

[7] The Far North District has four transitional plans relevant in these proceedings, created by the former Counties of Bay of Islands, Mangonui, Hokianga, and Whangaroa. Those plans are of quite some age except for the Mangonui one.

[8] In 1996 the council promulgated a new proposed plan, but it was withdrawn in somewhat controversial circumstances.

[9] The current PDP was promulgated in 1998, decisions on submissions issued in July 2003, and the appeals subsequently brought.

The Issues

[10] The relief the subject of the hearing focussed largely (but not exclusively) on the discretionary activity controls for subdivision in the General Coastal Zone, this being the coastal zone having the strongest "conservation" flavour, and containing some truly outstanding natural coastline.

[11] The revised version of the PDP (subsequent to decisions on submissions by the council), makes provision for subdivision as a discretionary activity for lots of a minimum size of 4 hectares, or a maximum of 3 lots of minimum size of 2000m^2 and to an average of 4 hectares. It also makes alternative provision for subdivision in terms of a draft management plan prepared in accordance with Rule 12.9.2. That rule provides no minimum lot size or dimension, but there is provision that the

average size of all lots in the subdivision must be no less than 5000m^2 and that any further subdivision of a lot within the management plan shall be a non-complying activity. The requirements for applications based on such management plans are quite detailed, and the many topics listed that require to be addressed include identification of any outstanding landscapes or natural features, areas of significant indigenous vegetation and significant habits of indigenous fauna, and heritage resources.

[12] In contrast, the rules make provision for controlled activity consents in the General Coastal Zone, down to a minimum lot size of 12 hectares (20 hectares where the property is located within an Outstanding Landscape or similar).

[13] All parties agreed that the minimum lot size for subdivisions in the GCZ by way of controlled activity consent, should be 20 hectares.

[14] Varying approaches were taken by the parties at the time of lodging their appeals concerning discretionary activity lot sizes, and they further modified their approaches during the course of the hearing. For instance EDS, while initially favouring the flexibility offered by the averaging technique found in the management plan approach, shifted to a position favouring a simpler control, that of a minimum lot size of 10 hectares. This came about partly as a result of questions from the Court about how best to handle limitations on future subdivision after the initial application, particularly in circumstances where one large "balance lot" might have been created on the first occasion. The Director-General of Conservation ("DOC") consistently advocated for a minimum lot size approach (10ha), and deletion of the alternative.

[15] RFBPS had sought additional relief that subdivision in the GCZ be of non-complying status where the land was contained within an Outstanding Natural Feature or an Outstanding Landscape Feature as mapped and described in the PDP, or within an area of Predominantly Indigenous Vegetation as defined in the plan. That appellant signalled an intention to withdraw just prior to the hearing. EDS as a party under s274 applied to take over the appeal, expressly on the basis that it would not be adding to the length of the hearing so as not to expose itself to any further liability for costs.

[16] The council significantly (and in our view responsibly) modified its position as a consequence of negotiations leading up to the hearing. Its position before us,

described in submissions by Mr Rae and the evidence of its planning consultant Mr J C Stewart, is best encapsulated by a table offered by the latter, which we set out below:

Zone	**Controlled Activity Status**	**Restricted Discretionary Status**	**Discretionary Status**
General Coastal without outstanding Landscape, outstanding Landscape Features or Outstanding Natural Features, as shown on the Resource Maps.	The minimum lot size is 20 ha (but subdivision within 100m of the boundary of a Mineral Zone is a restricted discretionary activity).	1. Subdivision that complies with the controlled activity standard but is within 100m of the boundary of the Minerals Zone. 2. The minimum lot size is 10 ha.	1. The minimum lot size is 8 ha. or 2. A subdivision in terms of a management plan as per Rule 12.9.2 may be approved. The <u>average</u> size of all lots in the subdivision must be no less than 6 ha.
General Coastal with Outstanding Landscape, Outstanding Landscape Features or outstanding Natural Features, as shown on the Resource Maps.		The minimum lot size is 20 ha.	1. The minimum lot size is 10 ha. or 2. A subdivision in terms of a management plan as per Rule 12.9.2 may be approved. The average size of all lots in the subdivision must be no less than 8 ha.

