

**In the Environment Court  
Wellington Registry**

**ENV-2019-WGN-**

Under the Resource Management Act 1991  
And in the matter of an appeal pursuant to Schedule 1, clause 14(1) of the Act

Between

**Titahi Bay Residents Association Incorporated**

Appellant

and

**Greater Wellington Regional Council**

Respondent

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**Notice of Appeal on behalf of Titahi Bay Residents  
Association Incorporated against decision on the Greater  
Wellington Proposed Natural Resources Plan**

18 September 2019

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**BELL GULLY**

BARRISTERS AND SOLICITORS  
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**To:** The Registrar  
Environment Court  
Wellington

1. Titahi Bay Residents Association Incorporated (**TBRA**) appeal against parts of a decision of the Greater Wellington Regional Council (**GWRC**) on the Greater Wellington Proposed Natural Resources Plan (the **PNRP**).
2. TBRA made a submission and a further submission on the PNRP.
3. TBRA is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. TBRA received notice of the decision on 31 July 2019.
5. The decision was made by the Independent Hearing Panel appointed by GWRC.
6. The parts of the decision that this appeal relates to are:
  - (a) Section 4.10.3 – Other activities in the coastal marine area - Policy P149;
  - (b) Section 5.7.13 – Motor vehicles on the foreshore – Rules R190, R196, R197, R198 and R199;
  - (c) Section 6.7.12 – General disturbance activities – Rules R191 and R192; and
  - (d) Map 35 – Titahi Bay fossil forest (indicative).
7. The reasons for the appeal and the relief sought from the Court are set out in detail below. Amendments sought by TBRA are underlined or ~~struck through~~.

**Section 4.10.3 – Other activities in the coastal marine area – Policy P149 and Section 5.7.13 – Motor vehicles on the foreshore – Rules R190, R196, R197, R198 and R199**

*Reason for appeal:*

8. The decisions version of these provisions have the effect of prohibiting motor vehicles over the entire length of the Tītahi Bay foreshore, seabed and remnants of fossilised forest.
9. TBRA seeks amendment to the provisions to provide a framework that reinstates the status quo under the Operative Wellington Regional Coastal Plan (the **Operative Plan**) which allows motor vehicle activity on certain parts of the beach at Tītahi Bay.
10. In particular TBRA seeks a framework that:
  - (a) Largely prohibits use of motor vehicles within the central area of the beach;
  - (b) Provides limited exceptions for motor vehicle use on the central area of the beach as already set out in Rule R197 of the PNRP;
  - (c) Provides a new limited exception for part of the central area of the beach which allows motor vehicles to be used for a further 3 days per year for limited special circumstances upon application for a non-complying resource consent. Activities that are envisaged under such consents could include motion picture filming, commemorative waka landings, or an annual beach festival;
  - (d) Allows motor vehicles to be used at either ends of Tītahi Bay beach as a permitted activity not only when associated with boat shed activities as provided for under Rule R190, but also when parked on the beach in these areas provided that such use will only be a permitted activity where it is undertaken in daylight hours (5am – 9.30pm). Where such an activity is undertaken at night (between 9.30pm – 5am the next day) consent should be required for a non-complying activity, unless the applicant is a

registered boat shed owner in which case use at night time should be permitted;

- (e) Prohibits the use of motor vehicles within 10 metres of any exposed Tītahi Bay fossil forest across the entire length of Tītahi Bay (exposed meaning the fossil forest is protruding above the substrate sand/gravel base); and
  - (f) Prohibits use of motor vehicles that leave caterpillar tracks on any part of the beach and therefore limits the use of motor vehicles to those vehicles with rubber tyres, in order to protect the fossil forest.
11. While TBRA acknowledges that there is a fossil forest that requires protection on Tītahi Bay beach and that the New Zealand Coastal Policy Statement directs that vehicle use will be controlled in circumstances which may have significant adverse effects on fossil forests, TBRA considers that use of vehicles on Tītahi Bay in certain areas under special circumstances does not have the potential for significant adverse effects on the fossil forest.
12. Any adverse effects of motor vehicles on the environment within the framework sought above will be avoided, remedied or mitigated.
13. TBRA also seeks amendment to Rule R199, which references to Rule R198, as the referencing is circular.
14. With respect to parking on the beach, TBRA considers that it is impracticable that the PNRP permits motor vehicle use associated with boat launching and retrieving, but then prohibits other motor vehicle movements (such as parking). Tītahi Bay has a unique topography whereby the boat sheds are situated above mean high water springs, and therefore in order to launch boats, it is necessary that motor vehicles are parked and driven on the foreshore in the areas surrounding the boat sheds.

