

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 WELLINGTON WATER LIMITED

(ENV-2019-WLG-000123)

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: 6 August 2021

Date of Issue: 6 August 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 Topic 17: areas and sites with significant mana whenua values – mana whenua sites: Policies P44 and P45 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 29 June 2021.

Other relevant matters

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

- Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa Inc Society;
- Heritage New Zealand Pouhere Taonga;
- Federated Farmers of New Zealand;
- Wellington International Airport Ltd;
- Kāpiti Coast District Council;
- Porirua City Council;
- Minister of Conservation;
- Wellington Fish and Game Council; and
- CentrePort Ltd and CentrePort Properties Ltd.

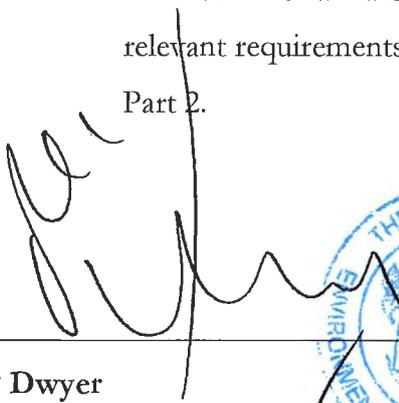
[3] Kāinga Ora – Homes and Communities, Ātiawa ki Whakarongotai Charitable Trust and Royal Forest and Bird Protection Society of New Zealand Inc did not sign the consent memorandum, but in accordance with the Court's direction in its minute dated 28 April 2021, they are deemed to have accepted the consent memorandum and order.



Orders

[4] 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



KEY:

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

Red track - changes made at mediation

APPENDIX A - RELEVANT PROVISIONS - (DECISIONS VERSION - WITH CLAUSE 16 CHANGES) - TOPIC 17

Definitions

Cultural impact assessment - A report or written advice prepared to consider and assess the potential impacts of an activity on the cultural values within an area. It must be prepared by a suitably qualified person mandated by mana whenua.

A **cultural impact assessment** may include, but is not limited to, Māori history, Treaty claims and settlements, presence of significant sites, social effects and recommendations for avoiding, remedying and mitigating adverse effects.

Note: The Wellington Regional Council maintains a list of the contact details for iwi authorities.

Offset – A measurable positive outcome resulting from an action designed to compensate for the **significant residual adverse effects** on the environment arising from an activity after avoidance, remediation and mitigation measure have been taken.

Policy P45: Managing adverse effects on sites with significant mana whenua values

Sites with significant **mana whenua** values identified in **Schedule C** shall be protected and restored by managing use and development both within and outside of these sites in the following manner:

- (a) in the first instance, avoid locating activities within sites listed in Schedule C;
- (b) where it is not practicable to avoid a site, require any more than minor adverse effects of activities on the significant mana whenua values of the site to be evaluated through a cultural impact assessment undertaken by the relevant iwi authority or iwi authorities mana whenua as identified in Schedule C;
- (c) significant adverse effects of an activity on the significant values of the site shall be avoided.
- (d) other adverse effects shall be managed in accordance with tikanga and kaupapa Māori responding to recommendations as recommended in a cultural impact assessment to:
 - (i) avoid more than minor adverse effects on the significant values of the site; and
 - (ii) where more than minor adverse effects cannot be avoided, minimising them, and



- (iii) where more than minor adverse effects cannot be avoided and/or minimised, they are remedied; and
- (e) where more than minor adverse effects on significant **mana whenua** values identified in Schedule C (mana whenua) cannot be avoided, minimised, or remedied, the activity is inappropriate. Offsetting of effects on sites with significant **mana whenua** values is inappropriate, **except where provided for by in Policy P45A, and**
- (f) the relevant **mana whenua** as identified in Schedule C **iwi authority/ies** shall be considered to be an affected party under RMA s95E for all activities which require resource consent within a Schedule C site where the adverse effects are minor or more than minor, unless the application is publicly notified.

Policy P45A: Offsetting residual adverse effects on sites of significance to mana whenua

Residual adverse effects that are not otherwise avoided, minimised, or remedied in accordance with the management hierarchy in Policy P45 may be offset where the relevant **mana whenua** as identified in Schedule C :

- (a) considers that offsetting of residual adverse effects is appropriate in the particular circumstances, and
- (b) have:
 - (i) an offsetting policy in place that applies to the area and values to be affected by the proposed development, or
 - (ii) prepared a **cultural impact assessment** that includes specific direction for the offsetting of effects of the proposed activity on the site of significance, and
 - (iii) expressly confirm that the offset proposed is consistent with:
 - (1) the offsetting policy in P45A(b)(i) (where applicable), and;
 - (2) the **cultural impact assessment** in P45A(b)(ii), and
 - (3) the offsetting principles set out in Schedule G3.

