

**BEFORE THE ENVIRONMENT COURT
AT WELLINGTON
I MUA I TE KOOTI TAIAO O AOTEAROA
TE WHANGANUI-Ā- TARA ROHE**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of an appeal under clause 14(1) of Schedule 1 to the Act

BETWEEN **BEEF+LAMB NEW ZEALAND LIMITED**

Appellant

WELLINGTON FISH & GAME COUNCIL
(ENV-2019-WLG-122)

Appellant

**ROYAL FOREST & BIRD PROTECTION SOCIETY
OF NEW ZEALAND INCORPORATED**
(ENV-2019-WLG-130)

Appellant

AND **WELLINGTON REGIONAL COUNCIL**

Respondent

**MEMORANDUM OF COUNSEL FOR BEEF+LAMB NEW ZEALAND IN
RESPONSE TO RESPONDENT'S MEMORANDUM REGARDING
MANAGEMENT OF THE APPEALS
18 November 2019**

FLETCHER VAUTIER MOORE
LAWYERS
PO BOX 3029
RICHMOND 7050

Telephone: (03) 543 8301
Facsimile: (03) 543 8302
Email: cthomsen@fvm.co.nz
Solicitor: CP Thomsen

MAY IT PLEASE THE COURT:

1. Following the directions in the Court's minute of 26 September 2019 Counsel for the Respondent filed a memorandum addressing various procedural matters relating to the management of the appeals to the Natural Resources Plan for the Wellington Region (NRPW).
2. Beef+Lamb New Zealand Limited (B+LNZ) filed an appeal and is a s 274 party to the appeals of Forest and Bird, Wellington Fish and Game Council, Department of Conservation and Federated Farmers. This memorandum relates to its interest in the Forest and Bird and Fish and Game appeals.
3. This Counsel's memorandum addresses areas of disagreement between B+LNZ and the Respondent on the areas of B+LNZ's interest under s 274 in two sub-topics from Appendix A (Table) to the Respondent's memorandum.

Areas of Disagreement

4. B+LNZ provided comments and requested changes to the Table to record it as a party under s 274 to certain sub-topics. Some changes were made, and some were not.
5. Of those that were not made, B+LNZ maintains its position that it has an interest in two sub-topics it is not currently listed on¹:
 - (a) Natural form and function/Natural character and processes at p 3;
 - (b) Wetlands and biodiversity/Mitigation hierarchy, at p 15.
6. The Respondent's Counsel advised this Counsel by email of the reasons for disagreeing with B+LNZ's position:

We did not include Beef and Lamb in the above sub-topics because on our review of the Beef and Lamb's s 274 notice it references an interest in parts of the

¹ Set out below as topic/sub-topic.

proceedings, particularly the nutrient allocation framework. The parts of the proceedings referenced in the s 274 notice do not mention any of the objectives, policies, rules or definitions referenced in the above three² sub-topics.

B+LNZ's Interest in the Appeals

7. B+LNZ is interested in the objectives, policies and rules that create and implement the nutrient allocation³ framework in the Proposed Plan.
8. Particularly, B+LNZ's s 274 notice pleaded at paragraph 6 that it is interested in:
 - (a) The *effect* the relief sought will have on the nutrient allocation framework in the Proposed Plan, including under objective O25 and its supporting tables.
 - (b) Policies and rules that implement the objectives relating to the allocation of nutrients, including O25 in its supporting tables.
9. It is submitted the pleadings are broad and widely contemplate any part of the Proposed Plan that addresses the allocation of nutrients. The allocation of nutrients is a broad topic in the context of a regional plan and can impact on or be impacted by any number of provisions.
10. It is not correct to view the interest signalled by B+LNZ in its s 274 notices as only focusing on O25 and its supporting tables and the numeric or narrative freshwater objectives therein (if that is what the Respondent is doing). Its reference to the *effect* relief will have on the *nutrient allocation framework* in its notices gives it the scope to participate in the Proposed Plan's provisions that impact on the allocation of nutrients.

² One of which is no longer being pursued by B+LNZ.

³ B+LNZ refer to nutrient allocation as a short hand way of referring to the allocation by regulation of, usually, diffuse discharges of e.g. N or P. It can also include sediment and other contaminants that materially impact on tools adopted by a plan such as the Macroinvertebrate Community Index.

