

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

LAND MATTERS LIMITED
(ENV-2019-WLG-000107)

TRANSPower NEW ZEALAND
LIMITED
(ENV-2019-WLG-000108)

PORIRUA CITY COUNCIL
(ENV-2019-WLG-000116)

WELLINGTON CITY COUNCIL
(ENV-2019-WLG-000119)

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

WELLINGTON WATER LIMITED
(ENV-2019-WLG-000123)

WINSTONE AGGREGATES
(ENV-2019-WLG-000124)

RANGITĀNE TŪ MAI RĀ TRUST
and RANGITĀNE O WAIRARAPA
INC SOCIETY

(ENV-2019-WLG-000125)



ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INC

(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 under s 279 of the
Act

Date of Order: 27 October 2021

Date of Issue: 27 October 2021

CONSENT ORDER

- 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 46 reclamation (Policy P102, Rules R127, R128, R127A, R127B and new definitions) 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 26 August 2021.

Other relevant matters

[2] The following persons 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:

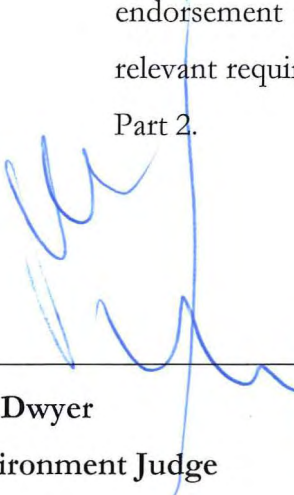
- Kāpiti Coast District Council;
- Masterton District Council;
- South Wairarapa District Council;
- Meridian Energy Ltd;
- First Gas Ltd; and
- Federated Farmers of New Zealand.

[3] Land Matters Ltd, Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa Inc Society, Wellington Fish and Game Council, Horticulture New Zealand, Wellington City Council and Queen Elizabeth II National Trust 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. Kāinga Ora – Homes and Communities confirmed it had no interest in this Topic.

[4] The Regional Council advised that s 274 parties CentrePort Ltd and CentrePort Properties Ltd, Kahungunu Ki Wairarapa and Fire and Emergency New Zealand were supplied with the consent order in accordance with the Court's 4 June 2021 direction. CentrePort Ltd and CentrePort Properties Ltd and Fire and Emergency New Zealand confirmed they have no interest in this Topic. As there was no response from Kahungunu Ki Wairarapa, it is assumed it has no interest in the matter.

[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.



B P Dwyer
Environment Judge



Appendix A

Key:

Red track -- changes made by this consent order

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



<u>Functional need (in the CMA)</u>	When an activity is dependent on having its location in the coastal marine area. or in the beds of lakes and rivers.
<u>Functional need (in beds of lakes and rivers and inland natural wetlands)</u>	<u>The need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.</u>
<u>Natural hazard works</u>	<p><u>Works for the purpose of removing material, such as trees, debris, and sediment, that:</u></p> <ul style="list-style-type: none"> (a) <u>is deposited as the result of a natural hazard, and</u> (b) <u>is causing, or is likely to cause, an immediate hazard to people or property.</u>
<u>Other infrastructure</u>	<u>Infrastructure, other than specified infrastructure, that was lawfully established before, and in place at, the close of 2 September 2020.</u>
<u>Specified Infrastructure</u>	<ul style="list-style-type: none"> (a) <u>infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002),</u> (b) <u>regionally significant infrastructure identified as such in a regional policy statement or regional plan,</u> (c) <u>any public flood control, flood protection, or drainage works carried out:</u> <ul style="list-style-type: none"> (i) <u>by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941, or</u> (ii) <u>for the purpose of drainage by drainage districts under the Land Drainage Act 1908.</u>
<u>Wetland utility structures</u>	<ul style="list-style-type: none"> (a) <u>a structure placed in or adjacent to a wetland whose purpose, in relation to the wetland, is recreation, education, conservation, restoration, or monitoring, and</u> (b) <u>for example, includes the following structures that are placed in or adjacent to a wetland for a purpose described in paragraph (a):</u> <ul style="list-style-type: none"> (i) <u>jetties,</u> (ii) <u>boardwalks and bridges connecting them,</u> (iii) <u>walking tracks and bridges connecting them,</u> (iv) <u>signs,</u> (v) <u>bird-watching hides,</u> (vi) <u>monitoring devices,</u> (vii) <u>maimai.</u>

Policy P102: ~~Reclamation or drainage~~ Loss of extent and values of the beds of lakes and rivers, and natural wetlands

The loss of extent and values ~~reclamation or drainage~~ of the beds of lakes and rivers and **natural wetlands**, including as a result of reclamation and drainage, shall be is avoided, ~~in particular those identified in Schedules A (outstanding water bodies) and C (mana-whenua)~~, except where ~~the reclamation or drainage is~~:

(a) in a natural inland wetland:

(i) the loss of extent or values arises from any of the following:

