

**IN THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV- 2019-WLG-

**I MUA I TE KOOTI TAIAO O AOTEAROA
TE WHANGANUI-Ā-TARA**

IN THE MATTER

of an appeal under Clause 14 (1) of the
First Schedule of the Resource
Management Act 1991

AND IN THE MATTER

of the proposed Wellington Regional Plan

BETWEEN

**THE ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW ZEALAND
INCORPORATED**

Appellant

AND

WELLINGTON REGIONAL COUNCIL

Respondent

**NOTICE OF APPEAL BY THE ROYAL FOREST AND BIRD PROTECTION SOCIETY OF
NEW ZEALAND INCORPORATED**

18 September 2019

To: The Registrar
Environment Court
Auckland

1. The Royal Forest and Bird Protection Society of New Zealand Incorporated ('Forest & Bird'; 'the Society') appeals against decisions of Wellington Regional Council on the Proposed Wellington Natural Resources Regional Plan (the proposed plan).
2. Forest & Bird made a submission and two further submissions on the proposed plan.
3. Forest & Bird is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Forest & Bird received notice of the decision on or about 31 July 2019.
5. The decision was made by the Wellington Regional Council.
6. Forest & Bird is willing to participate in alternative dispute resolution.

PARTS OF DECISION APPEALED, REASONS FOR APPEAL, AND RELIEF SOUGHT

7. The parts of the decision that Forest and Bird is appealing, the reasons and the relief are set out in Table 1. These relate to the provisions regarding water management, biodiversity and the coastal environment, and includes consequential amendments to other plan provisions as necessary for consistency and to give effect to relief sought as set out in the Table 1 below.
8. In addition to the reasons set out in the table below, the general reasons for Forest & Bird's appeal are that the provisions appealed against:
 - a. do not give effect to relevant provisions of the Wellington Regional Policy Statement (RPS);
 - b. do not give effect to the New Zealand Coastal Policy Statement (NZCPS) ;
 - c. do not give effect to the National Policy Statement for Freshwater Management (NPSFM);
 - d. are not consistent with Part 2 of the Resource Management Act ('the Act');

- e. do not implement the Council's functions under s 30 of the Act; and/or
 - f. do not represent best resource management practice.
9. Where specific wording changes are proposed by way of relief, Forest & Bird seeks in the alternative any wording that would adequately address the reasons for its appeal.

Attachments

10. The following documents are attached to this notice of appeal:
- a. A list of names and addresses of persons to be served with a copy of this notice (Appendix A); and
 - b. A copy of Forest and Bird's original submission (Appendix B).
 - c. A copy of Forest and Birds further submission (Appendix C)
11. The decision is not attached as a result of the Environment Court Decision *Re Wellington Regional Council* [2019] NZEnvC 126.
12. Parties served with a copy of this notice of appeal will not be served with the attachments, and may obtain a copy from the appellant on request.

Dated: 18 September 2019



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Advice to recipients of copy of notice of appeal

How to become 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 or service requirements (see form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.

Advice

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

- Schedule 1 form 7 heading: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).
- Schedule 1 form 7: amended, on 1 November 2010, by [regulation 19\(1\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2010 (SR 2010/279).

Schedule 1 form 7: amended, on 1 June 2006, by [regulation 10\(4\)](#) of the Resource Management (Forms, Fees, and Procedure) Amendment Regulations 2006 (SR 2006/99).

TABLE 1 - PART OF DECISION APPEALED, REASONS FOR APPEAL AND RELIEF SOUGHT

	PROVISION	REASONS FOR APPEAL	APPEAL – RELIEF SOUGHT
	Definitions		
1.	New definition: Te Mana o te Wai	Definition needed to give effect to NPSFM	Add definition of Te Mana o te Wai that gives effect to that in the NPSFM
	Objectives		
2.	New Objective	The objective is needed to give effect to NPSFM	Add a new objective The management of freshwater will give effect to “Te Mana o te Wai”
3.	O1	Decision reduces clarity of objective	Reinstate notified objective
4.	O5	Objective not consistent with sustainable management purpose of RMA	Reinstate notified objective
5.	O12	Objective not consistent with sustainable management purpose of RMA	Reinstate notified objective
6.	O18 and Table 3.8	Table 3.8 contains subjective words such as “balanced” and “appropriate”. These should be avoided where possible in favour of objective measures or numerical objectives.	Remove subjective references in tables and replace with objective measures.
7.	O19	Deletion of objective does not give effect to the NZCPS.	Reinstate and amend O19 such that it that provides “Natural processes are safeguarded from use and development”
8.	O20	The reference to “acceptable” is not appropriate in an	Replace with “The adverse effects from natural hazards and

