

BEFORE THE ENVIRONMENT COURT

ENV-2019-WLN-000123

AT WELLINGTON

I MUA I TE KOOTI TAIAO

O AOTEAROA

IN THE MATTER

of an appeal under clause 14
of Schedule 1 of the Resource
Management Act 1991

BETWEEN

**Wellington Water
Limited**

Appellant

AND

**Wellington Regional
Council**

Respondent

**NOTICE OF WISH TO BE A PARTY TO PROCEEDINGS BY THE
MINISTER OF CONSERVATION**

Dated: 9 October 2019

Department of Conservation
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Notice of person's wish to be a party to proceedings

Section 274 Resource Management Act 1991

To: The Registrar
Environment Court
WELLINGTON

1. The **Minister of Conservation** (the **Minister**) wishes to be a party to the following proceedings:
 - 1.1. Wellington Water Limited v Wellington Regional Council,
ENV-2019-WLN-000123.
2. The Minister made submissions and appeared at the Council hearing on the proposed Natural Resources Plan for the Wellington Region (proposed Plan). The Minister also has an interest greater than the interest the general public has, specifically regarding conservation values and the implementation of the New Zealand Coastal Policy Statement.
3. The Minister is not a trade competitor for the purposes of section 308C or 308CA of the Resource Management Act 1991 (RMA).
4. The Minister is interested in part of the proceedings.
5. The Minister is interested in the following particular issues:
 - 5.1. All the parts of the decision appealed under the heading “sites with significant values” of the Notice of Appeal by Wellington Water Limited (the appellants), namely:
 - “11.1 Objective O24;
 - 11.2 Policy P39: Adverse effects on outstanding water bodies;
 - 11.3 Policy P40: Ecosystems and habitats with significant indigenous biodiversity values;
 - 11.4 Policy P41: Managing adverse effects on ecosystems and habitats with significant indigenous biodiversity values;
 - 11.5 Policy P41A: Effects on the spawning and migration of indigenous

fish species;
11.6 Policy P42: Protecting and restoring ecosystems and habitats with significant indigenous biodiversity values;
11.7 Policy P44: Protection and restoration of sites with significant mana whenua values;
11.8 Policy P45: Managing adverse effects on sites with significant mana whenua values;
11.9 Schedule F1: Rivers and lakes with significant indigenous ecosystems;
11.10 Any other parts of the decision that are related to the parts listed above, such that resolving the issues in respect of the above parts requires consequential changes to be made to those other parts.”

5.2. Policy P111: water takes at minimum flows and minimum water levels and Policy P115: authorising takes below minimum flows and lake levels;

5.3. Rules WH.R4 and WH.R1 – take and use of water in the Wellington Harbour and Hutt Valley Whaitua – restricted discretionary and prohibited rules including Table 8.1.

5.4. Matters under the appellant’s heading “wastewater” (and also, in the case of policies P 62 and P62 in relation to stormwater):

Objective O49;
Objective O50;
Policy P62: Promoting discharges to land;
Policy P67: Minimising discharges to water or land;
Policy P76: Minimising wastewater and stormwater interactions;
Policy P81: Minimising and improving wastewater discharges;
Policy P83: Avoiding new wastewater discharges to freshwater;
Policy P83A: Discouraging new discharges of treated wastewater to coastal water.

5.5. Matters under the appellant’s heading “beds of lakes and rivers”:

Policy P106: Management of plants in the beds of lakes and rivers;
5.5.4 Beds of lakes and rivers general conditions;
Rule R117: New structures – permitted activity;
Rule R122: Removing vegetation from the bed of any river or lake – permitted activity;
Rule R127: Reclamation of the beds of rivers or lakes – noncomplying activity.

5.6. Matters under the appellant’s heading “biodiversity, aquatic ecosystem health and mahinga kai”:

Objective O29;
Policy P31: Biodiversity, ecosystem health and mahinga kai;
Policy P32: Adverse effects on biodiversity, aquatic ecosystem health and mahinga kai;
Policy P34: Fish passage;
Policy P35: Restoring fish passage;
Schedule G2.

