

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)
D RIDDIFORD
(ENV-2019-WLG-000109)
CARTERTON DISTRICT COUNCIL
(ENV-2019-WLG-000112)
WELLINGTON FISH AND GAME
COUNCIL
(ENV-2019-WLG-000122)
RANGITĀNE TŪ MAI RĀ TRUST
and RANGITĀNE O WAIRARAPA
INC SOCIETY
(ENV-2019-WLG-000125)
FEDERATED FARMERS OF NEW
ZEALAND INC
(ENV-2019-WLG-000126)
ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INC
(ENV-2019-WLG-000130)
BEEF + LAMB NEW ZEALAND
LTD
(ENV-2019-WLG-000133)

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 38 - Land use in riparian margins and Stock access – Categories 1 and 2 surface water bodies, Policy P99, Policy 101, Chapter 5.4 Land Use Rules, and Rules R97, R98, R98A and R106 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 7 October 2021.

Other relevant matters

[2] A and J Boyne 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] Royal Forest and Bird Protection Society of New Zealand, Daniel Riddiford, Rangitāne Tū Mai Rā Trust And Rangitāne o Wairarapa Inc Society, Wellington Fish

and Game Council, Carterton District Council, A & B Mathewson, Horticulture New Zealand, Kāinga Ora – Homes and Communalities, K Reedy, P & C Cutfield, N & H Diederich, S Beveridge and E Cates, Masterton District Council, South Wairarapa District Council and Kahungunu ki Wairarapa 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.

[4] CentrePort Ltd and CentrePort Properties Ltd, Wellington Water Ltd and Fire and Emergency New Zealand confirmed they have no interest in this Topic.

[5] In addition, the Regional Council advised that 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.

[6] 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



KEY:

Red track - changes made at mediation

Red track grey highlight - changes made in reliance of section 44 and clause 16

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

Purple track – further clause 16 changes

APPENDIX A - RELEVANT PROVISIONS - (DECISIONS VERSION - WITH CLAUSE 16 CHANGES) - TOPIC 38 – LAND USE IN RIPARIAN MARGINS AND STOCK ACCESS

DEFINITIONS

<p>Category 1 surface water body</p>	<p>Category 1 surface water body includes, and is limited to <u>the following parts of a surface water body or the coastal marine area:</u></p> <ul style="list-style-type: none">(a) <u>outstanding water bodies identified in Schedule A (outstanding water bodies), and</u>(b) sites with significant mana whenua values identified in Schedule C (mana whenua), and(c) inanga spawning habitat identified in Schedule F1b (inanga spawning habitats), and(d) habitats for indigenous birds in rivers identified in Schedule F2a (birds-rivers), <u>and estuaries identified in Schedule F4 (coastal sites), and</u>(e) significant natural wetlands greater than 0.1ha identified in Schedule F3 (<u>identified significant natural wetlands</u>), and(f) <u>estuaries identified in Schedule F4 (coastal sites), and outstanding water bodies identified in Schedule A (outstanding water bodies), and</u>(g) within 1,000m upstream of a surface water abstraction site for a community drinking water supply shown on Map 26.
<p>Category 2 surface water body</p>	<p>Category 2 surface water body includes, and is limited to <u>the following parts of a surface water body or the coastal marine area:</u></p> <ul style="list-style-type: none">(a) estuaries other than those identified in Schedule F4 (coastal sites), and(b) within the mapped lowland areas shown on Map 29, rivers that have an active bed width of 1m or wider, and drains greater than 1m wide, and water races, and any<ul style="list-style-type: none">(i) <u>Schedule F1 river,</u>



	<p><u>(ii) other rivers that have an active bed width of 1m or wider, and</u></p> <p><u>(iii) water races, and</u></p> <p>(c) rivers and streams important to trout spawning habitat identified in Schedule I (trout spawning habitat), and</p> <p>(d) natural lakes,</p> <p>but excludes any <u>part of a surface water body or the coastal marine area</u> that meets the definition of a Category 1 surface water body.</p>
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4.8.8 Livestock access and riparian management

Policy P99: Livestock access to a surface water body and the coastal marine area 

Degradation of water quality and aquatic ecosystems (including plants and habitats in, on or under the bed) in a surface water bodies or the coastal marine area from sSedimentation, the direct discharge of contaminants, or damage to the beds or banks, and degradation of aquatic ecosystems disturbance to the banks and beds resulting from livestock access is avoided, remedied or mitigated by shall be managed to:

