

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)

PORIRUA CITY COUNCIL

(ENV-2019-WLG-000116)

WELLINGTON INTERNATIONAL
AIRPORT LTD

(ENV-2019-WLG-000117)

CENTREPORT LTD and
CENTREPORT PROPERTIES LTD

(ENV-2019-WLG-118)

WELLINGTON WATER LTD

(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

(ENV-2019-WLG-000130)

FIRST GAS LTD

(ENV-2019-WLG-000132)

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

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 16: Natural hazards (Objectives O20 and O21 Policies P27, P27A, P28 and P29, Rules R165 and R165A and related 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 5 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;
- New Zealand Transport Agency;
- Masterton District Council;
- South Wairarapa District Council;
- Powerco Ltd;
- Z Energy Ltd, BP Oil New Zealand Ltd and Mobil Oil New Zealand Ltd; and
- Queen Elizabeth the Second National Trust.

[3] Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa Inc Society, Wellington Fish and Game Council, Kāinga Ora-Homes and Communities, First Gas Ltd, and Heritage New Zealand Pouhere Taonga 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. KiviRail Holdings Ltd, Federated Farmers of New Zealand Inc and Fire and Emergency New Zealand confirmed they have no interest in this Topic.

[4] In addition, s 274 party Land Matters Ltd was supplied with the consent order. As there was no response within five working days, 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


<p>Hazard <u>risk</u> management strategy</p>	<p>A coherent, integrated framework for the management of a hazard <u>risk</u> to avoid increasing, or reducing if practicable, overall risk of social, environmental and economic harm and adverse effects from natural hazards. It is; normally developed by a local authority or appropriately qualified agency, and including some or all of the following elements; hazard and hazard <u>risk</u> identification, impact assessment, potential mitigation works (costs/impacts/maintenance), assessment of environmental effects, assessment of alternate options, cost-benefit analysis, budget allocation; community engagement and implementation plan.</p> <p><u>The scale of a hazard risk management strategy should reflect the scale of the proposed development or activity.</u></p>
<p>High <u>hazard risk</u> areas (also known as areas at high risk from natural hazards)</p>	<p>For the purposes of the Plan, all areas in the coastal marine area and the beds of lakes and rivers are high <u>hazard risk</u> areas.</p>
<p>Risk-based approach (natural hazards)</p>	<p>A risk-based approach takes account of the intended purpose of a development, the likelihood of natural hazard events occurring the vulnerability and exposure of the site, use or development, the severity and consequences of potential hazard events and the costs and benefits of acting or not acting. An assessment is required as part of a resource consent application in high risk areas and needs to be commensurate with the size and scale of the use or development. The hazard risk can be evaluated on a scale</p>



	<p>from low to high or acceptable to intolerable, assessed on the basis of:</p> <ul style="list-style-type: none"> (a) the scale, engineering design and intended life and use for the development, and (b) the likelihood, frequency and magnitude of natural hazard events that could potentially affect the site or development, and (c) the vulnerability and exposure of <u>both the development and areas around the development</u> to natural hazards, and (d) the severity of any physical, social, economic and environmental consequences that could arise from natural hazard events affecting <u>both the site or development and areas around the site or development</u>, and (e) <u>the costs and benefits of acting or not acting.</u> <p><u>An assessment using the risk-based approach is required as part of a resource consent application in high hazard areas and needs to be commensurate with the size and scale of the use or development.</u></p> <p><i>Note</i></p> <p><u>Methods for evaluating hazard risk are described in Risk-based land use planning for natural hazard risk reduction (September 2013) published by GNS Science and the Risk based approach to natural hazards under the RMA (June 2016) prepared for Ministry for the Environment by Tonkin & Taylor.</u></p> <p><u>A risk-based approach may be informed by any consultation undertaken to understand the community's tolerance of risk, now and in the future, including the ability and willingness to prepare for and adapt to risk, and respond to a risk event.</u></p>
<p><u>Seawall</u></p>	<p><u>A hard inflexible structure between the land-water interface along river mouths, shorelines, or lake edges made up of structural materials including concrete, steel, timber or rock. A seawall is a structure or modification to the seabed, foreshore or coastal land and includes any integrated rock revetments, groynes or bulkheads, with the primary purpose or effect of protecting an activity from a coastal hazard, including erosion.</u></p>

Objective O20 

The hazard risk, and residual hazard risk, ~~and adverse effects~~ from natural hazards and adverse effects of climate change, on people, the community, the environment and infrastructure are acceptable.

