

BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA

IN THE MATTER of the Resource Management Act 1991

AND of appeals under Clause 14 of Schedule 1 of the Act in  
relation to the Proposed Regional Plan for Northland

BETWEEN CEP SERVICES MATAUWHI LIMITED  
(ENV-2019-AKL-000111)

ROYAL FOREST AND BIRD PROTECTION SOCIETY NZ  
(ENV-2019-AKL-000127)

NORTHLAND FISH AND GAME COUNCIL  
(ENV-2019-AKL-000120)

BAY OF ISLANDS MARITIME PARK INC  
(ENV-2019-AKL-000117)

Appellants

AND NORTHLAND REGIONAL COUNCIL

Respondent

Environment Judge J A Smith sitting alone pursuant to s 279 of the Act  
In Chambers at Auckland

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CONSENT ORDER

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[A] Under s 279(1) of the Resource Management Act 1991, the Environment Court,  
by consent, orders that:

(1) The appeals are allowed in accordance with **Annexure A** to this Order.



- (2) This order resolves the appeals as they relate to section C.3.1 Damming and diverting water. There are no outstanding appeal points on rules in section C.3.1.

[B] Under s 285 of the Resource Management Act 1991, there is no order as to costs.

## REASONS

### Introduction

[1] These appeals are against the provisions of the Proposed Regional Plan for Northland as it relates to the Topic 6 Damming and diversion of water and land drainage, sub-topic Damming and diverting water.

[2] The parties have reached agreement on the resolution of all the rules in section C.3.1 under appeal, being:

- (a) C.3.1.1 Off-stream damming and diversion – permitted activity
- (b) C.3.1.2 Small dam – permitted activity
- (c) C.3.1.3 Existing in-stream dam – permitted activity
- (d) C.3.1.5 Existing in-stream large dams – controlled activity
- (e) C.3.1.5A Reinstatement and restoration of natural flows – controlled activity
- (f) C.3.1.6 River channel diversion – discretionary activity
- (g) C.3.1.9 Damming or diversion of water in a significant wetland or significant area – non-complying activity

*C.3.1.1 Off-stream damming and diversion – permitted activity.*

[3] The Royal Forest & Bird Protection Society requested the deletion of the text '*to an extent that may adversely affect the wetland's natural ecosystem*'. The parties agree to this amendment as the amended rule provides greater certainty and removes an element of subjectivity from the permitted activity rule's conditions.



*C.3.1.2 Small dam – permitted activity.*

[4] CEP Services Matauwhi Ltd sought to add a reference to “Outstanding Natural Landscapes” to condition 2 of this rule. Following mediation CEP Services Matauwhi has agreed to no longer pursue that relief.

*C.3.1.3 Existing in-stream dam – permitted activity and C.3.1.5 Existing in-stream large dams – controlled activity.*

[5] The Royal Forest & Bird Protection Society sought that these rules not apply where the existing in-stream dam is in an outstanding freshwater body. The effect of the amendment is that existing in-stream dams in outstanding freshwater bodies will require resource consent as a non-complying activity under rule C.3.1.9 Damming or diversion of water in a significant wetland or significant area – non-complying activity.

[6] All parties agreed that the amendments are the most appropriate way to achieve the objectives of the Proposed Plan, in particular Objectives F.1.1(2) and F.1.2(7), which seek to protect the significant values of outstanding freshwater bodies.

*C.3.1.5 Existing in-stream large dams – controlled activity.*

[7] The Royal Forest & Bird Protection Society sought that rule C.3.1.5 be amended to add an additional matter of control relating to effects on indigenous biodiversity.

[8] The parties have agreed to include an amendment to the text which is common throughout the Proposed Plan so that matter of control (6) reads as follows: ‘*effects on aquatic ecosystem health and indigenous biodiversity*’. The amendment recognises that it may be relevant for decision makers to consider indigenous biodiversity that is not limited to the aquatic ecosystem.

*C.3.1.5A Reinstatement and restoration of natural flows – controlled activity.*

[9] Bay of Islands Maritime Park Inc’s appeal sought a new permitted activity rule to enable the reinstatement or restoration of natural meander channels, oxbow loops and natural floodplain vegetation and hydrosystem functioning.



[10] The parties have agreed to include a new rule that enables the diversion of water and disturbance of river beds for the purpose of flood plain habitat restoration and reinstatement of natural meander channels or oxbow loops as a controlled activity. The parties have agreed on appropriate permitted activity conditions, which protect significant areas (i.e. any: significant wetland, outstanding freshwater body, Outstanding Natural Character Area, or Outstanding Natural Feature, or Site or Area of Significance to tangata whenua) and ensure that effects on public access, existing structures, other property or the river's flow are avoided.

