

BEFORE THE ENVIRONMENT COURT

ENV-2019-WLN-000131

AT WELLINGTON

I MUA I TE KOOTI TAIAO

O AOTEAROA

IN THE MATTER

of an appeal under clause 14
of Schedule 1 of the Resource
Management Act 1991

BETWEEN

**New Zealand Transport
Agency**

Appellant

AND

**Wellington Regional
Council**

Respondent

**NOTICE OF WISH TO BE A PARTY TO PROCEEDINGS BY THE
MINISTER OF CONSERVATION**

Dated: 9 October 2019

Department of Conservation
Solicitor acting: K Anton/M Downing
Email: kanton@doc.govt.nz/m Downing@doc.govt.nz
Telephone: 027 427 5900

Notice of person's wish to be a party to proceedings

Section 274 Resource Management Act 1991

To: The Registrar
Environment Court
WELLINGTON

1. The **Minister of Conservation** (the **Minister**) wishes to be a party to the following proceedings:
 - 1.1. New Zealand Transport Agency v Wellington Regional Council, ENV-2019-WLN-000131.
2. The Minister made submissions and appeared at the Council hearing on the proposed Natural Resources Plan for the Wellington Region (proposed Plan). The Minister also has an interest greater than the interest the general public has, specifically regarding conservation values and the implementation of the New Zealand Coastal Policy Statement.
3. The Minister is not a trade competitor for the purposes of section 308C or 308CA of the Resource Management Act 1991 (RMA).
4. The Minister is interested in part of the proceedings.
5. The Minister is interested in the following particular issues:
 - 5.1. Objective O31: Sites with significant values;
 - 5.2. Objective O35: Sites with significant indigenous biodiversity values;
 - 5.3. Objective O53: - coastal management - functional / operational need;
 - 5.4. Policy P4: minimising adverse effects;
 - 5.5. Policy P12: benefits of regionally significant infrastructure and renewable energy generation;

- 5.6. New policy “policy Y” providing an effects management hierarchy for regionally significant infrastructure;
- 5.7. Policy P24 – outstanding natural character;
- 5.8. Policy P28 – hazard mitigation measures;
- 5.9. Policy P31 – biodiversity, aquatic ecosystem health and mahinga kai;
- 5.10. Policy P35 – restoring fish passage;
- 5.11. Policy P39 – adverse effects on outstanding waterbodies;
- 5.12. Policy P39A – indigenous biodiversity values within the coastal marine area;
- 5.13. Policy P40 – ecosystems and habitats with significant indigenous biodiversity values;
- 5.14. Policy P42 – protecting and restoring ecosystems and habitats with significant indigenous biodiversity values;
- 5.15. Rules R107-R111 – relating to wetlands;
- 5.16. Rules R194, R195, R205 and R209 - all relating to destruction, damage, disturbance or deposition;
- 5.17. Rule R214 – reclamation and drainage for regionally significant infrastructure outside sites of significance – discretionary activity.

6. The Minister opposes the relief sought because:

- 6.1. Objective O31: sites with significant values - Objective O31 requires outstanding waterbodies and their significant values to be protected and restored. The appellant seeks to qualify this objective by saying protection must be from ‘inappropriate use and development’. Schedule A outstanding waterbodies contain significant indigenous vegetation and significant habitats of indigenous fauna. Section 6(c) of the Resource Management Act 1991 and, where relevant, Policy 11 of the New Zealand Coastal Policy Statement requires those values to be protected in their own right, not from ‘inappropriate’ use and development.
- 6.2. Objective O35 requires ecosystems and habitats with significant indigenous biodiversity values to be protected and where appropriate, restored. The appellant seeks to qualify this objective by saying protection must be from ‘inappropriate use and development’. Schedule A outstanding waterbodies contain

significant indigenous vegetation and significant habitats of indigenous fauna. Section 6(c) of the Resource Management Act 1991 and, where relevant, Policy 11 of the New Zealand Coastal Policy Statement requires those values to be protected in their own right, not from ‘inappropriate’ use and development.

- 6.3. Policy P4: minimising adverse effects – the Minister supports the concept of clarifying the meaning and use of the term “minimise” throughout the plan. The Minister opposes the exceptions suggested by the appellant in relation to regionally significant infrastructure only being required to be located away from significant sites “if practicable”.
- 6.4. Policy P12: benefits of regionally significant infrastructure and renewable energy generation – the relief sought to explicitly link the ‘functional need’ policy to Scheduled sites is unnecessary because the policy already applies to all areas.
- 6.5. New policy “policy Y” providing an effects management hierarchy for regionally significant infrastructure: the hierarchy proposed to avoid, remedy, mitigate, then offset or compensate is acceptable outside scheduled sites or any sites that meet the criteria in policies 11(a), 13(a) and 15(a) of the New Zealand Coastal Policy Statement. However, the policy as proposed cannot lawfully apply within those sites (*Environmental Defence Society Inc v Otago Regional Council* [2019] NZHC 2278; *Royal Forest and Bird Protection Society Inc v Bay of Plenty Regional Council* [2017] NZHC 3080). As such, clarification is needed on this point.
- 6.6. Policy P24 – Outstanding Natural Character: The appellant seeks substantial modification to this policy in order to provide for regionally significant infrastructure. However, the relief sought is not limited to regionally significant infrastructure and as such is too broad. It also seeks deletion of the part of the policy that requires areas of outstanding natural and high natural character within the region to be identified. This would be inconsistent with the requirements in the New Zealand Coastal Policy Statement – policy 13(1)(c).
- 6.7. Policy P28 – hazard mitigation measures: The appellant seeks an amendment which enables hard hazard engineering to protect not only existing development, but also “development associated with

regionally significant infrastructure”. New Zealand Coastal Policy Statement Policy 27(1)(c) reads “recognising that hard protection structures may be the only practical means to protect existing infrastructure of national or regional importance, to sustain the potential of built physical resources to meet the reasonably foreseeable needs of future generations”. The focus is on protecting existing development, but with some flexibility around that existing development so that it can continue to meet the reasonably foreseeable needs of future generations. It does not otherwise provide an exception for new development in relation to using hard protection structures.