- ~~(a) protect aquatic habitat and water quality, and~~
- ~~(a) protect the significant values of excluding livestock from Category 1 surface water bodies, by excluding livestock from these water bodies and~~
- ~~(b) outside a Category 1 surface water body. Where livestock are not excluded from the bed (including the banks) of surface water bodies, the adverse effects of access are avoided, remedied or mitigated by methods, such as, but not limited to, restricting the location and frequency of access of some types of livestock to Category 2 surface water bodies, and~~
- ~~(c) limiting adverse effects of livestock access in all surface water bodies and the coastal marine area.~~
- ~~(d) restricting the number of animals, and~~
- ~~(e) limiting the density, frequency and duration of access, and~~
- ~~(f) providing sufficient alternative sources of drinking water, shade and grazing outside of the banks and beds.~~

Policy P101: Management of riparian margins



In order to 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,
- (b) appropriate set-back distances from surface water bodies for some land use activities,
- (c) encouraging the planting of appropriate riparian vegetation, and
- (d) the management control of pest plants and animals.

5.4.3 Livestock access

Note

Any restrictions in this Plan on livestock access to a water race do not limit the use of the water race for the purpose of providing drinking water for stock, provided livestock do not enter the water race.

Livestock access to, and exclusion from, a surface water body is also subject to:

- (i) the Resource Management (National Environmental Standards for Freshwater) Regulations 2020, with regulations to take effect on 1 May 2021; and
- (ii) the Resource Management (Stock Exclusion) Regulations 2020, with regulations to take effect on 3 September 2020 for new pastoral systems and from 1 July 2023 and 1 July 2025 for existing pastoral systems.

Rule R97: Livestock access to a surface water body or the coastal marine area – permitted activity

COASTAL

Livestock access to a surface water body or the coastal marine area, and any associated discharge to water, is a permitted activity provided the following conditions are met:

- (a) From 31 July 2019, there shall be no livestock access to a Category 1 surface water body, except that sheep may have access to a significant natural wetland listed in Schedule F3 (significant wetlands), if authorised by a resource consent pursuant to Rule R106.
- (b) From 31 July 2022, access by:
 - (i) cattle, farmed deer or farmed pigs livestock to a Category 2 surface water body (except for a Schedule F1 river that is less than 1m wide), and

- (ii) dairy cows to a river that is not a **Category 1 or Category 2 surface water body** and has an **active bed** width of 1-metre or wider **at the location of the access,**

may occur provided: **the access is only at a stock crossing point** and the cattle (including dairy cows), farmed deer or farmed pigs;

- (iii) are supervised and actively driven across the water body; and

- (iv) do not cross the same water body more than twice in any month.

~~a. there is no surface water present at the time and location of the access; or~~

~~b. if there is surface water present, the access is only at a **stock crossing point** that complies with condition (d).~~

(c) From 1 July 2025, access by:

- (i) cattle, farmed deer or farmed pigs to a **Category 2 surface water body** which is a **Schedule F1 river** that is less than 1m wide, and

- (ii) cattle, farmed deer or farmed pigs to a **Category 2 surface water body** which is within that part of the **Huangarua River catchment** identified in **Schedule I** (trout spawning habitat), during the trout spawning season (31 May to 31 August),

may occur provided the access is only at a **stock crossing point** and the cattle (including dairy cows), farmed deer or farmed pigs;

- (a) are supervised and actively driven across the water body; and

- (b) do not cross the same water body more than twice in any month.