[11] The parties have also agreed on a suite of matters of control, which ensure that the Council can assess and impose conditions relating to river flow, fish passage and spawning, water quality, tangata whenua values, ecosystem health and indigenous biodiversity, mahinga kai, pest control and river scour and erosion control.

[12] The parties consider that the new rule appropriately manages potential adverse effects, while providing for the multiple benefits of the reinstatement of natural flows and habitat restoration, such as sediment capture, peak flow attenuation, erosion reduction and improved aquatic ecosystem health and indigenous biodiversity.

*C.3.1.6 River channel diversion – discretionary activity and C.3.1.9 Damming or diversion of water in a significant wetland or significant area – non-complying activity.*

[13] CEP Services Matauwhi Ltd is no longer pursuing relief to add 'Outstanding Natural Landscape' as a further mapped area.

[14] In making this order the Court has read and considered the memorandum of the parties dated 13 March 2020 in support of this order.

[15] NZ Refining Company Ltd, Patuharakeke Te Iwi Trust Board, Federated Farmers of New Zealand Inc, Horticulture New Zealand, Royal Forest & Bird Protection Society of NZ Inc and Northland Fish & Game Council have given notice to become parties to these appeals under s 274 of the Act and have signed the memorandum of the parties dated 13 March 2020.

[16] The Court is making this order under s 279(1)(b) 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 that have an interest in the matters to be resolved by this order have executed the memorandum requesting this order;



- (b) All parties are satisfied that all matters proposed for the Court's endorsement are within the scope of submissions and appeals, fall within the Court's jurisdiction, and conform to relevant requirements and objectives of the Resource Management Act 1991, including in particular Part 2.

### Order

[17] Therefore, the Court orders, by consent, that the Proposed Regional Plan for Northland be amended as set out in **Annexure A** to this Order.

18 This order resolves the appeals as they relate to section C.3.1 Damming and diverting water. There are no outstanding appeal points on rules in section C.3.1.

[19] There is no order as to costs.

DATED at Auckland this 20<sup>th</sup> day of May, 2020

  
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J A Smith  
Environment Judge



## Annexure A

### C.3.1 Damming and diverting water

#### C.3.1.1 Off-stream damming and diversion – permitted activity

The damming or diversion of rainfall runoff, including in sediment ponds and **stormwater** detention structures, or water in an **artificial watercourse** are permitted activities, provided:

- 1) the activities do not **dam** or divert water in a continually or **intermittently flowing river**, **natural wetland** or lake, and
- 2) the activities do not adversely affect the reliability of water supply of an **authorised** water take, and
- 3) a one percent annual exceedance probability flood event must be accommodated by the **dam** or an **overland flow path** without increasing flood levels upstream or downstream of the **structure** beyond the land or **structures** owned or controlled by the person undertaking the activities, and
- 4) the dammed or diverted water does not raise sub-surface or **surface water** levels to the extent that drainage of **other property** is adversely impeded, and
- 5) the activities must not cause change to the seasonal or annual range in water level of any **natural wetland** to an extent that may adversely affect the **wetland's** natural ecosystem, and
- 6) the level of a lake or downstream flow in a continually or **intermittently flowing river** is not reduced below a **minimum flow** or **minimum level**, and
- 7) the structure must be maintained in a sound condition, and functioning for the purpose it was designed for, and at all times be capable of withstanding a one percent annual exceedance probability flood without structural failure or risk to people or **other property**, and
- 8) if the maximum **reservoir capacity** of the **dam** is more than 20,000 cubic metres, the person doing the activity must notify the Regional Council's Compliance Manager (in writing or by email) prior to the activities occurring with:
  - a) the name, address, and phone number of the person undertaking works, and
  - b) the location of the **dam**, and
  - c) the **reservoir capacity** and **dam structure** height.

**For the avoidance of doubt this rule covers the following RMA activities:**

- Damming or diversion of rainfall runoff or water in an **artificial watercourse** (s14(2)).

