

BEFORE THE ENVIRONMENT COURT
AT WELLINGTON

I MUA I TE KŌTI TAIAO O AOTEAROA
KI TE WHANGANUI-A-TARA

IN THE MATTER of an appeal under cl 14 of Schedule 1 to
Resource Management Act 1991

BETWEEN TĪTAHI BAY RESIDENTS
ASSOCIATION

(ENV-2019-WLG-000121)

Appellant

AND WELLINGTON REGIONAL
COUNCIL

Respondent

Court: Environment Judge B P Dwyer sitting alone pursuant to s 279
of the Act

Date of Order: 31 March 2021

Date of Issue: 31 March 2021

CONSENT ORDER

A: Under s 279(1)(b) of the Act, the Environment Court orders, by consent,
that the changes set out in **Appendix A** be made to the Proposed Plan.

B: The appeal is otherwise dismissed.

C: Under s 285 of the Act, there is no order as to costs.

REASONS



TĪTAHI BAY RESIDENTS ASSOCIATION v WELLINGTON REGIONAL
COUNCIL

Introduction

[1] The Court has read the notice of appeal and the memoranda of the parties dated 17 February 2021 and 25 March 2021.

Other relevant matters

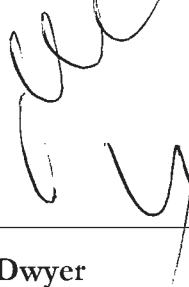
[2] Royal Forest and Bird Protection Society of NZ Inc gave notice of an intention to become a party to the appeal under s 274 of the Act, and has signed the consent memorandum setting out the relief sought.

Orders

[3] The Court is making this order under s 279(1) 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 have executed the memorandum requesting this order;
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular,

Part 2.



B P Dwyer
Environment Judge



Appendix A

Key:

Red track – changes made by this consent order

Green track - changes in the Decisions Version of the PNRP, with clause 16 changes

<u>Exposed</u> <u>(Titahi</u> <u>Bay fossil</u> <u>forest)</u>	<u>means the fossil forest is protruding above the substrate sand/gravel</u> <u>base</u>
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Rule R192: Beach recontouring for coastal restoration purposes – controlled activity

The disturbance of the foreshore or seabed for **beach recontouring** in the coastal marine area, including any associated:

- (a) deposition in, on or under the foreshore or seabed, and
- (b) discharge of contaminants

is a controlled activity, provided the following conditions are met:

- (c) the activity forms part of a **coastal restoration plan**, and
- (d) the activity shall comply with the coastal management general conditions specified above in Section 5.7.2, and:
- (e) within the Titahi Bay fossil forest area shown on Map 35, any motor vehicle used shall not have caterpillar tracks.

Matters of control

1. Timing of the activity associated with coastal fauna
2. Volume of material removed
3. Effects of disturbance, deposition, discharge and diversion associated with the activity
4. Effects on shoreline stability (including dunes and nearshore) and the potential to create a coastal inundation hazard



5. Effects on the heritage values of structures and sites identified in Schedule E1 (heritage structures) or Schedule E4 (archaeological sites)
6. Effects on sites and habitats identified in or using Schedule C (mana whenua), Schedule F2c (birds-coastal), Schedule F4 (coastal sites), Schedule F5 (coastal habitats) or Schedule J (geological features) ~~and Schedule K (surf breaks)~~

Notification

In respect of Rule R192, applications are precluded from public notification (unless special circumstances exist).

Rule R190: Motor vehicles for launching, retrieving or temporary mooring of vessels – permitted activity

The disturbance of the foreshore or seabed from a motor vehicle associated with the launching, retrieval or temporary mooring of a vessel in the coastal marine area is a permitted activity, provided the following conditions are met:

- (a) a boat ramp shall be used if available at the locality, and
- (b) within the Tītahi Bay fossil forest area shown on Map 35, the activity shall not be undertaken:
 - (i) within any area shown as Area A,
 - (ii) outside of the Area A, between 9.30pm and 5.00am,
 - (iii) on, or within, a buffer zone of 5 metres of any exposed Tītahi Bay fossil forest ~~shown on Map 35,~~
 - (iv) by any motor vehicle with caterpillar tracks, and
- (c) the activity shall comply with the coastal management general conditions specified above in Section 5.7.2.

