

**BEFORE THE ENVIRONMENT COURT
AT WELLINGTON
I MUA I TE KOOTI TAIAO**

ENV-2019-WLN-

IN THE MATTER

of an appeal under
Clause 14 of the First
Schedule of the Resource
Management Act 1991

BETWEEN

**Minister of
Conservation**
Appellant

AND

**Greater Wellington
Regional Council**
Respondent

**NOTICE OF APPEAL BY THE MINISTER OF
CONSERVATION**

Dated: 18 September 2019

Department of Conservation
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**Notice of appeal to Environment Court against decision on Proposed
Natural Resources Plan for the Wellington Region**

Clause 14(1) of Schedule 1, Resource Management Act 1991 (the Act)

To: The Registrar
Environment Court
WELLINGTON

1. I, the Minister of Conservation, appeal against parts of a decision of the Greater Wellington Regional Council (the Council) on the following plan:

1.1. Proposed Natural Resources Plan for the Wellington Region (the Plan).

2. I made a submission on the Plan.

3. I am not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (the Act).

4. I received notice of the decision on 31 July 2019.

5. The decision was made by the Council.

6. The parts of the decision that I am appealing are the parts of the Council's decision regarding:

Section 2.2 – Definitions

6.1. *Category 2 Surface Waterbodies*: the decision to decline the Minister's submission to include rivers identified in Schedule F1 (Rivers and lakes with significant indigenous ecosystems: habitat for indigenous threatened/at-risk fish species) that are also within the mapped lowland areas shown on Map 29.

6.2. *Seawall*: the decision to include this definition in the plan which is inconsistent with the New Zealand Coastal Policy Statement's (NZCPS) definition of "hard protection structure".

Section 3 – Objectives

6.3. *Objectives O20, O21 and new natural hazards coastal objective: the decisions to:*

6.3.1. Not include a new objective specific to coastal hazards as follows:

In areas potentially affected by coastal hazards over at least the next 100 years, increases in risk, residual risk, and adverse effects from coastal hazards, including the effects of climate change on people, property or the environment are avoided;

6.3.2. In Objective O20, retain reference to “acceptable” risk instead of requiring that increases in risk are avoided.

6.4. *Objective O25 and tables 3.4 – 3.8 – biodiversity, aquatic ecosystem health and mahinga kai: the decision to*

6.4.1. Remove clause (b) relating to restoration of aquatic ecosystem health and mahinga kai;

6.4.2. Continue to use unclear terms such as ‘balanced’ and ‘unacceptable’ instead of replacing them with clear meaningful terms throughout the tables;

6.4.3. Not include numeric objectives in preference to narrative objectives in the tables generally;

6.4.4. In *Table 3.4:*

6.4.4.1. Not include the minimum fish index of biotic integrity as a numeric objective;

6.4.4.2. Not reference the periphyton weighted composite cover method;

6.4.4.3. Not include numeric objectives for deposited sediment cover, temperature, dissolved oxygen, toxicants, metals and metalloids, dissolved inorganic nitrogen, dissolved reactive phosphorous and nuisance macrophytes;

6.4.5. In *Table 3.5:*

6.4.5.1. Not include the compulsory national objectives framework (NOF) from the National Policy Statement Fresh Water Management (NPS-FM) attributes for phytoplankton, total nitrogen or total phosphorous to provide for the compulsory national value of ecosystem health under the NPS-FM;

6.4.6. In *Table 3.6:*

6.4.6.1. Retain the term ‘unacceptable effects’ in relation to nitrate concentrations with no numeric threshold;

- 6.5. *Objective O31*: The decision to link tables 3.4 – 3.8 from O25 to the objective.
- 6.6. *Objective O35*: The decision to link tables 3.4 – 3.8 from O25 to the objective.

Section 4 – Policies

- 6.7. *Policy P27 – High risk areas*: The decision not to require that risk is not increased, and reduced if practicable in paragraph (b)
- 6.8. *Policy P31 – Biodiversity, aquatic ecosystem health and mahinga kai*: The decision to link tables 3.4 – 3.8 from O25 to policy P31.
- 6.9. *Policy P38A (previously Policy P23) Restoring Te Awarua-o-Porirua Harbour, Wellington Harbour (Port Nicholson) and Wairarapa Moana*: The decision to link tables 3.4 – 3.8 from O25 to policy P38A.
- 6.10. *Policy P70 – Managing point source discharges for aquatic ecosystem health and mahinga kai*: The decisions to remove wastewater discharges from the ambit of the policy insofar as it relates to coastal water and not to include numeric thresholds and standards from Policy P71.
- 6.11. *Policy P71 – Quality of point source discharges to rivers*: The decisions to not include numeric thresholds and standards sought by the Minister, to remove all numeric thresholds and standards existing in the policy and to remove wastewater and stormwater from the policy.
- 6.12. *Policy P99 – Livestock access to a surface water body and the coastal marine area*: The decision to delete aspects of the policy relating to effects on ecosystem health, water quality and aquatic habitats.
- 6.13. *Policy P101 – Management of riparian margins*: The decision to refer to “appropriate set-back distances” for some (undefined) land use activities.
- 6.14. *Policy P102 – Reclamation or drainage of the beds of lakes and rivers*: The decisions:
 - 6.14.1. To focus the policy on Schedule A and C sites, as such potentially casting doubt on the strength of the ‘avoid’ policy for all other beds of lakes and rivers and natural wetlands; and
 - 6.14.2. To not remove the exception to this policy relating to urban development, namely paragraph (b) (previously paragraph (c)).
- 6.15. *Policy P132 – Functional need and efficient use*: The decision to exclude the Lambton Harbour Area in its entirety from this policy.