[17] Mr Stewart told us that the council's rationale for the hierarchy of zones (Coastal Residential, Coastal Living, and General Coastal) was explained in an analysis report prepared under s32 RMA. He acknowledged in the light of the current debate that he knew of no definitive or objective way of determining what the appropriate subdivision regime should be to achieve the overall statutory requirements, but that ultimately it was a matter of judgment and was also a matter of determining what constituted natural character and how this might be protected.

[18] Mr Stewart also drew our attention to the existence of appeals concerning rules controlling buildings in the GCZ, not as yet resolved but the subject of continuing negotiations. This assumed some importance for us because of the view that we formed as we listened to the case, that integrated management of effects as between subdivision and land use applications, was highly desirable on the Far North coastline.

The Resource Management Act 1991 and NZ Coastal Policy Statement

[19] There is no doubt in our minds that the provisions of subsections (a) and (b) of s6 RMA, are critical to resolution of these appeals. They provide:

> **6 . Matters of National Importance**
>
> In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:
>
> (a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
>
> (b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development.

[20] We note also the provisions of subsections (c) and (d) of s6, concerning the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, and the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers. Neither should subsection (e) be overlooked, "the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga".

[21] Of prime importance must be the overarching purpose of the Act, stated in s5, which of course is multi-faceted.

[22] By s75(2) a district plan must give effect to the NZ Coastal Policy Statement.

[23] Informed by these RMA provisions, are Policies 1.1.1 and 1.1.3 of the NZ Coastal Policy Statement 1994. We set these out as follows:

Policy 1.1.1

It is a national priority to preserve the natural character of the coastal environment by:

(a) encouraging appropriate subdivision, use or development in areas where the natural character has already been compromised and avoiding sprawling or sporadic subdivision, use or development in the coastal environment;

(b) taking into account the potential effects of subdivision, use, or development on the values relating to the natural character of the coastal environment, both within and outside the immediate location; and

(c) avoiding cumulative adverse effects of subdivision, use and development in the coastal environment.

Policy 1.1.3

It is a national priority to protect the following features, which in themselves or in combination, are essential or important elements of the natural character of the coastal environment:

(a) landscapes, seascapes and landforms, including:

  (i) significant representative examples of each landform which provide the variety in each region;

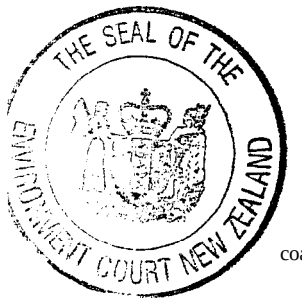
  (ii) visually or scientifically significant geological features; and

  (iii) the collective characteristics which give the coastal environment its natural character including wild and scenic areas;

(b) characteristics of special spiritual, historical or cultural significance to Maori identified in accordance with tikanga Maori; and

(c) significant places or areas of historic or cultural significance.

[24] Section 75(2)(b) requires that a district plan not be inconsistent with a regional policy statement. Various of the planning witnesses drew our attention to certain provisions of the Northland RPS. We have considered them and note particularly that Policy 4 encourages restoration of areas within the coastal environment. Likewise they referred to Objectives in Chapter 22 (Coastal Management) where we particularly noted amongst other things encouragement for maintenance and enhancement of public access to the coast.



General Considerations

[25] Responding strongly to allegations by the conservation groups that clarity and certainty demanded the imposition of a minimum lot size, Mr Cavanagh and the expert planning witness he called, Mr B W Putt, supported flexibility and a principled approach to establishment of the controls. Mr Cavanagh and Mr Putt largely supported the approach now suggested by the council. Under questioning from the Court, Mr Putt described the nature of that approach as being towards the middle of the spectrum of approach taken by various councils around the top half of the North Island; that is some approaches were more conservative and others less so. In writing this decision we have taken account of some of those, for instance the Proposed Whangarei District Plan and the Operative Hauraki Gulf Islands Section of the Auckland City District Plan.

[26] One criticism of the discretionary activity provisions by the conservation groups was that there was insufficient to differentiate the management plan option from the more straightforward minimum lot size option. That is, they considered that there was little in terms of the information requirements in the management plan approach, and of environmental outcomes, to justify what they saw as an outcome more favourable to subdividers than the minimum lot size approach.

