IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2016-404-2343
[2018] NZHC 1069

BETWEEN	ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED Appellant
AND	AUCKLAND COUNCIL Respondent

Continued next page

Hearing:	On the papers
Counsel:	S Gepp and P Anderson for Appellant J Caldwell and M Gribben for Respondent C Kirman and A Devine for Housing NZ Corporation Inc R Gardner for Federated Farmers of New Zealand Inc D Minhinnick and L J Eaton for Stevenson Group Ltd B Matheson for Fulton Hogan Ltd, Brookby Quarries Ltd and Winstone Aggregates Ltd C Sheard for New Zealand Transport Agency T Howell for Te Arai Group J Gardner-Hopkins and L Hinchey for Transport NZ Ltd R Enright and M Wright for Environmental Defence Society Inc M Williams for Man O'War Farm Ltd
Judgment:	18 May 2018

JUDGMENT OF WHATA J

This judgment was delivered by me on 18 May 2018 at 4.00 pm, pursuant to Rule 11.5 of the High Court Rules.

Registrar/Deputy Registrar

Date: ……………………………

HOUSING NEW ZEALAND CORPORATION INC
FEDERATED FARMERS OF NEW ZEALAND INC
STEVENSON GROUP LIMITED
FULTON HOGAN LIMITED
BROOKBY QUARRIES LIMITED
NEW ZEALAND TRANSPORT AGENCY
WINSTONE AGGREGATES LIMITED
TE ARAI GROUP
TRANSPOWER NEW ZEALAND LIMITED
ENVIRONMENTAL DEFENCE SOCIETY INC
MANO'WAR FARM LIMITED
COUNTIES MANUKAU DISTRICT HEALTH BOARD
Section 301 Parties

Introduction

[1] This judgment considers the final aspect of Royal Forest and Bird Protection Society of New Zealand Inc's ("Royal Forest and Bird") appeal against various decisions of the Auckland Council on the Proposed Auckland Unitary Plan ("PAUP"). The parties[1] interested in this final aspect filed a joint memorandum recording settlement on 21 December 2017 and seek consent orders which will resolve the appeal.[2]

[2] The frame for the resolution of appeals by consent was set out in *Ancona Properties Ltd*,[3] which I adopt. As with all Unitary Plan appeals which have been resolved by way of consent orders, I am guided in my assessment by the fact the parties concerned have reached an agreed position.

Background

[3] Helpfully, in the joint memorandum the parties have agreed on the key facts and issues. The background that follows reflects those agreed matters.

[4] Royal Forest and Bird is an incorporated society which seeks to preserve and protect indigenous flora and fauna, and the natural features of this country's landscape. To that end, it made a number of submissions on various aspects of the PAUP.

[5] The PAUP contained various areas subject to a Significant Ecological Area ("SEA") overlay. The SEA overlay applied to those areas that the Council considered met the criteria for significance, as set out in the PAUP. A different planning framework, and activity status for vegetation alteration, applied to areas not covered

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1 The parties being Royal Forest and Bird (the appellant), Auckland Council (the respondent), and the following interested parties: Housing New Zealand Corporation, Federated Farmers of New Zealand Inc, Stevenson Group Ltd, Fulton Hogan Ltd, Brookby Quarries Ltd, New Zealand Transport Agency, Winstone Aggregates (a division of Fletcher Concrete and Infrastructure Ltd), Te Arai Group, Transpower New Zealand Ltd, Environmental Defence Society Inc, Man O'War Farm Ltd, and Counties Manukau District Health Board.

2 The other aspects of Royal Forest and Bird's appeal were resolved in *Royal Forest and Bird Protection Society of New Zealand Inc v Auckland Council* [2017] NZHC 980 [Third Error Decision], and *Royal Forest and Bird Protection Society of New Zealand Inc v Auckland Council* [2017] NZHC 1606 [Second Error Decision].

3 *Ancona Properties Ltd v Auckland Council* [2017] NZHC 594.

by the overlay. A number of zones fell within the ambit of the SEA overlay, including a number of Special Purpose Zones such as the Quarry Zone.

[6] The application of the SEA overlay to various areas of land was challenged throughout the submission and hearing process, as was expert Council evidence from ecologists. In some cases, the Council's ecologists agreed with submitters that some or all of an area did not meet the SEA criteria and should be amended or removed. After hearing these submissions, the Auckland Unitary Plan Independent Hearings Panel ("Panel") released its recommendations on 22 July 2016.