Objective O21 

Inappropriate use and development in **high hazard risk hazard** areas is avoided.

Policy P27: High **hazard risk hazard** areas 

Use and development, including hazard mitigation methods, in on or over high hazard risk areas shall be ~~avoided except where managed to ensure that:~~

- (a) they have a **functional need** or **operational requirement** or there is no practicable alternative to be so located, and
- (b) ~~an overall increase in risk of social, environmental, and economic harm is avoided, and~~
- (b) (c) the hazard risk to the development and/or residual hazard risk to the development after hazard mitigation measures, assessed using a **risk-based approach**, is acceptable or as low as reasonably practicable, recognising that in some instances an increase in risk to the development may be appropriate, and
- (e) (d) that the development does not cause or exacerbate ~~natural~~ hazard risk in other areas unless effects are avoided, remedied or mitigated in accordance with a hazard risk management strategy, and
- (d) (e) ~~interference with~~ adverse effects on natural processes (coastal, riverine and lake fluvial and lacustrine processes) is ~~are~~ minimised avoided, remedied, or mitigated, and
- (e) (f) natural cycles of erosion and accretion and the potential for natural features to fluctuate in position over time, including movements due to climate change and sea level rise over at least the next 100 years, are taken into account.

Policy P27A: Diversion of flood waters in a floodplain

The diversion of flood waters from any river or lake resulting from earthworks or the erection, placement or extension of a structure within stopbanks or through the creation of new stopbanks shall be managed to ensure:

- (a) any increase in **hazard risk** or **residual hazard risk** in other areas as a result of the diversion is avoided or mitigated, and
- (b) any adverse effects on natural processes are avoided, remedied, or mitigated, and
- (c) natural cycles of erosion and accretion and the potential for natural features to fluctuate in position over time, including movements due to climate change over at least the next 100 years, are taken into account.

Policy P28: Hazard mitigation measures



Hard hazard engineering mitigation and protection methods shall be ~~discouraged~~ ~~avoided~~ except where it is necessary to protect ~~existing development from unacceptable hazard risk, assessed using the risk-based approach;~~

- (a) existing, or upgrades to, infrastructure including **regionally significant infrastructure**, or
- (b) new **regionally significant infrastructure**, or
- (c) significant existing development, and

in respect of (a), (b) and (c):

- (d) there is no reasonable or practicable alternatives to mitigate **hazard risk** and **residual hazard risk**, and
- (e) the mitigation and protection methods are suitably located and designed, and where appropriate certified by a qualified, professional engineer, and
- (f) the use of **soft engineering** options are incorporated and used, where appropriate,

and either:

- (ag) any adverse effects are no more than minor, or
- (bh) where the environmental effects are more than minor the works form part of a **hazard risk management strategy**.

~~the works either form part of a **hazard management strategy** or the environmental effects are considered to be no more than minor.~~


Policy P29: Effects of Climate change 

Particular regard shall be given to the potential for climate change

- (a) to threaten biodiversity, aquatic ecosystem health and mahinga kai, or
- (b) to cause or exacerbate natural hazard events over at least the next 100 years that could adversely affect use and development

including as a result of:

- (c) ~~(a)~~ coastal erosion and inundation (storm surge), and
- (d) ~~(b)~~ river and lake flooding and erosion, or aggradation, decreased minimum flows, and
- (e) ~~(e)~~ stormwater ponding and impeded drainage, and
- (f) ~~(d)~~ relative sea level rise, using the best available guidance-reliable scientific data for the Wellington region.