- 6.16. *Policy P138 – Structures in sites with significant values:* The decision not to apply this policy to sites in the Wellington region that meet the criteria in policy 11(a) of the New Zealand Coastal Policy Statement.
- 6.17. *Policy P143 – Deposition in a site with significant values:* The decision not to apply this policy to sites in the Wellington region that meet the criteria in policy 11(a) of the New Zealand Coastal Policy Statement.
- 6.18. *Policy P144 – Dumping in a site with significant values:* The decision not to apply this policy to sites in the Wellington region that meet the criteria in policy 11(a) of the New Zealand Coastal Policy Statement.

Section 5 – Rules

- 6.19. *Rule R36B – Motorised and aerial discharge of agrichemicals – permitted activity:* the decision to include the requirement in condition (b) that there is no discharge into water (which is covered under general condition 5.1.13(b)).
- 6.20. *Proposed new rule 88A: Vertebrate toxic agents (associated with rule R88):* the decision to decline the Minister’s submission to include a new restricted discretionary activity rule for vertebrate toxic agents, particularly Rotenone, to be used in water to control pest fish.
- 6.21. *Rule R94 – Cultivation of land – permitted activity:* the decisions to:
- 6.21.1. Reduce the setback width from 5 m to 3m on slopes less than 3 degrees; and
 - 6.21.2. Explicitly enable associated discharge of contaminants as part of this rule subject to narrative conditions derived from s 70 of the Act which, as expressed, are largely unmeasurable.
- 6.22. *Rule R95 – Break-feeding – permitted activity:* the decisions to:
- 6.22.1. Reduce the setback width from 5 m to 3m on slopes less than 3 degrees; and
 - 6.22.2. Explicitly enable associated discharge of contaminant as part of this rule subject to narrative conditions derived from s 70 of the Act which, as expressed, are largely unmeasurable.
- 6.23. *Rule R97 – Livestock access to a surface water body or the coastal marine area – permitted activity:* The decision not to exclude sheep access from significant natural wetlands.
- 6.24. *Rule R115 – Culverts – permitted activity:* the decisions to:
- 6.24.1. Include reclamation associated with the culvert;

- 6.24.2. Exclude the culvert diameter measurements that align with current national best practice for providing fish passage.
- 6.25. Rule R117 – *New structures -permitted activity*: the decisions to:
- 6.25.1. Include partial stream reclamation associated with the structure;
- 6.25.2. Reject the Minister’s submission that this rule should exclude structures in inanga spawning habitat (Schedule F1b).
- 6.26. Rule R121 – *Maintenance of drains and highly modified rivers or streams within an individual property – permitted activity*: the decisions to:
- 6.26.1. not restrict the permitted activity during the migration times listed in Schedule F1a for species present in the catchment; and
- 6.26.2. remove the restriction on removing woody debris with a diameter greater than 0.2 m unless it is causing or may cause a flood or erosion threat or a threat to infrastructure.
- 6.27. Rule R122 – *Removing vegetation from the bed of any river or lake – permitted activity*:
- 6.27.1. the decision to not restrict the permitted activity during the migration times listed in Schedule F1a for species present in the catchment; and
- 6.27.2. the decision to remove the restriction on removing woody debris with a diameter greater than 0.2 m unless it is causing or may cause a flood or erosion threat or a threat to infrastructure
- 6.28. Rule R127 – *Reclamation of the beds of rivers or lakes – non-complying activity*: the decision to remove reclamation associated with the piping of a stream from the non-complying rule, thus making it a discretionary activity.
- 6.29. Rules R136 – *Take and use of water – permitted activity*; R137 – *Farm dairy washdown and milk-cooling water – permitted activity*; and R 141 - *Take and use of water – controlled activity*: In each case the decisions to:
- 6.29.1. make the fish screen requirement subject to a “minimum” mesh size of 3mm instead of a “maximum” mesh size of 3mm. This is presumed to be an error; and
- 6.29.2. not include a condition requiring the prevention of fish becoming trapped against the intake screen by way of adding a limit to the approach velocity (flow onto the fish screen) and a requirement that the sweep velocity (flow across the fish screen) exceeds the approach velocity.

- 6.30. *Rule R151 – Additions or alterations to structures – controlled activity*: The decision not to preclude this controlled activity rule from applying within a scheduled biodiversity or habitat site.
- 6.31. *Rule R165 – Additions or alteration to, or replacements of, existing seawalls – controlled activity*: The decision not to preclude this controlled activity rule from applying within the scheduled sites listed in paragraph 4 of the rule.
- 6.32. *Rule R207 – Deposition for beach renourishment – controlled activity*: The decision not to preclude this controlled activity rule from applying within the scheduled sites listed in R207(5).

Section 6 - Methods

- 6.33. *Method M20A – Coastal Sites that meet NZCPS Policy 11*: The decision not to make this method time-bound.
- 6.34. *Method M24 – Outstanding natural features and landscapes and high natural character*: The decision not to amend the compliance time for this method from 2017 to an achievable time in the future.

7. The reasons for the appeal are as follows:

Section 2.2 - Definitions

“Category 2 Surface Waterbodies”

- 7.1. The consequence of excluding all rivers, irrespective of size, identified in Schedule F1 that are also within the mapped lowland areas shown on Map 29 is that stock access to these small rivers with high biodiversity values becomes a permitted activity under Rule 97. The definition of Category 2 Surface Waterbodies already includes mapped lowland rivers and drains greater than 1 m wide and water races. The gap is for mapped lowland rivers and drains less than 1 m wide that are identified in schedule F1 “Rivers and lakes with significant indigenous ecosystems”. Allowing stock access to rivers of any size with significant indigenous ecosystems as a permitted activity does not give effect to the NPS-FM or the Regional Policy Statement. The inclusion of small waterways (including headwater, intermittent and ephemeral streams) is critical to ensuring impacts on

freshwater ecosystem health and water quality are reduced or avoided.¹ Small headwater streams are important for ecosystem health² and for water quality contaminant reductions. The majority of nutrient loads to freshwater (77%) enter small rivers and streams.³

Relief sought

- 7.2. Amend the definition of Category 2 Surface Waterbodies by including reference to Schedule F1 rivers in the mapped lowland areas shown on Map 29, irrespective of their width.