1. the customary harvest of food or resources undertaken in accordance with tikanga Māori, or
2. restoration activities, or
3. scientific research, or
4. the sustainable harvest of sphagnum moss, or
5. the construction or maintenance of wetland utility structures, or
6. the maintenance or operation of specified infrastructure, or other infrastructure, or
7. natural hazard works, and
8. where the activity involves reclamation or drainage there are no other practicable alternative methods of providing for the activity,

or

(ii) for specified infrastructure:

1. the activity, including any reclamation and drainage, is necessary for the construction or upgrade of specified infrastructure, and
2. the specified infrastructure will provide significant national or regional benefits, and
3. there is a functional need for the specified infrastructure in that location,

or

(b) in a river:

(i) there is a **functional need** for the activity in that location; and

(ii) **any reclamation** or drainage is:

1. **partial reclamation** of a river bank for the purposes of flood protection or erosion control, or
2. for the purposes of ~~necessary to enable~~ the development, operation, maintenance and **upgrade** of **regionally significant infrastructure**, or
3. associated with the creation of a new river bed and does not involve piping of the river, or
4. for the purpose of forming a reasonable crossing point, or
5. associated with the extraction of **significant mineral resources** from existing quarries, or
6. **partial reclamation** of a river bank for the purposes of local roads, and
7. in respect of (1) to (6) there are no other practicable alternative methods of providing for the activity,

or

(c) in a lake the **reclamation** or drainage is:

(i)(e) necessary to enable the development, operation, maintenance and **upgrade** of **regionally significant infrastructure**, or

(ii)(e) for the purpose of forming a reasonable crossing point, and

(iii)(f) in respect of (ii)(a) to (e)(b) there are no other practicable alternative methods of providing for the activity.

Note: The effects of any activity that requires a resource consent under this policy will be managed through applying the effects management hierarchy as set out in Policies P32, P39, P39A, or P45.

~~(a) partial reclamation of a river bank for the purposes of flood prevention or erosion control, or~~

~~(a) partial reclamation of a river bank for the purposes of flood prevention or erosion control, or~~

~~(b) associated with a growth and/or development framework or strategy approved by a local authority under the Local Government Act 2002, or~~

~~(d) — associated with the creation of a new river bed and does not involve piping of the river, and~~

~~(g) — the reclamation or drainage is of an ephemeral flow path.~~

Rule R127A: Reclamation of the bed of a river or lake outside of a site identified in Schedule A1 (outstanding rivers), Schedule A2 (outstanding lakes) or Schedule C (mana whenua) – discretionary activity

The reclamation of the bed, or any part of the bed, of a river or lake outside of a site identified in Schedule A1 (outstanding rivers), Schedule A2 (outstanding lakes) or Schedule C (mana whenua) except where the reclamation is associated with the piping of a river, unless this piping is necessary to enable the operation, maintenance or upgrade of existing regionally significant infrastructure, is a discretionary activity.

Note

Piping of a river does not include a culvert for the purpose of forming a reasonable crossing point. This is addressed by Rules R115 and R129.

Rule R127B: Reclamation associated with piping of a river outside of a site identified in Schedule A1 (outstanding rivers), or Schedule C (mana whenua) – non-complying activity

The reclamation of the bed, or any part of the bed, of a river outside of a site identified in Schedule A1 (outstanding rivers) or Schedule C (mana whenua), associated with piping of a river, that is not a discretionary activity under Rule R127A, is a non-complying activity.

Note

Piping of a river does not include a culvert for the purpose of forming a reasonable crossing point. This is addressed by Rules R115 and R129.

Rule R127: Reclamation of the bed of a river or lake inside a site identified in Schedule A1 (outstanding rivers), Schedule A2 (outstanding lakes) or Schedule C (mana whenua) – non-complying activity

The reclamation of the bed, or any part of the bed, of a river or lake:

- (a) in a site identified in Schedule A1 (outstanding rivers) or Schedule A2 (outstanding lakes) where the reclamation is necessary to enable the operation, maintenance or upgrade of regionally significant infrastructure, or

- (b) in a site identified in Schedule C (mana whenua) where the **reclamation** is necessary to enable the operation, maintenance or **upgrade of regionally significant infrastructure**, or
- (c) in a site identified in Schedule C (mana whenua) where the **reclamation** is only a partial **reclamation** for the purposes of flood protection or erosion control,

is a non-complying activity.

Note

Damming inside a site identified in Schedule A1 (outstanding lakes) or Schedule A2 (outstanding rivers) is a non-complying activity under Rule R126.

Rule R128: Reclamation of the bed of ~~an outstanding a river, or lake or Schedule C site,~~ and associated diversion inside a site identified in Schedule A1 (outstanding rivers), Schedule A2 (outstanding lakes) or Schedule C (mana whenua) – prohibited activity

The reclamation of the bed, or any part of the bed, of a river or lake:

- (a) in a ~~river~~ site identified in Schedule A1 (outstanding rivers), or
- (b) in a ~~lake~~ site identified in Schedule A2 (outstanding lakes), or
- (c) in a site identified in Schedule C (mana whenua),

~~and including~~ any associated diversion of water, is a prohibited activity, except as provided for by Rules R126 and Rule R127.