Rule R165: Additions or alterations to, or replacements of, existing seawalls outside Schedule C, Schedule F4 and Schedule F5 sites (excluding scheduled kelp beds* and subtidal rocky reefs to the west and south of Wellington International Airport) – controlled activity 

The addition or alteration to, or replacements of, an existing **seawall** and the associated use of the addition in the coastal marine area, including any associated:

- (a) occupation of space in the **common marine and coastal area**, and
- (b) disturbance of the foreshore or seabed, and
- (c) deposition in, on or under the foreshore or seabed, and
- (d) discharge of contaminants, and
- (e) diversion of open coastal water

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

- (f) any addition shall add no more than 5m in horizontal projection at the ends of the existing structure parallel to the shoreline and 1m in vertical projection to the structure as it existed on the date of 31 July 2015 public notification of the Proposed Natural Resources Plan (31.07.2015),
- (g) the structure is not inside a site or habitat identified in Schedule F5 (coastal habitats) (other than those scheduled kelp beds* and


subtidal rocky reefs to the west and south of Wellington International Airport), Schedule C (mana whenua), or Schedule F4 (coastal sites).

- (h) the addition shall not extend any further seaward than the existing seawall, and
- (i) the activity shall comply with the coastal management general conditions specified above in Section 5.7.2.

Matters of control

1. Effects on public access
2. Design, design life and construction
3. Effects on coastal **natural processes** including effects on shoreline stability in the vicinity and adjacent areas
4. Effects on a site or habitat identified in Schedule F2(c) (indigenous birds), or those scheduled kelp beds* and subtidal rocky reefs to the west and south of Wellington International Airport, or on an adjacent site or habitat identified in Schedule C (mana whenua), Schedule F4 (coastal sites), Schedule F5 (coastal habitats), Schedule J (geological features) ~~or Schedule K (surf breaks)~~
5. Effects of coastal erosion and inundation (storm surge) on the seawall
6. Effects on the heritage values of structures identified in Schedule E1 (heritage structures), Schedule E2 (wharves and boatsheds) or Schedule E3 (navigational aids)

Note: *This exclusion does not apply to Giant kelp Macrocytis beds

Rule R165A: Additions or alterations to, or replacements of, existing seawalls inside Schedule C, Schedule F4 and Schedule F5 sites (excluding scheduled kelp beds* and subtidal rocky reefs to the west and south of Wellington International Airport) – restricted discretionary activity 

The addition or alteration to, or replacements of, an existing seawall inside a site or habitat identified in Schedule C (mana whenua), Schedule F4 (coastal sites), Schedule F5 (coastal habitats) (excluding scheduled kelp beds* and subtidal rocky reefs to the west and south of Wellington International Airport), and the associated use of the addition in the coastal marine area, including any associated:

- (a) occupation of space in the common marine and coastal area, and
- (b) disturbance of the foreshore or seabed, and

- (c) deposition in, on or under the foreshore or seabed, and
- (d) discharge of contaminants, and
- (e) diversion of open coastal water

that is not controlled by R165, discretionary under R166 or non-complying under R167, is a restricted discretionary activity, provided the following conditions are met:

- (f) any addition shall add no more than 5m in horizontal projection at the ends of the existing structure parallel to the shoreline and 1m in vertical projection to the structure as it existed on the date of 31 July 2015,
- (g) the addition shall not extend any further seaward than the existing seawall, and
- (h) the activity shall comply with the coastal management general conditions specified above in Section 5.7.2.

Matters of discretion

1. Effects on public access
2. Design, design life and construction
3. Effects on coastal **natural processes** including effects on shoreline stability in the vicinity and adjacent areas
4. Effects of coastal erosion and inundation (**storm surge**) on the **seawall**
5. Effects on a site or habitat identified in Schedule C (mana whenua), Schedule F4 (coastal sites), Schedule F5 (coastal habitats), Schedule J (geological features).

Note: *This exclusion does not apply to Giant kelp Macrocyctis beds