“Seawall”

- 7.3. This new definition is different to the New Zealand Coastal Policy Statement’s definition of “hard protection structure” for no apparent reason. The definition of “seawall” in the plan does not require a primary purpose or effect of protecting an activity from a coastal hazard or erosion.

Relief sought

- 7.4. Amend the definition of “seawall” so it aligns with the NZCPS definition of “hard protection structure” and the “hard hazard engineering” definition in the plan.

Section 3 – Objectives

Objectives O20, O21 and new natural hazards coastal objective

- 7.5. Objective O20 relates to hazard risk generally in the region. Objective 22 requires inappropriate use and development in high risk areas to be

¹ McDowell RW, Cox N, Snelder TH 2017. Assessing the Yield and Load of Contaminants with Stream Order: Would Policy Requiring Livestock to Be Fenced Out of High-Order Streams Decrease Catchment Contaminant Loads? *Journal of Environmental Quality* 46:1038–1047 (2017) doi:10.2134/jeq2017.05.0212.

Greenwood MJ, Harding JS, Niyogi DK, McIntosh AR 2012. Improving the effectiveness of riparian management for aquatic invertebrates in a degraded agricultural landscape: stream size and land-use legacies. *Journal of Applied Ecology* 49, 213–222.

Storey RG, Parkyn S, Neale MW, Wilding T, Croker G 2011. Biodiversity values of small headwater streams in contrasting land uses in the Auckland region. *New Zealand Journal of Marine and Freshwater Research* 45 (2): 231-248.

² Greenwood et al. 2012, above n1.

³ McDowell et al. 2017, above n1.

avoided. They both refer to coastal hazards so are required to give effect to the NZCPS. However, as a package (also having regard to policy P27):

7.5.1. It is unclear how the acceptability of risk will be determined on O20;

7.5.2. There is no guidance on what inappropriate development in high hazard areas is and does; and

7.5.3. They do not give effect to the NZCPS requirement to avoid increases in risk from coastal hazards (NZCPS Policy 25(a)).

Relief sought

7.5.4. Ensure that the plan, through an objective, provides for coastal hazards as follows:

In areas potentially affected by coastal hazards over at least the next 100 years, increases in risk, residual risk, and adverse effects from coastal hazards, including the effects of climate change on people, property or the environment are avoided;

Objective O25 and tables 3.4 – 3.8 – biodiversity, aquatic ecosystem health and mahinga kai:

7.6. The objective O25 tables need to adequately reflect a healthy functioning state for aquatic ecosystem health and mahinga kai. However, compulsory NOF attributes and attributes from other national guidelines have not been included in the tables. Amendment is required in order to give effect to the NPSFM.

Relief sought

7.7. Reinstate clause (b) relating to restoration of aquatic ecosystem health and mahinga kai;

7.8. Remove unclear terms such as 'balanced' and 'unacceptable' and replace them with clear meaningful terms throughout the tables;

7.9. Include numeric objectives in preference to narrative objectives in the tables generally;

7.10. In *Table 3.4*:

7.10.1. Include the fish index of biotic integrity (Wellington region-specific IBI model) as numeric objectives as follows:

7.10.1.1. For rivers in Schedules A1 and F1, IBI score thresholds for the classes 'excellent' and 'very good' applied alongside the narrative outcomes for indigenous fish;

7.10.1.2. For other rivers, IBI score threshold of 'good' applied alongside the narrative outcomes for indigenous fish.

- 7.10.2. Reference the periphyton weighted composite cover method for the periphyton attribute added to Table 3.4 as per the national guidelines in Matheson et al. (2012)⁴;
- 7.10.3. Include numeric objectives for deposited sediment cover by applying the '<20% and within 10% of reference condition' guideline from Clapcott et al. (2011)⁵;
- 7.10.4. Include numeric objectives for temperature, dissolved oxygen, toxicants, metals and metalloids, dissolved inorganic nitrogen and dissolved reactive phosphorous which will not result in reduction of existing water quality and will result in improvement where degraded;
- 7.10.5. In relation to submerged macrophytes remove the term 'balanced' and replace it with the <50% cover guideline from Matheson et al. (2012);
- 7.10.6. In *Table 3.5*:
- 7.10.6.1. Include the compulsory NOF lake attributes for phytoplankton, total nitrogen or total phosphorous to provide for the compulsory national value of ecosystem health under the NPS-FM;
- 7.10.7. In *Table 3.6*:
- 7.10.7.1. Remove the term 'unacceptable effects' in relation to nitrate concentrations in favour of a numeric threshold of 1mg/L nitrate-nitrogen.

Objective O31

- 7.11. Linking tables 3.4 – 3.8 in Objective O25 to Objective O31 potentially limits the scope of restoration to water quality as defined in those tables. However, restoration may include actions beyond water quality. Water quality is only one aspect of ecosystem health which also includes water flow, habitat, ecosystem processes and aquatic life.⁶

⁴ Matheson F, Quinn J, Hickey C 2012. Review of the New Zealand instream plant and nutrient guidelines and development of an extended decision making framework: Phases 1 and 2 final report. Prepared for the Ministry of Science & Innovation Envirolink Fund. NIWA Client Report No: HAM2012-081.

⁵ Clapcott JE, Young RG, Harding JS, Matthaei CD, Quinn JM, Death RG 2011. Sediment Assessment Methods: Protocols and guidelines for assessing the effects of deposited fine sediment on in-stream values. Cawthron Institute, Nelson, New Zealand.

⁶ As per Clapcott et al. (2018) national framework for ecosystem health: Clapcott J, Young R, Sinner J, Wilcox M, Storey R, Quinn J, Daughney C, Canning A 2018. Freshwater biophysical

Relief Sought

7.12. Amend the tables as sought in this appeal notice to:

7.12.1. more fully provide for water quality, aquatic life and habitat (deposited sediment) aspects of ecosystem health, and

7.12.2. ensure that restoration to a healthy functioning state is stated to be “at least” as defined by the tables and should also consider habitat, flow, ecosystem processes and aquatic life as per the national framework for ecosystem health by Clapcott et al (2018).