		objective.	climate change on people, the community, ecological values and infrastructure are anticipated and provided for in a proactive and environmentally sensitive manner.”
9.	O22	Objective does not give effect to NZCPS	Reinstate notified objective.
10.	O23, O24, O25, O31, O35 and Tables 3.1-3.7	<p>This objective does not give effect to NPSFM.</p> <p>Amendments to the NPSFM in 2017 supersede these provisions. For example, Te Mana o te Wai is a fundamental concept of the NPSFM and this is referred to in O23.</p> <p>Amendments to the NPSFM proposed in September 2019 include significant changes to the objectives and policies. O23, O24, O25, O31, O35 and Tables 3.1-3.8 do not give effect to these changes.</p>	<p>Amend objectives and table so that they gives effect to the NPSFM including by amending the objectives to implement the concept of Te Mana o te Wa and updating the table so that attributes that are required to be included by the NPSFM, such as dissolved inorganic nitrogen, are appropriately included.</p> <p>The specific wording of the objectives and tables cannot be provided at this stage. This is because the government has indicated amendments to the NPSFM proposed in September 2019 are likely to come into force in early 2020,¹ before this appeal is considered by Environment Court.</p> <p>There are no relevant transitional provisions proposed in the 2019 amendments, and if this is carried through, the Court, will have to give effect to the NPSFM as amended.</p> <p>Further particulars can be provided once decisions are made on the amendments to the NPSFM have been finalised.</p>
11.	O37	The deletion of this objective does not give effect to the NPSFM	Reinstate notified objective
12.	O44 -O48	These objectives do not give effect to NPSFM. The reference to minimising and reducing are contrary to the concepts of Te Mana o te Wai and Ki uta ki ti	Amend objectives and reinstate O45 to remove references to minimise, implement the concept of Te Mana o te Wai with reference to ensuring activities achieve the the freshwater objectives in Table 3.4 -3.8 (as amended by appeal points above)

¹ <https://www.mfe.govt.nz/sites/default/files/media/Fresh%20water/action-for-healthy-waterways-summary.pdf>

Policies			
13.	P12A	Policy does not give effect to the NZCPS	Delete policy
14.	P13 and P15	<p>Policies do not give effect to the NZCPS or NPSFM</p> <p>The use of the word “provided” elevates the subject matter of the policy (regionally significant infrastructure and renewable electricity generation), that are matters of national importance under s 6, to equivalent importance of matters of national importance.</p>	Reinstate notified policies with the words “provided adverse effects are avoided remedied or mitigated” added at the end of both policies.
15.	P16	Policies does not give effect to the NZCPS or NPSFM	Add the words “provided adverse effects are avoided remedied or mitigated” at the end of both policies
16.	P30	Policy does not give effect to the NZCPS or NPSFM	Delete the reference to minimising adverse effects
17.	P31	<p>Policy 31(b) requires a consequential amendment to be consistent with Objective O25 and Tables 3.3-3.8</p> <p>P31(c) does not give effect to the NPSFM</p> <p>P31(f) do not give effect to NPSFM and or NZCPS, especially the requirement to minimise adverse effects, as it may allow effects that have to be avoided under Policy 11 of the NZCPS</p>	<p>Amend Policy 31(b) so that it is consistent with Objective O25 (as amended)</p> <p>Add a new heading “wetlands” and a new sub policy “avoid the loss or degradation of any natural wetland”</p> <p>Replace “maintain” in P31(f) with “avoid remedy or mitigate”</p>
18.	P32	<p>The policy provides no guidance on the management of effects and provides that any activity can proceed, regardless of effects, if the effects are offset. This will allow for ongoing degradation of water through cumulative effects. This does not give effect to the NPSFM and is inconsistent with s 30.</p> <p>Given the major impacts on water quality and quantity are often cumulative the policy should be reframed to address cumulative effects.</p>	<p>Replace with</p> <p>“Activities that impact on aquatic ecosystem health and mahinga kai shall be managed to:</p> <p>(a) ensure that the freshwater objectives in Tables 3.4 – 3.8 (as amended) and limits/targets in Table 4.5 are achieved.</p> <p>(b) where (a) is achieved avoid significant adverse effects, and, in relation to adverse effects that are not significant:</p>