[7] The alleged error of law underpinning the present settlement relates to a recommendation by the Panel to delete previously identified SEAs where it considered that "other planning imperatives" having economic or strategic importance to the region outweighed the identification of SEAs. The Panel stated:[4]

> The Panel generally accepts the Council's position that areas that satisfy the significant ecological factors (set out in the regional policy statement) should be mapped as such. However, where there are competing values, a judgment call, based on evidence, needs to be made as to what provisions better promote sustainable management of natural and physical resource as required by section 5 of the Resource Management Act 1991.
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> ...
>
> Significant ecological areas have been deleted from the Special Purpose – Quarry Zone areas. This is due to the economic and strategic importance of the mineral resource. These areas are identified as areas to be quarried, which means ground cover has to be removed to access the resource, giving rise to a direct conflict between the purpose of the zone as a quarry and this form of protection. ...

[8] It went on:[5]

> Where there was evidence that the identification of the significant ecological area would frustrate the purpose of the zone or location, and that purpose has economic or strategic importance to the region and could not readily be achieved in any other way or area, the Panel recommends removal of the identification of the significant ecological area. Examples include their removal from all Special Purpose – Quarry Zones ...

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4 Auckland Unitary Plan Independent Hearings Panel *Report to Auckland Council Hearing topic 023 Significant ecological areas and vegetation management* (22 July 2016) at 6.

5 At 14.

[9] This recommendation, to remove these SEAs, meant the Panel did not make a recommendation on any amendment to the boundaries of SEAs that had been agreed between the Council's ecologists and various submitters.

[10] The Council adopted the relevant Panel recommendation in its decisions version of the Auckland Unitary Plan.

Bespoke approach to SEAs identified in Quarry Zone sites

[11] In respect of SEAs within the Quarry Zone:

(a) Vegetation removal within an SEA on a Quarry Zone had been classified in the PAUP as a restricted discretionary activity, which had been supported by some of the Quarry Operators[6] in their primary submissions.

(b) Brookby Quarries Ltd, however, sought in its submission that the SEA overlay be deleted from all Quarry Zones, with the effect that although a resource consent would still be required for general vegetation removal, there would be no need for specific consideration of the SEA matters and values.

(c) The PAUP also included specific matters of restricted discretion and specific assessment criteria for the activity of vegetation alteration or removal in SEAs in the Quarry Zone.

(d) The Regional Policy Statement (RPS) component of the PAUP contained policies (within the section on Minerals) requiring that new mineral extraction activities were undertaken outside SEAs and other areas of natural resources, except where no practicable alternative to locating within the SEA existed, in which case the policies provided for consideration of the scale of effects on SEAs and the extent to which

[6] For ease, Fulton Hogan Ltd, Winstone Aggregates, Brookby Quarries Ltd, and Stevenson Group Ltd are collectively referred to as Quarry Operators.

adverse effects could be mitigated or offset (Associated Quarry Natural Resources Policies).

(e) The Associated Quarry Natural Resources Policies were supported by the Council and the Quarry Operators (with some minor amendments). No new SEA-related regional or district plan objectives or policies were included within the Quarry Zone part of the PAUP, or proposed by any of the Quarry Operators during the hearing process.

(f) The proposed RPS also contained a section on Biodiversity, which included specific objectives and policies for protection of SEAs. There were also specific regional and district plan objectives and policies for protection of SEAs.

(g) The Council's "closing version" of the SEA provisions proposed to amend the specific assessment criteria for the activity of vegetation alteration or removal in SEAs in the Quarry Zone, by specifying that none of the general objectives and policies would apply to the assessment of any such (restricted discretionary) application. In contrast, Royal Forest and Bird in its "closing version" sought to specify that consideration of the biodiversity objectives and policies would be required as part of the assessment of all restricted discretionary activities.

(h) Winstone Aggregates (in respect of the Hunua Quarry) and Stevenson Group Ltd (in respect of the Drury Quarry) had reached agreement with the Council that the vegetation on small portions of the Quarry Zone did not meet the criteria for SEA and that these areas of the SEA overlay should be removed ("agreed SEA removal").[7]

(i) Fulton Hogan Ltd (in respect of the Clevedon Quarry) requested a portion of the SEA be removed on the basis that its expert evidence concluded it did not meet the PAUP's criteria for a SEA. This

7 The areas of the agreed SEA removal are shown in Appendices C and D.

amendment was not agreed by the relevant Council ecologist and so was unresolved ("unresolved SEA status").

