

**BEFORE THE ENVIRONMENT COURT  
AT AUCKLAND**

**COPY**  
*of Final dated  
26/1/10*

**ENV-2009-AKL-000211**

**IN THE MATTER** of the Resource Management  
Act 1991

**AND**

**IN THE MATTER** of an appeal under section 120  
of the Act

**BETWEEN**

**DIRECTOR GENERAL OF  
CONSERVATION**

**Appellant**

**AND**

**NORTHLAND REGIONAL  
COUNCIL**

**Respondent**

*Continued over page...*

**JOINT MEMORANDUM SEEKING ORDERS BY CONSENT**  
Dated this                      day of January 2010

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**WEBB ROSS  
LAWYERS  
WHANGAREI**

Solicitor: **WAYNE D McKEAN**

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**ENV-2009-AKL-000213**

**IN THE MATTER** of the Resource Management  
Act 1991

**AND**

**IN THE MATTER** of an appeal under section 120  
of the Act

**BETWEEN** **FAR NORTH HOLDINGS  
LIMITED**

Appellant

**AND** **NORTHLAND REGIONAL  
COUNCIL**

First respondent

**AND** **FAR NORTH DISTRICT  
COUNCIL**

Second respondent

**MAY IT PLEASE THE COURT:**

1. There are two appeals arising out of the decisions and recommendations made by the Northland Regional Council in regard to applications for resource consents for redevelopment of the Paihia Waterfront (CON200605454(11-16) and CON200605454(17-40)). The applications are for coastal permits – both restricted coastal activities and regional consents.
2. There is one appeal against the decisions of the Far North District Council to grant land-use consent RC 2061019 for the redevelopment of the Paihia Waterfront.
3. Far North Holdings Limited is the applicant. The Northland Regional Council is a respondent in both appeals. The Far North District Council is a respondent in one appeal (ENV-2009-AKL-000213). The appellants are:
  - a. Director General of Conservation (ENV-2009-AKL-000211); and
  - b. Far North Holdings Limited (ENV-2009-AKL-000213).
4. There are a number of s274 parties. The s274 parties to ENV-2009-AKL-000211: Director-General of Conservation v Northland Regional Council are as follows:
  - a. Bay of Islands Coastal Watchdog Incorporated;
  - b. Lois and Bill Elliot;
  - c. Nga Whanau O Horotutu Me Taputaputa O Pahi (Emma Gibbs-Smith).
5. The s274 parties to ENV-2009-AKL-000213: Far North Holdings Limited v Northland Regional Council and the Far North District Council are as follows:
  - a. Paihia and Districts, Residents and Ratepayers Association Incorporated;
  - b. Business Paihia Incorporated;

- c. Bay of Islands Coastal Watchdog Incorporated;
- d. Lois and Bill Elliot.

**Director-General of Conservation appeal**

- 6. The Director-General of Conservation appeals against the following parts of the Northland Regional Council's recommendation to the Minister of Conservation:
  - a. The parts of the recommendation relating to the breakwaters;
  - b. The part of the recommendation relating to the dredging of a re-routed navigation channel;
  - c. The decision on the beach replenishment proposal, including the timing of bonding;
  - d. The part of the recommendation relating to the provision of esplanade strips on reclamations.

**Far North Holdings Limited appeal**

- 7. Far North Holdings Limited appeals against the following parts of the Northland Regional Council's decision:
  - a. The parts of the recommendation relating to the provision of a 10m wide esplanade strip;
  - b. The expiry date of a number of consents and coastal permits;
  - c. The decision on the beach replenishment and breakwater proposal, including the amount of the bond;
- 8. Far North Holdings Limited appeals against the following parts of the Far North District Council's decision:
  - a. The decision on the expiry date of consents contained in condition 32.

### Issues that have been resolved

9. The parties have entered into discussions and all issues have been resolved. Far North Holdings Limited and the Director-General of Conservation plan to enter into a separate side memorandum addressing the Northern Breakwater which the parties agree is not to be part of the Court orders.
10. The parties have agreed settlement on the basis set out in the draft consent order attached to this memorandum. Accordingly the parties ask that the Court make orders in terms of the attached draft.
11. The agreement reached amends Northland Regional Council recommendations and decisions relating to beach replenishment, dredging, the esplanade strips, monitoring, lapsing of consents and the bond payable.
12. The agreement reached changes a Northland Regional Council decision on beach replenishment (coastal permit 18) to a recommendation to the Minister of Conservation (recommendation 41). The parties agree that the beach replenishment is a restricted coastal activity.
13. The agreement reached changes a Far North District Council decision (condition 32). Condition 32 will be re-worded as follows:

