

BEFORE THE ENVIRONMENT COURT ENV-2019-AKL-

IN THE MATTER of the Resource Management Act 1991

BETWEEN **NORTHLAND FISH AND GAME COUNCIL**
Appellant

AND **NORTHLAND REGIONAL COUNCIL**
Respondent

NOTICE OF APPEAL

Dated: June 2019

Contact:

Peter Wilson
PO Box 1325
Palmerston North
021 151 3486
pwilson@fishandgame.org.nz

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON
PROPOSED REGIONAL PLAN FOR NORTHLAND**

TO: The Registrar
Environment Court
AUCKLAND

1. The NORTHLAND FISH AND GAME COUNCIL ("**Fish & Game**") appeals against part of a decision of the Northland Regional Council on the following plan:

Proposed Regional Plan for Northland ("**PRPN**")

2. Fish & Game made a submission on the PRPN.
3. Fish & Game is not a trade competitor for the purposes of Section 308D of the Resource Management Act 1991.
4. Fish & Game received notice of the final decision on 3 May 2019.
5. The decision was made by the Northland Regional Council.
6. The part of the decision that Fish & Game is appealing is set out in Column 1 of the Table appended to this Notice.
7. The reasons for Fish & Game's appeal are:
 - 7.1. The reasons set out in Column 3 of the Table appended to this Notice;
and
 - 7.2. The provisions the subject to this appeal are contrary to the purpose and principles of the Resource Management Act 1991, the National Policy Statement Freshwater Management (2017) and the Northland Regional Policy Statement.
8. Fish & Game seeks the following relief:
 - 8.1. The relief sought as set out in Column 2 of the Table appended to this Notice; and

8.2. Such further or other relief as the Court considers appropriate or is otherwise consequential on the relief generally sought within this appeal and may address the concerns expressed in the reasons for the appeal otherwise raised.

9. Fish & Game **attaches** the following documents to this notice:

9.1. A copy of its submission;

9.2. A copy of the relevant parts of the decision;

9.3. A list of the names and addresses of persons to be served with a copy of this notice.

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ON BEHALF OF THE NORTHLAND FISH AND GAME COUNCIL

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June 2019

Address for service of Appellant:

Peter Wilson
PO Box 1325
Palmerston North
021 151 3486
pwilson@fishandgame.org.nz

Table setting out part of Decision Fish & Game is appealing, reasons for its appeal and relief sought

PRPN provision	Relief sought:	Reasons:
C: Rules		
Activities in the Beds of Lakes and Rivers		
C.2.1.8 and C.2.1.9 Fish passage structures; Demolition or removal of existing structures	Delete reference to the Regional Council in the following (amendment sought shown): “before the start of works, the person doing the activities obtains written advice from the Regional Council or the Department of Conservation that there are no known populations of indigenous fish upstream that would be vulnerable if ...”	The Department of Conservation retains the relevant function under section 6(ab) of the Conservation Act 1987 “[t]o preserve so far as is practicable all indigenous freshwater fisheries, and protect recreational freshwater fisheries and freshwater fish habitats”. The Department has the knowledge to provide the written advice referred to and not the Regional Council.
C.2.1.12 Freshwater structures – controlled activity	In subclause 3), delete the word “indigenous” (amendment shown): “the structure does not prevent indigenous fish passage, and...”	A structure that prevents the passage of trout, a <i>non-indigenous</i> fish species, should also not be considered as a controlled activity and should default to a discretionary activity (under rule C2.1.13). The protection of trout (and salmon) is recognised under section 7(h) of the Act.
C2.2 Activities affecting wetlands		
C.2.2.1 Wetland management and enhancement – permitted activity	Retain permitted activity rule with the following amendment: Under item 1) allow the <i>incidental</i> removal of raupo as a permitted activity for the maintenance and enhancement purpose.	Northland has lost many of its wetlands and many others are degraded. Encouragement of wetland enhancement and restoration will be required in order to meet the requirements of ss6(a) and (c) RMA, the NPSFM 2017, the Northland RPS Policies 2.8(b) and 4.2.1(c) and 4.71(k)-(l), and the functions of the Regional Council set