[12] As noted, the Panel recommended the removal of the SEA overlay from, among other zones, the Quarry Zone. As a result, the Panel:

(a) recommended relocating the Associated Quarry Natural Resources Policies from the RPS to the Auckland-wide rules Chapter E38 Mineral Extraction from land;[8]

(b) recommended deleting the Quarry Zone-specific matters of restricted discretion and assessment criteria;

(c) did not need to make, and did not make, any recommendations on the agreed SEA removal as it applied to the Drury and Hunua quarries; and

(d) did not need to make, and did not make, any recommendation on the unresolved SEA status as that applied to portions of the Clevedon Quarry.

[13] The Panel's report did not specifically address the above matters, but its "recommendations version" of the Unitary Plan included amendments to that effect. However, the Panel did state in its report, subsequent to recommending deletion of the relevant SEAs, that "vegetation removal provisions have been retained over quarry zones, notwithstanding that the significant ecological areas have been removed from the Special Purpose – Quarry Zone".[9] The effect of this was under the Panel's recommendations, and the Auckland Unitary Plan Operative in part, any vegetation alteration or clearance within the Quarry Zone over small-scale permitted thresholds is a restricted discretionary activity.[10] That recommendation and subsequent decision to accept it has not been challenged.

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8 This recommended relocation and the final form of these policies was on the basis that the SEA overlay no longer applied over the Quarry Zone, and accordingly all references to SEAs within these policies had been deleted.

9 Auckland Unitary Plan Independent Hearings Panel, above n 4, at 4.

10 Pursuant to E15.4.1 Activity table, r (A10).

The original grounds of appeal

[14] In its appeal, Royal Forest and Bird alleges:

(a) if an area of indigenous vegetation or habitat of indigenous fauna meets the factors for a SEA, then it should be identified as such;

(b) it was unlawful for the Panel to spatially modify or delete certain areas of the SEA overlay on the basis that some other planning imperatives outweighed their identification;

(c) in accepting the Panel's recommendation in this regard, the Council erred because it:

(i) applied the wrong legal test in recognising and providing for such areas under s 6(c) of the Resource Management Act 1991 (RMA);

(ii) took into account an irrelevant consideration, namely, the other planning imperatives; and

(iii) failed to implement the RPS provisions of the Unitary Plan.

What the parties have agreed on

The agreed error

[15] The parties' positions have coalesced around sub-para (b). As I will set out below, all the parties to the appeal, except Federated Farmers (which has agreed to withdraw from the appeal if the draft consent order is granted), agree that the modification or deletion of the SEAs for "other planning imperatives" constituted an error of law. Specifically, they agree that if an area of indigenous vegetation or habitat of indigenous fauna meets the objective criteria for SEA, then it should be identified as such in the district or regional plan, irrespective of any planning outcomes that might follow.

[16] Royal Forest and Bird says the deletion of the SEA overlay for "planning imperatives" was an error of law because existing jurisprudence on s 6(c) of the RMA confirms that whether a site is "significant" is an ecological assessment which should not be conflated with consideration of management or planning imperatives. Alongside a series of decisions in the Environment Court,[11] Royal Forest and Bird cites the Court of Appeal's decision relating to s 6(b) in *Man O'War Station Ltd v Auckland Council*,[12] applied by Wylie J in relation to s 6(c) in *Royal Forest & Bird Protection Society of New Zealand Inc v Auckland Council*.[13] I will refer to this decision as RF&B No.2 for ease of reference.

[17] In *Man O'War Station Ltd* the Court of Appeal emphasised the classification of an area as having particular values meeting s 6 should be made on an "essentially factual assessment based upon the inherent quality of the landscape itself", independent of consideration of the consequences of being classified as such.[14] Wylie J, in considering the second error of law in Royal Forest and Bird's appeal, found:[15]

> [18] A related provision — s 6(b), dealing with the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development — was considered by the Court of Appeal in *Man O'War Station Ltd v Auckland Council*. One of the questions posed for the Court's consideration was whether or not the identification of an outstanding natural landscape for the purposes of s 6(b) should be informed by, or dependent upon, the protection afforded to the landscape under the Act, and/or the relevant planning instrument. The Court held that the issue of whether land has attributes sufficient to make it an outstanding landscape within the ambit of s 6(b) requires an essentially factual assessment based upon the inherent quality of the landscape itself.
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> [19] The structure of s 6(b) and (c) is the same. I agree with the Society and the Council that the same principle must apply to the identification of an area as a significant ecological area qualifying for protection under s 6(c). The exclusion indicators, dealing as they do with modified areas, have the potential to cut across s 6(c) and the findings made by the Court of Appeal in *Man*

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11 *Royal Forest & Bird Protection Society of New Zealand Inc v Central Otago District Council* EnvC Auckland A128/2004, 23 September 2004, EnvC Auckland A154/2004; *Royal Forest & Bird Protection Society of New Zealand Inc v New Plymouth District Council* [2015] NZEnvC 219, (2015) 19 ELRNZ 122; *Friends of Shearer Swamp Inc v West Coast Regional Council* [2010] NZEnvC 345, upheld on appeal in *West Coast Regional Council v Friends of Shearer Swamp Inc* [2012] NZRMA 45 (HC).