[27] We do not support the minimum lot size option, because we think that it is too much of a "blunt instrument" for the variety of visual and cultural landscape conditions that may be found around the extensive coast of the Far North district.

[28] Instead, we favour the management plan approach, with modifications, a continuation of the restricted discretionary provisions, and further consideration being given to the controlled activity subdivision provisions.

[29] We consider that there are aspects of the discretionary activity management plan approach that ought to be strengthened, as we will set out in more detail below.

[30] We mention the controlled activity regime, because although the parties appeared readily to agree on a 20-hectare minimum lot size as a appropriate approach in the zone, we are concerned that that may not adequately meet the purpose of the Act and the important provisions in s6 RMA and the NZ Coastal Policy Statement that we have described. It also appears generous in comparison to the provisions of some other district plans, for instance the Hauraki Gulf Islands

Section of the Auckland City District Plan, where any subdivision on the coast is a discretionary activity. In this regard it occurs to us that there may be some mileage in the RFBPS appeal previously described, now being run by EDS. However we express this view in a more tentative fashion than we express our recommendations about discretionary activities, because the thrust of the case that we heard was about the latter rather than the former.

Detailed Analysis

[31] In the following section of this decision we will review the detail of, and inter-relationship between the provisions covered in the hearing. In summary, the provisions reviewed are:

- Rule 12.8.1: Allotment Sizes and Dimensions including Table 7 Minimum Lot Sizes.
- Rule 12.9 Discretionary Activity ("DA") Subdivision
- Rule 12.9.2 Management Plans [DA]
- Rule 12.10 DA Subdivision Assessment Criteria
- Rule 12.8.1.5 Lots Divided by Overlay Notation
- Rule 12.9.3 Development Bonus
- Rule 10.6.5.4.3 Integrated Development [DA]
- Rule 10.6.5.1.2 Residential Intensity
- Rule 10.6.5.3 Scale of Activities
- Rule 10.6.5.3.1 Visual Amenity-Restricted Discretionary Activity ("RDA")

Coastal Environment objectives [10.3] and policies [10.4] and GCZ objectives [10.6.3] and policies [10.6.4].

Rule 12.8.1: Allotment Sizes and Dimensions

[32] As already noted the parties agreed that the 12 ha Controlled Activity ("CA") minimum should become 20 ha within and without Outstanding Natural Landscape/Feature etc "overlays" and 20 ha RDA within 100m of a Mineral Zone boundary. The Court supports the increase but as also already mentioned retains an open mind on whether 20 ha should be further increased to better implement Part 2 RMA, the NZCPS, the RPS and relevant Plan objectives and policies. There is also a question as to whether it should be CA or RDA/DA.

[33] It is also the Court's view that the DA minimum lot size option (4ha in the Decisions Version and 8/10 hectares (without and with overlays) in the Council's hearings proposal) should be deleted.

[34] Table 7 as it applies to the GCZ, DA, item 2 (bottom of p255) was not the subject of much evidence or submission. The rule provides: *"a maximum of 3 lots in any subdivision, provided that the minimum lot size is 2,000m2 and the average lot size is 4ha, and provided further that the subdivision is of lots which existed at or prior to 28 April 2000, or which are amalgamated from titles existing at or prior to 28 April 2000 (Note: the effect of this alternative is that there is a <u>once-off opportunity</u> to subdivide a maximum of two lots from an existing larger lot)"* (emphasis added). Issues arising from this provision in our view include:

- It is not evident what resource management purpose the rule addresses. There seemed to be a suggestion from Mr Dixon that long standing owners/farmers should be able to subdivide for "equity" reasons, perhaps by way of farmers' "retirement lots". There seem to be few if any supporting Plan provisions. Objective 12.3.1 refers to the "...social, economic and cultural well being of people ...." but is principally concerned with subdivision being "*..... consistent with the purpose of the various zones .....*". There do not appear to be related objectives and/or policies in either the Coastal Environment or GCZ sections [10.3, 10.4 and 12.4].

- How many potentially qualifying sites exist? Mr Nugent's evidence was the closest to come to this issue, but did not expressly address it?

- If it is a "retirement lot" provision, why should 2 sites be allowed? There may be a question as to whether retirement lots should still be recognised as appropriate where s.6 RMA circumstances apply.

- There appears no requirement for the applicant to have owned the lot as at 28 April 2000.

