

**BEFORE THE ENVIRONMENT COURT
AT WELLINGTON**

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

IN THE MATTER of the Resource Management Act 1991
AND of appeals under cl 14 of the First Schedule to
 the Act
BETWEEN VARIOUS
 Appellants
AND WELLINGTON REGIONAL COUNCIL
 Respondent

**MINUTE OF THE ENVIRONMENT COURT
(23 DECEMBER 2020)**

Background

[1] The Court's Minute of 11 November 2020 made directions to advance the efficient scheduling of the hearing of Proposed Natural Resources Plan appeals in 2021.

[2] At paragraph [7] of the Minute, the Court directed:

By 12pm on Thursday 17 December 2020 all appellants (including any s 274 party stepping into the shoes of an appellant) are to advise the Court which issues remain live from their perspective and how they wish to advance those issues.

[3] At paragraph [8] of the 11 November Minute, the Court directed the Wellington Regional Council to:

By 21 December 2020 ... provide a comprehensive update to the Court on those matters requiring a hearing that proposes steps that will assist in parties to each appeal meeting the requirement for a joint memorandum to inform case management and scheduling of hearing to be lodged by Friday 4 February 2021.



[4] The Council's memorandum of 21 December 2020 provides that comprehensive update and seeks further directions from the Court in order to progress matters to hearing as required.

Responses to the Minute from Parties

[5] The Council's memorandum advised that memoranda had been received from the following parties (some of which were joint memoranda):

Beef and Lamb New Zealand (**Beef and Lamb**), Carterton District Council (**CDC**), CentrePort Limited and CentrePort Properties Limited (**CentrePort**), Federated Farmers NZ (**Federated Farmers**), First Gas Limited (**First Gas**), Horticulture NZ, Kāpiti Coast District Council (section 274 party stepping into appellant's shoes) (**KCDC**), Masterton District Council (**MDC**), Meridian Energy Limited (**Meridian**), Minister of Conservation (**Minister**), Porirua City Council (**PCC**), Powerco Limited (**Powerco**), Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa Incorporated Society (**Rangitāne**), Royal Forest and Bird Protection Society of NZ Inc (**Forest and Bird**), South Wairarapa District Council (**SWDC**), The Oil Companies (BP Oil NZ Limited, Z Energy Ltd, Mobil Oil NZ Ltd), Tītahi Bay Residents Association (**TBRA**), Transpower New Zealand Limited (**Transpower**), Waka Kotahi NZ Transport Agency (**Waka Kotahi**), Wellington City Council (**WCC**), Wellington Fish and Game Council (**Fish and Game**), Wellington International Airport Limited (**WIAL**), Wellington Water Limited (**WWL**), Wairarapa Water Users Society Incorporated (**WWUSI**), and Winstone Aggregates.

[6] The Council's list does not include a memorandum from Mr Dan Riddiford dated 17 December 2020 in relation to the appeal under his own name. The Court supplied the memorandum from Mr Riddiford to the Council after receiving the Council's memorandum.

[7] The Council's memorandum notes that it has not received any response from the Roding, Parks and Gardens and Solid Waste departments of Hutt City Council (**Hutt City Council**), Dan Riddiford, Land Matters Ltd or the Surfbreak Protection Society Inc. The Council considers that the Hutt City Council and Surfbreak Protection Society Inc appeal issues have been resolved through mediation, with consent documentation being prepared or signed, and it is not anticipating receiving any further response from those parties.

Summary of memoranda received

[8] The Council reports that the responses received raised a range of outstanding issues, and requests. This included requests for hearings (in limited cases) and requests for further mediation or time for discussions to occur, with reporting to the Court by 29 January, 12



February, 26 February, 26 March and 31 March 2021. It notes that the majority of the responses do not acknowledge the 4 February 2021 reporting date set by the Court.

[9] Beef and Lamb (Topic 38), Federated Farmers (Topic 38 and 40), Forest and Bird (water quality Topics 29, 30, 31), 34A and Waka Kotahi (Topics 7 & 8) have all sought that matters be set down now for hearing. The Council agrees with these positions (noting direct discussions are continuing on all of these topics with a view to at least narrowing issues).

