

**IN THE ENVIRONMENT COURT  
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA  
KI TĀMAKI MAKĀURAU**

IN THE MATTER of the Resource Management Act 1991

AND of an appeal under clause 14 of  
Schedule 1 of the Act

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

PUBLIC AND POPULATION  
HEALTH UNIT OF THE  
NORTHLAND DISTRICT HEALTH  
BOARD  
(ENV-2019-AKL-000126)

FEDERATED FARMERS OF NEW  
ZEALAND  
(ENV-2019-AKL-000114)

TOP ENERGY LIMITED  
(ENV-2019-AKL-000125)

MANGAWHAI HARBOUR  
RESTORATION SOCIETY  
(ENV-2019-AKL-000110)

BP OIL NEW ZEALAND LIMITED,  
MOBIL OIL NEW ZEALAND  
LIMITED AND Z ENERGY  
LIMITED (THE OIL COMPANIES)  
(ENV-2019-AKL-000119)

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



THE NATIONAL INSTITUTE OF  
WATER AND ATMOSPHERIC  
RESEARCH LIMITED (NIWA)

(ENV-2019-AKL-000108)

Appellants

AND

NORTHLAND REGIONAL  
COUNCIL

Respondent

Court: Environment Judge J A Smith sitting alone under s 279 of the Act

Date of Order: **03 JUN 2021**

Date of Issue: **03 JUN 2021**

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**CONSENT ORDER**

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A: Under section 279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that the appeals are allowed in accordance with **Annexure A** to this Order.

B: Under section 285 of the Resource Management Act 1991, there is no order as to costs.

**REASONS**

**Introduction**

[1] This order relates to appeals against Northland Regional Council's decision on the Proposed Regional Plan for Northland, in respect of rules relating to farm

wastewater discharges, stormwater discharges and land preparation activities (Topic 7 Discharges to land and water and Topic 9 Land use and disturbance activities).

[2] The appeals relate to:

(a) Topic 7:

- i. Rule C.6.3.1 Farm wastewater discharges to land – permitted activity;
- ii. Rule C.6.3.2 Horticulture wastewater discharges to land – permitted activity;
- iii. Rule C.6.3.3 Discharges associated with the making or storage of silage – permitted activity;
- iv. Rule C.6.3.4 Discharges associated with the disposal of dead animals or offal – permitted activity;
- v. Rule C.6.3.8 Farm wastewater discharges to water – non-complying activity;
- vi. Rule C.6.4.1 Stormwater discharges from a public stormwater network – permitted activity;
- vii. Rule C.6.4.2 Other stormwater discharges – permitted activity;
- viii. Rule C.6.8.1 Investigating potentially contaminated land – permitted activity;
- ix. Rule C.6.8.2 Discharges from contaminated land – permitted activity;
- x. Rule C.6.8.4 Re-consenting passive discharges from contaminated land – controlled activity; and
- xi. Rule C.6.8.5A Investigating potentially contaminated land – restricted discretionary activity.

(b) Topic 9:

- i. Rule C.8.3.1 Earthworks – permitted activity;
- ii. Rule C.8.3.2 Earthworks – controlled activity; and
- iii. Rule C.8.4.2 Vegetation clearance in riparian areas – permitted activity.

- (c) Policy D.4.3 Municipal, domestic and production land wastewater discharges.
- (d) Definitions of “sensitive groundwater”, “vegetation clearance”, “passive discharge” and “diffuse discharge”.

[3] The following persons gave notice of their intention to become parties to one or more of the appeals under s 274 of the Act:

- (a) Federated Farmers of New Zealand Incorporated;
- (b) Horticulture New Zealand;
- (c) Bay of Islands Maritime Park Incorporated;
- (d) Atlas Quarries Limited and Atlas Concrete Limited;
- (e) Royal Forest and Bird Protection Society of New Zealand Incorporated;
- (f) New Zealand Refining Company Limited;
- (g) Minister of Conservation;
- (h) Northport Limited;
- (i) Northpower Limited;
- (j) Patuharakeke Te Iwi Trust Board;
- (k) Top Energy Limited;
- (l) Transpower New Zealand;
- (m) The Oil Companies; and
- (n) New Zealand Transport Agency.

