

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
the Resource Management Act 1991

BETWEEN

PORIRUA CITY COUNCIL

(ENV-2019-WLG-000116)

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)

Appellants

AND

WELLINGTON REGIONAL
COUNCIL

Respondent

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

Date of Order: 9 June 2021

Date of Issue: 9 June 2021

CONSENT ORDER



PORIRUA CITY COUNCIL v WELLINGTON REGIONAL COUNCIL

- A: Under s 279(1)(b) of the Act, the Environment Court orders, by consent, that the changes set out in **Appendix A** be made to the Proposed Plan.
- B: The appeal points relating to Coastal Management General Conditions 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 27 May 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:

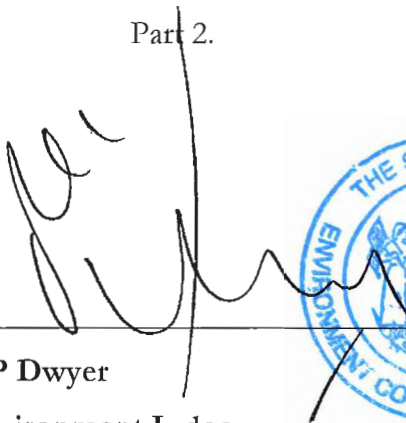
- Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa Inc Society;
- Royal Forest and Bird Protection Society of New Zealand Inc;
- Kāpiti Coast District Council;
- Minister of Conservation; and
- Kāinga Ora Homes and Communities.

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, it is deemed to have accepted the consent memorandum and order.

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 either 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

5.7.2 Coastal management general conditions

Coastal management general conditions



Coastal management general conditions for activities in the coastal marine area that apply when specified in a rule.

Disturbance

- (a) the coastal marine area, including river mouths shall not be disturbed to an extent greater than that required to undertake the activity, and
- (b) there is no disturbance of the foreshore or seabed to a depth greater than 0.5m below the seabed or foreshore within the Hutt Valley Aquifer Zone shown on Map 30, and unless the activity is for the replacement of an existing submarine telecommunications cable, in which case the depth of disturbance must be no greater than 2.0m, and
- (c) all machinery, equipment and materials used for the activity shall be removed from the foreshore or seabed at the completion of the activity, and

Discharges

- (d) There shall be no discharge of contaminants (excluding sediment which is addressed by clause (e)) to water or the foreshore or seabed, except where the minor discharge is permitted by another rule in this Plan, and
- (e) The discharge of sediment to water from an activity in, on, over or under the foreshore or seabed in the coastal marine area shall meet the following:
 - (i) the release of sediment associated with the activity shall not be undertaken for more than five consecutive days, and for more than 12 hours per day, and
 - (ii) it shall not, after reasonable mixing, cause any conspicuous change in the colour of the water in the receiving water or any

change in horizontal visibility greater than 30% more than 24 hours after the completion of the activity, and

Erosion and scouring

- (f) The activity shall not result in erosion or scouring of river banks (that are part of the coastal marine area) and shall not result in flooding of a neighbouring **property**, and

Diversion

- (g) No structure shall alter the natural course of a river (that is part of the coastal marine area), including any diversion of open coastal water during flood events, and

Note

Tree planting or **vegetative bank edge protection** works that are limited to the banks of a river and do not extend into the active channel are not considered to alter the course of the river for the purpose of this condition.

- (h) Any diversion of open coastal water undertaken as part of an activity shall only be temporary and for a period no longer than that required to complete the activity. ~~All work shall be contained within the coastal marine area, and a~~Any diversion channel required must have sufficient capacity to carry the same flow as the original channel, so as not to cause flooding or erosion of any neighbouring **property**, and

Dumping

- (i) Demolition materials shall not be used for any purpose in the coastal marine area, and

Fish passage

- (j) Any structure constructed in the coastal marine area shall ~~not impede~~ be carried out in a manner to ensure that fish passage between coastal and fresh water habitat (including between fresh water and coastal water) at all times, unless a temporary restriction is required for construction activities is maintained at all times, except:

(i) as required for the operation of backflow devices during heavy rainfall events, or

(ii) a temporary restriction of no more than 48 hours required for construction or maintenance activities, provided any full obstruction is outside the months of August to December inclusive, and

Note Any activity that results in fish passage being impeded may require approval from the Director General of Conservation under the Freshwater Fisheries Regulations 1983.