[10] The Council collated the outstanding issues into an Appendix 1 and summarises the issues in the body of its memorandum. This does not include issues resolved pending the circulation and filing of consent documentation.

Section 274s stepping into shoes

[11] The Council update refers to s 274 parties stepping into the shoes of appellants which do not wish to pursue particular appeal points.

[12] KCDC, which is a s 274 party but not an appellant, has advised through its 17 December 2020 memorandum of its intention to step into the shoes of three appellants as follows:

- WWL (ENV-2019-WLG-000123) in respect of its appeal on the definition of 'stormwater network', and Policy P13.
- MDC (ENV-2019-WLG-000110) in respect of its appeal on Objective O12A.
- SWDC (ENV-2019-WLG-000127) in respect of its appeal on Objective O12A.

[13] WIAL has advised that it reserves its position to step into the shoes of appellants on issues related to its NZCPS 11(a) appeal points (ie RSI activities in the airport environs in the coast).

[14] Other parties have broadly reserved their positions to step into relevant appellants shoes without indication of what those may be.

Appeals by Mr Riddiford and Land Matters Ltd

[15] The Council proposes:

In respect of the other two appeals (being Dan Riddiford and Land Matters Ltd), the Council considers that the issues raised through those appeals have not yet been resolved and further time should be given to those parties before the appeals are dismissed, including consideration of whether section 274 parties wish to step into the shoes of those appellants.



A further reporting date of 22 January 2021 is suggested for those parties and if nothing is received by then, the Court assumes those appeal points are withdrawn or resolved.

[16] The Court does not agree to the Council's proposed course of action. We see no reason to treat these appellants and appeals differently from other appellants and appeals (and indeed parties stepping into the shoes of appellants). That includes consideration of any scope questions that may arise.

Progressing Outstanding Issues

[17] The Council considers that outstanding issues can be grouped as follows:

Regionally Significant Infrastructure - this includes Policy P13A (a new policy sought by Transpower New Zealand Limited), Policies P24, P25, P102, Rules R107, R127, R128, the coastal environment and works in wetlands and the beds of lakes and rivers. This includes the outstanding appeal points from Topics 6, 7, 8, 11, 12, 15, 16, NZCPS 11(a), 41, 42, and 46.

Wetlands, biodiversity and mitigation hierarchy policy framework - this includes Objective O31, O34, O35, Policy P32, P40, P41, P39A. This includes the outstanding appeal points from Topics 41, 42, 44, and 46 not covered by the provisions above.

'Drains' and stormwater - this relates primarily to the framework for vegetation and sediment removal from local authority networks and addresses the outstanding matters from Topics 4, 33, 45 and 47.

Water quality - this includes diffuse discharges, discharges to land (including wastewater), discharges from water races and Objective O25. This includes the outstanding appeal points from Topics 28, 29, 30, 31, 34A, 34B, 35.

Water allocation - this addresses the remaining issues from Topic 23.

Rural land use - earthworks, vegetation clearance and stock access. This includes outstanding issues from Topics 38 and 40.

Contaminated land - this relates to the matters addressed by Topic 20 in respect of contaminated land. It is standalone and can be addressed as its own topic.



Titahi Bay - the appeal by TBRA (Topics 13 and 14) is standalone and can be addressed as its own topic.

[18] The Council proposes a timetable to facilitate compliance with the 4 February 2021 date which could be directed by the Court. The Council also seeks a 19 February 2021 date for specific groupings of issues. We concur with those timetables with some amendments to the steps. We cannot take it that any issues not identified in 4 February or 19 February reporting memoranda are to be taken as resolved.

[19] Where possible parties are to file a common memorandum. If it is not possible to reach common positions parties are to file separate memoranda within the required timeframe set below.

For water quality, water allocation, rural land use, and contaminated land topics

- Appellant/s to circulate draft confirming what issue/s remain live and what evidence they are to call by **29 January 2021**;
- Council and s 274 parties to advise what evidence they are to call and s 274 parties to advise if they remain interested in the issues identified by the appellants by **3 February 2021**;
- Appellant/s to file joint memorandum by **4 February 2021**; and

For RSI topics

- Appellant/s to circulate draft confirming what issue/s remain live and what evidence they are to call by **19 February 2021**;
- Council and s 274 parties to advise what evidence they are to call and s 274 parties to advise if they remain interested in the issues identified by the appellants by **24 February 2021**;
- Appellant/s are to file joint memorandum by **26 February 2021**.