### **Agreement reached**

[4] Following Court-assisted mediation as well as subsequent informal discussions the parties have reached agreement on many of the provisions under appeal.

[5] A summary of the proposed changes and the parties rationale for the changes is set out below.

***Rule C.6.3.1 Farm wastewater discharges to land – permitted activity***

[6] Rule C.6.3.1 provides for the discharge of farm wastewater onto or into land and any associated discharge of odour to air as permitted activities, subject to certain conditions under the rule. Two appeals were lodged against Rule C.6.3.1. In summary:

- (a) Federated Farmers of New Zealand (**Federated Farmers**) appealed seeking a date for triggering compliance with permitted activity conditions after 1 March 2025. The rationale for Federated Farmers' appeal is that a 5-year transition period enables farms to affordably move towards individually appropriate storage targets and best management discharge to land practices within a reasonable time frame.
- (b) Public and Population Health Unit of the Northland District Health Board (**Northland District Health Board** or **NDHB**) appealed seeking the inclusion of a new condition to safeguard the quality of fresh water for registered drinking water supplies. NDHB sought the following amendment to clause (2)(A):

“the discharge does not cause any more than minor adverse effect on source water for human consumption as per Resource Management (Standards for Sources of Human Drinking Water) Regulations 2007”

[7] Through ongoing discussions during July 2020, Federated Farmers agreed not to pursue its appeal point.

[8] In respect of the NDHB's appeal point, the parties agreed to amend clause (2)(b) to refer to “a mapped priority drinking water abstraction point”. The amendment ensures that there is no discharge of farm wastewater onto or into land or overland flow within 50m of the water body for a distance of 2000 metres upstream of a mapped priority drinking water abstraction point. The parties agreed the amendment was appropriate in order to protect the sources of human drinking water across Northland and to ensure that the community's health and safety is maintained.

***Rule C.6.3.2 Horticulture wastewater discharges to land – permitted activity***

[9] Rule C.6.3.2 provides for the discharge of horticulture wastewater onto or into land as a permitted activity, provided that certain conditions under the rule are satisfied.

[10] This was appealed by NDHB who sought that a new clause be inserted to ensure that horticulture wastewater discharges do not adversely impact on the sources of human drinking water. NDHB sought the following amendment to condition (1)(ba):

“50m of the water body for distance of 2000 metres upstream of a public water supply intake servicing more than 25 people, and”

[11] Following mediation, NDHB agreed not to pursue its appeal point.

***Rule C.6.3.3 Discharges associated with the making or storage of silage permitted activity and Rule C.6.3.4 Discharges associated with the disposal of dead animals or offal – permitted activity***

[12] Rule C.6.3.3 provides that the discharge of contaminants onto or into land resulting from the making or storage of silage, and any associated discharge of odour to air, are permitted activities provided that certain conditions are satisfied.

[13] Rule C.6.3.4 provides for the discharge of contaminants onto or into land resulting from the disposal of dead animals or offal, and any associated discharge of odour to air, as permitted activities subject to certain conditions.

[14] Federated Farmers appealed both Rules C.6.3.3 and C.6.3.4 seeking that the reference to artificial watercourse and natural wetlands be removed from the rules. Federated Farmers’ concern was that by including artificial watercourse and natural wetlands, farmers may be subjected to onerous costs and delays for little or no environmental benefit.

[15] Following mediation, Federated Farmers agreed to withdraw their appeal points on Rules C.6.3.3 and C.6.3.4, subject to amendments to wetland definitions.

The wetlands definitions are agreed and will be subject to a separate consent order for Topic 2 – Activities in the bed of rivers and lakes and wetlands.