Objective O35

7.13. Linking tables 3.4 – 3.8 in Objective O25 to Objective O35 potentially limits the scope of restoration of ecosystems and habitats to water quality as defined in those tables. However, restoration may include actions beyond water quality. Water quality is only one aspect of ecosystem health which also includes water flow, habitat, ecosystem processes and aquatic life.⁷

Relief Sought

7.14. Amend the tables as sought in this appeal notice to:

7.14.1. more fully provide for water quality, aquatic life and habitat (deposited sediment) aspects of ecosystem health; and

7.14.2. ensure that restoration to a healthy functioning state is stated to be “at least” as defined by the tables and should also consider habitat, flow, ecosystem processes and aquatic life as per the national framework for ecosystem health by Clapcott et al (2018).

Section 4 – Policies

Policy P27: High risk areas

7.15. Policy P27 may have the effect of enabling increase in risks from coastal hazards and does not give effect to the NZCPS. Policy 25 of the NZCPS requires, in areas potentially affected by coastal hazards over at least the next 100 years, increases in the risk of social, environmental and economic harm from coastal hazards to be avoided. Policy 27(1)(a) of the NZCPS requires a risk reduction approach.

ecosystem health framework. Prepared for Ministry for the Environment. Cawthron Report No. 3194. 89 p. plus appendices.

⁷ As per Clapcott et al. (2018) national framework for ecosystem health: Clapcott J, Young R, Sinner J, Wilcox M, Storey R, Quinn J, Daughney C, Canning A 2018. Freshwater biophysical ecosystem health framework. Prepared for Ministry for the Environment. Cawthron Report No. 3194. 89 p. plus appendices.

Relief sought:

7.16. Amend Policy P27(b) so that, in relation to coastal hazards “the **hazard risk** to the development and/or **residual hazard risk** after hazard mitigation measures assessed using a **risk-based approach** is ~~low~~ not increased, and reduced if practicable.”

Policy P31: Biodiversity, aquatic ecosystem health and mahinga kai

7.17. This policy relies on tables 3.4 – 3.8 as containing adequate water quality targets. However, the tables are not sufficient to manage effects on water quality because they do not include compulsory numeric attributes from the NPS-FM.

Relief sought:

7.18. Amend the tables as sought in this appeal notice to:

7.18.1. more fully provide for water quality, aquatic life and habitat (deposited sediment) aspects of ecosystem health, and

7.18.2. ensure that restoration to a healthy functioning state is stated to be “at least” as defined by the tables and should also consider habitat, flow, ecosystem processes and aquatic life as per the national framework for ecosystem health by Clapcott et al (2018).

Policy P38A: Restoring Te Awarua-o-Porirua Harbour, Wellington Harbour (Port Nicholson) and Wairarapa Moana (previously policy P23)

7.19. This policy relies on tables 3.4 – 3.8 as containing adequate water quality targets. However, the tables are not sufficient to manage effects on these water bodies because they do not include compulsory numeric attributes from the NPS-FM nor are they consistent with national guidelines, particularly with respect to sedimentation.

Relief sought:

7.20. Amend the tables as sought in this appeal notice to:

7.20.1. more fully provide for water quality, aquatic life and habitat (deposited sediment) aspects of ecosystem health, and

7.20.2. ensure that restoration to a healthy functioning state is stated to be “at least” as defined by the tables and should also consider habitat, flow, ecosystem processes and aquatic life as per the national framework for ecosystem health by Clapcott et al (2018).

Policy P70 – Managing point source discharges for aquatic ecosystem health and mahinga kai

7.21. This policy no longer deems new wastewater discharges inappropriate where it would cause the affected water to decline in relation

to an objective in the tables in O25. For fresh water, the reason for the deletion appears to be so that policy P83 which requires new discharges of wastewater to freshwater to be avoided is not undermined. However, the related policy for new discharges to coastal water is to “discourage” them (P83A). The ‘discouragement’ in new P83A is inadequate on its own and needs to be supported by numeric objectives.

Relief sought

7.22. That policy P70(b) continues to apply to new wastewater discharges to coastal water.

7.23. Consequential relief as outlined in relief sought to Policy P71 below
Policy P71 – Quality of point source discharges to rivers

7.24. This policy has been amended to apply where all the objectives in table 3.4 are met. As a consequence, minimum numeric thresholds and standards have been removed to avoid a situation where the numeric standards might result in poorer outcomes for ecosystem health. However, note that table 3.4 does not contain the full range of water quality attributes to provide for ecosystem health. The minimum numeric standards and thresholds should instead be applied where water quality objectives are not being met – namely the situations in Policy P70. This will assist in restoring ecosystem health as required by the NPS-FM and to create bottom lines as required by the national objectives framework and in accordance with other national guidelines.

Relief sought

7.25. Include the numeric standards and thresholds in the notified plan for point source discharges where Objective O25 thresholds are not being met (currently this would require them to be in policy P70), as follows:

7.25.1. For rivers, a decrease in the Quantitative Macroinvertebrate Community Index of no more than 20%;

7.25.2. A decrease in water clarity of no more than 20% in outstanding waterbodies (Schedule A) and Schedule F1 rivers and lakes;

7.25.3. A change in temperature of no more than 2 degrees Celsius in River classes 1 or 2, or 2 degrees Celsius in any river identified as having high macroinvertebrate community health in Schedule F1 (rivers/lakes) or 3 degrees Celsius in any other river;

7.25.4. Dissolved oxygen standards of a 7-day mean minimum dissolved oxygen no lower than 7mg/L and 1-day minimum of no less than 5mg/L;

- 7.25.5. A soluble carbonaceous biochemical oxygen demand₅ standard of no more than 2mg/L for rivers at flows less than flood flows;
- 7.25.6. A particulate organic matter (POM) standard of no more than 5mg/L for rivers at flows less than the median flow;
- 7.25.7. Nitrate toxicity standards of ≤ 1 mg/L as an annual median and ≤ 1.5 mg/L as an annual 95th percentile for Schedule A and Schedule F1 rivers; and 6.9 mg/L as an annual median and 9.8mg/L as an annual 95th percentile for all other rivers;
- 7.25.8. Ammonia toxicity standards of ≤ 0.03 mg/L as an annual median and ≤ 0.05 mg/L as an annual maximum for Schedule A and Schedule F1 rivers and lakes; and 1.3 mg/L as an annual median and 2.2mg/L as an annual maximum in all other rivers and lakes.