Inanga spawning

- (k) In any part of the coastal marine area (including any part of a river in the coastal marine area) identified as inanga spawning habitat in Schedule F1b (inanga spawning habitat), no disturbance of or deposition in, on or under the foreshore or seabed shall occur and no diversion of open coastal water or sediment discharge shall occur between 1 ~~March~~ January and 31 May, except that material accumulated at the outlet of a stormwater discharge pipe may be removed between 1 January and 1 March, so long as there is no associated trimming or removal of vegetation (including weeds) on the bed or banks, and

Design and maintenance of structures

- (l) Any structure (other than stormwater network structures) shall be designed and maintained so that it does not reduce the ability of the river (that is part of the coastal marine area) to convey flood flows, including the management of flood debris accumulated against the structure, and

Refuelling

- (m) No refuelling or cleaning of equipment shall take place on the foreshore or seabed in the coastal marine area (excluding vessels in the **Commercial Port Area**), and fuel storage shall not occur at a location where fuel can enter coastal water, and

Lighting and glare

- (n) All exterior lighting shall be managed to avoid the spill of light or glare that is:
- (i) a hazard to traffic safety on streets outside the coastal marine area, and
 - (ii) a hazard to navigation in the coastal marine area,
- unless the lighting is necessary for public safety reasons or **operational requirements**, and

Noise in the coastal marine area

- (o) Noise from activities located outside the **Commercial Port Area** shown on Map 32, Map 33 and Map 34 and the **Lambton Harbour Area** (Northern Zone) shown on Map 32 in the coastal marine area shall meet the following noise standards:
- (i) the activity shall not cause excessive noise (defined in section 326 of the Resource Management Act 1991) outside the coastal marine area, and
 - (ii) between the hours of 7.00am and 11.00pm, the noise level (Leq) measured at any point on the nearest Residential Area boundary shall not exceed 55dB(A), and
 - (iii) between the hours of 11.00pm and 7.00am, the noise level (Leq) measured at any point on the nearest Residential Area boundary shall not exceed 45dB(A), and
 - (iv) single events of noise shall not exceed an Lmax sound level of 75dB(A), and
 - (v) noise shall be measured and assessed in accordance with *NZS 6802:2008 Acoustics – Environmental Noise*, and
 - (vi) any construction activities shall meet standards specified in Table 1 of *NZS 6803:1999 Acoustics – Construction Noise*, and
 - (vii) helicopter landing areas shall meet the standards specified for residential areas in Table 1 of *NZS 6807:1994 Noise management and land use planning for helicopter landing areas*, and

conditions (i) to (iv) shall not apply to the following:

- (viii) noise generated by navigational aids, safety signals, warning devices, or emergency pressure relief valves, or
- (ix) noise generated by emergency work arising from the need to protect life or limb or prevent loss or serious damage to property or minimise or prevent environmental damage, or
- (x) commercial firework displays, or
- (xi) noise generated by overflying aircraft, and

conditions (ii) to (iv) shall not apply to temporary military training activities undertaken for defence purposes. Noise emission as a result of temporary military training measured on a line 20m from and parallel to the facade of any dwelling used for accommodation

or the legal boundary where this is closer to the dwelling or building shall meet the following:

(~~xii~~) (xii) for all activities excluding the use of explosives:

Time (any day)	Limits (dB(A))	
	L _{eq}	L _{max}
0000 – 0630	45	75
0630 – 0730	60	75
0730 – 1800	75	90
1800 – 2000	70	85
2000 – 2400	45	75

(~~xii~~) (xiii) for activities involving the use of explosives: 122dB(C) during daylight hours, and

(p) Noise from **port-related activities** located within the **Commercial Port Area** shown on Map 32, Map 33 and Map 34 and the **Lambton Harbour Area** (Northern Zone) shown on Map 32 shall comply with the following noise standards:

- (i) the activity shall not cause excessive noise (defined in section 326 of the Resource Management Act 1991) outside the coastal marine area, and
- (ii) noise shall be measured in accordance with the requirements of *NZS 6801:2008 Acoustics – Measurement of environmental sound* and *NZS 6809:1999 Port noise management and land use planning*, and
- (iii) noise from **port-related activities** in a **Commercial Port Area** and the part of the **Lambton Harbour Area** shown on Map 32 shall not exceed the following at or beyond the **Port Noise Control Line** as shown on Map 32, Map 33 and Map 34, and

Time (any day)	Limits (dB(A))		
	L _{dn}	L _{max}	L _{eq}
Any 5 consecutive 24 hour periods	65	-	-
Any 24 hour period	68	-	-
10pm – 7am		85	60 (9hr) 65 (15mins)