***Rule C.6.3.8 Farm wastewater discharges to water – non-complying activity***

[16] Rule C.6.3.8 provides that the discharge of treated farm wastewater into water is a non-complying activity, provided the discharge is not into a dune lake, surface water flowing into any dune lake, an outstanding freshwater body or a significant wetland.

[17] This was appealed by Federated Farmers who sought that the rule be retained as a discretionary activity. The rationale for Federated Farmer's appeal was that discharge of farm wastewater is interconnected with storage and treatment of effluent, and in the context of Rule C.6.3.8 it is inappropriate to treat farm wastewater discharge to water as a non-complying activity. Accordingly, Federated Farmers sought that the rule be retained as a discretionary activity, with clarification of the calculation method for FDE storage more properly incorporated as a discretionary activity assessment matter, and with the decision to notify applications being considered on a case-by-case basis.

[18] Through mediation and ongoing discussions, Federated Farmers proposed an amendment to Policy D.4.3 – Municipal, domestic and production land wastewater discharges, as an alternative to seeking discretionary status for Rule C.6.3.8. The parties agreed to include the word “environmentally” in clause (2) of Policy D.4.3 as follows:

An application for resource consent to discharge municipal, domestic, horticultural or farm wastewater to water will generally not be granted unless:

- 1) the storage, treatment and discharge of the wastewater is done in accordance with recognised industry good management practices, and
- 2) a discharge to land has been considered and found not to be environmentally, economically or practicably viable.

[19] The rationale for the amendment is that there are likely to be situations where discharges into or onto land could result in poorer environmental outcomes than

direct discharges to water. In these situations, it may be more appropriate to discharge into water. The parties consider that the addition of “environmentally” is appropriate as it provides policy guidance for such situations when considering a discharge permit application for a non-complying activity to discharge farm wastewater to water.

[20] The amendment resolves Federated Farmers’ appeal on Rule C.6.3.8.

***Rule C.6.4.1 Stormwater discharges from a public stormwater network – permitted activity and Rule C.6.4.2 Other stormwater discharges – permitted activity***

[21] Rule C.6.4.1 provides that the diversion and discharge of stormwater from a public stormwater network into water or onto or into land where it may enter water, is a permitted activity provided that certain conditions under the rule are met.

[22] The Northland District Health Board appealed both Rules C.6.4.1 and C.6.4.2, seeking the inclusion of a new condition to safeguard the quality of fresh water for registered drinking water supplies. In both rules, NDHB sought the amendment to a condition as follows:

the rendering of fresh water unsuitable for consumption by farm animals and source water for human consumption as per the Resource Management (National Environmental Standards for Sources of Human Drinking Water) Regulations 2007

[23] The parties agreed to amend Rules C.6.4.1 and C.6.4.2, but to instead refer to avoiding contaminating mapped priority drinking water sources. The amendments ensure that potential effects of permitted stormwater discharges will not render drinking water unsuitable for human consumption. The amendments help to ensure that the community’s health and safety is maintained and that the Regional Policy Statement for Northland (principally Objective 3.2, which seeks to protect the quality of registered drinking water supplies) is given effect to.



***Rule C.6.8.1 Investigating potentially contaminated land – permitted activity***

[24] Rule C.6.8.1 provides for the disturbance of land for a site investigation to assess the concentration of hazardous substances in soil, water or air as a permitted activity, subject to certain conditions.

[25] Rule C.6.8.1 was appealed by Refining NZ who sought that the rule be amended so that a site investigation undertaken at the Marsden Point Refinery Site is exempt from clause (1) of Rule C.6.8.1. Refining NZ sought the following amendment:

**C.6.8.1 Investigating potentially contaminated land – permitted activity**

The disturbance of land for a site investigation to assess the concentration of hazardous substances in soil, water or air is a permitted activity, provided:

1. except where the site investigation is being undertaken at the Marsden Point Refinery Site, the site investigation is supervised and certified by a suitability qualified and experienced practitioner, and

...

