

IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKĀURAU

Decision [2022] NZEnvC 232

IN THE MATTER OF an appeal under clause 14 of Schedule 1
of the Resource Management Act 1991

BETWEEN ENERGY RESOURCES AOTEAROA
INCORPORATED

(ENV-2019-AKL-297)

TARANAKI ENERGY WATCH
INCORPORATED

(ENV-2019-AKL-299)

Appellants

AND TARANAKI REGIONAL COUNCIL

Respondent

Court: Judge M J L Dickey sitting alone under s 279 of the Act

Date of Order: 8 November 2022

Date of Issue: 8 November 2022

CONSENT DETERMINATION

A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeals are allowed subject to the amendments to the proposed Taranaki Coastal Plan set out in **Appendix A** to this order;



(2) The following appeals are otherwise dismissed:

(a) Energy Resources Aotearoa Incorporated (ENV-2019-AKL-297);
and

(b) Taranaki Energy Watch Incorporated (ENV-2019-AKL-299).

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

REASONS

Introduction

[1] These appeals concern Taranaki Regional Council's (**the Council**) decisions on the Proposed Taranaki Coastal Plan.

[2] Energy Resources Aotearoa Incorporated (**Energy Resources**) and Taranaki Energy Watch Incorporated (**TEW**) have appealed the Council's decisions on the Proposed Taranaki Coastal Plan in relation to a number of the policies and rules.

[3] This order resolves appeal points under Topic 4 (Oil and Gas).

[4] The following have given notice of an intention to become a party under s 274 of the Act and have signed the joint memorandum in support of the consent order:

- (a) TEW;
- (b) Energy Resources;
- (c) Royal Forest and Bird Protection Society of New Zealand Incorporated;
- (d) the Minister of Conservation
- (e) Port Taranaki Limited.

Agreement reached

[5] Following informal mediation and subsequent discussions, the parties have reached agreement to resolve aspects of these appeals.

[6] The parties have agreed to changes to the following provisions:

- (a) Rule 26;

- (b) Rule 28; and
- (c) Rule 30.

Section 32AA analysis

[7] Section 32AA of the Act requires a further evaluation for any changes to a proposal since the initial s 32 evaluation report. The parties prepared a s 32AA report that evaluates and addresses the key changes proposed to Rules 26, 28 and 30 of the Plan.

[8] Rules 26, 28 and 30 govern the drilling of exploration or appraisal wells in the Open Coast Port, Outstanding Value, Estuaries Unmodified and Estuaries Modified Areas and the placement or erection of petroleum production installations in Outstanding Coastal Areas. The key changes are to the activity status of these rules, as well as the creation of two new rules: 28A and 30A.

Consideration

[9] In making this order the Court has now read and considered the consent memorandum of the parties dated 2 March 2022 and the s 32AA report dated 11 May 2022.

[10] I am satisfied that the agreement reached is one that represents the various interests of the parties. I conclude the parties have taken a considered and balanced approach, and the agreed amendments are the most appropriate way to achieve the purpose of the Act and the objectives in the Plan. Overall, I consider the sustainable management purpose and the other relevant requirements of the Act are broadly met.

[11] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order;
- (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 the relevant requirements and objectives of the Act including, in particular, Part 2.

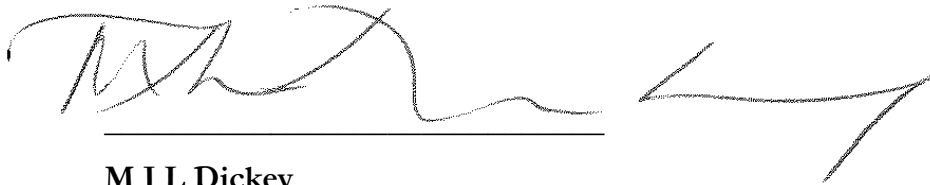
Orders

[12] Therefore the Court orders, by consent, that the Proposed Taranaki Coastal Plan is amended in accordance with **Appendix A**.

[13] The appeals by Energy Resources and TEW are resolved.

[14] Topic 4 (Oil and Gas) is resolved in its entirety.

[15] There is no order as to costs.



M J L Dickey
Environment Judge



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

Note: Final amendments are shown in purple text. Blue and red text indicates changes that appeared in the Council's decisions version of the Proposed Taranaki Coastal Plan.