Further Discussions and Mediation

[20] We note that parties seek further discussions on specific issues and the Council intends to continue with discussions with parties on various matters. The arrangement and conduct of any such discussions is up to the parties.

[21] The Council considers that, subject to the Court's availability, where mediation is sought by an appellant (which the Council understands only to be Waka Kotahi and only in respect of Policy P102, R107, R108, R127, R128) mediation sessions could be scheduled



for February 2021. The Court understands that there may be other parties also seeking further mediation.

[22] The Council does not consider mediation past the end of February is appropriate as it wishes to have final resolution in a timely manner. The Proposed Plan was notified in July 2015 with a decision in July 2019. The Council requires the Proposed Plan resolved so it can progress related workstreams to implement the recent national direction on freshwater.

[23] The Council's memorandum states under the Regionally Significant Infrastructure heading:

While Waka Kotahi has signalled that it does not consider continued discussions in respect of Policy P24 and P25 are appropriate, the Council does not agree. Discussions should not be ruled out completely. In addition, Waka Kotahi has sought further mediation on Topic 41 (R107 and R108) and Topic 46 (R127 and R128 and P102) be set down. The Council does not consider this to be necessary given ongoing discussions on related issues but will participate if set down by the Court.

[24] If parties and the Court agree to further mediation Commissioner Leijnen (or another Commissioner) can be made available (on AVL through TEAMS if that suits parties better) in a timeframe that means the appellant can meet the 19 February 2021 deadline.

[25] The Court notes that Mr Riddiford's memorandum states his opposition to land use rules 95-101 constraining vegetation removal, earthworks and livestock grazing regulations. That memorandum also refers to his belief that more mediation will advance resolution but only if the Council involves practical farmers, conservators or land management officers from the Wairarapa. The Court will not direct further mediation on these matters.

Timetable towards hearing

[26] At paragraphs [9] and [10] of the Court's Minute of 11 November, it directed the following:

By Friday 4 February 2021 parties to each appeal are to file a joint memorandum advising the Court of:

- Appeal point(s) in contention
 - Issues to be heard
 - Number of witnesses and their expertise
 - Hearing time likely to be required
- Any other requests, such as for hearing appeals together or in particular sequence.



That joint memorandum is to include a proposed evidence exchange timetable that includes any expert conferencing required in line with the Environment Court Practice Note expectations, the scheduling of that expert conferencing and any request for Environment Court Commissioner facilitation

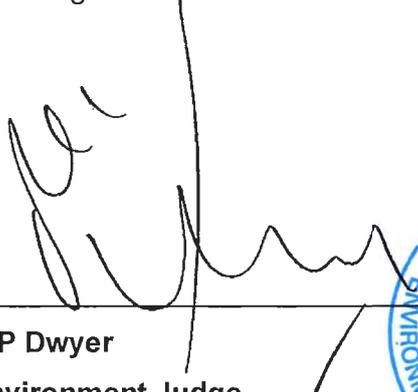
[27] The Council proposes a standardised evidence exchange timetable leading to hearings to be set down from late May 2021 at the earliest (see the Council's paragraph 32-34). The Court struggled to understand the proposed timetable which has very long timeframes with the total adding up to 31 weeks and clearly not able to be achieved for a hearing by May 2021.

[28] We propose to review where matters are at after receiving the 4 February and 26 February 2021 memoranda. Further directions will issue.

Appeals resolved subject to consent documentation

[29] The Court notes that consent memoranda are still in the course of preparation or circulation for signature for a large number of appeals and appeal points. The Council considers that outstanding consent documentation can be circulated for signing, and preferably filed, no later than the end of February 2021. It notes that where responses are not received to documentation circulated in final form, it will proceed to file those memoranda noting which parties are yet to sign.

[30] The Court impresses on parties the need for urgency in progressing the completion and filing of consent memoranda with the Court.


