

IN THE ENVIRONMENT COURT
AT WELLINGTON

I TE KŌTI TAIAO O AOTEAROA
KI TE WHANGANUI-A-TARA

Decision No. [2022] NZEnvC 39

IN THE MATTER

of an application for a declaration under
s 310 and for an order under s 293 of
the Resource Management Act 1991

BETWEEN

WELLINGTON REGIONAL
COUNCIL

(ENV-2021-WLG-000033)

Applicant

Court: Environment Judge BP Dwyer sitting alone under s 279(1)(b)
and (c) of the Act
Last case event: Memorandum dated 26 January 2022
Date of Decision: 22 March 2022
Date of Issue: 22 March 2022

FINAL DECISION OF THE ENVIRONMENT COURT

A: The Environment Court makes an anticipatory direction under s 292, as set
out in paragraph [5] of this decision.

REASONS

Introduction

[1] The Court issued an interim decision in this matter on 12 January 2022¹ (the

Re Wellington Regional Council [2022] NZEnvC 1. That decision ought be read in
conjunction with this decision giving effect to it.

RE WELLINGTON REGIONAL COUNCIL



interim decision). In the interim decision the Court made a declaration sought by the Wellington Regional Council (the Council) determining the location of unmapped river mouths in its proposed Natural Resources Plan for the Wellington Region (pNRP). This information had been omitted from the pNRP in error. The Court deferred consideration of the Council's application to remedy that error by application of s 293 RMA but suggested that the appropriate remedy for the error was the application of s 292 RMA once the pNRP became operative. The Council lodged a memorandum in response to that decision on 26 January 2022.

[2] The Council advised that s 292 was not initially proposed as an appropriate mechanism to remedy the error as that provision can only be used after a plan is made operative. The Council noted that it did appear at one time that some appeals (which the Court understands might potentially have enabled resolution of the river mouth issue) would proceed to a hearing. As the appeals are now all subject to consent orders (some yet to be determined) the Council agreed that s 292 is an appropriate mechanism to give effect to the declaration.

[3] Accordingly the Council has made the anticipatory request identified by the Court in the interim decision. The Council requests that the Court makes a direction that on the date the pNRP for the Wellington Region becomes operative, the Council amends the operative instrument to reflect the declaration made by the Court in the interim decision. The Council notes that some of the provisions affected by the amendment will form part of the Regional Coastal Plan. The Council wishes to include the direction as part of the information that goes to the Minister of Conservation under cl 18 of Schedule 1 to the Act.

[4] The Court determines that it is appropriate to make such a direction for the reasons given in paragraphs [22] – [32] of the interim decision. The Court is satisfied that it has jurisdiction to make such an order on an anticipatory basis pursuant to s 269(1) and (1A) of the Act.

Order

[5] Pursuant to s 292 RMA, the Council is directed on the date that the pNRP

becomes operative, to amend the operative NRP to reflect the declaration made by the Court, by inserting the following text into the operative NRP in Chapter 13 and placed immediately above Map 42 (below the heading which reads: 'Coastal marine area and river mouth boundaries'):

Maps 42 to 48 show where the Coastal Marine Area and river mouth boundaries are located. For the remaining rivers in the Wellington Region not shown on Maps 42 to 48, the mouth is deemed to be a straight line representing the continuation of the line of Mean High Water Springs on each side of the river at the river outlet.

The Coastal Marine Area means the foreshore, seabed, and coastal water, and the air space above the water—

- (a) of which the seaward boundary is the outer limits of the territorial sea:
- (b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—
 - (i) 1 kilometre upstream from the mouth of the river; or
 - (ii) the point upstream that is calculated by multiplying the width of the river mouth by 5.


BP Dwyer
Environment Judge