- What is an appropriate average lot size? 4ha is no longer proposed by council in other DA circumstances. 20ha bearing might disqualify "small" lot owners.

- Care may be needed where properties contain several contiguous titles in common ownership.

- Rule 10.6.5.1.2 Residential Intensity could result in additional dwellings on the balance lot, with the potential for subsequent sites being created for each dwelling in the manner described by Mr Nugent in cross-examination.

Rule 12.9 Discretionary (Subdivision) Activities

[35] The introduction states subdivision is a DA where [refer 12.9(b)] *"it <u>complies</u> with the rules under 12.9.1 and 12.9.2"*.

[36] Rule 12.9.1 is cross-referenced to the discretionary activity status column of Table 7 in Rule 12.8.1.1, and is clear and certain to that extent.

[37] Rule 12.9.2 is the Management Plan rule. It traverses a range of matters including information requirements, minimum lot size and assessment criteria. It needs to be made clear as to how it can be ascertained from this pot-pourri whether a proposal *"complies"* and is therefore a DA under 12.9(b).

Rule 12.9.2 Management Plans [DA]

[38] Council's hearing proposal requires average lot sizes of 8 and 6 ha for sites with and without "overlays" respectively, compared to the minimum 1 ha average in the Decisions version. Salient points as follows.

[39] Council's hearing proposal could result, subject to other controls, in the clustering of a relatively large number of small lots plus a large balance lot. For example, a 64 ha parent site with an "overlay" could yield 7 x 1 ha sites and a 57 ha balance lot to produce an 8 ha average lot size.

[40] There is no minimum size or dimensions for the lots. On being questioned by the Court the expert witnesses were all minded to suggest 1 ha if a minimum were found necessary.

[41] The DA Management Plan provisions (Rule 12.9.2), subject to necessary amendments, have merit in securing some s.6 matters and implementing some NZCPA, RPS and GCZ objectives/policies. In addition to the matters raised above, the following need further consideration:

- Whether there should be specific Management Plan requirements for the GCZ as opposed to an omnibus provision that also serves the General Rural, Waimate North and Coastal Living Zones (perhaps the GCZ and CL zones could have a combined provision?).

- We query the need to include reference to *"the life of this plan"?* The 12.8.1.1 GCZ DA # (2) provision is expressed to be a *"once-off opportunity"* and that is as far as any plan can realistically take matters.

- The rule allows for the subdivision of a *"specified portion of a site"*, the inference being that there could be two balance lots, (one, that provided sufficient area to off-set small lots being a part of the consented management plan and the other being the balance of the parent site not subject to the management plan). The latter could subsequently be further subdivided in accordance with the Plan's provisions?

- If the portion of a lot not subject to a management plan ("MP") is not legally defined as a separate site how will the "portions" be permanently recorded?

- There is no express requirement in the MP information requirements to nominate building platforms for each lot although Assessment Criterion 12.10.10(a) addresses this matter. We favour compulsory integration of land use assessment and control with any DA subdivision application in the GCZ.

- There is no express requirement (until one gets to page 264 and the reference to Rule 12.8.2) for valued natural resources, including those subject to "overlay" provisions, to be protected permanently. These have simply to be "identified" in the MP. This should be remedied.

- However, on page 264 the matters council will have regard to when assessing an application include Item (b) *"the degree to which the application complies with ..... rules under 12.8.2"*. Rule 12.8.2: Other Matters To Be Taken Into Account provides that any CA subdivision application must make provision for the matters listed under Rules 12.8.2.1 - 10. Rule 12.8.2.9 requires that affected resources in schedules (a) - (f) are to be the subject of continued preservation as an *"ongoing condition for approval to the subdivision consent"*. The schedules deal with notable trees, historic sites/buildings/objects, sites of Maori cultural significance, ONF, OLF, archaeological sites, areas of significant indigenous vegetation or significant habitats of indigenous fauna. Although Rule 12.9.2 is a DA provision it appears the requirements of CA Rule 12.8.2 are to be met, and in this way, valued existing natural and physical resources protected. DA Assessment Criteria Rule 12.10.1(e) covers the same/similar matters as does Rule 12.10.11 (a) - (e). Whilst it is reassuring that the Plan has these matters firmly in sight, each rule is expressed differently and there may be risks in the apparent three-fold replication. We recommend a tidying and rationalisation of these provisions. (We note with approval that the subdivision environmental outcomes/objectives/policies (12.2 - 4), expressly cover such matters).