[26] Following mediation, the parties agreed to delete the reference to “supervised and” from clause (1), as opposed to inserting an exemption within the permitted activity rule. The parties also agreed to introduce a new rule, Rule C.6.8.5A, which is discussed further below. The parties consider that the amendment is appropriate as it ensures that the rule is not unduly onerous (i.e. requiring supervision as well as certification by a qualified person). The amendment is also consistent with the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health (NESCS), which provides (among other things) sampling soil and disturbing soil as permitted activities, without the requirement for supervision.

***Rule C.6.8.2 Discharges from contaminated land – permitted activity***

[27] Rule C.6.8.2 provides for the passive discharge of a contaminant from contaminated land into water, or onto or into land where it may enter water, as a permitted activity subject to certain conditions

[28] This was appealed by The Oil Companies, who sought the reintroduction of the distinction between sensitive and non-sensitive groundwater as provided in the notified version of the rule. In order to do so, The Oil Companies proposed an amendment to the wording of Rule C.6.8.2 and the reinstatement of the notified definition of sensitive groundwater, subject to the deletion of clause 4.

[29] Following mediation, the parties agreed to amend the wording of Rule C.6.8.2 and to reintroduce the definition of sensitive groundwater proposed by The Oil Companies. The parties consider the amendments are appropriate to ensure that Rule C.6.8.2 takes an appropriate risk-based approach. The amendment is also consistent with the objectives and policies of the Proposed Plan, particularly Policy D.4.7 Discharges from contaminated land which requires that discharges from contaminated land are managed or remediated to an appropriate level.

***Rule C.6.8.4 Re-consenting passive discharges from contaminated land – controlled activity***

[30] Rule C.6.8.4 provides for an application for a new resource consent to replace an existing consent for a passive discharge into water, or onto or into land where it may enter water, as a controlled activity.

[31] This was appealed by Refining NZ who sought the deletion of “the need for a financial bond” as a matter of control for the rule.

[32] Through mediation and subsequent discussions, the parties agreed to amend clause (3) as follows:

- 3) The need for a financial bond to secure ongoing performance of conditions relating to:
  - a) remedial, restoration or maintenance work
  - b) ongoing monitoring of long-term effects

Having regard to factors including the:

  - c) means of the consent holder to achieve compliance with consent conditions, and
  - d) risk of abandonment of the site

[33] The parties consider the amendment is appropriate as it enables the Council to require a financial bond where there may be a risk of compliance with the consent conditions or a risk of the applicant abandoning the site.

***Rule C.6.8.5A Investigating potentially contaminated land – restricted discretionary activity***

[34] Rule C.6.8.5 Contaminated land – discretionary activity provides that any disturbance or discharge associated with contaminated land that is not a permitted or controlled activity is a fully discretionary activity.

[35] Through mediation and subsequent discussions regarding Refining NZ's appeal against Rule C.6.8.1 (addressed above), the parties agreed that it would be appropriate to introduce a new rule to provide for investigations to assess the concentration of hazardous substances that may be present in soil that is not a permitted activity under Rule C.6.8.1, as a restricted discretionary activity. As a result, the parties agreed on a proposed Rule C.6.8.5A Investigating potentially contaminated land – restricted discretionary activity and associated matters of discretion.

[36] The parties consider that such a new rule is appropriate as it reflects the lower risk of adverse effects associated with investigations (as opposed to other activities that may disturb contaminated land). The proposed rule provides an appropriately narrow list of matters of discretion, which ensures that all relevant matters can be assessed.