B P Dwyer
Environment Judge

Issued: 23 December 2020



Appendix 1: outstanding issues

Topic	Unresolved	Position advised by appellants	Next steps
Topic 4: Importance of land and water	Issue 1	KCDC position on 'catchment based flood protection and erosion risk' reserved pending Topic 45 and 46 Issue 4 - PCC/KCDC position reserved pending Topic 45 and 46	Direct discussions to continue as part of Drains/stormwater discussions.
Topic 6: Balance of RSI	Issue 1 - Transpower wishing to pursue a Policy P13A re National Grid and Waka Kotahi (and PCC/KCDC) positions reserved on O12A and P13	O12A and P13 (KCDC, Waka Kotahi), new policy (Rangitāne) Policy 13A (Transpower) P13/P14, O12, O13, P12 (WWL if other parties proceed to hearing) New objective and O12, P12 (WIAL position reserved pending resolution of package).	Direct discussions to continue, report by 4 February as part of RSI topic.



Topic	Unresolved	Position advised by appellants	Next steps
Topic 7 & 8: Outstanding natural character & ONFL and Natural character & processes	Transpower subject to P13A / Waka Kotahi subject to RSI/Subject to whole package	M24 (Rangitāne) P24 and P25 (Waka Kotahi) P24 (WWL if proceeds to hearing) O17 (WIAL pending resolution of package)	Direct discussions but hearing likely required, report by 4 February as part of RSI topic
Topic 11: Coastal structures	Issue 6 and Issue 11	R161 (CentrePort and PCC), R162 (CentrePort and PCC) P138 (PCC, WWL, First Gas)	Direct discussions to continue as part of NZCPS 11(a) topic, report by 4 February as part of RSI topic
Topic 12: Coastal structure modifications	Issue 2 (R151) positions of section 274 Parties outstanding on Minister's Appeal	Minister	Direct discussions to continue as part of NZCPS 11(a) topic, report by 4 February as part of RSI topic
Topic 13: Motor vehicles on beaches	Issue 2 (Titahi Bay)	Resolution pending	File consent documentation by 12 February



Topic	Unresolved	Position advised by appellants	Next steps
Topic 14: Tītahi Bay Fossil forest	Issues 1 and 2	Resolution pending	File consent documentation by 12 February
Topic 15: Balance of coastal activities	Issue 2 (P145) and Issue 3 (rules)	P145 and rules from Issue 3 (CentrePort waiting on 274s) P145 (WIAL)	Direct discussions to continue as part of NZCPS 11(a) topic, report by 4 February as part of RSI topic
Topic 16: Natural hazards and seawalls	Issue 10 and 11	R166, R167 (CentrePort)	Direct discussions to continue as part of NZCPS 11(a) topic, report by 4 February as part of RSI topic
Topic 17: Mana whenua sites	Resolved subject to confirming no Topic 3 party is concerned with amendments to the definition of 'offset'	P45 (WWL if proceeds to hearing)	No action at this stage.



Topic	Unresolved	Position advised by appellants	Next steps
Topic 20: Contaminated land and hazardous substances	WWL raised Additional concerns re R55(c), definition of SLUR Category IV Land, R55(c)(ii), R57, R69. Other parties Confirming Positions	O43, P90, R55, R56, R57 (WIAL)	Discussions to continue, report to Court by 4 February 2021.
Topic 23: Supplementary allocation	Issues 1, 2 and 4	Water storage facility (Rangitāne) Water harvesting and water storage, in particular O52 and P11 (WWUSI) O52 (WWL if proceeds to a hearing) End use of water (Fish and Game)	Appellants to report by 29 January 2021.



Topic	Unresolved	Position advised by appellants	Next steps
Topic 28: Introduction, Interpretation and Ki uta ki tai	Issue 2 - Dan Riddiford position reserved on Issue 2 pending Topics 38, 40, 41 and 42	O25 (Minister)	Discussions to continue, report to Court by 4 February 2021.
Topic 29: Water management Objective O25	Issue 4B - Table 3.4 - a number of issues unresolved Positions reserved on Issue 6	P70 (Rangitāne) Forest and Bird and Fish and Game appeal points	To proceed to hearing as part of water quality topic, 4 February reporting date.
Topic 30: Water management objectives (excluding wastewater & stormwater)	Issue 11 - Table 3.1 - outstanding issues Positions reserved on issues 4-6, 15, 17-18	Forest and Bird appeal points	To proceed to hearing as part of water quality topic, 4 February reporting date.