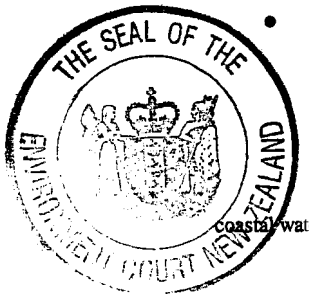
- We encourage the parties to be a little more pro-active and state positively that subdivision will be used to permanently secure/safeguard potentially affected resources (as opposed to merely protecting the resources from the effects of subdivision).

- Restoration planting /environmental rehabilitation initiatives are not strongly enough provided for, and the MP information requirements include only *"measures, if any, to .....enhance indigenous vegetation ....."* We consider that the words *"if any"* should be deleted, and that there should be mandatory employment of ICM/enhancement techniques in the MP.

- Management plans are required to identify only *"20% of the total area of the subdivision as land to be set aside from built development, in order to retain rural* [not coastal] *character"*. Legally, "the subdivision" may include a portion of a site not subject to the management plan, which would further decrease the modest minimum 20% requirement. This needs to be remedied.

- It is unclear why rule 12.9.2 (page 264 left hand column 2nd paragraph) has assessment criteria for MP when these are dealt with expressly and more extensively in Rule 12.10: Assessment Criteria. We are concerned about such duplication because of the potential for inconsistency.

- There appears to be no express requirement for potential visual, landscape and amenity effects to be described/assessed with reference to mitigation measures, temporal considerations and attendant risks. In our experience earthworks and vegetation clearance to form access ways, including on-site



access and building platforms, often has the greatest impact of all, together with the erection of power/phone lines).

- Item (vii) on p263 should be strengthened by adding rats and other animal pests, and by providing for removal of exotic wilding flora and the subsequent control of same.

- Item (e) on page 264 should be strengthened to require that the NZCPS be given effect to.

Rule 12.10 DA Subdivision Assessment Criteria

[42] There are 15 assessment criteria spanning approximately 95 different matters. These seem comprehensive on a first study, but we offer detailed thoughts below.

[43] The Introduction suitably provides for regard to be had to the objectives and policies, (yet to be settled).

[44] As previously mentioned, the assessment criteria are couched solely in terms of managing adverse effects on valued resources as opposed to positively promoting/facilitating protection. This belies the Plan's related provisions for enhancement/re-vegetation and active conservation initiatives across a range of potentially affected resources.

[45] Rule 12.10.1(g) requires council to consider "whether the cumulative and long term implications of proposed subdivisions are sustainable in terms of preservation of the rural [not coastal] environment". We have not seen anything in the Plan that guides council's assessment of this most fundamental factor. This issue goes to "environmental capacity". There must be a question as to whether compliance with the DA minima average areas are deemed "sustainable".

[46] Rule 12.10.2(h) Natural and Other Hazards deals with land filling and excavation and addresses visual detraction, sedimentation, heritage values, ecological values, water quality and access to water bodies. Two issues arise:

- Some of those activities should be regulated solely by the NRC (but perhaps with a cross-referencing note to regional plans).

- Is this the sole provision regulating the amenity effects of earthworks (access formation and building platforms)? If so, the provisions scarcely seem adequate. We might have expected the Plan to have a clear statement of the effects of earthworks/vegetation clearance to be avoided, outcomes sought and matters to be addressed by conditions.

[47] Rule 12.10.4(a) Stormwater Disposal and 12.10.5 Sanitary sewage Disposal (e) require compliance with related regional rules. We make the same suggestion as with the first bullet point above.

[48] As regards Rule 12.10.5(g) Sanitary Sewage Disposal we question whether monitoring, by itself, can effectively manage the adverse effects of containment discharges. Is it anticipated consent notices will require owners to take specified actions, for example, regular maintenance of septic tanks and/or compliance with council's Engineering Standards and Guidelines? A sharper focus on the outcomes required and action necessary would be helpful. On a related aspect, 12.10.5(b) should require ongoing compliance.