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

- 7.26. Aspects of the policy relating to effects on ecosystem health, water quality and aquatic habitats have been deleted or weakened and are no longer adequately managed through the policy. This is inappropriate, particularly in light of Policy 21 of the NZCPS, which requires stock to be excluded from the coastal marine area, adjoining intertidal areas and other water bodies and riparian margins in the coastal environment within a prescribed timeframe to improve degraded water quality.

Relief sought

- 7.27. Amend P99 so it directs protection of aquatic habitat and water quality, restoration where necessary, and a management framework for stock access that to achieve that.

Policy P101 – Management of riparian margins

- 7.28. Livestock exclusion and clearly expressed setback requirements for cultivation and breakfeeding are two of the simplest and most direct ways of protecting waterbodies from pollution and should be mandated by clear policy direction.

Relief sought

- 7.29. Refer, in particular, to cultivation and break feeding in P101(b) which requires set back distances from surface water bodies.

Policy P102 – Reclamation or drainage of the beds of lakes and rivers

- 7.30. As notified this policy directed reclamation and drainage of the beds of all lakes, and rivers and wetlands to be avoided, with some stated exceptions. Adding the qualifier that it applies 'particularly' to sites

identified in schedule A (outstanding waterbodies); or schedule C (mana whenua) casts doubt on the broader application of this policy to not only other scheduled sites (such as schedule F – ecosystems and habitats with significant biodiversity values) but any other water body where the ‘avoid’ direction should apply. If scheduled sites are to be included in policy P 101, they should be included in a way that excludes the exceptions from applying within them.

- 7.31. Further, the decisions version did not remove the exception for a development associated with a growth and/or development framework or strategy approved by a local authority under the Local Government Act 2002. Reclamation and drainage of river beds destroys freshwater fish habitat. Subdivision design led by stream retention is necessary to safeguard the life supporting capacity of fresh water ecosystems and to provide for the needs of future generations and so give effect to the NPS FM and the purpose of the Act. It can result in equal or better housing yield than development that destroys streams as demonstrated by application of the Auckland Unitary Plan. The proposed NPS FM 2019 requires no further net loss of streams (draft policy 9). The draft national environmental standard for freshwater has an associated rule which ascribes the infilling of the bed of a river as non-complying for urban development. As such, urban development should not be included as an exception to Policy P102’s direction to avoid reclamation and drainage of beds of lakes and rivers. There is recognition nationally, as well as in Auckland with its pressure for new housing, that further loss of streams is not consistent with the purpose of the Act, the NPSFM as it stands now and the proposed new NPSFM and National Environmental Standard. The same standards need to apply in Wellington, and this is supported by the Wellington Regional Policy Statement (policy 18).

Relief sought

- 7.32. Delete “in particular those identified in Schedules A (outstanding water bodies) and C (mana whenua),” or reframe this phrase as an exception to the exceptions in paragraphs (b) – (g).
- 7.33. Delete Policy P102(b) (previously (c)) which refers to a growth and/or development framework or strategy approved by a local authority under the Local Government Act 2002.

Policy P132 – Functional need and efficient use

- 7.34. Policy P132 implements the NZCPS requirement that activities that have a functional need to be located in the coastal marine area should be provided for in appropriate places, and that activities that do not have a functional need to be located in the coastal marine area generally should not be located there (NZCPS P6(2)(c) and (d)). The Lambton Harbour Area has been excluded from this policy on the basis that it conflicted with Policy P142 – Lambton Harbour Area. It is acknowledged that some reconciliation between Policies P132 and P142 is required in order to enable appropriate re-development of existing wharves. However, the exception of the whole Lambton Harbour Area from Policy 132 is considered too broad and as such does not give effect to the NZCPS.

Relief sought

- 7.35. Reconcile policies P 132 and P 142 by either:
- 7.35.1. Making the Lambton Harbour Area subject to paragraphs (e) – (h) in P132 (which relate to using minimum area necessary, making available for appropriate public or multiple use, removing structures when redundant and concentrating development locations where practicable) and/or;
 - 7.35.2. Confining the exclusion of the Lambton Harbour Area from P132 to parts of the Lambton Harbour Area where redevelopment of existing structures is contemplated, such as the existing “finger wharves” in the northern part of the Lambton Harbour Area.

P138 – Structures in sites with significant values

- 7.36. Policy P138 requires the avoidance of new, replaced or altered structures in specified significant sites. However, many sites of significant indigenous biodiversity that meet policy 11(a) of the NZCPS have not yet been identified. As such, they need to be included in this policy on a ‘criteria’ basis in order to give effect to the NZCPS.

Relief sought

- 7.37. Amend Policy P138 by adding “or that meets the criteria in Policy 11(a) of the New Zealand Coastal Policy Statement” after “Schedule J (geological features)”, or similar.

P143 – Deposition in a site with significant values

- 7.38. Policy P143 requires the avoidance of deposition of sand, shingle or shell in specified significant sites. However, sites of significant indigenous biodiversity that meet policy 11(a) of the NZCPS have not yet been identified. As such, they need to be included in this policy on a ‘criteria’ basis in order to give effect to the NZCPS.

