

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)

DAN RIDDIFORD

(ENV-2019-WLG-000109)

MASTERTON DISTRICT COUNCIL

(ENV-2019-WLG-000110)

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 FISH AND GAME
COUNCIL

(ENV-2019-WLG-000122)

WELLINGTON WATER LIMITED

(ENV-2019-WLG-000123)

RANGITĀNE TŪ MAI RĀ TRUST
and RANGITĀNE O WAIRARAPA
INC SOCIETY

(ENV-2019-WLG-000125)



ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW
ZEALAND INC

(ENV-2019-WLG-000130)

NEW ZEALAND TRANSPORT
AGENCY

(ENV-2019-WLG-000131)

FIRST GAS LIMITED

(ENV-2019-WLG-000132)

Appellants

AND

WELLINGTON REGIONAL
COUNCIL

Respondent

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

Date of Order: 14 September 2021

Date of Issue: 14 September 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 Wetlands & Biodiversity - Biodiversity, aquatic ecosystem health and mahinga kai - Topic 42 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 12 August 2021.

Other relevant matters

[2] The following persons gave notice of an intention to become parties to the appeals under s 274 of the Act, and have signed the consent memorandum setting out the relief sought:

- Wairarapa Water Users Inc Society;
- Kāpiti Coast District Council;
- BP Oil New Zealand Ltd, Mobil Oil New Zealand Ltd and Z Energy Ltd;
- Powerco Ltd;
- Meridian Energy Ltd;
- Federated Farmers of New Zealand;
- Queen Elizabeth II National Trust; and
- KiwiRail Holdings Ltd.

[3] Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa Inc Society, Wellington Fish and Game Council, Dan Riddiford, Horticulture New Zealand, QEII National Trust, Land Matters Ltd, First Gas Ltd, Masterton District Council, South Wairarapa District Council, A & J Boyne, Egon Guttke and K Reedy 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. Kāinga Ora – Homes and Communities and Beef and Lamb New Zealand Ltd confirmed to Council that they did not have an interest in the topic.

[4] The Regional Council advised that s 274 parties Hiwi Trust, Kahungunu ki Wairarapa and N & H Diederich were supplied with the consent order in accordance

with the Court's 4 June 2021 direction, and did not respond. Fire and Emergency New Zealand advised the Council it had no interest in this Topic.

[5] The Court is making this order under s 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to s 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order or are deemed to have done so in accordance with the Court's minute of 28 April 2021;
- (b) all parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act including, in particular, Part 2.


B P Dwyer
Environment Judge



APPENDIX A - RELEVANT PROVISIONS - (DECISIONS VERSION - WITH CLAUSE 16 CHANGES) - TOPIC 42 WETLANDS AND BIODIVERSITY

KEY:

Red track - changes made at mediation

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

Blue track - changes in other granted/proposed consent orders

Objective O31



Outstanding water bodies identified in Schedule A (outstanding water bodies) and their significant values are protected, and restored. Where the significant values relate to biodiversity, aquatic ecosystem health and mahinga kai, restoration is to a healthy functioning state including as defined by Tables 3.4, 3.5, 3.6, 3.7 and 3.8.

Objective O35



Ecosystems and habitats with significant indigenous biodiversity values are protected from the adverse effects of use and development, and where appropriate restored to a healthy functioning state including as defined by Tables 3.4, 3.5, 3.6, 3.7 and 3.8.

Policy P31: Biodiversity, Aquatic ecosystem health and mahinga kai



~~Biodiversity, Aquatic ecosystem health and mahinga kai shall be maintained or restored by managing the effects of use and development on physical, chemical and biological processes to:~~

Manage the adverse effects of use and development on biodiversity, aquatic ecosystem health and mahinga kai to:

Hydrology

- (a) minimise adverse effects on maintain or where practicable restore natural flow characteristics and hydrodynamic processes, and the natural pattern and range of water level fluctuations in rivers, lakes and **natural wetlands**, and

Water quality

- (b) maintain or improve water quality including to assist with achieving meet the objectives in Tables 3.4, 3.5, 3.6, 3.7 and 3.8 of Objective O25, and

Aquatic habitat diversity and quality

- (c) ~~minimise adverse effects on~~ maintain or where practicable restore aquatic habitat diversity and quality, including:

(i) the form, frequency and pattern of pools, runs, and riffles in rivers, and

(ii) the natural form of rivers, lakes, **natural wetlands** and the coastal ~~habitats~~ marine area, and

- (d) where practicable, restore the connections between fragmented aquatic habitats, and

Critical habitat for indigenous aquatic species and indigenous birds

- (e) ~~minimise adverse effects on~~ maintain or where practicable restore habitats that are important to the life cycle and survival of indigenous aquatic species and the habitats of indigenous birds in the coastal marine area, natural wetlands and the beds of lakes and rivers and their margins that are used for breeding, roosting, feeding, and migration, and

Critical life cycle periods

- (f) ~~minimise~~ avoid, minimise or remedy adverse effects on aquatic species at times which will most affect the breeding, spawning, and dispersal or migration of those aquatic species, including timing the activity, or the adverse effects of the activity, to avoid times of the year when adverse effects may be more significant, and

Riparian habitats

- (g) ~~minimise adverse effects on~~ maintain or where practicable restore riparian habitats ~~and restore them where practicable,~~ and

Pests

- (h) avoid the introduction, and restrict the spread, of aquatic pest plants and animals¹.

Policy P34: Fish passage

The construction or creation of new barriers impeding the efficient and safe to the passage of fish and kōura species at all their life stages shall be avoided, except where this is required for the protection of indigenous fish and kōura populations.