	<p>OR Insert new Rule C.3.10: Restoration activities in natural or significant wetlands – controlled activity</p> <p>Activities in wetlands including damming and diversion activities, for the purpose of the restoration of restoring or enhancing natural or significant wetlands including those that are not permitted by rules C.2.2.2 – C.2.2.4 are controlled activities provided the following condition is met:</p> <p>H. the activities are stipulated in and carried out in accordance with an approved restoration management plan.</p> <p>Matters of control:</p> <ul style="list-style-type: none"> • Removal, damage or modification of indigenous vegetation • Removal of sediment • Changes to the hydrology of the wetland • Species for planting • Amount of disturbance and deposition that may occur • Timing of the activities • Management of sites with significant mana whenua values in any natural or significant wetland. • Type, frequency, density and timing of livestock access to the natural or significant wetland • Methods of pest control, including the use of aerial spraying. 	<p>out in section 30(1)(c)(iii) and (iiia), (g) and (ga) – including the function relating to maintaining indigenous biological diversity. Policy 4.2.1 of the Northland RPS requires promoting the overall quality of Northland’s water resources, including by promoting and supporting the active management, enhancement and creation of wetlands.</p> <p>Leaving wetlands to ‘look after themselves’ will not achieve restoration, or even maintenance of the extent of wetlands in Northland. Northland Fish & Game Council maintain and restores wetlands in the Northland Region. Activities include removing silt and sediment, maintaining the water level to prevent wetland desiccation (water level control structures), removing weeds/decaying vegetation mechanically. .</p> <p>Although Fish & Game’s submission sought permitted activity status for a wider range of activities, Fish & Game now seeks (as a compromise) a controlled activity rule for activities relating to enhancement/restoration of wetlands that do not fall under rule C.2.2.1.</p> <p>Controlled activity status would allow Northland Regional Council to maintain oversight of restoration activities, but encourage and enable a wider range of restoration and enhancement activity under a single resource consent.</p>
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	<ul style="list-style-type: none"> • Area subject to restoration. <p>Notification: In respect of C.3.10, applications are precluded from public notification (unless special circumstances apply).</p> <p>Insert associated new definition “Restoration management plan” – Restoration Management Plan means a plan prepared by a person with the appropriate professional qualifications, and approved by a General Manager at Northland Regional Council, providing information on at least the following matters:</p> <p style="padding-left: 40px;">H. Property details Details must include the physical address, names of owners, a legal description, relevant contact details and a map. Tenure of the land and any legal protection or designation must also be included. Include information on any management partners and/or key stakeholders relevant to the restoration management plan.</p> <p>2. Values Describe the site’s values in so far as they are relevant to the wetland restoration management plan. These will include general ecological values, threatened ecosystems and species, mana whenua values, and others, such as cultural and landscape values.</p> <p>3. Issues Describe the current state of the identified values. Discuss the threats facing the values and the opportunities for restoring them.</p>	
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	<p>4. Management Objectives State specific objectives for managing the site based on the values and issues described. Ensure consideration is given to existing resource consents, landowner agreements, stakeholder agreements and any specific values or management objectives for the site expressed in an operative or proposed regional policy statement, regional plan, district plan or other relevant plan such as an iwi management plan, Department of Conservation Management Strategy, or Sports Fish & Game Bird Management Plan.</p> <p>5. Operational Plan Outline the activities that will be carried out to achieve the management objectives. Give timelines for these activities and identify who has responsibility for resourcing and delivering them. Include maps to show operational areas.</p> <p>6. Review & Reporting Describe the approach to assessing progress against the restoration management plan. Give the reporting timelines and ensure that any resource consent reporting requirements are covered.</p> <p>(Consequential amendments required e.g. to C2.2.4 and C.2.2.5).</p>	
C.3.1.9 Damming or diversion of water in a significant wetland or significant area – non-complying activity	This rule should be made subject to the new rule that Fish & Game seeks for Restoration activities in natural or significant wetlands (Rule C.3.10 – controlled activity) and the allowance for removal of raupo for the purpose of wetland enhancement and restoration, that Fish & Game seeks as a permitted activity (under Rule C.2.2.1).	Refer reasons set out above: wetland restoration and enhancement activities should be encouraged, including within significant wetlands.