Where offsetting is proposed for a site of significance that is associated with multiple mana whenua, there must be an agreed position between all groups that offsetting is appropriate and that (b) has been met.

Schedule G3: Principles to be applied when proposing and considering an offset for significant mana whenua values identified in Schedule C

This schedule details the principles that should be used to guide the development of offsets for significant mana whenua values identified in Schedule C and when assessing the adequacy of proposals for the design and implementation of offsetting as part of resource consents issued under this Plan.

The numbering of the principles in this schedule is solely for convenience and should not be interpreted as an indication of relative importance.

1. Adherence to the mitigation hierarchy

The proposed offset will be assessed in accordance with the mitigation hierarchy set out in Policy P45. Any proposal for an offset will demonstrate how it addresses the residual adverse effects of the activity.

2. Matauranga Māori – basis of knowledge

The design and implementation of an offset must be a documented process informed by, and which provides for, tikanga, kawa, matauranga Māori, and other science.

3. Limits to what can be offset

Consideration of offsetting is inappropriate where:

- (a) there is no appropriate site, knowledge, proven methods, expertise or mechanism available to design and implement an adequate offset, or
- (b) a cultural impact assessment or an iwi management plan specifically identifies a site or particular values as being unsuitable/ unavailable for offsetting, or
- (c) when an activity is anticipated to cause residual adverse effects on an area after an offset has been implemented

4. Additional outcomes

Any proposal for an offset will demonstrate that the actions taken to achieve positive effects for the significant values of the site are additional to what would

have occurred without the proposed **offset**, including any activities required by any associated resource consent/s.

A proposed **offset** under this Schedule may incorporate part or all of a proposed **offset** under Schedule G2.

5. Offset context

Any proposals for offsetting will:

- (a) demonstrate that positive effects are achieved preferentially, first at the site, then the relevant catchment, then within the takiwā or rohe, except where there is an appropriate rationale for doing otherwise, and
- (b) complement and contribute to the protection of the significant values associated with the site, and
- (c) take into account available information on the full range of cultural, spiritual, social and biological values associated with the site, and
- (d) take into consideration other likely future developments, such as competing land use pressures, within the landscape.

6. Long-term outcomes

Any proposals for **offsetting** should be based on an adaptive management approach, incorporating monitoring and evaluation, with the objective of securing outcomes that last at least as long as the activity's impacts, and preferably in perpetuity.

The proposed **offset** should, unless as otherwise expressly promoted by the relevant **mana whenua** identified in Schedule C:

- (a) demonstrate that management arrangements, legal arrangements (e.g. covenants) and financial arrangements (e.g. bonds) are in place that allow the positive effects to endure as long as the residual adverse effects of the activity, and preferably in perpetuity, and
- (b) be able to be implemented and enforced in line with any resource consent conditions associated with the activity. These conditions should include:
 - (i) specific, measurable and time-bound targets, and
 - (ii) mechanisms for adaptive management using the results of periodic monitoring and evaluation against identified milestones to determine whether the **offset** is on track and how to rectify if necessary, and

- (c) establish roles and responsibilities for managing, governing, monitoring and enforcing the offset, and
- (d) undertake methods by which analysis will identify when milestones of the offset are not achieved, and the causes of non-achievement, and how to revise the offset-management plan to avoid similar occurrences.

7. Net gain

Any proposals for offsets will provide measurable positive effects for the significant values identified for the site preferentially, first at the site, then within the takiwā or rohe, which can reasonably be expected to result in a net gain for mana whenua values. Any proposals for an offset should, unless otherwise expressly promoted by the relevant mana whenua identified in Schedule C, demonstrate: that an explicit calculation of loss and gain has been undertaken as the basis for the offset design, and should demonstrate the manner in which a net gain can be achieved by the offset, and

- (a) that the offset design and implementation should include provisions for addressing sources of uncertainty and risk of failure in delivering the offset, and that the offset is applied so that the values being achieved through the offset are the same or similar to those being lost, and
- (b) the intention to include and use an offset management plan that:
 - (i) sets out baseline information on the values that are potentially impacted by the proposed activity at both the donor and recipient sites, and
 - (ii) demonstrates how the requirements set out in this schedule will be carried out, and
 - (iii) identifies the monitoring approach that will be used to demonstrate how the matters set out in this schedule have been addressed over an appropriate timeframe.