12 *Man O'War Station Ltd v Auckland Council* [2017] NZCA 24, [2017] NZRMA 121.

13 Second Error Decision, above n 2.

14 *Man O'War Station Ltd v Auckland Council*, above n 12, at [61]-[62].

15 Second Error Decision, above n 2 (footnotes omitted).

> *O'War Station*. An area may still qualify for protection under s 6(c) notwithstanding modification.

[18] Royal Forest and Bird argues that, in the present context, the decision to remove the SEA overlay because of "other planning imperatives" diverged from the correct approach to SEA identification and that this Court should order the reinstatement of the deleted and modified SEAs.

[19] The Council accepts this error for the reasons provided above and agrees resolution requires reinstatement of removed or amended SEAs. The Quarry Operators also accept deletion of the SEA overlay was an error of law. For completeness, the Council and Quarry Operators agree with one another that it has not been alleged there was an error of law in providing a tailored approach to the resource management issue of mineral extraction within SEAs, which was different to the issue of how other activities in an SEA are managed. As for the other parties:

(a) the Environmental Defence Society supports Royal Forest and Bird's position;

(b) the Counties Manukau District Health Board, Transpower New Zealand Ltd and Housing New Zealand Corporation accept there was an error of law;

(c) Te Arai Group specifically agree with the assessment undertaken that the amendments to SEA 5548a were made for ecological reasons and not as a result of other planning imperatives;[16]

(d) Man O'War Farm Ltd will withdraw its interest in the appeal, if it has not done so already; and

(e) Federated Farmers of New Zealand Inc does not wish to express a view on whether there is an error of law, but has agreed to withdraw from the appeal if the draft consent order is granted.

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[16] As shown in Appendix B, this is not subject to the present appeal.

Areas affected by the agreed error

[20] The parties have also reached an agreed position on reasons for deletion or modification of SEAs. Having investigated the Panel's recommendations in some depth, the parties have agreed some SEAs were modified or deleted for reasons that did not relate to "other planning imperatives". Those areas are not intended to be subject to Royal Forest and Bird's appeal, and the parties have agreed further changes to those SEAs are not necessary.

[21] Appendix A to this decision sets out:

(a) The SEAs that the parties have agreed were modified or deleted because of "other planning imperatives" and are subject to the appeal.

(b) The SEAs that were modified or deleted because of "other planning imperatives" but which the parties agree should be reduced in size because a portion of the SEA does not have ecological value sufficient to support SEA status. This includes the agreed SEA removal in Appendices C and D. These are marked in Appendix A with an asterisk.

[22] Appendix B then sets out a table of areas the parties agree were modified or deleted for reasons other than "other planning imperatives" and which are not subject to the appeal.

Unresolved matters: consequential amendments

[23] The parties have, however, been unable to reach consensus on what consequential amendments should follow the reinstatement of the SEA overlay, especially in relation to the management of activities within a SEA and a Quarry Zone.

[24] The Quarry Operators contend consequential amendments on the following matters need to be considered:

(a) the activity status for vegetation removal within an SEA in zones from which the SEA overlay had been removed (which they submit should be restricted discretionary or controlled);

(b) what other consequential changes flow from a change in the activity status for vegetation removal within a SEA in the Quarry Zone; and

(c) what decision should be made in respect of those submitters who sought the removal of the SEA overlay over part of their site, but whose relief was effectively superseded by the Panel's recommendation to remove the SEA on a much broad basis (i.e. how the agreed SEA removal and unresolved SEA status should be resolved).

[25] Royal Forest and Bird accepts the "default" discretionary activity status for SEA vegetation alteration or removal should not apply to vegetation alteration or removal within SEAs in the Quarry Zone, as the notified status was restricted discretionary, and no party sought a more restrictive status. It would support an order amending the activity status to restricted discretionary. It also accepts consequential recommendations relating to (a) deletion of the SEA/Quarry Zone-specific assessment criteria and (b) the agreed SEA removal and unresolved SEA removal may be necessary.

