

**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 HORTICULTURE NEW ZEALAND
(ENV-2019-AKL-000116)

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

THE NEW ZEALAND REFINING COMPANY LIMITED
(ENV-2019-AKL-000121)

MINISTER OF CONSERVATION
(ENV-2019-AKL-000122)

ROYAL FOREST AND BIRD PROTECTION SOCIETY
OF NEW ZEALAND INCORPORATED
(ENV-2019-AKL-000127)

Appellants

AND NORTHLAND REGIONAL COUNCIL

Respondent

Environment Judge – sitting alone pursuant to section 279 of the Act
In Chambers at Auckland

CONSENT ORDER



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

(1) The order resolves the appeals as they relate to Objective F.1.1 and Policies D.4.16 as set out in **Annexure A** to this order.

(2) The Council is continuing to engage with the parties in the interests of trying to resolve the appeal points on Policies H.4.1, H.4.2 and H.4.3.

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

REASONS

Introduction

[1] These appeals relate to the Northland Regional Council's decision on the Proposed Regional Plan for Northland. This order resolves the appeals as they relate to objectives and policies relating to freshwater quantity management - Topic 4, specifically Policy D.4.16, Objective F.1.1 and Policies H.4.1 and H.4.3.

[2] Following Court assisted mediation the parties were able to reach an agreement to resolve the appeal points concerning Policy D.4.16 and Objective F.1.1.

Objective F.1.1 ("Freshwater quantity")

[3] The Royal Forest and Bird Protection Society wanted objective F.1.1 to be amended provide for flow management in intermittent and ephemeral streams and the reference to "natural" wetlands be deleted. The parties have agreed to deleting the term "continually flowing" from the fourth clause of the objective but retaining the reference to natural wetlands in the second clause.

[4] Northland Fish and Game Council sought that reference to "valued introduced species such as trout" be added to the third clause of the objective. The parties have also agreed to make this amendment.

[5] Refining NZ sought to amend Objective F.1.1(6) so that it recognises that the saline intrusion as a consequence of a water take may be necessary to manage passive discharges at the Marsden Point Refinery site. The parties have also agreed to make this amendment. Manage the taking, use, damming and diversion of fresh water so that:



Manage the taking, use, damming and diversion of fresh water so that:

- 1) the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems, of fresh water are safeguarded, and the health of freshwater ecosystems is maintained, and
- 2) the significant values, including hydrological variation in outstanding freshwater bodies and natural wetlands are protected, and
- 3) the extent of littoral zones in lakes are maintained, and 4
- 4) 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 and valued introduced species such as trout, and
- 5) flows and water levels support sustainable mahinga kai, recreational, amenity and other social and cultural values associated with freshwater bodies, and
- 6) adverse effects associated with saline intrusion and land subsidence above are avoided (except where the taking, use, damming or diversion is for groundwater management at the Marsden Point refinery, in which case this clause does not apply), and
- 7) it is a reliable resource for consumptive and non-consumptive uses.

- [6] The parties consider that the above amendments better achieve the purpose of the Act in relation to safeguarding the life-supporting capacity of water and ecosystems. The reference to valued introduced species such as trout is consistent with section 7(h) of the Act.
- [7] The amendment to clause 6 was deemed necessary in order to ensure that Refining NZ can continue to manage historical groundwater contamination at the Marsden Point Refinery site by creating a localised groundwater depression (which has the potential to induce saline intrusion).

Policy D.4.16

- [8] The Royal Forest and Bird Protection Society of New Zealand sought that Policy D.4.16 be deleted because it considered that the policy does not give effect to the National Policy Statement for Freshwater Management 2017.
- [9] In order to resolve this appeal point the parties have agreed that the policy can be amended to clarify that water user groups should be specific to catchments (rather than takes across multiple catchments) and that metering requirements should be real-time.

- [10] The Council is continuing to engage with the parties in order to resolve the appeal points on Policies H.4.1, H.4.2 and H.4.3.



- [11] In making this order the Court has read and considered the memorandum of the parties dated 13 March 2020 in support of this consent order.
- [12] The following people gave notice of their intention to become parties under s 274 of the Act and have signed the memorandum of the parties seeking this order:
- (a) Federated Farmers of New Zealand;
 - (b) Horticulture New Zealand;
 - (c) Minister of Conservation;
 - (d) Northland Fish and Game Council;
 - (e) Northpower Limited;
 - (f) New Zealand Refining Company;
 - (g) Royal Forest and Bird Protection Society of New Zealand; and
 - (h) Patuharakeke Te Iwi Trust Board.
- [13] 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 with 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

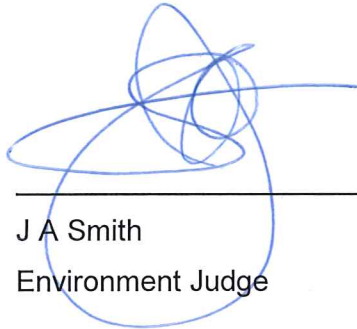
[14] Therefore, the Court orders, by consent, that the Proposed Regional Plan for Northland is amended as set out in **Annexure A** to this Order.

[15] The order resolves the appeals as they relate to: Objective F.1.1 and Policies D.4.16.



- [16] The Council is continuing to engage with the parties resolve the appeal points on Policies H.4.1, H.4.2 and H.4.3.
- [17] The Royal Forest and Bird Protection Society of New Zealand will withdraw its appeal on Policy D.4.13 (notified version). The New Zealand Refining Company Limited will withdraw its appeal on Policy D.4.15.
- [18] There is no order as to costs.

DATED at Auckland this 20th day of May 2020



J A Smith
Environment Judge



Annexure A

D.4.16 Water user groups

The formation of water user groups should be encouraged to allow permit holders who choose to work with other water permit holders in the same surface water catchment or aquifer where it is confined to that catchment sub-catchment to temporarily share all or part of the water take authorised by their water permit provided:

- 1) all water permits are subject to conditions that specify a maximum rate of take, a daily volume, and a seasonal or annual volume; and
- 2) real-time metering and telemetry of water abstraction data is undertaken for all takes, and
- 3) all water permits are subject to common water take restriction conditions, or any discrepancies in restriction conditions are addressed prior to the formation of the group.

F.1.1 Freshwater quantity

Manage the taking, use, damming and diversion of fresh water so that:

- 1) the life-supporting capacity, ecosystem processes and indigenous species including their associated ecosystems, of fresh water are safeguarded, and the health of freshwater ecosystems is maintained, and
- 2) the significant values, including hydrological variation in outstanding freshwater bodies and natural wetlands are protected, and
- 3) the extent of littoral zones in lakes are maintained, and
- 4) ~~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 and valued introduced species such as trout, and
- 5) flows and water levels support sustainable mahinga kai, recreational, amenity and other social and cultural values associated with freshwater bodies, and
- 6) adverse effects associated with saline intrusion and land subsidence above are avoided (except where the taking, use, damming or diversion is for groundwater management at the Marsden Point refinery, in which case this clause does not apply), and
- 7) it is a reliable resource for consumptive and non-consumptive uses.

Note:

This objective was included in this plan pursuant to Policy B1 of the National Policy Statement for Freshwater Management 2017.