Note: Advice can be sought from the statutory agencies responsible for the species. Sports fish, including trout, are managed by the Wellington Fish and Game Council and indigenous fish are managed by the Department of Conservation.

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

The ecological health and significant values of Te Awarua-o-Porirua Harbour, Wellington Harbour (Port Nicholson) and ~~Lake~~ Wairarapa Moana will be restored including overtime by:

- (a) managing activities, erosion-prone land, and riparian margins to reduce sedimentation rates and pollutant inputs, to meet the water quality, aquatic ecosystem health and mahinga kai objectives set out in Tables 3.4 to 3.8, and
- ~~(b) managing erosion-prone land and riparian margins in their catchments, and~~
- ~~(c)~~(b) undertaking planting and pest management programmes in harbour and lake habitats and ecosystems.

Policy P39: Adverse effects on outstanding water bodies

The adverse effects of use and development on outstanding water bodies and their significant values identified in Schedule A (outstanding water bodies) shall be avoided, unless there is a functional need for operation, maintenance or upgrade of existing

¹ Pests for the Wellington region are defined in the Wellington Regional Pest Management Strategy

regionally significant infrastructure in which case adverse effects of activities shall be managed by:

- (a) avoiding adverse effects where practicable, and
- (b) where adverse effects cannot be avoided, **minimising** them, and
- (c) where adverse effects cannot be **minimised**, they are remedied where practicable, and
- (d) where **residual adverse effects** cannot be avoided, **minimised**, or remedied, **offsetting** is provided where possible.

Proposals for **biodiversity mitigation** and **biodiversity offsetting** will be assessed against the principles listed in Schedule G1 (**biodiversity mitigation**), and-Schedule G2 (**biodiversity offsetting**). A precautionary approach shall be used when assessing the potential for adverse effects on outstanding water bodies.

Where more than minor adverse effects on outstanding water bodies cannot be avoided, **minimised**, remedied or redressed through **biodiversity offsets**, the activity is inappropriate.

Policy P40: Ecosystems and habitats with significant indigenous biodiversity values



Protect in accordance with Policy P32 and Policies P39A-D and where appropriate restore the following ecosystems and habitats with significant indigenous biodiversity values:

- (a) the rivers and lakes with significant indigenous ecosystems identified in Schedule F1 (rivers/lakes), and
- (b) the habitats for indigenous birds identified in Schedule F2 (bird habitats), and
- (c) significant natural wetlands, including the significant natural wetlands identified in Schedule F3 (identified significant natural wetlands), and
- (d) the ecosystems and habitat-types with significant indigenous biodiversity values in the coastal marine area identified in Schedule F4 (coastal sites) and Schedule F5 (coastal habitats).

Notes

All natural wetlands in the Wellington Region are considered to be **significant natural wetlands** ecosystems and habitats with significant

indigenous biodiversity values as they meet at least two of the criteria listed in Policy 23 of the Regional Policy Statement 2013 for identifying indigenous ecosystems and habitats with significant indigenous biodiversity values: being representativeness and rarity.

Policy P42: Protecting and restoring Managing effects on ecosystems and habitats with significant indigenous biodiversity values from activities outside these ecosystems and habitats



In order to protect the ecosystems and habitats with significant indigenous biodiversity values ~~identified~~ in accordance with Policy P40, particular regard shall be given to managing the adverse effects of use and development in surrounding areas outside of these ecosystems and habitats ~~outside of~~ on physical, chemical and biological processes to:

- (a) maintain ecological connections within and between these habitats, or
- (b) provide for the enhancement of ecological connectivity between fragmented habitats through biodiversity offsets, and
- (c) provide adequate buffers around ecosystems and habitats with significant indigenous biodiversity values, and
- (d) avoid cumulative adverse effects on, and the incremental loss of ~~the values of these ecosystems and habitats~~ significant indigenous biodiversity values.

Policy P105: Protecting trout habitat

Particular regard shall be given to the protection of trout habitat in rivers with important trout habitat identified in Schedule I (trout habitat). The effects of use and development in and around these rivers shall be managed to:

- (a) maintain or improve water quality in accordance with the objectives in Table 3.4 and Table 3.5 of Objective O25, and
- (b) minimise changes in flow regimes that would otherwise prevent trout from completing their life cycle, and
- (c) maintain the amount of pool, run and riffle habitat, and
- (d) minimise adverse effects on the beds of trout spawning waters identified in Schedule I (trout habitat).

Method M7: Outstanding water bodies

Wellington Regional Council will:

- (a) review criteria in the Regional Policy Statement for the Wellington Region 2013 used to identify outstanding rivers and lakes for indigenous ecosystem values, and
- (b) work with relevant statutory agencies and stakeholders to establish ~~use~~ an expert panel to develop and apply criteria for outstanding recreational values of rivers and lakes in the region, and
- (c) work with territorial authorities to develop and apply criteria for outstanding landscape values of rivers and lakes, and
- (d) work with mana whenua to develop and apply criteria to identify water bodies with outstanding cultural and spiritual values by June 2021, and
- (e) amend the Plan, after consultation with interested parties, through plan change or variation to include outstanding rivers and lakes identified in (a), (b), and (c) and (d) above.

Method M20A: Coastal Sites that meet NZCPS Policy 11

Wellington Regional Council will work with the Department of Conservation, territorial local authorities, Iwi and other parties as appropriate to:

- (a) identify sites in the coastal marine area within the region that meet the criteria set out in the New Zealand Coastal Policy Statement Policy 11, and
- (b) produce a regional list of these sites for inclusion in the Plan by plan change or variation **by December 2022.**