[26] But it does not accept that such reconsideration extends to the activity status for vegetation alteration or removal within SEAs in the Quarry Zone, because no party challenged the Panel's recommendation that the vegetation removal provisions for non-SEAs should continue to apply to the Quarry Zone, such that removal or alteration is a restricted discretionary activity. In its view, there is no scope for the Quarry Operators to seek controlled activity status as part of consideration of this issue.

[27] As for the other parties, the Counties Manukau District Health Board wishes to be involved in the consideration of any consequential amendments to the Unitary Plan that might be required in relation to its site and removal of vegetation within the Special Purpose: Healthcare Zone.

The proposed solution

[28] The parties submit that, if the appeal is allowed, the Court is required to make orders amending the provisions of the Plan. For that purpose, the parties propose:[17]

(a) The SEA overlay be reinstated, except where shown in Appendices A and B, and those parts of Hunua and Drury quarries shown in Appendices D and E.

(b) The activity status for removal of vegetation within the Quarry Zone will be restricted discretionary and in other zones will be discretionary (reflecting the notified version of the Unitary Plan).

(c) The applicable assessment criteria for vegetation alternation or removal within a SEA in a Quarry Zone are to be the same as the notified version of the PAUP.

[29] It is further submitted that s 156(2), limits the matters on appeal before the Environment Court to:

(a) what form the matters to which discretion is reserved (and associated assessment criteria) should take; and

(b) whether the portion of vegetation classified as SEA should be removed from the Clevedon quarry (i.e. the unresolved SEA status question).

[30] Given, however, the position of the Quarry parties, the appeal to the Environment Court will also require determination of:

(a) whether there is jurisdiction to consider the appropriate activity status for the removal of vegetation within a SEA in the Quarry Zones;[18] and

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17 The proposed changes are set out in Appendices E and F.

18 As stated above, the Quarry Operators consider the question of activity status is within scope, and that the activity status for vegetation removal could validly be either controlled or restricted discretionary. Royal Forest and Bird considers the activity status is not within scope, because no party has challenged the Panel's recommendation that the vegetation removal provisions for areas

(b) whether there is jurisdiction to amend the Associated Quarry Natural Resources Policies;[19] and

(c) any alternative solution in relation to the activity status and controls related to vegetation within the Special Purpose: Healthcare Zone.[20]

Assessment

[31] The central issue on appeal is whether the Panel was correct in law to delete the SEA overlay as it related to certain areas because of other "planning imperatives". The parties (except Federated Farmers) agree that the panel so erred, relying on the dicta in *Man O'War Station Ltd* and Wylie J's decision in *RF&B No.2.* I agree that on the specific facts of this case, the dicta in both those cases applies and the Panel erred by incorporating the rule making assessment into the SEA identification process.

[32] However, as foreshadowed to the parties in a draft version of this assessment section, I want to be clear about the effect of this judgment. I invited submissions on this issue. There is a broad (though not unqualified) consensus about the following. Whether and to what extent the principles stated in *Man O'War Station Ltd* and applied in *RF&B No.2* apply in any given case will depend on the object of the provisions under scrutiny. If, as here, the clear object is to identify SEA areas that qualify for protection under s 6(c), then the assessment is a factual one as stated in *Man O'War Station Ltd* and other planning imperatives have no direct role to play. However, if the object of the provisions is to provide a planning outcome considering the full context, including other planning imperatives that achieve the sustainable management purpose of the Act, then the dicta may have limited, if any, application.

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that are not SEA should continue to apply to the quarry zone, so that vegetation alteration or removal is and only can be a restricted discretionary activity.

19 See [10](d) above, and E28.3 in the Auckland Unitary Plan Operative in part. The Quarry Operators consider it likely that any party to the Environment Court appeal would seek cross-reference in the criteria for removal of vegetation within an SEA to associated policies. While the Panel recommended a form of wording for the Associated Quarries Natural Resources Policies, that was on the basis the SEA overlay did not apply. It is unclear what form those policies might have taken, had the Panel at first instance recommended that the SEA overlay apply. The Quarry Operators consider there is a need to re-examine those policies as a direct consequential change of this appeal. Royal Forest and Bird disagrees.

20 The Counties Manukau District Health Board has indicated it may wish to apply any alternative solution. Royal Forest and Bird does not agree that there is scope to reconsider these activity statuses and controls.