***Rule C.8.3.1 Earthworks – permitted activity***

[37] Rule C.8.3.1 provides for earthworks outside the bed of a river, lake, wetland and the coastal marine area (CMA), and any associated damming, diversion and discharge of stormwater onto or into land where it may enter water, as permitted activities subject to conditions. Rule C.8.3.1 was appealed by:

- (a) Top Energy Limited (**Top Energy**), seeking that the rule is amended to provide greater flexibility for earthworks as part of infrastructural network facility constructions and maintenance. Top Energy considered

the rule to be unduly restrictive and onerous for a network utility operator;

- (b) Mangawhai Harbour Restoration Society (**MHRS**), seeking an amendment to exclude coastal dune restoration from the requirement in clause (3) to comply with the Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region (2016);
- (c) The Minister of Conservation, seeking an amendment to include a condition providing that earthworks do not occur within 20 metres of any inanga spawning site identified by the Council;
- (d) Federated Farmers, seeking that the rule be amended by adding exemptions from compliance standards for typical minor farm earthworks;
- (e) NDHB, seeking that Rule C.8.3.1 be amended to avoid negative impacts on the sources of human drinking water across Northland; and
- (f) NIWA, seeking the inclusion of an advice note to clarify that contaminated land is covered by the permitted activity earthworks rule.

[38] The parties agreed to include explanatory text to Table 13 to address Top Energy's appeal point. The explanatory text in note 2 enables progressive closure and stabilisation works being utilised as part of a continuing project to remain within the permitted thresholds. The amendment more appropriately provides for the social and economic wellbeing of the people and communities who are served by Top Energy's electricity transmission network, and better aligns with the RPS, NZCPS and Part 2 of the Act.

[39] The parties agreed to the amendment sought by MHRS. The parties consider this is appropriate as erosion and sediment control guidelines are not relevant when the substrate is sand and the potential for erosion and materials to enter the CMA is addressed in clauses (5) and (6) of the Rule.

[40] The parties agreed to add a condition to clause (8) of Rule C.8.3.1 to address NDHB's appeal. The amendment ensures that potential contamination effects of stormwater discharges associated with earthworks will not render freshwater taken

from a mapped priority drinking water abstraction point as unsuitable for human consumption. The amendment helps to ensure that the community's health and safety is maintained and also gives effect to the Regional Policy Statement for Northland (principally Objective 3.2, which seeks to protect the quality of registered drinking water supplies).

[41] The parties agreed to add an advice note to Rule C.8.3.1 as sought by NIWA to clarify how the thresholds in the table apply and that territorial authorities are responsible for managing the disturbance of contaminated land. This amendment provides greater clarity for plan users.

[42] One aspect of the Minister of Conservation's appeal relating to restrictions and setbacks from īnanga spawning sites is not fully resolved between the parties. The parties have agreed in principle to a 10 metre setback from an īnanga spawning sites to address the Minister's appeal. However, while Federated Farmers does not oppose the 10 metre setback per se, it does not support the definition of "īnanga spawning site" and its use in a permitted activity rule and therefore, does not support the Minister's proposed amendment to Rule C.8.3.1.

[43] The aspect of Rule C.8.3.1 relating to īnanga spawning sites was addressed as part of the hearing in the week of 21 September 2020, along with the remaining rule under Topic 9, Rule C.8.2.1 Land preparation – permitted activity. Accordingly, the aspect of Rule C.8.3.1 as it relates to īnanga spawning sites is not included in the consent order that this memorandum supports.

***Rule C.8.3.2 Earthworks – controlled activity***

[44] Rule C.8.3.2 provides for earthworks outside the bed of a river, lake, wetland and the CMA that exceed 5,000 square metres of exposed earth at any time, and any associated damming, diversion and discharge or stormwater onto or into land where it may enter water, as controlled activities subject to certain location conditions.

[45] Rule C.8.3.2 was appealed by the Minister of Conservation, seeking an amendment to include a condition providing that earthworks do not occur within 20 metres of any īnanga spawning site identified by the Council.

[46] The parties have agreed in principle to a 10 metre setback from an īnanga spawning site to address the Minister’s appeal.