C.5 Taking and using water		
C.5.1.8 High Flow allocation – restricted discretionary activity.	Delete rule OR Retain the following standards that were contained in the notified version but deleted by the Decision: “1) the frequency of flushing flows that exceed three times the median flow of the river is not changed; 2) 50% of the river flow above the median flow remains in the river.”	The deletion of the standards in the notified version of the Rule ignores the importance of flushing flows and a fluctuating flow regime to aquatic life. It is inappropriate for an activity of flow harvesting that has potentially significant adverse effects due to the absence of standards, to be considered on a restricted discretionary basis. The rule is not the most appropriate means to achieve Objective F1.1(3).
C.5.1 “Note” C.5.1.11 and C.5.1.12 Water take below minimum flow or water level; Water take that will exceed an allocation limit D.4.19 Minimum Flows and levels	Revise the framework for taking and using water, so that it ensures compliance with the minimum flow and allocation limits, as is required by Policy D.4.17A in the PRPN, including: <ul style="list-style-type: none"> • Delete the provision for an “alternative minimum flow” in D.4.19. • Delete the following words in H.6: “The minimum flows in Table 24 ‘Minimum flows for rivers’ apply to Northland’s rivers (excluding ephemeral rivers or streams) unless a lower minimum flow is provided for under D.4.19 Exceptions to Minimum flows and or levels.” 	Under the National Policy Statement Freshwater Management (NPSFM) a “limit” is the maximum amount of resource use available that allows a freshwater objective to be met. Freshwater objectives must provide for the compulsory value of ecosystem health. Providing for water to be taken below minimum flows is inconsistent with the NPSFM which requires avoidance of any further over-allocation of fresh water and phasing out existing over-allocation (Objective B1) and that no decision will likely result in future over-allocation (Policy B5).

H.6 Environmental Flows and Levels	<ul style="list-style-type: none"> Clarify the point at which compliance with the minimum flow and allocation limit is to be measured, monitored and applied (currently H.6 contains the words “at the point of take and any downstream flow recorder sites determined by the Regional Council.”) Clarify how section 14(3)(b) takes are dealt with in the allocation regime given the following “Note” at the commencement of C.5.1: “The following rules do not apply to the taking and use of water that is done in accordance with sections 14(3)(b) – (e) of the RMA”. 	<p>In relation to the point at which the minimum flow and allocation limit will be applied, the reference to “and any downstream flow recorder sites determined by the Regional Council” gives to Council an inappropriate level of discretion and raises uncertainty as to how <i>cumulative</i> effects of multiple takes will be addressed. Fish & Game seeks clarity to ensure that the adverse cumulative effects of numerous takes are appropriately managed.</p>
D: Policies		
D.4 Land and Water		
D.4.28 Wetland - values	<p>Delete 2a) and 2b) (track changes shown):</p> <p>When considering resource consents for activities in wetlands recognise:</p> <ol style="list-style-type: none"> the benefits of wetland creation, restoration and enhancement of wetland functions; that the values of induced wetlands or reverted wetlands are likely to relate to: <ol style="list-style-type: none"> the length of time the wetland has been in existence (ecological values are generally lower in newly established wetlands), and 	<p>Long-term ecological viability should not be used as a threshold for determining the values of a wetland. Many of Northland’s most significant ecosystems are in threatened land environments where wetlands and other ecosystem types are highly fragmented, modified, and reduced from their former extent. Values, and ecological significance, should be determined by criteria such as representativeness, diversity, rarity and ecological context - with ecological viability being a management consideration and not used as a threshold for determining value.</p>

	<p>b) whether long-term viability of the wetland relies on maintenance works to maintain suitable hydrological conditions (wetlands that do not don't require maintenance are of greater value), and</p> <p>...</p>	
F: Objectives		
F.1.1 Freshwater Quantity	<p>Amend subclause 3) by adding “and valued introduced species such as trout” as follows (amendment shown):</p> <p>“c) continually flowing rivers have sufficient flows and flow variability to maintain habitat quality, including to flush rivers of deposited sediment and nuisance algae and macrophytes and support the natural movement of indigenous fish <u>and valued introduced species such as trout</u>”.</p>	<p>Trout are a valued part of the ecosystems of Northland. Explicit recognition of introduced species such as trout is required in this Objective - the current reference to “recreational” values does not make it sufficiently clear that the needs of this species must be considered when managing the use, taking and diversion of freshwater. This is necessary to ensure consistency with s7(h) RMA, “the habitat of trout and salmon”</p>