Note

Marine Reserves Regulations 1993 provide for anchoring and use of vessels in a marine reserve (section 5 and 6 respectively). Anchoring is only permitted on the condition that no damage occurs, or that



damage is kept to a minimum practical level. The Marine Reserves Act 1971 (section 23) provides for anchoring anywhere within a marine reserve in times of stress or emergency.

Rule R197: Motor vehicles for certain purposes – permitted activity



The disturbance of the foreshore or seabed from **motor vehicles** in the coastal marine area, for the following purposes:

- (a) surf lifesaving operations, or
- (b) emergency situations, including firefighting, oil spills, rescue operations, salvage of vessels and marine mammal strandings, or
- (c) local authority activities, including law enforcement, or
- (d) activities carried out by or on behalf of the Department of Conservation, or
- ~~(d)~~(e) the maintenance, **upgrade** and operation of **regionally significant infrastructure**

is a permitted activity, provided the following conditions are met:

- ~~(e)~~(f) subject to (h) below the vehicle shall take the most direct route, and shall only operate within the area necessary to carry out the activity to ensure minimal disturbance to the foreshore or seabed, **and**
- ~~(f)~~(g) the activity shall comply with the coastal management general conditions specified above in Section 5.7.2, **and**
- (h) within the Tītahi Bay fossil forest area shown on Map 35, the activity shall not be undertaken on or within a buffer zone of 5 metres from any **exposed** fossil forest.

Rule R198: Motor vehicles inside sites of significance – non-complying activity



The disturbance of the foreshore or seabed from **motor vehicles** inside a site or habitat identified in Schedule C (mana whenua), Schedule E4 (archaeological sites), Schedule F2c (birds-coastal), Schedule F4 (coastal sites), Schedule F5 (coastal habitats) or Schedule J (geological features) in the coastal marine area that is not permitted by Rule R190, (excluding on the exposed Tītahi Bay fossil forest) or Rule R196 (excluding on the exposed Tītahi Bay fossil



~~forest~~) or Rule R197 ~~or prohibited under Rule R199~~, is a non-complying activity.

Rule R199: Motor vehicles on the exposed fossil forest at Titahi Bay fossil forest – prohibited activity 

The disturbance of the foreshore or seabed from a motor vehicles on any exposed Titahi Bay fossil within the mapped area on Map 35

- ~~(a) — part of the foreshore shown on Map 35 as containing remnants of fossilised forest, and~~
- ~~(b) — any part of the remaining foreshore where any fossil forest is exposed~~

that is not permitted activity under Rule R189, ~~Rule R190, Rule R192, Rule 196 or Rule R197~~ a controlled activity under Rule R192 or non-complying under Rule R198, is a prohibited activity.

Note

~~Rule R190 provides for the disturbance of the foreshore or seabed (associated with the use of a motor vehicle) on Titahi Bay Beach to launch, retrieve or temporarily moor a vessel as a permitted activity.~~



Titahi Bay fossil forest (indicative)

Titahi Bay Residents Association
Porirua City Council

Map 35



This version of the map is not complete. The version of this map available online through the online web map viewer shows the complete, detailed information on a GIS overlay that is not shown on this hard copy. The online version is available on the Council's website at <https://mapping.gw.govt.nz/gwrc/> (select theme proposed Natural Resources Plan 2015) and can be accessed from the Council offices or public library.

-  Titahi Bay fossil forest
-  Area A

0 100 200 m

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greater WELLINGTON
REGIONAL COUNCIL
Te Pahi Whānau Rau