***Rule C.8.4.2 Vegetation clearance in riparian areas – permitted activity***

[47] Rule C.8.4.2 provides for vegetation clearance within 10 metres of a natural wetland, river or lake, and any associated damming, diversion or discharge of stormwater onto or into land where it may enter water, as permitted activities provided that certain conditions under the rule are satisfied.

[48] Rule C.8.4.2 was appealed by:

- (a) Federated Farmers, seeking an exemption for vegetation clearance associated with typical farming operations in the rule; and
- (b) Northland District Health Board, seeking:
  - i. an amendment to clause (4)(b) to protect the sources of human drinking water under the rule; and
  - ii. the addition of a new clause (5) to provide:

“the operator of any registered drinking water supply are given at least five working days’ notice (in writing or by email) of any earthworks activity being undertaken within a drinking water catchment”

[49] Through ongoing discussions, the parties agreed to include a new condition (4)(c) to address NDHB’s appeal point. The amendment ensures that any potential effects from the discharge of sediment does not render surface water taken from a mapped priority drinking water supply abstraction point unsuitable for human consumption. The parties consider this is appropriate as it ensures that the community’s health and safety is maintained and it gives effect to the Regional Policy Statement for Northland (principally Objective 3.2, which seeks to protect the quality of registered drinking water supplies). Given the agreement on condition (4)(c), NDHB agreed not to pursue its other appeal point.

[50] To address Federated Farmers' appeal, the parties agreed to amend the definition of vegetation clearance as well as to limit vegetation clearance under Rule C.8.4.2 so that it only applies to surface water abstraction points, therefore excluding bores.

[51] The definition of vegetation clearance was appealed by both Federated Farmers and Royal Forest and Bird. Federated Farmers sought that the definition be amended by adding the following additional exemptions:

6) Vegetation clearance necessary for farm operation such as: removal/harvesting of crops and pasture, pasture maintenance, maintaining clearance around farm dwellings and other farm buildings and structures, farm access tracks, fence lines, rural fire breaks along farm boundaries, water supply pipelines, stock drinking water troughs, water storage tanks, dams, agricultural and grain storage silos, fertiliser storage pits, and farm airstrips

[52] Forest and Bird sought that the definition be amended as follows and to include the exemptions in the relevant rules:

The cutting, burning, crushing, removal or destruction of vegetation and includes direct drilling when this results in the removal of native vegetation. ~~but does not include clearing:~~

- 1) ~~hedges and amenity plants, or~~
- 2) ~~vegetation along fences and around dams and ponds, or~~
- 3) ~~vegetation around network utilities, or~~
- 4) ~~vegetation alongside road and tracks, or~~
- 5) ~~vegetation that is infected by an unwanted organism as declared by the Ministry of Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993.~~

[53] Through mediation and subsequent ongoing discussions, the parties have agreed to amend the definition by adding the following exemptions:

- 6) pasture, or
- 7) agricultural or horticultural crops, or

8) weeds and pest plants.

[54] The parties have also agreed to include a ‘note’ with the definition to clarify which provisions of the Plan that the definition of vegetation clearance applies to. The parties consider that these amendments are appropriate as they reduce ambiguity regarding which provisions of the Plan that the definition of vegetation clearance applies to. It also clarifies that the clearing of pasture, agricultural or horticultural crops as well as weeds and pest plants is not ‘vegetation clearance’.

*Definitions of “passive discharge” and “diffuse discharge”*

[55] Forest and Bird appealed the definition of “passive discharge” seeking a wording amendment to specify that the passive discharge relates to contaminated land.

[56] Forest and Bird also sought to include a new definition for “diffuse discharge”.

[57] Following mediation, Forest and Bird agreed that it would not pursue its appeal points on the definitions of “passive discharge” and “diffuse discharge”.