#### C.3.1.2 Small dam – permitted activity

The use, erection, reconstruction, placement, alteration or extension of a **dam** in a lake, river or **natural wetland**, any associated disturbance of the bed of a river or lake and deposition of material on the bed, and damming and diversion of water are permitted activities, provided:

- 1) the activities are necessary for:
  - a) the creation or enhancement of a **wetland**, or



- b) hydrological monitoring, or
  - c) stock drinking where **livestock** are excluded from entering the lake, continually or **intermittently flowing river** or **wetland**, and
- 2) the activities are not in a **significant wetland** or an **outstanding freshwater body** or mapped (refer **I Maps | Ngā mahere matawhenua**):
  - a) Outstanding Natural Character Area, or
  - b) Outstanding Natural Feature, or
  - c) Site or Area of Significance to tangata whenua, and
- 3) the width of a continually or **intermittently flowing river** bed where the **dam** is located does not exceed three metres, and
- 4) the **dam height** does not exceed 600 millimetres above the **natural bed level** of the water body, and
- 5) a hydrological monitoring **dam** must not be in place longer than 14 days in any two-month period, and
- 6) the level of a lake or downstream flow in a continually or **intermittently flowing river** is not reduced below a **minimum flow** or **minimum level** as a result of the **dam**, and
- 7) the person undertaking the activities must notify the Regional Council's Compliance Manager (in writing or by email) at least 10 working days before the start of works in the bed of the water body, with:
  - a) timing, location and extent of the activities, and
  - b) a description of measures to avoid erosion, **structure** failure and obstruction of fish passage, and
  - c) for **wetland enhancement**, the values being enhanced, and
- 8) the activities comply with all relevant conditions of **C.2.3 General conditions**.

**For the avoidance of doubt this rule covers the following RMA activities:**

- Use, erection, reconstruction, placement, alteration, or extension of a **dam** in, on, under, or over the bed of a lake or river, and any associated disturbance of the bed of a river or lake and deposition of any substance in, on, or under the bed of a river or lake (s13(1)).
- Damming and diversion of water associated with the **dam** (s14(2)).
- Discharge sediment or water into water or onto land where it may enter water incidental to the use, erection, reconstruction, placement, alteration or extension of a **dam** or disturbance of the bed or any deposition of any substance on the bed (s15(1)).
- Discharge sediment or water onto land incidental to the use, erection, reconstruction, placement, alteration or extension of a **dam** or any disturbance of the bed or any deposition of any substance on the bed (s15(2A)).

### C.3.1.3 Existing in-stream dam – permitted activity

The use of an existing **dam** in a lake, river or **natural wetland** and any associated damming and diversion of water are permitted activities, provided:

- 1) the damming or diversion is **authorised**, and



- 2) the **reservoir capacity** is:
  - a) less than 20,000 cubic metres, and the **dam height** is less than four metres, or
  - b) necessary for maintaining the **wetland's** natural ecosystem and not associated with any consented water take, and
- 3) the level of a lake or downstream flow in a continually or **intermittently flowing river** is not reduced below a **minimum flow** or **minimum level** as a result of the **dam**, and
- x) the dam is not in an **outstanding freshwater body**, and
- 4) the **dam structure** complies with all relevant conditions of **C.2.3 General conditions**.

**For the avoidance of doubt this rule covers the following RMA activities:**

- Use of a **dam** in, on, under, or over the bed of a lake or river (s13(1)).
- Damming and diversion of water associated with the **dam** (s14(2)).
- Discharge of sediment or water into water incidental to the use of a **dam** (s15(1)).

### C.3.1.5 Existing in-stream large dams – controlled activity<sup>1</sup>

The use of an existing **dam** in a lake, river or **natural wetland** and the associated damming and diversion of water that are not permitted activities under **C.3.1.3** are controlled activities, provided:

- 1) the dam is **authorised**, and
- x) the dam is not in an **outstanding freshwater body**, and
- 2) the level of a lake or downstream flow in a continually or **intermittently flowing river** is not reduced below a **minimum flow** or **minimum level** as a result of the **dam**, and
- 3) the activities comply with all relevant conditions of **C.2.3 General conditions**.

**Matters of control:**

- 1) Minimum and flushing flows.
- 2) Provision for fish passage.
- 3) Effects on water quality.
- 4) Effects on a site or area of significance to tangata whenua.
- 5) The structural integrity of the **dam** and any upgrade works or maintenance required.
- 6) Effects on aquatic ecosystem health and indigenous biodiversity.

**For the avoidance of doubt this rule covers the following RMA activities:**

- Use of a **dam** in, on, under, or over the bed of a lake or river (s13(1)).
- Damming and diversion of water associated with the **dam** (s14(2)).
- Discharge of sediment or water into water incidental to the use of a **dam** (s15(1)).