(iv) CentrePort shall undertake a noise monitoring programme to ensure that noise from **port-related activities** comply with limits in (p)(iii) at the **Port Noise Control Line** as shown on Map 32, Map 33 and Map 34. This monitoring will be undertaken in accordance with the *Port Noise Management Plan for CentrePort Limited* (Dec 2008) and the information shall be reported to the Wellington Regional Council, and

conditions (p)(i), (p)(iii) and (p)(iv) shall not apply to the following:

(v) noise generated by navigational aids, safety signals, warning devices or emergency pressure relief valves, and

(vi) noise generated by emergency work arising from the need to protect life or limb or prevent loss or serious damage to property or minimise or prevent environmental damage, and

(vii) noise generated by construction activities which shall meet the standards specified in Table 1 of *NZS 6803:1999 Acoustics – Construction Noise*, and

(viii) noise generated by helicopter landing areas which shall meet the standards specified for commercial areas in Table 1 of *NZS 6807:1994 Noise management and land use planning for helicopter landing areas*, and

(q) The following noise standards shall only apply to activities in the **Commercial Port Area** at Seaview Wharf shown on Map 34 that are controlled by a rule in this Plan, are located in the coastal marine area and refer to the coastal marine area general conditions within the rule:

(i) the activity shall not cause excessive noise (defined in section 326 of the Resource Management Act 1991) outside the coastal marine area at the nearest residential area boundary, and

(ii) the noise level measured at any point on the nearest residential area boundary shall not exceed:

Time (any day)	Limits	
	L _{eq}	L _{max}
7am – 11pm	60 dB(A)	-
11pm – 7am	45 dB(A)	75 dB(A)

(iii) noise shall be measured in accordance with *NZS 6801:2008 Acoustics – Measurement of environmental sound*.

Corrected levels shall be determined in accordance with *NZS 6802:2008 Acoustics – Environmental Noise*, and

conditions (q)(i) and (q)(ii) shall not apply to the following:

- (iv) noise generated by navigational aids, safety signals, warning devices, or emergency pressure relief valves, and
 - (v) noise generated by emergency work arising from the need to protect life or limb or prevent loss or serious damage to property or minimise or prevent environmental damage, and
 - (vi) noise generated by construction activities which shall meet the standards specified in Table 1 of *NZS 6803:1999 Acoustics – Construction Noise*, and
 - (vii) noise generated by helicopter landing areas which shall meet the standards specified for Commercial areas in Table 1 of *NZS 6807:1994 Noise management and land use planning for helicopter landing areas*, and
- (r) Habitable rooms in buildings containing **noise sensitive activities** in a **Commercial Port Area**, the **Lambton Harbour Area** and the **Lambton Harbour Area (Northern Zone)**, shown on Map 32, Map 33 and Map 34, shall be protected from noise arising from outside the building by ensuring the external sound insulation level achieves the following minimum performance standards:

Area	Planning Map	Performance standard
Commercial Port Area	Map 32, Map 33, Map 34	$D_{nT,w} + C_{tr} > 35$ dB
Lambton Harbour Area (Northern Zone)	Map 32	$D_{nT,w} + C_{tr} > 35$ dB
Lambton Harbour Area	Map 32 (excluding northern zone)	$D_{nT,w} + C_{tr} > 30$ dB

- (s) Where bedrooms with openable windows are proposed, a positive supplementary source of fresh air ducted from outside is required at the time of fit-out. For the purposes of this requirement, a bedroom is any room intended to be used for sleeping. The supplementary source of air is to achieve a minimum of 7.5L/s per person. The required airflow level is based on the minimum standard for habitable spaces set out in *NZS 4303:1990 Ventilation for Acceptable Indoor Air Quality*, and

Port Noise Management Plan

- (t) ~~CentrePort shall at all times operate in accordance with the Port Noise Management Plan for CentrePort Ltd (December 2008).~~ CentrePort shall at all times have a port noise management plan in place.

Rule R193: River, ~~and stream~~ and lake mouth cutting – permitted activity



The disturbance of the foreshore or seabed for river, ~~and stream~~ and lake mouth cutting in the coastal marine area, including any associated:

(a) deposition in, on or under the foreshore or seabed, and

~~(b) discharge of contaminants, and~~

~~(e)(b)~~ diversion of open coastal water, and

~~(d)(c)~~ discharge of contaminants for the following rivers and lakes:

~~(e)(d)~~ Waitohu Stream, Ōtaki River, Mangaone Stream, Waimeha Stream, Waikanae River, Hadfield Drain, Wharemauku Stream, Whareroa Stream, Wainui Stream, Waikakariki Stream, Makara Stream, Motuwaikeka Stream, Castlepoint Stream, Whakataki River, Tikotu Stream, and