- 6.8. Policy P31 – biodiversity, aquatic ecosystem health and mahinga kai: The appellant seeks this comprehensive policy be deleted because it does not provide for regionally significant infrastructure and allegedly does not provide for managing effects. However, the policy implements the respondent council’s functions under s 30(1)(c)(ii) and (iii) of the Act and is also required to implement the National Policy Statement Freshwater Management.
- 6.9. Policy P35 – restoring fish passage – the appellant suggests this policy is retrospective, which it is not. It will only apply to fresh consent applications, so will only apply to existing structures in respect of which there is a fresh consent application. The requirement to provide for the passage of indigenous fish and koura is deliberately expressed as being where it is appropriate for the management and protection of indigenous fish and koura populations. In some cases, restoring fish passage is not appropriate as it will enable predator species access to the indigenous populations. Accordingly, the Minister seeks retention of the decisions’ version of this policy.
- 6.10. Policy P39 – adverse effects on outstanding waterbodies: Policy P39 requires the adverse effects of use and development on outstanding waterbodies to be avoided. The appellant seeks to qualify this policy by saying it is the adverse effects of ‘inappropriate use and development’ that must be avoided. Schedule A outstanding waterbodies contain significant indigenous vegetation and significant habitats of indigenous fauna. Section 6(c) of the Resource Management Act 1991 and, where relevant, Policy 11 of the

New Zealand Coastal Policy Statement require those values to be protected in their own right, not from ‘inappropriate’ use and development.

- 6.11. Policy P39A – indigenous biodiversity values within the coastal marine area. This policy implements policy 11 of the New Zealand Coastal Policy Statement. The relief sought by the appellant would dilute it so it no longer gave effect to the NZCPS, and would be inconsistent with case law (*Environmental Defence Society Inc v Otago Regional Council* [2019] NZHC 2278; *Royal Forest and Bird Protection Society Inc v Bay of Plenty Regional Council* [2017] NZHC 3080).
- 6.12. Policy P40 – ecosystems and habitats with significant indigenous biodiversity values – the relief sought would add a qualifier (inappropriate use and development) that is not anticipated by section 6(c) of the Act, nor the NPSFM or NZCPS.
- 6.13. Policy P42 – protecting and restoring ecosystems and habitats with significant indigenous biodiversity values – Policy P42 decisions version implements section 6(c) of the Act, the NPSFM and the NZCPS. The appellant’s relief sought would replace those higher order directions with an effects management hierarchy, which is inappropriate.
- 6.14. Rules R107-R111 – relating to wetlands: The appellant seeks leniency for regionally significant infrastructure throughout these provisions. The Minister considers that some allowance for regionally significant infrastructure, particularly existing regionally significant infrastructure, is appropriate, but that the relief sought is framed too broadly.
- 6.15. Rules R194, R195, R205 and R209 - all relating to destruction, damage, disturbance or deposition: The appellant seeks leniency for regionally significant infrastructure throughout these provisions. The Minister considers that some allowance for regionally significant infrastructure, particularly existing regionally significant infrastructure, is appropriate, but that the relief sought is framed too broadly.
- 6.16. Rule R214 – reclamation and drainage for regionally significant infrastructure outside sites of significance – discretionary activity – the appellant seeks discretionary, instead of non-complying status

for regionally significant infrastructure inside sites of significance. The proposed Plan currently reflects the requirements of the NZCPS by recognising the benefits of regionally significant infrastructure, but also setting out where development of it is inappropriate. The Minister therefore seeks retention of the decisions' version of Rule R214.

6.17. The amendments sought do not give effect to higher order policy direction including the National Policy Statement for Freshwater Management 2014 and New Zealand Coastal Policy Statement, do not provide for matters of national importance listed in section 6 of the RMA, and do not promote the sustainable management of natural and physical resources.

6.18. Such other grounds as may be raised in submissions.

7. The Minister supports the relief sought in relation to Objective O53 because:

7.1. Objective O53: the relief sought reflects the requirement in the New Zealand Coastal Policy Statement Policy 6.

8. The Minister agrees to participate in mediation or other alternative dispute resolution of the proceedings.



Katherine Anton/May Downing
Solicitors for the Minister of Conservation

9 October 2019

Address for service of person wishing to be a party:

Minister of Conservation

Department of Conservation
18 Manners Street, Wellington 6011

Contact persons

Katherine Anton, Solicitor
Telephone: 027 427 5900
Email: kanton@doc.govt.nz

Herb Familton, Resource Management Planner
Telephone: 027 536 7037
Email: hfamilton@doc.govt.nz

Advice

If you have any questions about this notice, please contact the Environment Court in Auckland, Wellington, or Christchurch.