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<sup>1</sup> Appeal to Environment Court by Royal Forest & Bird Protection Society NZ ENV-2019-AKL-000127





### C.3.1.5A Reinstatement and restoration of natural flows – controlled activity

The diversion of water in a river and any associated disturbance of the bed or deposition of material on the bed, for the purpose of flood plain habitat restoration and either reinstating natural meander channels or oxbow loops, provided:

- 1) The activities are not in a [significant wetland](#), an [outstanding freshwater body](#), or a mapped (refer I Maps | Ngā mahere matawhenua):
  1. Outstanding Natural Character Area, or
  2. Outstanding Natural Feature, or
  3. Site or Area of Significance to tangata whenua, and
- 2) the activities do not:
  1. impede existing legal public access to the river, and
  2. compromise the structural integrity or use of any other [authorised](#) structure or activity in the bed of the river or lake, or
  3. dam or divert water in a way that causes flooding or ponding on any [other property](#).
  4. reduce the flow in a continually or [intermittently flowing river](#) below a [minimum flow](#), or [minimum level](#) and

#### **Matters of control:**

1. Effects on:
  - a. Minimum, flushing and flood flows.
  - b. Fish passage and spawning habitat.
  - c. Water quality.
  - d. Any site or area of significance to tangata whenua.
  - e. Aquatic ecosystem health and indigenous biodiversity.
  - f. Mahinga kai and access to mahinga kai.
2. Methods of pest control.
3. River bed scour and erosion controls.

#### **For the avoidance of doubt this rule covers the following RMA activities:**

- Disturbance of the bed of a river and deposition of any substance in, on, or under the bed of a river associated with diverting water in a river (s13(1)).
- Diversion of water in a river (s14(2)).
- Discharge of sediment or water into water or onto land where it may enter water incidental to the diversion of water in a river or disturbance of the bed or deposition of a substance on the bed (s15(1)).
- Discharge sediment or water onto land incidental to damming and diversion of water in a river or disturbance of the bed or any deposition of material on the bed (s15(2A)).

### C.3.1.6 River channel diversion – discretionary activity

The diversion of water in a river and any associated disturbance of the bed or deposition of material on the bed, that is not the subject of any other rule in this Plan are discretionary activities, provided it



is not in a [significant wetland](#), an [outstanding freshwater body](#), or a mapped (refer [I Maps | Ngā mahere matawhenua](#)):

- 1) Outstanding Natural Character Area, or
- 2) Outstanding Natural Feature, or
- 3) Site or Area of Significance to tangata whenua.

**For the avoidance of doubt this rule covers the following RMA activities:**

- Disturbance of the bed of a river and deposition of any substance in, on, or under the bed of a river associated with diverting water in a river (s13(1)).
- Diversion of water in a river (s14(2)).
- Discharge of sediment or water into water or onto land where it may enter water incidental to the diversion of water in a river or disturbance of the bed or deposition of a substance on the bed (s15(1)).
- Discharge sediment or water onto land incidental to damming and diversion of water in a river or disturbance of the bed or any deposition of material on the bed (s15(2A)).

### C.3.1.9 Damming or diversion of water in a significant wetland or significant area – non-complying activity

The damming or diversion of water in a [significant wetland](#), an [outstanding freshwater body](#) or mapped (refer [I Maps | Ngā mahere matawhenua](#)):

- 1) Outstanding Natural Character Area, or
- 2) Outstanding Natural Feature, or
- 3) Site or Area of Significance to tangata whenua, and

that is not a permitted activity in section [C.3.1](#) of this Plan is a non-complying activity.

**For the avoidance of doubt this rule covers the following RMA activities:**

- Use, erection, reconstruction, placement, alteration or extension of a [dam](#) in, on, under, or over the bed of a natural wetland that is not part of the bed of a lake or river, and any associated disturbance of the bed or deposition of any substance in, on, or under the bed (s9(2)).
- Use, erection, reconstruction, placement, alteration or extension of a [dam](#) in, on, under, or over the bed of a lake or river, and any associated disturbance of the bed or deposition of any substance in, on, or under the bed (s13(1)).
- Damming and diversion of water associated with the [dam](#) (s14(2)).
- Discharge of sediment or water into water or onto land where it may enter water incidental to the use, erection, reconstruction, placement, alteration or extension of a [dam](#), the damming and diversion of water, or the disturbance of the bed or deposition of material on the bed (s15(1)).
- Discharge sediment or water onto land incidental to the use, erection, reconstruction, placement, alteration or extension of a [dam](#), the damming and diversion of water, or disturbance of the bed or deposition of material on the bed (s15(2A)).