Relief sought

- 7.39. Amend Policy P143 by adding “or that meets the criteria in Policy 11(a) of the New Zealand Coastal Policy Statement” after “Schedule J (geological features)”, or similar.

P144 – Dumping in a site with significant values

- 7.40. Policy P144 requires the avoidance of dumping in specified significant sites. However, sites of significant indigenous biodiversity that meet policy 11(a) of the NZCPS have not yet been identified. As such, they need to be included in this policy on a ‘criteria’ basis in order to give effect to the NZCPS.

Relief sought

- 7.41. Amend Policy P144 by adding “or that meets the criteria in Policy 11(a) of the New Zealand Coastal Policy Statement” after “Schedule J (geological features)”, or similar.

Section 5 – Rules

Agrichemicals - Rule R36B – “Motorised and aerial discharge of agrichemicals – permitted activity”:

- 7.42. Condition (b) of Rule R36B states “there is no discharge into water or, onto a roof used for rain water collection.”
- 7.43. The first element of condition (b) of Rule R36B, which refers to “discharge into water”, is inconsistent with condition (b) of 5.1.13 “General conditions for the discharge of agrichemicals”, which already provides:

*There is no discharge directly into the coastal marine area or a **surface water body**, unless the agrichemical is approved by the Environmental Protection Agency for use over or into water*

- 7.44. However, it is unclear as to whether condition (b) is intended to apply solely to systems designed to collect rain water (for example a roof used to collect rainwater), water generally, or both.

Relief sought

7.45. Amend condition (b) of Rule R36B to clarify that it only applies to systems designed to collect rainwater, as follows:

“(b) there is no discharge onto a roof, gutter or holding used for rain water collection.”

Vertebrate toxic agents – new rule

7.46. The control of pest fish is essential for the maintenance of indigenous biological diversity and protection of significant habitats under section 6(c) of the Act. The use of vertebrate toxic agents, namely Rotenone, is an important part of this work.

7.47. Rotenone is a natural plant toxin that is acutely toxic to fish and invertebrates and is widely used internationally as a tool for controlling and eradicating pest fish. It degrades rapidly on exposure to light, heat and oxygen with a half-life measured in days. Rotenone does not bioaccumulate.

7.48. The Resource Management (Exemption) Regulations 2017 exempt the discharge of rotenone from section 15 of the Act.⁸ However, the exemption is only available where the discharge is into a water body whose surface, during the discharge, is less than hectare in area, and is not connected to a river or an artificial watercourse. Accordingly, rotenone in water bodies that do not meet these criteria will require a resource consent under Rule R67 “All other discharges to sites of significance – non-complying activity” or R68 “All other discharges – discretionary activity” of the Proposed Plan.

7.49. Discretionary or non-complying activity status is not an appropriate method to manage the effects of rotenone use, for the following reasons:

7.49.1. It introduces unnecessary duplication and cost because the discharge of vertebrate pest control products is separately regulated under the Hazardous Substances and New Organisms Act 1996.

7.49.2. Under section 26ZR of the Conservation Act 1987, only warranted officers or any person authorised by the Director-General of Conservation may destroy freshwater fish using a hazardous substance such as rotenone.

7.49.3. Invasive pest fish have the potential to have significant impacts on the values of outstanding water bodies. This includes those listed in Schedule A and the ecosystems and habitats with significant indigenous values listed in Schedule F of the Proposed Plan. Without the ability to control these invasive fish, there is the potential for these sites to become significantly degraded, and their value lost.

⁸ Regulation 6.

Relief sought

7.50. 2.2 Add a new restricted discretionary activity rule as follows:

“Rule R88A: Rotenone into water – restricted discretionary activity

The discharge of rotenone into water for the control of invasive aquatic organisms is a restricted discretionary activity provided the following conditions are met:

(a) The application technique or method is approved for use by the Hazardous Substances and New Organisms Act 1996 and the use and discharge of the substance is in accordance with all controls of the approval.

Matters for discretion:

- 1. Effects on **community drinking water supply** water quality:*
- 2. Effects on non-target species:*
- 3. Effects on **aquatic ecosystem health** including beneficial effects.*

Rule 94 – Cultivation of land – permitted activity

7.51. There is no technical reason to support the reduction in setback width from 5 m to 3m on slopes less than 3 degrees. This change will reduce the amount of particulate and fine sediment that would be removed and as such is inconsistent with the NPSFM and NZCPS. The decision to explicitly enable associated discharge of contaminant as part of this rule subject to narrative conditions derived from s 70 of the Act means discharges will be permitted with largely unmeasurable conditions.

Relief sought

7.52. Reinstate the setback to 5 m on all slopes as a minimum; and

7.53. Either assign measureable and enforceable numeric standards for the conditions which replicate s 70 of the Act; or apply rule R42 discharge standards

Rule R95 – Break-feeding – permitted activity

7.54. There is no technical reason to support the reduction in setback width from 5 m to 3m on slopes less than 3 degrees. This change will reduce the amount of particulate and fine sediment that would be removed and as such is inconsistent with the NPSFM and NZCPS. The decision to explicitly enable associated discharge of contaminant as part of this rule subject to narrative conditions derived from s 70 of the Act means discharges will be permitted with largely unmeasurable conditions.

Relief sought

- 7.55. Reinstatement of the setback to 5 m on all slopes as a minimum; and
- 7.56. Either assign measurable and enforceable numeric standards for the conditions which replicate s 70 of the Act; or apply rule R42 discharge standards

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

- 7.57. Sheep grazing in wetlands may be appropriate in some circumstances, but in others they may cause significant adverse effects. As such sheep should not be allowed to graze in wetlands as a permitted activity. This is also inconsistent with NZCPS Policy 21(d).

Relief sought

- 7.58. Remove the exclusion enabling sheep to graze in significant natural wetlands from paragraph (a).