[49] Rules 12.10.6(f) Energy Supply and 12.10.8(c) Telecommunications address whether new reticulation *"will have potential adverse effects on amenity values"*, which is good. It might be suggested that the extent of guidance in the objectives/policies on what outcomes are to be avoided, best location practice or requirements for under-grounding, be checked.

[50] Rule 12.10.10 Building Locations only addresses the physical suitability of building sites but is appropriately cross-referenced to the GCZ and ONL Unit Visual Amenity Rules discussed below.

[51] Rule 12.10.11 Preservation of Heritage Resource, Vegetation, Fauna and Landscape, and Land Set Aside for Conservation Purposes provides a basis for assessing/determining whether any affected resources are adequately protected. There is express reference to kiwi habitat but the threat from rats, mustelids and other animal pests has been deleted leaving dogs and cats. There could also be a reference to the desirability of removing and controlling exotic wilding flora.

[52] Rule 12.10.13 Access To Waterbodies might be described as passive. The criterion inquires whether provision is made and, if so, whether it is adequate. Public access to the coast is referred to in Coastal Environment Context 10 p127 *"Access to areas of the coast suitable for public recreation is insufficient relative to the demand"*. Reference is also made to the subject in Issue 10.1.3; Outcome 10.2.4; Objective 10.3.5 and Policy 10.4.5. In 10.5 Methods of Implementation, 10.5.6 states that the policy will be implemented through financial contributions; and 10.5.7 suggests that the council will *"Acquire suitable locations for public access to the coast as opportunities arise"*. Section 13 Financial Contributions is stamped

'Decisions Deferred". Mr Rae told us that the council was going to progress that whole subject through the LGA. Section 13 contains relevant coastal access objectives (13.3.2), and policies (13.4.1(ii) and (iii), 13.4.2(b)(ii), 13.4.11, 13.4.12 and 13.4.13). Rule 13.6.1 was designed to implement these. We think the following issues arise:

- Is it possible and/or appropriate for the Council to meet all its related RMA obligations through the LGA, especially those in sections 77 and 230 of the former?

- Should there be a coastal access strategy in the Plan covering such things as an analysis of existing reserves, their adequacy to meet current and future needs, respective roles of esplanade reserves/strips, unformed legal roads, identification of areas where the network is to be extended (including where something less than the minimum is required), priorities, designations and the respective roles of subdividers, council (refer Methods of Implementation 10.5.10) and other funding bodies? We acknowledge that only parts of these provisions would find their way into the Subdivision Section, but in our view they could be important parts. Refer particularly to s6(d) RMA.

Rule 12.8.1.5: Lots Divided by Overlay Notation

[53] The wording in the right hand column on page seems imprecise. In a couple of places it refers to complying with Rule 12.8.1.1 and Table 7, which in the case of a MP can not be known until an application is decided. Perhaps the wording is shorthand for that?

[54] If the RDA 10ha minimum were removed from the "without overlay" scenario the rule might be simplified.

[55] We question the merits of imposing an artificial lot boundary along the "overlay" boundary. It may unnecessarily limit the scheme plan design process. The DA process with its "broad overall judgement" should have sufficient flexibility to accommodate well considered proposals without this measure.

[56] 5.4 On a slightly different [but related] matter - the different averages with and without "overlays" might present an unnecessary complication. We consider that the presence of an overlay might simply be a matter to take into account in framing an application and in its assessment? Conservation or enhancement of the feature should be the dominant factor. We doubt that will this turn on whether the proposed lots average 6 ha or 8 ha in different parts of the site.

Rule 12.9.3 Development Bonus

[57] The rule allows council to grant a development bonus where valued features, which may be identified in the Plan, are "formally protected". The relevant rules are found in section 11. Taking the provision about landscape and natural features as an example, one finds:

- Contingent on protection of existing values *"and/or where re-vegetation and/or enhancement is proposed ....."* , the Plan provides *"the standards permitted on that site may be increased up to the level that corresponds with that provided for DA in the relevant zone"*. We are unclear about the meaning of this. Is it intended [using council's hearings version] that the proposing subdivider can have one or more additional 8 or 10 ha lots?