(e) (d) Access by **livestock, excluding sheep**, to all **surface water bodies** or the coastal marine area shall not result in:

- (i) a **conspicuous change in colour or visual clarity of water**;
- a. in a site with significant **mana whenua** values identified in **Schedule C** (mana whenua); or
 - b. in a **natural wetland**, lake, estuary or the coastal marine area; or
 - c. beyond the **zone of reasonable mixing** in a river; or

~~(ii) pugging or de-vegetation that exposes bare earth; or~~

~~(iii) cattle, farmed deer or farmed pigs being left unattended in, or not being actively moved through, a natural wetland, estuary or the coastal marine area.~~

~~(d) A stock crossing point on a river, drain, water race or lake shall:~~

~~(i) be not more than 20m wide, and~~

~~(ii) be perpendicular to the direction of water flow, except where this is impracticable owing to the natural contours of the bed or adjoining land, and~~

~~(iii) align with a constructed track or raceway on either side of the stock crossing point, and~~

~~(iv) not be used to allow cattle, farmed deer or farmed pigs to be left unattended in, or not actively moved through, the water body, and~~

~~(v) not be used more frequently than twice in any month.~~

(ii) more than minor damage in a natural wetland provided that;

a. the natural wetland is 0.05 ha or more and is not identified as a Category 1 surface water body; or

b. stock exclusion from the natural wetland is not required by the Resource Management (Stock Exclusion) Regulations 2020; and

(iii) more than minor damage to the water body's bed and banks, including through bank collapse, except at a stock crossing point where livestock are supervised and actively driven across the water body.

(e) In the coastal marine area:

(i) access by beef cattle shall not result in more than minor damage; and

(ii) beef cattle shall be supervised in, or driven across, land below mean high water springs in a Schedule F5 (coastal habitats) or Schedule J (geological features) site or habitat; and

(iii) cattle (other than beef cattle), farmed deer or farmed pigs shall be supervised in, or driven across, land below mean high water springs; and

(iv) where the quality of water in the coastal environment has deteriorated so that it is having a significant adverse effect on ecosystems, natural habitats, or water-based recreational activities, or is restricting existing uses, livestock access to the coastal marine area, adjoining intertidal areas and other water bodies and riparian margins in the coastal environment must


be expressly allowed for in a Freshwater Farm Plan certified under section 217G of the RMA.

Note

Fencing is one method of managing livestock access and fencing can be either permanent or temporary as long as it achieves the conditions of the rule.

Rule R98: Livestock access to ~~the beds of a~~ surface water body~~ies~~ or the coastal marine area (excluding any Category 1 surface water body) – discretionary activity 

The use and disturbance of the bed, including the banks, or other land in a surface water body or the coastal marine area, and any associated discharge to water, ~~land for access by any from~~ livestock access to the bed (including the banks), and the disturbance of the bed and discharge of sediment and excreta to a surface water body that does not comply with is not permitted by condition (b), (c) (d) or (e) of Rule R97, is a discretionary activity.

Rule R98A: Livestock access to any **Category 1 surface water body** – non-complying activity 

The use and disturbance of the bed, including the banks, or other land in a surface water body or the coastal marine area, and any associated discharge to water, from livestock access that does not comply with condition (a) of Rule R97, is a non-complying activity.

Rule R106: Restoration of **significant natural** wetlands and outstanding natural wetlands – controlled activity 

Activities Livestock access for the purpose of the restoration of restoring the indigenous biodiversity of a ~~natural wetland~~ **significant natural wetland** or an **outstanding natural wetland** identified in Schedule A3 (outstanding wetlands), ~~that are not permitted by Rules R104 and R105, are unless prevented by the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 or the Resource Management (Stock Exclusion) Regulations 2020, is a controlled activity~~iesy provided the following condition is met:

- (a) the activity is ~~activities are~~ stipulated in and carried out in accordance with an approved wetland restoration management plan.

Matters of control

1. Type, frequency, density and timing of **livestock** access to, and (where there is no practicable alternative) the limited location of fencing within, the **significant natural wetland** or **outstanding natural wetland.**

- ~~2. Removal, damage or modification of indigenous vegetation.~~

- ~~3. Changes to the hydrology of the significant natural wetland or outstanding natural wetland~~
- ~~4. Species for planting~~
- ~~5. Amount of disturbance and deposition that may occur~~
- ~~6. Timing of activities~~
- ~~7. Management of sites with significant mana whenua values in any wetland significant natural wetland or outstanding natural wetland~~
- ~~8. Ongoing significant natural wetland or outstanding natural wetland management~~
- ~~9. Methods of pest control including the use of aerial spraying.~~

Notification

In respect of Rule R106, applications are precluded from public notification (unless special circumstances apply).

Waiver of consent fees

To encourage and support the **restoration** of wetlands, the Wellington Regional Council will waive resource consent fees issued for this rule at its discretion.