11. Counsel is wary of providing too much analysis of the provisions at such an early stage of the proceeding and considers the best and most efficient way to expand on B+LNZ's position is with some examples of why its pleadings in its s 274 notice contemplate the sub-topics.

Natural Character and Processes

12. Amongst other things, the natural character and processes sub-topic addresses objectives O17 and O19.
13. In the Fish and Game appeal the relief sought in respect of objective O19⁴ seeks:

The natural character of the coastal marine area, natural wetlands, and rivers, lakes and their margins is preserved and protected from inappropriate use and development, and restored and rehabilitated where degraded.

14. B+LNZ consider that the way degradation is measured and what restoration and rehabilitation might be required will be informed by freshwater objectives (required by the NPSFM), which are set out in the tables accompanying O25. However, as noted already the interest signalled in the s 274 notice is not confined to O25, given the broad pleading in the notice. The relief sought can have an effect on the nutrient allocation *framework* because it could impact on the way the freshwater objectives addressing nutrient allocation are framed and what outcome any targets⁵ seek to achieve.
15. As a second illustration of the point, the definition of *natural processes* in the Plan is incorporated in the definition of *natural character*, both of which are relevant under O17 and O19. The definition of natural processes is:

Dynamic natural, physical and ecological relationships and events that are characteristically natural in their occurrence and effects, that act to shape the natural

⁴ See Natural character and processes sub-topic.

⁵ As defined in the NPSFM.

environment, its land forms and features such as beaches, dunes, wetlands and rivers; and including processes of: wave formation, breaking and dissipation; swash run up, near shore currents, sediment transport, erosion and deposition, flooding, river meandering, aggradation and mass movement.

16. The relationship between any freshwater attributes, and, particularly, the proposed Macroinvertebrate Community Index values proposed for inclusion in the Proposed Plan (including at O25), will be influenced by controls on the transportation of sediment and the effect that has on, inter alia, ecological relationships (processes). How the Proposed Plan will provide for those and other ecological relationships will influence the allocation of nutrients.
17. Ultimately, the way the objectives addressed under this sub-topic will be implemented will impact on nutrient allocation as provided for in the NRPW's policies and rules. It is submitted there is a link between natural character and processes and nutrient allocation that is incapable of being decoupled.

Wetlands and biodiversity – Mitigation Hierarchy

18. B+LNZ's interest in this sub-topic arises as a party to Forest and Bird's appeal. Amongst other things, Forest and Bird seek relief in respect of two policies to be addressed by this sub-topic, policies P32 and P41.
19. It is not entirely clear to this Counsel if the sub-topic's focus is intended to be on biodiversity offsets or, given the nature of these two policies, it is broader than that.
20. P32 is a management policy that refers to biodiversity and aquatic ecosystem health, two matters that, it is submitted, are impossible to separate from nutrient allocation.
21. The definition of *aquatic ecosystem health* refers to the retention of ecological structure, processes and functions and resilience within natural variability. All are matters that will be impacted by nutrient

allocation objectives, policies and rules that B+LNZ's s 274 notice indicates it has an interest in.

22. P41 seeks to avoid activities with adverse effects on biodiversity values identified in policy P40. Relevantly, Forest and Bird plead that the policy in the NRPW does not give effect to the NPSFM. Again, it is submitted there is a link between how the Proposed Plan will regulate discharges of nutrients and the mitigation strategies for the adverse effects that are contemplated by the policy.

General Submissions

23. It is submitted that at this stage of the appeals, particularly for the purpose of mediation, the most appropriate approach is to include B+LNZ in the topics it seeks to participate in. The concern for B+LNZ is that if it is not included in the discussions about the sub-topics, matters discussed and, maybe determined, may impact on the nutrient allocation framework.

Directions Sought

24. Accordingly, B+LNZ seek a direction that the appeal topics and sub-topics table attached as Appendix A to the Respondent's memorandum be amended to include it as a s 274 party to the topics and sub-topics set out at paragraph 5 above.



CP Thomsen
Counsel for Beef+Lamb New Zealand Limited
18 November 2019