*“This resource consent shall ~~expires~~ lapse 10 years after the commencement of the consent unless:*

  - (a) It is given effect to before the end of that period; or*
  - (b) Upon application made prior to the ~~expiry~~ lapsing date, the Council fixes a longer period”.*
14. The agreement reached amends Condition 25 of the Far North Council decision as a consequence of an amendment to Condition 3 of the Northland Regional Council recommendation to the Minister

of Conservation on an esplanade strip. Condition 25 will be reworded as follows:

~~“Public access shall be provided on a permanent and continuing basis to the open space and promenade areas shown on the plans. Open space covenants for public access and recreation purposes shall be created over Area C on ASL Plan PWD-1 to the satisfaction of Council or its duly designated officer.”~~

15. Attached and marked “A” is a new proposed recommendation and resource consents agreed to between the parties in relation to recommendations and decisions of the Northland Regional Council.
16. Counsel are satisfied that all matters proposed for the Court’s endorsement fall within the Court’s jurisdiction and conform to relevant requirements and objectives of the Resource Management Act including in particular Part Two.

Dated this                      day of January 2010

  
\_\_\_\_\_  
C JENKINS  
On behalf of the Director-General of Conservation


  
\_\_\_\_\_  
M NICHOLSON  
On behalf of Far North Holdings Limited

  
\_\_\_\_\_  
W McKEAN  
On behalf of the Northland Regional Council

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J BAGULEY  
Counsel for the Far North District Council

  
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M LEIDING  
For Bay of Islands Coastal Watchdog

  
\_\_\_\_\_

Lois & Bill Elliott

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EMMA GIBBS-SMITH  
For Nga Hwanau O Horotutu He Taputapu O Puhi

  
\_\_\_\_\_

D MULLAN  
For Paihia and Districts Residents and Ratepayers Association  
Incorporated

  
\_\_\_\_\_

S FOWLER  
For Business Paihia Incorporated

**ENV-2009-AKL-000211**

**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of an appeal under section 120 of the Act

**BETWEEN** **DIRECTOR-GENERAL OF CONSERVATION**

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**IN THE MATTER** of the Resource Management Act 1991

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**BETWEEN** **FAR NORTH HOLDINGS LIMITED**

**Appellant**

**AND** **NORTHLAND REGIONAL COUNCIL**

**First respondent**

**AND** **FAR NORTH DISTRICT COUNCIL**

**Second respondent**

**Before The Environment Court**

Environment Judge  
279 of the Act

sitting alone under section



## **In Chambers at AUCKLAND**

### **Consent Order**

#### **Introduction**

1. The Court has read and considered the appeal, the respondent's reply, and the memorandum of the parties dated                      January 2010.
2. Bay of Islands Coastal Watchdog Incorporated, Lois and Bill Elliot; Nga Whanau O Horotutu Me Taputaputa O Pahi (Emma Gibbs-Smith), Paihia and Districts, Residents and Ratepayers Association Incorporated and Business Paihia Incorporated have given notice of an intention to become a party under s274 and have signed the memorandum setting out the relief sought.
3. The Court is making this order under s279(1)(b) 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 fall with the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act, including in particular Part 2.

#### **Order**

4. Therefore the Court orders, by consent, that:
  - a. The recommendations and decisions of the Northland Regional Council relating to beach replenishment, dredging, the esplanade strips, monitoring, lapsing of consents and the bond payable as shown in the agreed recommendations attached and marked "A" replace the previous recommendations in consent CON200605454(11-16) and CON200605454(17-40).

- b. The decision of the Far North District Council to grant land use consent RC 2061019 to Far North Holdings Limited for the redevelopment of Paihia central waterfront is confirmed subject to the following amendment to condition 32:

*"This resource consent shall lapse 10 years after the commencement of the consent unless:*

*(a) It is given effect to before the end of that period; or*

*(b) Upon application made prior to the lapsing date, the Council fixes a longer period".*

- c. Condition 25 of the Far North District Council decision is amended and replaced with:

*"Open space covenants for public access and recreation purposes shall be created over Area C on ASL Plan PWD-1 to the satisfaction of Council or its duly designated officer."*

- d. There are no orders as to costs.

Dated this                    day of                    2010

Judge  
Environment Judge