

**IN THE ENVIRONMENT COURT  
AT WELLINGTON**

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

IN THE MATTER of appeals under cl 14 of Schedule 1 to  
the Resource Management Act 1991

BETWEEN HORTICULTURE NEW ZEALAND  
(ENV-2019-WLG-000103)

MINISTER OF CONSERVATION  
(ENV-2019-WLG-000106)

WELLINGTON FISH AND GAME  
COUNCIL  
(ENV-2019-WLG-000122)

ROYAL FOREST AND BIRD  
PROTECTION SOCIETY OF NEW  
ZEALAND INC  
(ENV-2019-WLG-000130)

Appellants

AND WELLINGTON REGIONAL  
COUNCIL

Respondent

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

Date of Order: 8 December 2021

Date of Issue: 8 December 2021

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**CONSENT ORDER**

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- A: Under s 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that the changes set out in **Appendix A** be made to the Proposed Plan.
- B: The parts of the appeals concerning Topic 39 – cultivation and break-feeding (Policies P100, P101 and Rules R94 and R95) are otherwise dismissed.
- C: Under s 285 of the Resource Management Act 1991, there is no order as to costs.

## **REASONS**

### **Introduction**

[1] The Court has read the notices of appeal and the memorandum of the parties received 11 August 2021.

### **Other relevant matters**

[2] Federated Farmers of New Zealand Inc and Wellington Water Ltd gave notice of an intention to become parties to the appeals under s 274 of the Act, and have signed the consent memorandum setting out the relief sought.

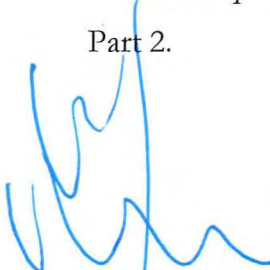
[3] Horticulture New Zealand, Kāinga Ora-Homes and Communities, Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa Inc Society and Wellington Fish and Game Council did not sign the consent memorandum, but in accordance with the Court's direction in its minute dated 28 April 2021, they are deemed to have accepted the consent memorandum and order. Beef + Lamb New Zealand advised it was not interested in this Topic.

[4] The Regional Council advised that s 274 parties CentrePort Ltd and CentrePort Properties Ltd, Fire and Emergency New Zealand, Porirua City Council and Kāpiti Coast District Council were supplied with the consent order in accordance with the Court's 4 June 2021 direction. They have confirmed they have no interest in the matter. In addition, s 274 party Kahungunu ki Wairarapa was given an

opportunity to comment on the consent memorandum. It did not respond, so it is deemed not to be interested in this Topic.

[5] 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 or are deemed to have done so in accordance with the Court's minute of 28 April 2021;
- (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.

  
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**B P Dwyer**  
Environment Judge



## Appendix A

### APPENDIX 1 - RELEVANT PROVISIONS (DECISIONS VERSION - WITH CLAUSE 16 CHANGES) - TOPIC 39

#### KEY:

Red track - changes made at mediation

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

#### 4.8.8 Livestock access and riparian management

Policy P100: Riparian margins for cultivation and break-feeding 

The overland flow of contaminants to ~~surface water bodies~~ from the use of land for ~~cultivation and break-feeding~~ shall be minimised through the use of riparian set-backs and ~~good management practices~~.

Policy P101: Management of riparian margins

~~In order to m~~ Maintain or restore water quality, aquatic ecosystem health, mahinga kai and natural character, and reduce the amount of contaminants sediments and nutrients entering surface water bodies, through the good management of riparian margins ~~shall be encouraged~~ including:

- (a) the exclusion or restricted access of livestock likely to affect riparian margins or water quality, ~~and~~
- (b) appropriate set-back distances from surface water bodies for some land use activities including earthworks, vegetation clearance, cultivation and break-feeding,
- (b)(c) encouraging the planting of appropriate riparian vegetation, and
- (e)(d) the management control of pest plants and animals.

## Chapter 5.4 Rules Land use

### 5.4.2 Cultivation and break-feeding

Rule R94: Cultivation ~~or tilling~~ of land – permitted activity

The use of land for **cultivation** and the associated discharge of a contaminant into water or onto land where a contaminant may enter water, is a permitted activity, provided the following conditions are met:

- (a) **cultivation on land with slope of more than 3 degrees** shall not occur within 5m of the bed of a surface water body or the coastal marine area, and or



- (b) cultivation on land with slope of 3 degrees or less shall not occur within 23m of the bed of a surface water body or the coastal marine area, and
- (c) the land between the cultivated land and the bed of a surface water body or the coastal marine area shall be in pasture or other groundcover vegetation throughout the period of cultivation; and
- (d) **cultivation** is undertaken along the contour of the land, where reasonably practicable, and
- (e) a sediment control measure or measures shall be used where a preferential flow path connects with a surface water body or the coastal marine area, and

Note – guidance on sediment control measures for cultivation is available in Section 4 of Horticulture NZ’s Erosion and Sediment Control Guidelines for Vegetable Production (June 2014)

- (f) where cultivation is within 5-10m (land with slope of more than 3 degrees) or 3-10m (land with slope of 3 degrees or less) of a natural wetland (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020), only if permitted by the Regulations, and
- (g) sediment laden any discharge surface water resulting from land subject to cultivation does not flow to a surface water body. shall not, outside the zone of reasonable mixing in a surface water body or the coastal marine area, result in any of the following effects in receiving waters;
  - (i) a conspicuous change in colour or visual clarity;
  - (ii) the rendering of fresh water unsuitable for consumption by animals;
  - (iii) any significant adverse effect on aquatic life.

Note:

Regulation 50 of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 controls vegetation clearance, earthworks or land disturbance (which includes cultivation) outside, but within 10m of a natural wetland for the purpose of arable or horticultural land use. For the avoidance of doubt, cultivation for this purpose is subject to Regulation 50.

### **Rule R95: Break-feeding – permitted activity**

The use of land for **break-feeding** and the associated discharge of a contaminant into water or onto land where a contaminant may enter water, is a permitted activity, provided the following conditions are met:

- (a) break-feeding on land with slope of more than 3 degrees shall not occur be within 5m of the bed of a surface water body or the coastal marine area, and
- (b) break-feeding on land with slope of 3 degrees or less shall not be within 3m of the bed of a surface water body or the coastal marine area, and
- (c) the land between the land used for break-feeding and the bed of a surface water body or the coastal marine area shall be in pasture or other groundcover vegetation, and not be grazed or cultivated throughout the period that the land adjacent is used for break-feeding, and
- (d) a sediment control measure or measures shall be used where a preferential flow path connects with a surface water body or the coastal marine area, and

Note – guidance on sediment control measures for break-feeding is available from <https://www.gw.govt.nz/good-management-practice/>

- (e) sediment-laden any discharge to a surface water body surface water resulting from land used for break-feeding does not flow to a surface water body. shall not, outside of the zone of reasonable mixing in a surface water body or the coastal marine area, result in any of the following effects in receiving waters:
  - (i) a conspicuous change in colour or visual clarity;
  - (ii) the rendering of fresh water unsuitable for consumption by animals;
  - (iii) any significant adverse effect on aquatic life.

Note:

The activity of break-feeding of winter forage crops and intensive winter grazing by livestock is also subject to;

- (i) the Resource Management (National Environmental Standards for Freshwater) Regulations 2020, with regulations to take effect on 01 May 2021; and

(ii) the Resource Management (Stock Exclusion) Regulations 2020, with regulations for break-feeding of cattle beef and deer to take effect on 03 September 2020 for new pastoral systems and 01 July 2023 for existing pastoral systems.