Rule R115 – Culverts – permitted activity: the decision to:

- 7.59. Rule R115 has been amended to include reclamation associated with the culvert without any dimension parameters which is not appropriate as a permitted activity. In addition the culvert diameter specifications are not in accordance with national best practice for providing fish passage⁹, which has been replicated in the Proposed National Environmental Standards for Freshwater 2019.

Relief sought

- 7.60. Either exclude reclamation associated with culverts from R115 or include appropriate dimension parameters; and
- 7.61. Amend culvert dimensions to align with current national best practice for providing fish passage and the Proposed National Environmental Standards for Freshwater 2019 regulation 21 generally, and in particular so that in R115(j)(iv) the culvert diameter must be at least 1.3 times the stream bankfull width for streams with a bankfull width of ≤ 3 m; or equal to or greater than $1.2 \times$ stream bankfull width + 0.6 m for streams with a bankfull width > 3 m.

Rule R117 – New structures – permitted activity: the decision to:

- 7.62. Rule R117 has been amended to include reclamation associated with the new structure without any dimension parameters which is not

⁹ New Zealand Fish Passage guidelines: For structures up to 4 metres. Franklin, P. Gee, E. Baker, C. Bowie, S. NZ Fish Passage Advisory Group, NIWA, DOC (2018)

appropriate as a permitted activity. In addition, this rule does not exclude permitted structures in inanga spawning habitat (Schedule F1b). This is contrary to the NPSFM, NZCPS, RPS and objectives and policies in the Plan.

Relief sought

- 7.63. Either exclude reclamation associated with new structures from R117 or include appropriate dimension parameters; and
- 7.64. Disapply this rule from inanga spawning habitat as identified in Schedule F1b.

Rule R121 – Maintenance of drains and highly modified rivers or streams within an individual property – permitted activity:

- 7.65. Drain maintenance and macrophyte removal typically causes the release of large amounts of sediment. General condition 5.5.4(g) requiring sediment to be minimised with a visibility standard does not apply to this rule. Migrating juvenile fish are particularly sensitive to high suspended sediment loads. Avoiding macrophyte removal during key migration times is an important way to minimise impacts on indigenous freshwater fish. However, it is acknowledged that a decision to restrict the permitted activity during the migration times listed in Schedule F1a for species present in the catchment would for some rivers result in a situation where at no time of the year could drain clearance be undertaken as a permitted activity and that this would impose financial and time costs on landowners. As such the Minister suggests a narrower relief than sought in her original submission which is to preclude the permitted activity insofar as it relates to use of mobile machinery in or on the bed in a manner that disturbs the bed from applying from August to December. This would capture the peak upstream migration times of the five whitebait species and capture a small part of the migration times of all other species.
- 7.66. Woody debris with a diameter greater than 0.2 m creates habitat and refuge for indigenous fish. Preventing the removal of this vegetation as a permitted activity was supported as an effective mechanism to protect at least some aspect of fish habitat in environments where habitat is lacking.

Relief sought

- 7.67. Add a new condition that the use of mobile machinery in or on the bed in a manner that disturbs the bed of the active flowing channel must not take place during the critical migration times of 1 August to 31 December (inclusive) for indigenous fish species present in the catchment.

7.68. Either:

7.68.1. reinstate condition (l) relating to not removing woody debris with a diameter greater than 0.2m from the drain during maintenance works unless it is causing, or has the potential to cause a flood or erosion threat, or a threat to infrastructure; or

7.68.2. insert a condition to similar effect that requires no removal of instream woody debris less than 2m³ in size unless this is required to reduce the risk of flooding or erosion or to remove a threat to infrastructure.¹⁰

Rule R122 – Removing vegetation from the bed of any river or lake – permitted activity:

7.69. Vegetation removal from the bed of a river or lake can cause adverse effects on migrating juvenile fish. Avoiding disturbance from this activity during key migration times is an important way to minimise impacts on indigenous freshwater fish. However, it is acknowledged that a decision to restrict the permitted activity during the migration times listed in Schedule F1a for species present in the catchment would for some rivers result in a situation where at no time of the year could vegetation removal be undertaken as a permitted activity and that this would impose financial and time costs. As such the Minister suggests a narrower relief than sought in her original submission which is to preclude the permitted activity insofar as it relates to use of mobile machinery in or on the bed in a manner that disturbs the bed from applying from August to December. This would capture the peak upstream migration times of the five whitebait species and capture a small part of the migration times of all other species.

7.70. Woody debris with a diameter greater than 0.2 m creates habitat and refuge for indigenous fish. Preventing the removal of this vegetation as a permitted activity was supported as an effective mechanism to protect at least some aspect of fish habitat in environments where habitat is lacking.

Relief sought

7.71. Add a new condition that the use of mobile machinery in or on the bed in a manner that disturbs the bed of the active flowing channel must not take place during the critical migration times of 1 August to 31 December (inclusive) for indigenous fish species present in the catchment.

7.72. Either:

¹⁰ From Horizons One Plan, permitted activity condition in Table 17.2(l).

7.72.1. reinstate condition (m) relating to not removing woody debris with a diameter greater than 0.2m from the drain during maintenance works unless it is causing, or has the potential to cause a flood or erosion threat, or a threat to infrastructure; or

7.72.2. insert a condition to similar effect that requires no removal of instream woody debris less than 2m³ in size unless this is required to reduce the risk of flooding or erosion or to remove a threat to infrastructure.¹¹

Rule R127 – Reclamation of the beds of rivers or lakes – non-complying activity

7.73. Reclamation associated with the piping of a stream has been moved from the non-complying rule, thus making it a discretionary activity. Stream piping has adverse effects on habitat, aquatic life and ecosystem health that must be avoided. See also the reasons for appeal in relation to policy P102.