			<ul style="list-style-type: none"> (i) these are avoided in the first instance; (ii) where they cannot be avoided, they are remedied; (iii) where they cannot be remedied they are mitigated; and (iv) residual adverse effects that cannot be mitigated, are offset.” <p>Add new Table 4.5 to include appropriate limits to give effect to the NPSFM, including but not limited to, soluble inorganic nitrogen and dissolved reactive phosphorous.</p>
19.	P37	Policy does not give effect to NPSFM	Replace with “avoid the loss or degradation of any natural wetland”
20.	P41	Policy does not give effect to the NPSFM or NZCPS	<p>Replace the second paragraph with:</p> <p>“If the ecosystem or habitat cannot be avoided, adverse effects are managed by avoiding significant adverse effects. Where adverse effects are not significant:</p> <ul style="list-style-type: none"> (a) they are avoided in the first instance; (b) where they cannot be avoided, they are remedied; (c) where they cannot be remedied they are mitigated; and (d) residual adverse effects that cannot be mitigated, are offset.”
21.	P41A	The drafting is ambiguous as it is not clear if the qualification after the words “during known” applies to F1 and F1b or just F1b	Amend so clear that qualifier only applies to Schedule F1b

22.	P49 and P51	The deletion of these policies does not give effect to the NZCPS	Reinstate notified policies
23.	P62	The policy does not give effect to the NPSFM.	Make policy subject to P65 and P70, specifically, achieving the water quality objectives in O25 and Table 3.3 – 3.8 (as amended)
24.	P65	<p>The policy does not give effect to the NPSFM. It fails to recognise that adverse effects on water quality are cumulative. An approach of allowing discharge that minimise adverse effects fails to recognise that the cumulative effect of many minimised discharge may preclude the objectives being achieved, particularly in areas that are overallocated.</p> <p>There is no basis for requiring point source discharge to comply with the tables supporting O25 but not requiring the same of discharges from agricultural activities.</p>	<p>Replace with:</p> <p>Where an objective in Table 3.4, Table 3.5, Table 3.6 or Table 3.8 of Objective O25 (as amended) is not met, discharges from agricultural activities which involve contaminants entering water shall be managed in the following way:</p> <p>(a) for an existing discharge that contributes to the objective not being met, the discharge is only appropriate if:</p> <p>(i) the application for resource consent, at a minimum includes a defined programme of work for upgrading the activity, in accordance with good management practice, within the term of the resource consent, and</p> <p>(ii) the conditions on the resource consent must require the reduction of adverse effects that will ensure that, along with other measures in the catchment, the objectives in Table 3.4, Table 3.5, Table 3.6 or Table 3.8 are achieved.</p> <p>for a change of agricultural activity, the discharge is only appropriate if the activity would not cause the affected fresh water body or area of coastal water to become any worse in</p>

			relation to the objective.
25.	P66	The policy does not give effect to the NPSFM and fails to recognise that the key adverse effects of discharges are cumulative effects.	Make policy subject to P65, specifically, achieving the water quality objectives in O25 and Table 3.3 – 3.8 (as amended)
26.	P67	The policy does not give effect to the NPSFM and fails to recognise that the key adverse effects of discharges are cumulative effects. Effects that are minimised may still result in the failure to achieve targets and limits. As such the policy is contrary to O25	Make policy subject to P65, specifically, achieving the water quality objectives in O25 and Table 3.3 – 3.8
27.	P70	The policy does not give effect to the NPSFM and fails to recognise that the key adverse effects of discharges are cumulative effects.	<p>Replace with:</p> <p>Where an objective in Table 3.4, Table 3.5, Table 3.6 or Table 3.8 of Objective O25 is not met, point source discharges to water shall be managed in the following way:</p> <p>(a) for an existing discharge that contributes to the objective not being met, the discharge is only appropriate if:</p> <p>(i) the application for resource consent, at a minimum includes a defined programme of work for upgrading the activity, in accordance with good management practice, within the term of the resource consent, and</p> <p>(ii) conditions on the resource consent which require the reduction of adverse effects that will ensure that, along with other measures, the objectives in Table 3.4, Table 3.5, Table 3.6 or Table 3.8 of</p>