- Or alternatively (and it is unclear why it is expressed as an alternative) council *"may grant consent to an application to subdivide one or more bonus lots .... either from the parent title ..... or on another title"*. Where exactly? In this situation *"The minimum area of a bonus lot shall be the minimum area provided for as a discretionary subdivision activity in the relevant zone",* but this will need to change if the option for minimum-sized lots is deleted from the plan.

- Mr Nugent acknowledged that the bonus provisions are additional to the Section 12 provisions (as indeed the term would suggest and also seems confirmed on p178 (right-hand column) column: *"The new lot(s) may be created in addition to the rights to subdivide which otherwise apply, and may include the area to be protected and/or enhanced"*.

- The *"....number of extra lots that are allowed ...."* seems open to council to determine having regard to the degree of protection and/or extent of re-vegetation. That may be rather too open-ended. There is provision for bonding, presumably to protect council interests where re-vegetation is proposed

- Why is a bonus being given when there is already a trade off under 12.9.2 between relatively small lots and protection/enhancement?

[58] The indigenous flora/fauna and heritage resources bonuses in 11.2.6.3.1 and 11.5.6.3.1 [there is no 11.5.6.3.2] are essentially the same as the landscape/natural features provisions reviewed above.

Rule 10.6.5.4.3 Integrated Development in GCZ

[59] DA Rule 10.6.5.4.3 provides that "Notwithstanding the rules in this zone relating to the management of the effects of activities, an application for integrated development of activities on a site may be made where the proposed development does not comply with one or more of the rules".

[60] Presumably the rules referred to are the preceding ones in the GCZ and/or Part 3: District Wide Provisions. The intent/effect appears to be to avoid non-complying status.

[61] Once a development is implemented no further integrated development consents for that land may be granted.

[62] An integrated management plan is required for the whole property (not site). Whilst said to be especially applicable to papakainga *"the rule applies to all land"*.

[63] The management plan information requirements are similar to those required for a rule 12.9.2 subdivision MP. However, on page 140 there is a markedly truncated list of assessment criteria (4) relative to Rule 12.10.

[64] When answering a question from the Court, Mr Rae stated that "Integrated Developments could be subdivided' and we were left wondering whether they were intended to be "developments" in the old LGA sense; especially given the strong papakainga flavour. There should be no need for both Rules 10.6.5.4.3 Integrated Development and 12.9.2 Subdivision Management Plans, with mandatory linking of them to require a fully integrated approach.

[65] The Plan might allow for integrated "developments" where no subdivision is intended, like a "farm park" with licences to occupy and a common area. However, the assessment criteria should be no less rigorous than where subdivision is proposed. The only difference might be where infrastructure was not going to vest in council, but council would still need to satisfy itself that the utilities/access ways were fit for the purpose of the RMA. We note as well for completeness that Integrated Developments should not be a means of avoiding financial contributions.

Rule 10.6.5.1.2 Residential Intensity in the GCZ

[66] Rule 10.6.5.1.2 allows one unit of residential development as a permitted activity, per 12 ha of land. This will presumably increase to 20ha or whatever minimum controlled activity area is ultimately decided upon.

[67] The effect of this rule is that dwellings can be erected in the GCZ, subject to other Plan provisions, at the minimum density without subdivision. The rule requires each unit to have exclusive use of 3,000m^2 but beyond this there does not

appear to be any control on clustering. Mr Nugent was concerned that because permitted activities are deemed to have "effects no greater than minor" there would be little or no impediment to the subsequent creation of separate titles for these dwellings. He is probably correct.

[68] The rule also authorises, subject to other Plan provisions, the use of existing sites for a "single residential unit for a single household". There is no evident distinction between existing sites and properties, ie contiguous sites in common ownership at a specified date. One dwelling per property holding would produce less development in the GCZ.

[69] Rule 10.6.5.4.1 contains a parallel DA provision for dwellings at a density of 1 per 4 ha and 2,000m^2 exclusive site area. Presumably under council's hearings version that would increase to 8 - 10 ha without and with "overlays".

Rule 10.6.5.1.3 Scale of Activities in the GCZ

[70] Rule 10.6.5.1.3 provides that "The total number of people engaged at any one period of time in activities on a site, including employees and persons making use of any facilities, but excluding ....[residents] .....shall not exceed 8 persons per 12 ha of net site area" provided that this figure may be exceeded to cover activity peaks and construction.