[33] Royal Forest and Bird however submitted that further guidance from the Court as to the dividing line would likely assist the parties involved in planning to understand how identification decisions are properly made. While a laudable goal, that would in fact do what I specifically wish to avoid. I agree with the general thrust of the other parties that in an area as complex, intuitive and evaluative as environmental law, some care must be taken before laying down a fixed binary approach to resource management.[21] In this regard, the following reminder from the Court of Appeal, has some currency:[22]

> As Professor A L Goodhart explained in his description of ratio decidendi, the principle of a case is found by taking account of (a) the facts treated by the Judge as material and (b) the Judge's decision as based on them.

[34] In the present case, the scheme of the notified and final decisions version of the PAUP as it relates to significant ecological areas, clearly envisages the identification of the location and spacial extent of those areas by way of factual assessment against specified criteria, leaving for separate consideration the management of those areas in accordance with relevant objectives and policies of the PAUP. The reasoning therefore in *Man O'War Station Ltd*, while not binding, is sufficiently apposite to provide principled guidance in this case.

[35] Turning to the issues of jurisdiction or scope in relation to quarry lands, ordinarily it would be a matter for this Court to determine whether relief was within scope. The facts here are, however, complicated by the Panel's decision to remove the SEAs from quarry lands and with it the planning and policy matrix that applies to SEAs, which included restricted discretionary activity status benched marked against that policy matrix. The relief then sought seeks to reinstate the SEAs, the associated policy matrix and thereby restricted discretionary status.

[36] Problematically, this leaves the affected quarries in a worse position than that envisaged by the Panel, which may have, had it adopted the correct approach, sought to identify given areas as SEAs but modify the activity status of the activities in the

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[21] I wish to acknowledge the careful submissions made by Royal Forest and Bird on this issue and what I say here should not be taken as a criticism of the position advocated by them.

[22] *Fang v Ministry of Business, Innovation and Employment* [2017] NZCA 190, [2017] 3 NZLR 316 at [33].

applicable areas considering other planning imperatives. It seems to me therefore, that fairness dictates there should be an opportunity afforded to affected persons to seek modification of the activity status even though the SEA designation applies to the relevant area. Given that at least one submitter sought the removal altogether of SEAs from quarry lands, I am satisfied there is scope to resolve the substantive issue.

[37] On that basis, the Environment Court need not be troubled with issues of jurisdiction. Rather, it must assess whether the Council approved version of the SEA policy matrix, including restricted activity status, should apply to quarry lands.

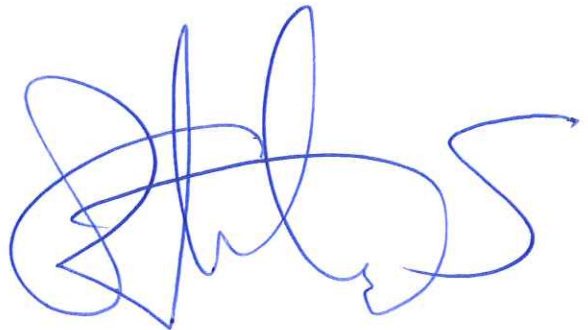
[38] Save in this respect, I endorse the approach proposed by the parties. A similar form of relief was granted in *University of Auckland v Auckland Council*.[23]

Final orders

[39] The Panel erred by deleting the SEA overlay (including from all Quarry Zones) on the basis of other planning imperatives. Accordingly, there shall be a consent order in the terms specified in Appendix F.

Costs

[40] There are no issues as to costs.



23 *University of Auckland v Auckland Council* [2017] NZHC 1150.