			Objective O25 are achieved. (b) for a new activity, the discharge is only appropriate if the activity would not cause the affected fresh water body or area of coastal water to decline in relation to the objective.
28.	P71	The policy does not give effect to the NPSFM and fails to recognise that the key adverse effects of discharges are cumulative effects.	Amend the start of the policy to say “Where all of the objectives in Table 3.4, Table 3.5, Table 3.6 or Table 3.8 of Objective O25 are met.... Update the parameters in P71 to ensure they give effect to the NPSFM.
29.	P78	The deletion of P78(a) does not give effect to the NPSFM	Reinstate P78(a)
30.	P95	P95(f) does not give effect to the NPSFM and fails to recognise that the key adverse effects of discharges are cumulative effects. Effects that are no more than minor may still result in the failure to achieve targets and limits.	Make policy subject to P65, specifically, achieving the water quality objectives in O25 and Table 3.3 – 3.8 (as amended) Replace (f) with “not result in a discharge to water that causes affected fresh water body or area of coastal water to decline in relation to the relevant objective in Table 3.4, Table 3.5, Table 3.6 or Table 3.8 of Objective O25.
31.	P99	The deletion of (d) removes the policy direction in relation to areas outside category 1 surface water bodies	Reinstate (d) Replace (b) with “prevent livestock access to water bodies other than Category 1 water bodies, except where it is demonstrated that the cumulative effects of stock access are no more than minor “
32.	P100	Deletion of policy does not give effect to NPSFM	Riparian set-backs and good management practises shall be used to avoid remedy and mitigate the adverse effects of

			the overland flow of contaminants to surface water bodies from the use of land for cultivation and break-feeding.
33.	P102	Policy does not give effect to the NPSFM	<p>Replace with</p> <p>The extent and ecosystem health of rivers and streams in the region, and their associated freshwater ecosystems, are at least maintained including by ensuring:</p> <ul style="list-style-type: none"> (a) There is no net loss in the extent or ecosystem health of a stream associated with permanently diverting a stream or culverting a stream; (b) The infilling of river or stream beds is avoided, unless there are no other practicable alternative methods of providing for the activity, and it is part of an activity: <ul style="list-style-type: none"> (i) designed to restore or enhance the natural values of the stream or of any adjacent or associated ecosystem; or (ii) necessary to enable the development, operation, maintenance and upgrade of nationally significant infrastructure; or (iii) required for the purposes of flood prevention or erosion control.
34.	P107	Deletion of the policy does not give effect to the NPSFM	Reinstate notified policy
35.	P128	Allowing transfers in overallocated catchments does not give effect to the NPSFM and will result in adverse effects as excess consented water that has not and will not be used at that site, can be used at a different site.	Impose a 50% reduction in the amount of water that can be transferred in overallocated catchments
36.	P138	The policy does not give effect to the NZCPS and is inconsistent with Policy 39A.	Add a new P138(f) "effects are managed in accordance with P39A"

37.	P143	It is uncertain why activities by territorial authorities which are not covered by the others provisions should be allowed.	Delete (e)
Rules			
38.	Rule 97	Other types of stock can have significant adverse effects	Amend (b)(ii) by adding farmed deer and farmed pigs and deleting “and has an active bed of 1 metre or wider”
39.	Rule 98	Discretionary activity status is not appropriate	Combine with Rule 98A and make stock access that does not meet Rule 97 a non-complying activity
40.	Ruler 107	Rule 107(c) does not give effect to the NPSFM	Remove condition (c) of Rule 107 and add it to Rule 108 as a non-complying activity
41.	Rule 126	Dams should not be allowed in outstanding water bodies	Change activity status to prohibited
42.	Rule 127	The concept of a partial reclamation makes no sense	Delete the words “or the reclamation is only a partial reclamation