Drilling of an eExploration or appraisal well drilling

Activity	Rule	Coastal management area	Classification	Standards/terms/conditions	Matters of c Control/ discretion notification ^{(32) (61)}	Policy reference
<p><u>Drilling of an e</u>Exploration or appraisal well drilling by an offshore installation or drilling ship, or directional drilling by a land based drilling rig, and placement of a well structure in, on, under or over the foreshore or seabed</p> <p>and any associated:</p> <p>(a) repair, alteration, extension and abandonment of the well structure fixed in, on, under or over any foreshore or seabed;</p> <p>(b) temporary exclusive⁽³⁷⁾ occupation of space in the common marine and coastal area;</p> <p>(c) disturbance of the foreshore or seabed;</p> <p>(d) deposition in, on or under the foreshore or seabed;</p> <p>(e) discharge of contaminants into water, into, on or under the foreshore or seabed, or into air; and</p> <p>(f) taking of water and heat incidental to the drilling process;</p> <p>excluding discharges regulated by the <i>Resource Management (Marine Pollution) Regulations 1998</i> (Appendix 5).</p>	26	Open Coast Port	Controlled Restricted discretionary	<p>(a) drilling is not undertaken the activity does not involve the discharge or deposition of drilling fluids, muds or cuttings⁵:</p> <p>(i) within 2,000 m of any site^{sea bed location} where drilling has occurred in the previous five years; or</p> <p>(ii) from multiple wells originating from a single well head; ^{(37) (51)}</p> <p>(b) the activitydrilling is not undertaken directly into or within 1,000 m of any sensitive marine benthic habitat identified in Schedule 4B or reef system;</p> <p>(c) the activitydrilling is not undertaken within any site identified in Schedule 5A or B⁽⁴¹⁾ [Historic heritage];</p> <p>(d) the activitydrilling does not have an adverse effect on significant indigenous biodiversity, any threatened or at risk, or regionally distinctive species, or any rare and uncommon ecosystem type including those identified in Schedule 4A [Significant indigenous biodiversity species and ecosystems]; ⁽²⁹⁾</p> <p>(da) the activity does not have a significant adverse effect on the values associated with taonga species identified in Schedule 4C [Taonga species];⁽⁶⁴⁾</p> <p>(e) the activitydrilling is undertaken at least 2,000 m from the line of mean high water springs or at least 1,000 m from the boundary of coastal management area – Outstanding Value;</p> <p>(f) only water-based or synthetic-based drilling fluids and muds are used; and</p> <p>(g) the activity complies with the general standards in Section 8.6 of this Plan.</p>	<p>ControlDiscretion is reserved over:</p> <p>(ha) the risks from a loss of well control event that may result in a release of hydrocarbons into the coastal environment, and measures to mitigate those risks;</p> <p>(h) compliance with relevant legislation and regulations¹ managing well integrity and discharges (including relating to the management of hazardous substances), and provision of relevant supporting documentation²;</p> <p>(i) well integrity, maintenance and abandonment;</p> <p>(j) any incidental discharges;</p> <p>(k) location, method, timing and notification of works;</p> <p>(l) effects on other authorised structures or activities;</p> <p>(m) sediment movement and erosion;</p> <p>(n) effects on water quality;</p> <p>(o) effects on ecological natural character, features and landscapes values⁽⁴³⁾</p> <p>(ha) effects on indigenous biodiversity⁽⁴³⁾ values;</p>	<p>General Policies</p> <p>1 to 21</p> <p>and</p> <p>Activity-based Policies</p> <p>22, 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 41, 42, 44, 47, 49</p>

⁵ ~~Drilling fluids, muds and cuttings must be removed for authorised disposal.~~

Note (1): Where the well head originates landward of the coastal marine area and enters the coastal marine area under the seabed only condition (f) will apply.

Note(2): If the activity does not [come within or](#) meet the standards, terms and conditions in this Rule refer to Rule 27.

- (p) effects on [cultural and historic, cultural and amenity heritage](#) values;
- (q) effects on [amenity values, including](#) surf breaks;
- (r) effects of occupation on public access;
- (s) effects on navigation;
- (t) effects of noise and light;
- (u) monitoring and information requirements;
- (v) duration of consent; and
- (w) review of consent conditions.

~~Resource consent applications under this Rule will not be publicly notified but may be limited notified.~~ ⁽³²⁾ ⁽⁶¹⁾

[Resource consent applications for activities under this rule shall be considered without public notification or service on affected persons, with the exception of the Department of Conservation and the Taranaki/Whanganui Conservation Board.](#)

¹ Current examples include:

- Part 6 Well Operations provisions of the Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 2013 whereby there is considerable overlap between Health and Safety in Employment and environmental considerations.
- Maritime Transport Act 1994 and associated Marine Protection Rules
- Resource Management (Marine Pollution) Regulations 1998.

² Current examples include:

- Well examiners verification of the well examination scheme under Part 6 Well Operations provisions of the Health and Safety in Employment (Petroleum Exploration and Extraction) Regulations 2013
- Valid International Oil Pollution Prevention Certificate applicable to the offshore installation being used, as required under Part 200 of the Marine Protection Rules (note as above).
- Approved Discharge Management Plan as required under Part 200 of the Marine Protection Rules (soon to become Marine Oil Spill Contingency Plan under Part 131 of the Marine Protection Rules).