~~(f)(e)~~ Lake Kohangapiripiri, Lake Kohangatera and Lake Onoke, and

~~(g)(f)~~ an unnamed stream approximately 190m south of the seaward end of Sunrise Way, Riversdale, and

~~(h)(g)~~ an unnamed stream approximately 145m north of the seaward end of Sunrise Way, Riversdale, and

~~(i)(h)~~ an unnamed stream at the seaward end of Karaka Drive, Riversdale

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

~~(j)(i)~~ the activity shall be carried out for the purposes of flood protection and/or erosion mitigation, and

- (k)(j) the activity shall only be carried out by or for a local authority, and
- (l)(k) the activity is only undertaken when the trigger level defined in Schedule U (river mouth cutting) is equalled or exceeded, and
- (m)(l) the foreshore shall not be mechanically disturbed to a depth greater than required to divert stream flow, and
- (n)(m) the activity shall not prevent public access to or along the foreshore (this condition shall not apply to any restrictions on access arising from water flowing in any outlet channel), and
- (o)(n) any material excavated shall be placed on the immediately adjacent foreshore area, and no material shall be removed from the site unless the material is contaminated and/or it contains **hazardous substances**, and
- (p)(o) for activities undertaken in the mouths of either Lake Kohangapiripiri or Lake Kohangatera, any cutting operation shall be in accordance with the *Wellington Regional Council Parangarahu Lakes Area Co-Management Plan (August 2014)*, and
- (q)(p) for activities undertaken in the Lake Onoke mouth, the mechanical opening shall not occur during the period 1 February to 31 May (inclusive) each year without notification to a nominated representative (or in their absence, a nominated deputy) from the Tuhirangi Marae, and
- (r)(q) for activities undertaken in the Waikanae River, the Department of Conservation shall be notified at least two working days prior to the commencement of the cutting operation, and
- (s)(r) the activity shall comply with the coastal management general conditions specified above in Section 5.7.2, **except 5.7.2(k) where the activity only disturbs sand or gravel and does not disturb any vegetated area.**

Schedule F1b: Known rivers and parts of the coastal marine area with inanga spawning habitat



Shown on Map 14

Areas of tidal influence in the following rivers and parts of the coastal marine area have been surveyed and found to have habitat suitable for inanga spawning.

Schedule F1b: Known rivers and parts of the coastal marine area with inanga spawning habitat		
River mouth	NZTM 2000 Northings	NZTM 2000 Eastings
<u>Awhea River</u>	<u>5402705</u>	<u>1809752</u>
Duck Creek	5447610	1759575
Horokiri Stream	5449063	1760078
Te Awa Kairangi/Hutt River	5433469	1759213
Kakaho Stream	5449786	1759092
<u>Kaiwharawhara Stream</u>	<u>5430930</u>	<u>1749786</u>
<u>Kaiwhata Stream</u>	<u>5435384</u>	<u>1850224</u>
Kenepuru Stream	5444564	1754767
Lake Onoke <u>and Lower Ruamāhanga River</u>	5416845	1778194
Lake Pounui <u>Lagoon/Stream</u>	5417992	1777311
Makara Stream	5435099	1743790
Manganene Stream	5485553	1777891
Mangaone Stream	5482519	1775861
Mataikona River	5480409	1875649
Motuwaireka Stream	5447359	1858444
<u>Ngakauau Stream</u>	<u>5464751</u>	<u>1867807</u>
<u>Okau Stream</u>	<u>5473474</u>	<u>1873301</u>
Ōtaki River	5485803	1777717
Oterei River	5404526	1815107
Owhiro Stream	5421506	1747076
Pahaoa River	5413965	1827650
Pauatahanui Stream	5447850	1760630

Schedule F1b: Known rivers and parts of the coastal marine area with inanga spawning habitat

River mouth	NZTM 2000	NZTM 2000
	Northings	Eastings
Porirua and <u>Keneperu</u> Streams	5444645	1754685
Taupō Stream	5450123	1756889
Waikanae River	5473228	1768909
Waimeha Stream	5475080	1771010
Wainuiomata River	5413904	1757358
Waitohu Stream	5489199	1779175
<u>Waiwhetu</u> Stream	<u>5434497</u>	<u>1760969</u>
Whakataki River	5470591	1871916
Whangamoana Stream	5413371	1781986
Whareama River	5455105	1860140
<u>Wharemauku</u> Stream	<u>5468628</u>	<u>1766788</u>
Whareroa Stream	5464269	1765818