Relief sought

7.74. Reinstate Rule R127(a) “associated with the piping of a stream” as a non-complying activity.

Rules R136 – Take and use of water – permitted activity; R137 – Farm dairy washdown and milk-cooling water – permitted activity; and R 141 Take and use of water – controlled activity

7.75. In each case the rule refers to the fish screen requirement being subject to a “minimum” mesh size of 3mm, it should instead refer to a “maximum” mesh size of 3mm. This is presumed to be an error.

7.76. There is no condition requiring the prevention of fish becoming trapped against the intake screen. This can be addressed by adding a limit to the approach velocity (flow onto the fish screen) and a requirement that the sweep velocity (flow across the fish screen) exceeds the approach velocity. This is required to prevent fish mortality from water takes.

Relief sought

7.77. Replace “minimum” with “maximum” in rules R136(c), R137(d) and R141(d).

7.78. In rules R136, R137 and R141 add a new requirement to prevent fish becoming trapped against the intake by imposing a maximum approach velocity (the speed at which the water is drawn into the intake) of 0.12m/s;

¹¹ From Horizons One Plan, permitted activity condition in Table 17.2(l).

and a requirement that the sweep velocity (the speed at which the water flows across the fish screen) exceeds the approach velocity.

Rule R151 – Additions or alterations to structures – controlled activity:

7.79. Under rule R151 an application for an addition to or alteration of a structure up to 10m horizontal projection and 3 m vertical projection may not be declined even if it is within a site or habitat identified in Schedule C (mana whenua), Schedule F2c (birds-coastal), Schedule F4 (coastal sites), Schedule F5 (coastal habitats) or Schedule J (geological features). This does not give effect to the NZCPS, in particular policies 11, 13 and 15, nor does it give effect to the RPS and is inconsistent with the policy direction in the plan.

Relief sought

7.80. Exclude this rule from applying in scheduled sites mentioned in the reasons for appeal and instead create a new discretionary activity rule or restricted discretionary rule for additions or alterations to structures of up to 10m horizontal projection and 3 m vertical projection within these scheduled sites.

Rule R165 – Additions or alteration to, or replacements of, existing seawalls – controlled activity

7.81. Under rule R165 an application for an addition to, replacement or alteration of a seawall up to 5m horizontal projection and 1m vertical projection may not be declined even if it is within a site or habitat identified in Schedule C (mana whenua), Schedule F2c (birds-coastal), Schedule F4 (coastal sites), Schedule F5 (coastal habitats) or Schedule J (geological features). This does not give effect to the NZCPS, in particular policies 11, 13 and 15, nor does it give effect to the RPS and is inconsistent with the policy direction in the plan.

Relief sought

7.82. Exclude this rule from applying in scheduled sites mentioned in the reasons for appeal and instead create a new discretionary activity rule or restricted discretionary rule for additions or alterations to or replacements of seawalls of up to 5m horizontal projection and 1m vertical projection within these scheduled sites.

Rule R207 – Deposition for beach renourishment – controlled activity

7.83. Under rule R207 an application for the deposition of sand, shingle, shell or other naturally occurring coastal material for beach renourishment is a controlled activity subject to specified conditions. Whilst the rule

includes consideration of effects on scheduled sites, the activity, which is subject to no volume constraints, may not be declined even if it is within a site or habitat identified in Schedule C (mana whenua), Schedule F2c (birds-coastal), Schedule F4 (coastal sites), Schedule F5 (coastal habitats) or Schedule J (geological features). This does not give effect to the NZCPS, in particular policies 11, 13 and 15, nor does it give effect to the RPS and is inconsistent with the policy direction in the plan.

Relief sought

7.84. Exclude this rule from applying in scheduled sites mentioned in the reasons appeal and instead create a new discretionary activity rule for deposition for beach renourishment within these scheduled sites.

Method M20A – Coastal Sites that meet NZCPS Policy 11

7.85. The addition of this method is welcome as an acknowledgment that there is more required for the Plan to give effect to the NZCPS. However, a realistic timeframe is needed for implementation so the plan can be said to be giving effect to the NZCPS as soon as is practicable, as is required by the Act.

Relief sought

7.86. Amend the method to refer to an appropriate and achievable time by which the method will be complied with.

Method M24 – Outstanding natural features and landscapes and high natural character

7.87. The time for achieving this objective to produce a list of outstanding natural features, landscapes and areas of high natural character was 2017. As this has not happened, the method should be amended to refer to an appropriate and achievable time in the future.

Relief sought

7.88. Amend the method to refer to an appropriate and achievable time by which the method will be complied with.

General

1. The parts of the decision appealed do not promote the sustainable management of natural and physical resources as required by Part 2 of the Act.

2. I seek the following relief:

2.1. The relief specified in this notice of appeal under each heading "*Relief sought*"; and

2.2. such further orders, alternative relief, consequential amendments or other amendments as are considered appropriate or necessary to address the concerns set out above.

3. I attach the following documents to this notice:

3.1. a copy of my submission and further submission (**Annexure A**);

3.2. a list of names and addresses of persons to be served with a copy of this notice (**Annexure B**).



Marie Long

Director, Planning, Permissions and Land
Department of Conservation
Acting pursuant to delegated authority on behalf of the Minister of
Conservation¹²

18 September 2019

Address for service of appellant:

Minister of Conservation

By email: kanton@doc.govt.nz; or

Katherine Anton

Department of Conservation

PO Box 10420

Wellington 6143

¹² A copy of the Instrument of Delegation may be inspected at the Director-General's office at Conservation House (*Whare Kaupapa Atawhai*, 18-32 Manners Street, Wellington 6011).

Contact persons

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And

Katherine ANTON, Solicitor – Legal Services

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Attachments

Copies of my submission and further submission and the decision of the Wellington Regional Council has been forwarded to the Environment Court with this notice of appeal. If any party served with this notice requires a copy of the submission and decision to be served on them, please contact the appellant at the address for service given above and provide an email address so that these documents can be forwarded electronically.

Advice to recipients of copy of notice

How to become a party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in [form 33](#)) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

Advice

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