Appendix A

Sites subject to appeal

SEA Schedule No.	Submission point	Indicative address	Inferred reason for change	Appeal seeks reinstatement of layer?	
SEA_T_1177		Stevensons Quarry, Drury	Planning imperative	Yes *	
SEA_T_1186	5996-1	29 Umbria Lane Manukau Central	Planning imperative	Yes *	
SEA_T_2626		Wainui Resource, Quarry	Planning imperative	Yes *	
SEA_T_2626a		Wainui Resource, Quarry	Planning imperative	Yes *	
SEA_T_4345	Sub: 2560-5	Middlemore Hospital	Planning imperative	Yes	
SEA_T_4386	2206-10	105 Logan Road Pukekohe	Ecological evidence presented, but may be planning imperative	Yes *	
SEA_T_4558		Whitford Quarry	Planning imperative	Yes	
SEA_T_5274		Brookby Quarry	Planning imperative	Yes	
SEA_T_5323		Stevensons Quarry (Drury), Winstone Aggregates Quarry (Coalmine Road)	Planning imperative	Yes *	
SEA_T_5346		Stevensons Quarry, Drury	Planning imperative	Yes *	
SEA_T_5349	3682-224	Stevensons Quarry, Drury	Planning imperative	Yes *	
SEA_T_5539	6784-37	Te Henga Quarry	Planning imperative	Yes	
SEA_T_5539	3734-1	1384 Huia Road	Planning imperative	Yes	
SEA_T_5547	5869-3	600 Island Road Mangere Bridge	Planning imperative	Yes *	
SEA_T_5588		McNicol Quarry	Planning imperative	Yes	
SEA_T_612		Harbour Ridge Road, Puhunui. [Quarry Zone]	Planning imperative	Yes	
SEA_T_6245	5473-14	Auckland zoo	Planning imperative	Yes *	
SEA_T_6436		Wharehine Quarry	Planning imperative	Yes	
SEA_T_6454		Wainui Resource, Quarry	Planning imperative	Yes	
SEA_T_6464		Omaha Valley Rd. [Quarry Zone]	Planning imperative	Yes *	
SEA_T_7032		Winstone Aggregates Quarry (Coalmine Road)	Planning imperative	Yes	
SEA_T_8343	4761-3	269 Rosedale Road Albany	Planning imperative	Yes	
SEA_T_8443		Harbour Ridge Road, Puhunui. [Quarry Zone]	Planning imperative	Yes *	

Appendix B

Analysis of reasons for removal of SEA overlay from sites listed in Appendix 1 of Appellant's Notice of Appeal

SEA Schedule No.	Submission point	Indicative address	Inferred reason for change
SEA_T_2042	1280-1	14 Elder Place Massey	Ecological evidence
SEA_T_2043	1280-1	14 Elder Place Massey	Ecological evidence
SEA_T_4711	6096-69	8-12 Titirangi Road	Boundary adjustment
SEA_T_5492A		Waikumete Cemetary	Ecological evidence
SEA_T_5492A		Waikumete Cemetary	Ecological evidence
SEA_T_5492B		Waikumete Cemetary	Ecological evidence
SEA_T_5492C		Waikumete Cemetary	Ecological evidence
SEA_T_5492C		Waikumete Cemetary	Ecological evidence
SEA_T_5539	4971-14	280 Bethells Road Bethells	Reasonable use
SEA_T_5539	3734-1	Multiple properties on Whatipu Road, Huia (36, 44, 46,48,50,52,5476-78,) as well as PART DP 10639, and unformed section of Whatipu Road	Ecological evidence
SEA_T_5539	4259-1	77 Seaview Road Piha, 12A Rayner Road Piha, 12B Rayner Road Piha, 14A Rayner Road Piha, 14B Rayner Road Piha	Ecological evidence
SEA_T_5539	4727-7	190 Parker Road	Ecological evidence
SEA_T_5539	1965-1	134 Shaw Road	Ecological evidence
SEA_T_5548a	864-50	Lot 1 DP 453130, Lot 2 DP 453130, Lot 3 DP 453130, Lot 4 DP 453130, Lot 5 DP 453130	Ecological evidence
SEA_T_6063	8994-2	21 Ayr Street Parnell	Ecological evidence
SEA_T_6065		94 Victoria Avenue	Ecological evidence
SEA_T_6180	7094-7, 869-5	Kohimarama	Ecological evidence
SEA_T_6346	2399-1	165 Mahoenui Valley Road Coatesville	Ecological / reasonable use
SEA_T_6373a	5294-331	260 Ihumatao Road Mangere, 200 Ihumatao Road Mangere	Ecological evidence