5.7. Matters under the appellant’s heading “coastal management”:

The definition of “operational requirement”;
Policy P138: Structures in sites with significant values;

Rule R154: New temporary structures outside sites of significance
– permitted activity;
5.7.2 Coastal management general conditions;

6. The Minister opposes the relief sought because:

- 6.1. In relation to the parts of the decision appealed under the appellant's heading "sites with significant values", some of the amendments sought do not give effect to higher order policy direction including the National Policy Statement for Freshwater Management 2014 (NPSFM) and the New Zealand Coastal Policy Statement (NZCPS), and do not provide for matters of national importance listed in section 6 of the RMA, and do not promote the sustainable management of natural and physical resources. The Minister wishes to be involved in the proceedings on these provisions to ensure that the outcome for these provisions is to protect areas with outstanding values whilst recognising and providing for regionally significant infrastructure in appropriate places.
- 6.2. Policy P111: water takes at minimum flows and minimum water levels and Policy P115: authorising takes below minimum flows and lake levels: Regional councils are required to avoid further over allocation of water and to phase out existing over allocation. Therefore, it is appropriate to limit the water available to industry when water levels fall below minimum flows.
- 6.3. Rules WH.R4 and WH.R1 – take and use of water in the Wellington Harbour and Hutt Valley Whaitua – restricted discretionary and prohibited rules, including Table 8.1. It is appropriate for new water allocation below minimum flows to be prohibited in order to avoid further over allocation as required by the NPSFM. The reduction sought in the minimum flow at the Kaitoke water supply intake to 400L/s for special circumstances is contrary to the respondent's technical advice that the reduction in minimum flow for activities such as lining the Macaskill Lakes need to be considered in detail through a resource consent process.
- 6.4. In relation to the provisions appealed under the heading "wastewater", and also where the same provisions are appealed under the heading "stormwater", the outcome of the amendments sought will result in the plan not giving effect to the NZCPS (especially policies 21 and 23 relating to water quality and discharges of contaminants) or the NPSFM.

- 6.5. Under the appellant's heading "beds of lakes and rivers": the relief sought, in particular in relation to increasing the scope and extent of permitted activity works in the general conditions; allowing occupation of up to 20m² of a bed as a permitted activity in R117; removing the requirement for fish refuse from R122; and increasing the potential for reclamation will have adverse effects on indigenous fish contrary to section 6 of the RMA and will not meet the requirements of the NPSFM.
- 6.6. Under the appellant's heading "biodiversity, aquatic ecosystem health and mahinga kai": Objective B1 of the NPSFM requires plans to have provisions which safeguard the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems of fresh water, in sustainably managing the taking, using, damming, or diverting of fresh water. The relief sought will not result in this objective being met. More particularly, policy P34 does not effectively preclude construction of in stream dams or weirs, but it does require them to provide for fish passage. Policy P35 appropriately requires fish passage to be restored. This policy will impact upon consents for new structures and alterations. The Freshwater Fisheries Regulations 1983 set out an approval process for fish passage with culverts, fords, dams and diversion structures. Restoration of biodiversity, aquatic ecosystem health and mahinga kai is supported by council functions under s 30(1)(c)(ii) and (iia) of the Act and the NPSFM and NZCPS. As such it is considered that Policy P34 and P35 do not require substantive amendment. However, if the application of the policies can be clarified, that is supported.
- 6.7. Under the appellant's heading "coastal management", it would be efficient and effective for the definition of "operational requirement" to be replaced with the planning standard definition of "operational need" if there is scope. It is important that adverse effects, even of regionally significant infrastructure, are avoided on sites with particularly high values (*Environmental Defence Society Inc v Otago Regional Council* [2019] NZHC 2278; *Royal Forest and Bird Protection Society Inc v Bay of Plenty Regional Council* [2017] NZHC 3080). As such, some refinement of the appellant's relief sought to Policy P138(e) and R154 is required. General conditions in the decisions version of the proposed Plan appropriately provide for fish passage and protection of identified inganga spawning sites.

7. Such other grounds as may be raised in submissions.
8. The Minister agrees to participate in mediation or other alternative dispute resolution of the proceedings.



Katherine Anton/May Downing
Solicitors for the Minister of Conservation

9 October 2019

Address for service of person wishing to be a party:

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Advice

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