*Resource Management (National Environmental Standards for Freshwater) Regulations 2020*

[58] Section 44A of the Act provides that where there is conflict or duplication between rules in a plan or proposed plan and a National Environmental Standard (NES), the Council is required to amend the proposed plan to remove the conflict or duplication without using the process in Schedule 1 and as soon as practicable.<sup>1</sup> A conflict arises where a rule is more stringent or more lenient than a NES and the NES does not expressly say that it can be.<sup>2</sup>

[59] The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-F) is relevant to Topics 7 and 9 as it contains regulations relating to vegetation clearance, earthworks, land disturbance and the take,

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<sup>1</sup> Resource Management Act 1991, section 44A(5).

<sup>2</sup> Resource Management Act 1991, section 44A(2).



use, diversion or damming of water in proximity to natural wetlands, which rules in the Proposed Plan must not conflict with.

[60] The Council undertook an analysis of the Proposed Plan for conflict and duplication with the NES-F. That concluded that the following rules addressed in this joint memorandum potentially conflict with the NES-F:

- (a) Rule C.6.4.1 Stormwater discharges from a public stormwater network – permitted activity;
- (b) Rule C.6.4.2 Other stormwater discharges – permitted activity;
- (c) Rule C.6.8.1 Investigating potentially contaminated land – permitted activity;
- (d) Rule C.8.3.1 Earthworks – permitted activity;
- (e) Rule C.8.3.2 Earthworks – controlled activity; and
- (f) Rule C.8.4.2 Vegetation clearance in riparian areas – permitted activity.

[61] The parties acknowledge the Court’s comments in its recent decision on Topics 3 (Allocation and use of water) and 4 (Water quantity) that the obligation to remove conflict is imposed on the Council rather than on the Court, but that “it would be unrealistic of this Court to include Plan provisions which would immediately need to be changed by the Council without using the Schedule 1 process”.<sup>3</sup>

[62] The parties have considered the agreed amendments per se (as opposed to the existing rules) in light of the NES-F. The parties consider that the amendments sought by consent to resolve the appeal points do not create conflict with the NES-F nor increase any existing conflict within the Proposed Plan. In other words, conflict between the existing rules and the NES-F will need to be addressed by the Council under section 44A of the Act at a later stage rather than via consent orders.

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<sup>3</sup> *Minister of Conservation v Northland Regional Council* [2021] NZEnvC 001 at [48].

***Rules C.8.3.1 and C.8.2.1***

[63] Two rules remain unresolved:

- (a) Rule C.8.3.1 Earthworks – permitted activity is unresolved in part. A number of appeal points have been agreed. However, the Minister of Conservation’s appeal seeking a setback from īnanga spawning sites is unresolved, due to its link to the contested definition of īnanga spawning sites.
- (b) Rule C.8.2.1 Land preparation – permitted activity is unresolved. The Minister of Conservation’s appeal seeking a setback from īnanga spawning sites and a general setback from rivers, lakes, streams and natural wetlands is unresolved.

[64] These unresolved rules were addressed at the hearing commencing in the week of 21 September 2020.

**Consideration**

[65] In making this order the Court has read and consider the appeals and the joint memorandum of the parties dated 4 May 2021.

[66] It is clear that the parties have taken a balanced approach and I am satisfied that the agreement reached is one that represents the interests of the various parties. The parties have considered consistency with objectives and policies in the proposed Plan, the RPS, NZCPS and Part 2 of the Act. I conclude the agreed amendments are the most appropriate way to achieve the purpose of the Act and the objectives in the Plan. I accept that conflict between the existing rules and the NES-F will need to be addressed by the Council under s 44A of the Act at a later stage.

