BEFORE THE ENVIRONMENT COURT
AT WELLINGTON

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

IN THE MATTER	of appeals under cl 14 of Schedule 1 to Resource Management Act 1991
BETWEEN	HORTICULTURE NEW ZEALAND (ENV-2019-WLG-000103)
	MERIDIAN ENERGY LIMITED (ENV-2019-WLG-000115)
	WELLINGTON INTERNATIONAL AIRPORT LIMITED (ENV-2019-WLG-000117)
	CENTREPORT LIMITED and CENTREPORT PROPERTIES LIMITED (ENV-2019-WLG-000118)
	WELLINGTON WATER LIMITED (ENV-2019-WLG-000123)
	RANGITĀNE TŪ MAI RĀ TRUST AND RANGITĀNE O WAIRARAPA INC SOCIETY (ENV-2019-WLG-000125)
	ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED (ENV-2019-WLG-000130)

	NEW ZEALAND TRANSPORT AGENCY
	(ENV-2019-WLG-000131)
	Appellants
AND	WELLINGTON REGIONAL COUNCIL
	Respondent

Court:	Environment Judge B P Dwyer sitting alone pursuant to s 279 of the Act
Date of Order:	4 June 2021
Date of Issue:	4 June 2021

CONSENT ORDER

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

(a)   Policy P4 should not be reinstated.

(b)   The word "minimise" should be retained in the following provisions:

    i.   the definition of "efficient allocation";

    ii.   Objectives O41, O46 and O47;

    iii.   Policies P19, P31, P52, P53, P55, P56, P58, P72, P78, P79, P85, P87, P88, P91, P92, P94, P95, P98, P123, P124, P130, P136, P150 and P151;

    iv.   Rules R52, 52A, R80, R90, Section 5.5.4 (general conditions), R115 (with the proviso that "practicable" be deleted from clause (o) to instead read "all steps...", noting that Rule R115 will have further changes to it as a consequence of the Topic 47 outcome, which is a consent order yet to be filed - this consent order only

relates to how that provision uses "minimise" in R115(o)),

Section 5.7.2 (general conditions); and

v.   Method M14.

B: The appeals relating to "minimise" are otherwise dismissed.

C: Under s 285 of the Act, 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 24 May 2021.

Other relevant matters

[2]   The following persons gave notice of an intention to become parties to the appeal under s 274 of the Act, and have signed the consent memorandum setting out the relief sought:

- Federated Farmers of New Zealand;
- Minister of Conservation;
- PowerCo Ltd;
- Z Energy Ltd, BP Oil New Zealand Ltd, Mobil Oil New Zealand Ltd; and
- The Queen Elizabeth II National Trust.

Wellington Water Ltd, Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa Inc Society, Royal Forest and Bird Protection Society of New Zealand Inc, First Gas Ltd, Land Matters Ltd 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. Kāpiti Coast District Council and Porirua City Council did not attend

mediation for this matter, but have indicated they "abide the decision of the Court" in relation to this consent memorandum.

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

Key:

Red track – changes made by this consent order

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

Minimise	Reduce to the smallest amount reasonably practicable. Minimised, minimising and minimisation have the corresponding meaning.

Policy P30: Natural buffers   COASTAL

Provide for the **restoration** or enhancement of ~~The adverse effects of use and development on~~ natural features such as beaches, dunes or wetlands that buffer development from natural hazards ~~shall be~~ and ensure the adverse effects of use and development on them are ~~minimised~~ avoided, remedied or mitigated.

Policy P134: Public open space values and visual amenity   COASTAL

The adverse effects of new use and development on public open space and visual amenity viewed within, to and from the coastal marine area shall be ~~minimised~~ avoided, remedied or mitigated by:

(a)   having particular regard to any relevant provisions contained in any bordering territorial authorities' proposed and/or operative district ~~plan,~~; and

(b)   managing use and development to be of a scale, location, density and design which is compatible with the natural character, natural features and landscapes and amenity values of the coastal environment and the **functional needs, operational requirements** and locational constraints, the **Commercial Port Area** and the Wellington International Airport, and

(c)   taking account of the future need for public open space in the coastal marine area.

Rule R115: Culverts – permitted activity

The placement ~~or use~~ of a culvert that is fixed in, or on, the bed of a river

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excluding activities regulated by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 including any associated:

(a)   disturbance of the river or lake bed, and

(b)   deposition on the river or lake bed, and

(c)   diversion of water, and

(d)   discharge of sediment to water, and

(e)   temporary damming of water, and

(f)   reclamation associated with the culvert

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

(e)(g)   the activity shall comply with the beds of lakes and rivers general conditions specified above in Section 5.5.4. except condition (l) (not altering the natural course of the river), and

(f)(h)   the activity does not occur within a site identified in Schedule C (mana whenua), and

(g)(i)   where multiple culverts are placed side by side, the total cross-sectional area capacity of the multiple culverts shall not be less than that of a single culvert which complies with this rule, and

(h)(j)   the culvert, associated fill and culvert placement shall comply with the following dimensions:

(i)   a maximum culvert length of 20m; and

(ii)   for circular culverts a culvert diameter of 0.3m to 1.2m (inclusive), and

(iii)   for non-circular culverts a width and height of 0.3m to 1.2m each (inclusive), and

(iv)   a culvert diameter, or width that is at least as wide as the river bed at the point at which the culvert is installed (and which complied with (h)(ii) and (h)(iii) above)

(v)   a maximum fill height of 2m above the top of the culvert unless a spillway is constructed to enable the passage of a 5% annual exceedance probability (20 year return period) flood event without the fill being overtopped, and

(i)(k)   a minimum culvert installation depth below the bed of 20% of the width of the culvert, and

(i)(l)   the culvert shall be positioned so that its alignment and gradient are the same as the river, and

(k)(m)   the culvert shall be constructed to allow:

(i)   the flow from a 5% annual exceedance probability (20 year return period) flood event without overtopping, unless the overtopping flows to a specifically designed spillway, and

(ii)   the flow from a two year return period flood event without any flow impediment, and

(l)(n)   the culvert inlet and outlet shall be protected against erosion, and

(m)(o)   all ~~practicable~~ steps shall be taken to minimise the release of sediment during construction, and

(n)(p)   the culvert shall be constructed and maintained to avoid any aggradation or erosion of the bed, including any erosion at the inlet and outlet of the culvert, and

(o)(q)   the culvert shall be constructed and maintained to avoid causing any flooding on any neighbouring properties.