*Relief sought:*

15. TBRA seeks amendment to these provisions as follows:

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 (including associated parking) 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) the activity shall not be undertaken within the areas A and B at Tītahi Bay shown on Map 35~~on any exposed Tītahi Bay fossil forest shown on Map 35~~, and

(c) if the activity is undertaken within the areas C and D at Tītahi Bay shown on Map 35, the motor vehicle must not be a caterpillar tracked vehicle and the activity is to take place between 5.00am and 9.30pm (unless the motor vehicle is immediately publicly identifiable as being owned, leased or operated by a registered boatshed owner in the Porirua City Council's Tītahi Bay Owners Register in which case the activity can be undertaken outside of these hours), and

(d) the activity shall not be undertaken within 10m of any exposed Tītahi Bay fossil forest across the entire of Tītahi Bay beach regardless of the area in which the activity is being undertaken shown on Map 35 (A, B, C or D). For the avoidance of doubt, exposed means the fossil forest is protruding above the substrate sand/gravel base, and

~~(e)~~ (e) 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 R196: Motor vehicles – permitted activity

The disturbance of the foreshore from **motor vehicles**, other than those permitted by R190, in the coastal marine area is a permitted activity, provided the following conditions are met:

~~(a) the activity is not within the area of Titahi Bay shown on Map 35, and~~

~~(b) the activity is not within 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).~~

*Note*

Permission may be required from the relevant city or district council.

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

(e) the maintenance, **upgrade** and operation of **regionally significant infrastructure**

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

(f) 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

(g) the activity shall comply with the coastal management general conditions specified above in Section 5.7.2-, and

(h) the activity shall not be undertaken within 10m of any exposed Tītahi Bay fossil forest. For the avoidance of doubt, exposed means the fossil forest is protruding above the substrate sand/gravel base.

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, Rule R196 or Rule R197, or non-complying under Rule R198A or Rule R198B, or prohibited under Rule R199, is a non-complying activity.

Rule R198A: Motor vehicles and launching, retrieving or temporary mooring of vessels at Tītahi Bay after hours – non-complying activity

The disturbance of the foreshore from **motor vehicles** associated with the launching, retrieval or temporary mooring of a vessel (including associated parking) that is not permitted by Rules R190, R196 or R197 in the coastal marine area at Tītahi Bay in areas C and D shown on Map 35 is a non-complying activity.

Rule 198B: Motor vehicles and launching, retrieving or temporary mooring of vessels for special events – non complying activity

The disturbance of the foreshore from **motor vehicles** within area B at Tītahi Bay shown on Map 35 is a non-complying activity for up to 3 one-day events per annum, between 5.00am and 9.30pm on those days.

Note

For clarity, at all other times the use of motor vehicles in area B shown on Map 35 is a prohibited activity in accordance with R199.

Rule R199: Motor vehicles in the fossil forest at Tītahi Bay – prohibited activity

The disturbance of the foreshore or seabed from **motor vehicles** within areas A, B, C and D shown on Map 35 ~~the following areas~~ at Tītahi Bay in the coastal marine area;

~~(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 R196 or Rule R197 or non-complying under ~~Rule R198~~ Rule 198A and Rule 198B, 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 Tītahi Bay Beach in areas C and D to launch, retrieve or temporarily moor a vessel (including associated parking) as a permitted activity provided the relevant conditions are met.

16. TBRA also seeks amendments to Policy P149 required to give effect to the rule framework sought above.

**Section 6.7.12 – General disturbance activities – Rules R191 and R192**

*Reason for appeal:*

17. TBRA considers that these provisions are in conflict with the policy behind the proposed prohibition of motor vehicles in order to avoid disturbance of the foreshore. In particular, beach re-contouring would do unacceptable damage to the fossilised forest at Tītahi Bay and is currently prohibited in the Operative Plan. Further, caterpillar tracked vehicles burrow into the sand by swivelling on one track while turning. They create much greater disturbance to the foreshore than rubber-tyre vehicles. TBRA supports the approach taken in the Operative Plan where these activities are prohibited.