[71] Presumably the area would increase to 20 ha with council's revised position. In the absence of activity tables this seems to be the technique for allowing business activities in the GCZ. Activities not meeting the PA standard become RDA under Rule 10.6.5.3 (a) where there are 8 assessment criteria, including visual amenity, height, traffic intensity, scale of activities, set backs and noise.

[72] Although one is struck by the apparent arbitrariness of the persons/ha "intensity" trigger it is not part of the subdivision provisions under appeal.

[73] It therefore needs to be remembered that sites created under the Subdivision rules can potentially be used for business purposes at the prescribed level of "intensity"?

Rule 10.6.5.1.1 Visual Amenity in GCZ

[74] This provision is an important control on the development of sites created under the subdivision provisions. (We approve that the Management Plan Assessment Criteria in 12.10.10 "Building Location", cross-reference the provision).

[75] The effect of the 10.6.5.1.1 PA rule is that buildings over 50m^2 GFA require resource consent.

[76] Rule 10.6.5.2 provides for an activity as a CA if, inter alia, it complies with all of the standards for a PA except the Visual Amenity or Residential Intensity provisions. Visual amenity assessment criteria are not provided. The CA provision appears primarily concerned with papakainga. It may be relevant that 10.6.5.2.1 requires compliance with the DA residential intensity standard in 10.6.5.4.1, which is *"one unit per 4ha of land"*. The latter is the DA minimum lot size in Section 12 Table 7 p255, which at the hearing council was minded to increase to 8 - 10 ha and the Court may delete. Whilst this all seems like a great deal of detail, it illustrates how the council has sought to be consistent within the Plan and how alteration of the subdivision standards may have knock-on effects.

Coastal Environment and GCZ Objectives and Policies

[77] Not knowing the detail of what is in each appeal annotated onto a copy of the Plan for us by council staff, and where the parties are headed in the course of their negotiations, means some of our comments may be somewhat academic.

[78] In a broad sense, it is hard to discern any clear strategy. For example, there are important statements in Policy 10.4.2 about avoiding coastal sprawl and in 10.7 Context about the purpose of the Coastal Living Zone but these are not juxtaposed in a strategic sense with the role of the GCZ. The latter is meekly described in 10.6 Context as having "slightly more stringent controls [than the Rural Production zone] aimed at preserving natural character". There is no clear position on enhancement as distinct from conserving what exists. There is no clear sense of or direction on the GCZ's "environmental capacity".

[79] There appear to be a lot of provisions, some possibly competing, with no clear sense of what is to be accorded priority. The challenge may well be to identify matters that might be omitted or combined.

[80] Whilst perhaps a matter of style, it would be appropriate if policies were clearly linked to objectives. Similarly, and with the same caveat, one might expect the Environmental Outcomes to follow the policies, again with an explicit linkage.

[81] The GCZ policies are notably few [4] notwithstanding there are eleven Coastal Environment ones. This is surprising given s.6, the NZCPS, the local issues and the critically important conservation function of the zone.

Conclusion

[82] In the spirit of the parties' request for guidance on the specific GCZ subdivision rules, and their indication that such guidance would prove helpful to them in their further negotiations about objectives, policies and rules on a slightly broader front, we have engaged in a comprehensive analysis of a number of plan provisions that are in any event interlocking.

[83] Council staff provided us with a helpful annotation of the decisions version of the plan which shows where appeals remain to be resolved and on what provisions. We do not however have details of the precise relief sought in all of those matters. Given the interlocking nature of the provisions however, we rather imagine that somewhere between the many requests for relief and the occasional request for consequential relief, jurisdiction will be found to make the necessary changes.

[84] Obviously our many suggestions concerning aspects beyond the relief sought in the matters we heard are not to be taken to pre-empt future decision-making on them should hearings be necessary. Equally, given the preliminary nature of the suggestions being offered about rules in circumstances where objectives and policies remain to be settled, leave is reserved for further evidence and submissions to be offered in a succinct fashion if necessary. It will probably be appropriate for us to leave final determinations on disputed matters to a time at which we can consider them jointly with consent positions on other related matters.

[85] Costs are very unlikely to be an issue, but are reserved out of caution.

DATED at **AUCKLAND this** 25th day of February 2005.

For the Court:

L J Newhook
Environment Judge