SEA Schedule No.	Submission point	Indicative address	Inferred reason for change
SEA_T_6393	906-1	211 Whitehills Road Wainui	Ecological evidence.
SEA_T_6652	6862-3	132 Upper Orewa Road Silverdale	Reasonable use/minor boundary adjustment
SEA_T_6652b	5600-1	Lot 2 DP 381692 Hillcrest Road Orewa	Reasonable use
SEA_T_6669	3639-1	122 Foley Quarry Road Albany Heights	Boundary adjustment
SEA_T_6677			Boundary adjustment / Sliver
SEA_T_6998	265-2	1172 Whangaparaoa Road Coal Mine Bay	Ecological evidence
SEA_T_770	5510-7	Pt Lot 1 DP 177047 Birdsall Road Whangateau	Ecological evidence
SEA_T_780	3300-1	6 Kyle Street Leigh	Ecological evidence.
SEA_T_785	2627-1	99 Upper Whangateau Road Whangateau	Ecological / Reasonable use
SEA_T_8049	1236-1	51 Spinella Drive Bayview	Ecological evidence
SEA_T_8160		Quarry (Puketutu Island)	Reasonable use
SEA_T_8162	1154-1	67 Waipa Street Birkenhead	Ecological evidence
SEA_T_8169	6151-5	163 Hinemoa Street Birkenhead	Ecological evidence
SEA_T_8295	3202-2	140 Gills Road Albany Heights	Reasonable use / Legal
SEA_T_8297	3159-33	29 Kewa Road Albany Heights; 40A Kewa Road Albany Heights; 42 Kewa Road Kewa Road Albany Heights	Ecological evidence
SEA_T_8299	7346-3	181 Gills Road Albany Heights; 185 Gills Road Albany Heights	Ecological evidence
SEA_T_8300	281-1	140 The Avenue Lucas Heights	Ecological evidence
SEA_T_973	7324-4	Pt Lot 1 DP 33446	Reasonable use / Boundary adjustment
SEA-M2-26a			Boundary adjustment / CMA edge
SEA_T_2295	827-1	369 Whitmore Road Takatu	Withdrawn
SEA_T_6622	1579-1	181 Haruru Road Tahekeroa	Withdrawn
SEA_T_930	827-1	369 Whitmore Road Takatu	Withdrawn
SEA-M2-3262DD	827-1	369 Whitmore Road Takatu	Withdrawn

Appendix D

Winstone Aggregate's Hunua Quarry

Note: Areas of SEA overlay to be removed shown in red hatching.

Appendix E

Stevenson's Drury Quarry

Note: Area of SEA overlay to be removed shown in black hatching.

Appendix F

Draft consent order

IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY **CIV-2016-404-002343**

UNDER THE	Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) and the Resource Management Act 1991 (**RMA**)
IN THE MATTER	of an appeal under section 158 of the LGATPA
BETWEEN	**ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED** Appellant
AND	**AUCKLAND COUNCIL** Respondent
AND	**HOUSING NEW ZEALAND CORPORATION** **FEDERATED FARMERS OF NEW ZEALAND INCORPORATED** **STEVENSON GROUP LIMITED** **FULTON HOGAN LIMITED** **BROOKBY QUARRIES LIMITED** **NEW ZEALAND TRANSPORT AGENCY** **WINSTONE AGGREGATES** **TE ARAI GROUP** **TRANSPOWER NEW ZEALAND LIMITED** **ENVIRONMENTAL DEFENCE SOCIETY INCORPORATED** **MAN O'WAR FARM LIMITED** **COUNTIES MANUKAU DISTRICT HEALTH BOARD** Section 301 Parties

BEFORE THE HIGH COURT

High Court Judge ....

IN CHAMBERS at Auckland

CONSENT ORDER

Introduction

1. The Court has read and considered the appeal and the memorandum of the parties dated December 2017.

2. The Appellant is Royal Forest and Bird Protection Society of New Zealand Incorporated.

3. The Respondent is Auckland Council.

4. The following parties have joined the appeal under section 301 of the RMA:

   (a) Housing New Zealand Corporation;
   (b) Federated Farmers of New Zealand Incorporated;
   (c) Stevenson Group Limited;
   (d) Fulton Hogan Limited;
   (e) Brookby Quarries Limited;
   (f) New Zealand Transport Agency;
   (g) Winstone Aggregates;
   (h) Te Arai Group;
   (i) Transpower New Zealand Limited;
   (j) Environmental Defence Society Incorporated; and
   (k) Man O'War Farm Limited.
   (l) Counties Manukau District Health Board

5. The Court is making this order, such order being by consent, rather than representing a decision or determination on the merits. The Court understands for present purposes that:

   (a) All parties to the proceedings have executed the memorandum requesting this order; and

   (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the purpose and principles of the Resource Management Act 1991, including in particular, Part 2, as well as the LGATPA.

Order

6. Pursuant to the power vested in it under the Local Government (Auckland Transitional Provisions) Act 2010 the Court orders, by consent, that the Auckland Unitary Plan be amended by:

   (a) Including within the AUP maps, the identification of Significant Ecological Areas on certain sites, as shown in Appendix A.

   (b) Including a new activity for *Any vegetation alteration or removal within a Quarry Zone*, within an SEA, in Chapter E15, along with matters of discretion and assessment criteria related to this new activity, as shown in Appendix B.

7. These amended provisions be treated as an "alternative solution" for the purposes of sections 148 and 156 of the LGATPA, with this order triggering a right of appeal to the Environment Court under section 156(1) limited to the matters set out in paragraphs 6(a) and (b) of this order.

8. There is no order as to costs.

DATED at this day of 2017

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Justice of the High Court