*Relief sought:*

18. TBRA seeks amendment to these provisions to reinstate the Operative Plan Rule 29 (2) Condition (7) and the essence of Operative Plan Rule 82 (albeit with a changed centre-beach area), as follows:

Rule R191: Disturbance associated with beach grooming – permitted activity

The disturbance of the foreshore or seabed for beach grooming including any removal of sand, shingle, shell or other natural material in the coastal marine area, including any associated:

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

on the following beaches:

Ōtaki, Te Horo, Peka Peka, Waikanae, Paraparaumu, Raumati, Paekakariki, Tītahi Bay (excluding the area of fossil forest shown on Map 35), Karehana Bay, Plimmerton, Browns Bay, Bradley Point, Motukaraka Point, Mana Foreshore, Onehunga Bay, Dolly Varden Beach, Pukerua Bay, Lyall Bay, Island Bay, Princess Bay, Worsler Bay, Scorching Bay, Oriental Bay, Freyberg, Petone, Point Howard, Sorrento Bay, Days Bay, Rona Bay, Castlepoint, Riversdale

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

- (c) the beach grooming shall be carried out for the purpose of grooming and the removal of marine debris and litter, and
- (d) the activity shall be undertaken by or for a local authority, and
- (e) the activity shall not occur when shellfish beds are exposed, and
- (f) the activity shall not be within a site identified in Schedule C (mana whenua) or Schedule E4 (archaeological sites) or Schedule F4 (significant indigenous biodiversity values in the coastal marine area), except on Island Bay beach, and
- (g) the activity shall not be within the Tītahi Bay fossil forest shown within areas A and B on Map 35 and if the activity is carried out on areas C and D of Tītahi Bay beach:

(i) it shall be carried out by or on behalf of a local authority to maintain amenity values, and

(ii) any vehicle used shall not have caterpillar tracks, and

(iii) the activity is not to involve re-contouring or reshaping, and

(h) the activity shall comply with the coastal management general conditions specified above in section 5.7.2.

*Note*

While the removal of natural materials from a marine reserve (unless authorised for research purposes) is prohibited under the Marine Reserves Act 1971, regulation 7 of the Marine Reserves (Taputeranga) Order 2008 enables a local authority to remove beach cast seaweed and debris after a storm within Taputeranga Marine Reserve with particular conditions.

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) the activity is not undertaken with any motor vehicle or other machinery with caterpillar tracks, within the areas A, B, C and D at Tītahi Bay shown on Map 35.

*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).

*Notification*

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

**Map 35 – Tītahi Bay fossil forest (indicative)**

*Reason for appeal:*

19. As set out above, the rules have the effect of prohibiting motor vehicles over the entire length of Tītahi Bay foreshore, seabed and remnants of fossilised forest.
20. Map 35 should be amended so as to show four sections – A, B, C and D that accord with the amendments sought to the rules above.

21. Area A covers the central area of the beach where motor vehicle use is prohibited other than for those limited activities set out in Rule R197.
22. Area B also covers part of the central area of the beach where motor vehicles use is prohibited other than for those limited activities set out in Rule R197, however B can also be used by motor vehicles for the limited special circumstances set out in Rule R198B.
23. Areas C and D cover the northern and southern ends of the beach where the boat sheds are located. Motor vehicle use in these areas is permitted at all times for registered boat shed owners, and permitted for all other persons during daylight hours from 5.00am – 9.30pm.

*Relief sought:*

24. Amend Map 35 by replacing it with the new Map 35 attached as **Appendix 1** to this notice of appeal.
25. For clarity, the new Map 35 attached to this notice of appeal shows the following:
  - (a) The boundary between Areas B and C at the northern end of Tītahi Bay beach is the stream across the beach at Bay Drive;
  - (b) The boundary between Areas A and D at the southern end of Tītahi Bay beach is the stream across the beach at South Beach Access Road; and
  - (c) The extent of Area A in the centre of Tītahi Bay is between 122 metres south of Bay Drive to 279 metres south of Toms Road.

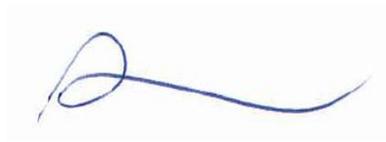
**Relief Sought**

26. TBRA seeks the following relief from the Court:
  - (a) The relief specified in this notice of appeal under each heading '*relief sought*'; or

- (b) Such further, consequential or alternative relief as may be necessary or appropriate to address the reasons for appeal to give effect to the relief sought.

27. The following documents are attached to this notice of appeal:

- (a) a copy of TBRA's submission and further submissions (with a copy of the submission opposed or supported by TBRA's further submissions); and
- (b) a list of names and addresses of persons to be served with a copy of this notice.



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A J L Beatson / L M Lincoln  
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Dated 18 September 2019

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## **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 or a further 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 15 working days after the period for lodging a notice of appeal ends.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service 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 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 in Auckland, Wellington, or Christchurch.

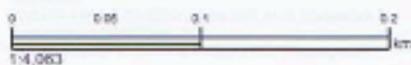
# Titahi Bay fossil forest (indicative)

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 <http://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



Basemap: World Oceans Base  
Projection: NZTM 2000

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greater WELLINGTON  
REGIONAL COUNCIL  
Te Pahi Matua Te Aro