Topic	Unresolved	Position advised by appellants	Next steps
Topic 31: Diffuse discharges	All issues	P65 and end use of water (Rangitāne) P65 (Forest and Bird) Fish and Game appeal points re new framework	To proceed to hearing as part of water quality topic, 4 February reporting date.
Topic 33: Stormwater	Resolved subject to concerns raised by Waka Kotahi re Schedule N, Rule R48A.	'stormwater network' (KCDC) R50, R48A (Waka Kotahi) 'stormwater network', P78, R52 (WWL if proceeds to a hearing)	Direct discussions to continue, report by 4 February as part of RSI topic.
Topic 34A: Balance of water quality	Issue 3 and 4	Forest and Bird appeal points	To proceed to hearing as part of water quality topic, 4 February reporting date.
Topic 34B: Balance of water quality	Issue 4 and 6	Discharges from water races - Rule R58 (CDC) R42 (Rangitāne, WIAL)	To proceed to hearing as part of water quality topic, 4 February reporting date.



Topic	Unresolved	Position advised by appellants	Next steps
Topic 35: Wastewater to land	Issues 1 and 3	Wastewater to land - Rule R79 (CDC, MDC, SWDC, Rangitāne), Rule R80 (MDC, SWDC, Rangitāne, WWL) O49 (WWL)	To proceed to hearing as part of water quality topic, 4 February reporting date.
Topic 38: Stock access	All issues	Cat 2 surface water body (CDC, Federated Farmers) and R97 (CDC, Beef and Lamb, Federated Farmers, Minister), R98 (Federated Farmers), R98A (Federated Farmers)	To proceed to hearing as part of rural land use topic, 4 February reporting date.
Topic 40: Earthworks and vegetation clearance	All issues	'Erosion prone land' (Beef and Lamb), R99, R100, R101 (Federated Farmers), R101 (Meridian)	To proceed to hearing as part of rural land use topic, 4 February reporting date.
Topic 41: Wetlands	Issue 8	R107 (PCC, Transpower, Waka Kotahi), R108 (Waka Kotahi)	Direct discussions to continue, report by 4 February as part of RSI topic.



Topic	Unresolved	Position advised by appellants	Next steps
Topic 42: Biodiversity, aquatic ecosystem health and mahinga kai	Issues 3 (other than P38A), 4, 5 and 8 (Dan Riddiford), issue 9 (resolved subject to Policy P34 parties confirming ok)	P40 (CentrePort, PCC, WWL, WIAL) and P42 (CentrePort, WWL, WIAL) O31 (Minister), O35 (Minister, WIAL) P31 (MoC, WWL, WIAL) Schedule F1 (WWL) F2c, Map 18 (WIAL) Method 20A (Minister) Forest and Bird appeal points P105 (Fish and Game)	Direct discussions to continue, report by 4 February as part of RSI topic.
Topic 44: Mitigation hierarchy	Issue 1	P32, P41, G3 (Meridian, PCC, Forest and Bird, WWL, WIAL)	Direct discussions to continue, report by 4 February as part of RSI topic.



Topic	Unresolved	Position advised by appellants	Next steps
Topic 45: Drains and highly modified rivers or streams	Issue 2 (local authority network)	CDC, SWDC, MDC	Direct discussions to continue, report by 4 February as part of RSI topic
Topic 46: Reclamation	All issues as NZTA position on P102 and activity status for RSI reserved	R127, R128 (PCC, Waka Kotahi) P102 (Waka Kotahi and if it goes to a hearing WWL) Forest and Bird	Direct discussions to continue, report by 4 February as part of RSI topic
Topic 47: Balance of beds of lakes and rivers	River Management scheme/flood plain management plan and R123	River Management scheme/flood plain management plan and R123 (PCC - include as Topic 45 discussions)	Direct discussions to continue as part, report by 4 February as part of RSI topic
NZCPS 11(a)	39B, 39C, Schedule F2c and Rule X due to WIAL appeal points outstanding	WIAL issues outstanding, rest resolved in principle.	Direct discussions to continue as part, report by 4 February as part of RSI topic