Activity	Rule	Coastal management area	Classification	Standards/terms/conditions	Matters of <u>Control/discretion/notification</u> ^{(32) (61)}	Policy reference
<p>Drilling of an eExploration or appraisal well drilling by an offshore installation or drilling ship, or directional drilling by a land based drilling rig, and placement of a well structure in, on, under or over the foreshore or seabed and any associated:</p> <p>(a) repair, alteration, extension and abandonment of the well structure fixed in, on, under or over any foreshore or seabed;</p> <p>(b) temporary exclusive occupation of space in the common marine and coastal area;</p> <p>(c) disturbance of the foreshore or seabed;</p> <p>(d) deposition in, on or under the foreshore or seabed;</p> <p>(e) discharge of contaminants into water, into, on or under the foreshore or seabed, or into air; and</p> <p>(f) taking of water and heat incidental to the drilling process</p> <p>excluding discharges regulated by the <i>Resource Management (Marine Pollution) Regulations 1998</i> (Appendix 5) and does not come within or comply with Rule 25A6 or 26.</p>	27	Open Coast Port	Discretionary			<p>General Policies 1 to 21 and Activity-based Policies 22, 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 41, 42, 44, 47, 49</p>

<p><u>Drilling of an e</u>Exploration or appraisal well <u>drilling</u>-by an offshore installation or drilling ship, or directional drilling by a land based drilling rig, and placement of a well structure in, on, under or over the foreshore or seabed and any associated:</p> <p>(a) repair, alteration, extension and abandonment of the well structure fixed in, on, under or over any foreshore or seabed;</p> <p>(b) temporary exclusive occupation of space in the common marine and coastal area;</p> <p>(c) disturbance of the foreshore or seabed;</p> <p>(d) deposition in, on or under the foreshore or seabed;</p> <p>(e) discharge of contaminants into water, into, on or under the foreshore or seabed, or into air; and</p> <p>(f) taking of water and heat incidental to the drilling process;</p> <p>excluding discharges regulated by the <i>Resource Management (Marine Pollution) Regulations 1998</i> (Appendix 5) and does not come within or comply with Rule <u>25A6</u> or <u>26</u>.</p>	28	<p><u>Outstanding Value</u></p> <p>Estuaries Unmodified</p> <p>Estuaries Modified</p>	Non-complying			<p>General Policies</p> <p>1 to 21</p> <p>and</p> <p>Activity-based Policies</p> <p>22, 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 41, 42, 44, 47, 49</p>
<p><u>Drilling of an exploration or appraisal well by an offshore installation or drilling ship, or directional drilling by a land based drilling rig, and placement of a well structure in, on, under or over the foreshore or seabed.</u></p>	<u>28A</u>	<u>Outstanding Value</u>	<u>Prohibited</u>			

Placement or erection of a pPetroleum production installation ~~erection or placement~~

Activity	Rule	Coastal management area	Classification	Standards/terms/conditions	<u>Matters of cControl/discretionnotification</u> (32) (61)	Policy reference
<p>Placement or erection of a pPetroleum production installation erection or placement, including drilling of any production wells and placement of any associated pipelines, in, on, under or over the foreshore or seabed and any associated:</p> <p>(a) repair, alteration, extension and abandonment of the well structure fixed in, on, under or over any foreshore or seabed;</p> <p>(b) occupation of space in the common marine and coastal area by an offshore installation, pipeline or drilling ship;</p> <p>(c) disturbance of the foreshore or seabed;</p> <p>(d) deposition in, on or under the foreshore or seabed;</p> <p>(e) discharge of contaminants into water, into, on or under the foreshore or seabed, or into air; and</p> <p>(f) taking of water and heat incidental to the drilling process and the taking of heat and produced water;</p> <p>excluding discharges regulated by the <i>Resource Management (Marine Pollution) Regulations 1998</i> (Appendix 5).</p>	29	Open Coast Port	Discretionary			<p>General Policies</p> <p>1 to 21 and</p> <p>Activity-based Policies</p> <p>22, 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 41, 42, 44, 47, 49</p>

<p><u>Placement or erection of a petroleum production installation erection or placement</u>, including drilling of any production wells and placement of any <u>associated</u> pipelines, in, on, under or over the foreshore or seabed and any associated:</p> <p>(a) repair, alteration, extension, removal and abandonment of a well and other structures fixed in, on, under, or over any foreshore or seabed;</p> <p>(b) occupation of space in the common marine and coastal area by an offshore installation or drilling ship;</p> <p>(c) disturbance of the foreshore or seabed;</p> <p>(d) deposition in, on or under the foreshore or seabed;</p> <p>(e) discharge of contaminants into water, into, on or under the foreshore or seabed, or into air; and</p> <p>(f) taking of water and heat incidental to the drilling process and the taking of heat and produced water excluding discharges regulated by the <i>Resource Management (Marine Pollution) Regulations 1998</i> (Appendix 5).</p>	30	<p><u>Outstanding Coastal Estuaries Unmodified</u> <u>Estuaries Modified</u></p>	Non-complying			<p>General Policies 1 to 21 and Activity-based Policies 22, 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 41, 42, 44, 47, 49</p>
<p><u>Placement or erection of a petroleum production installation including drilling of any production wells and placement of any associated pipelines, in, on, under or over the foreshore or seabed.</u></p>	30A	<u>Outstanding Value</u>	<u>Prohibited</u>			