[67] The Court is making this order under section 279(1) of the Act, such order being by consent, rather than representing a decision or determination on the merits pursuant to section 297. The Court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum (unless stated otherwise for specific reasons) requesting this order;


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

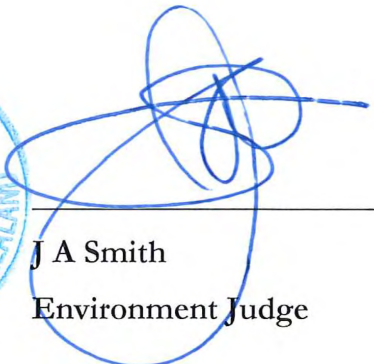
### Order

[68] Therefore the Court orders, by consent, that:

- (a) The Proposed Regional Plan for Northland be amended as set out in **Annexure A** to this order;
- (b) This order resolves the appeals as they relate to Rules C.6.3.1, C.6.3.2, C.6.3.3, C.6.3.4, C.6.3.8, C.6.4.1, C.6.4.2, C.6.8.1, C.6.8.2, C.6.8.4, C.6.8.5A, C.8.3.2 and C.8.4.2, Policy D.4.3 and the definitions of "sensitive groundwater", "vegetation clearance", "passive discharge" and "diffuse discharge";
- (c) The order resolves Rule C.8.3.1 in part. The part of Rule C.8.3.1 that remains unresolved relates to the Minister of Conservation's appeal seeking restrictions and setbacks from inanga spawning sites.

[69] There is no order as to costs.



  
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J A Smith  
Environment Judge

## ANNEXURE A

### C.6.3.1 Farm wastewater discharges to land – permitted activity

The discharge of **farm wastewater** onto or into land and any associated discharge of odour to air are permitted activities, provided:

- 1) there is no discharge:
  - a) into **surface water** or to the coastal marine area via overland flow, or
  - b) into **surface water** or to the coastal marine area via any tile, mole or other subsurface drain, or
  - c) into an **artificial watercourse**, and
- 2) there is no discharge onto or into land or overland flow within:
  - a) 20 metres of continually or **intermittently flowing river**, lake, **natural wetland**, or the coastal marine area, or
  - b) 50m of the water body for a distance of 2000 metres upstream of a **mapped priority drinking water abstraction point (refer I Maps | Ngā mahere matawhenua): public water supply intake servicing more than 25 people**, and
  - c) 20 metres of an **artificial watercourse**, or
  - d) 20 metres of a neighbouring **property** owned or occupied by another person, or
  - e) 20 metres of a public road or public space, or
  - f) 20 metres of the head of any drinking water supply **bore**, or
  - g) 50 metres of a dwelling owned or occupied by another person, and
- 3) it is discharged in a manner that:
  - a) evenly distributes the **farm wastewater**, and
  - b) does not result in ponding on the land for longer than three hours after the discharge, and
  - c) minimises overland flow, and
  - d) does not cause an offensive or objectionable odour beyond the **property** boundary, and
- 4) roof water from sheds and other buildings is permanently diverted away from **farm wastewater storage facilities**, unless **farm wastewater storage facilities** are sized to accommodate **stormwater**, and
- 5) a **stormwater** diversion system is maintained and operated to prevent **stormwater** from a yard at a dairy shed from entering the **farm wastewater storage facilities** when the yard is clean and not being used to hold animals, unless **farm wastewater storage facilities** are sized to accommodate **stormwater**, and
- 6) catchment **stormwater** is prevented from entering **farm wastewater storage facilities**, and
- 7) **farm wastewater storage facilities** are used for ensuring compliance with conditions 1), 2) and 3) of this rule, and from 1 March 2021:

- a) for dairy farms, they are designed, constructed and used in accordance with the *Dairy Effluent Storage Calculator* (DESC), and
  - b) for dairy farms, they have at least 75 percent working volume available between 1 March and 1 May each year, and
  - c) upon written request by the Regional Council, the person undertaking the activity provides a written statement or certification from a person with a qualification in farm dairy effluent system design to the Regional Council that shows compliance with a), and
- 8) **farm wastewater storage facilities** are sealed or lined so that seepage is minimised, and
- 9) there are contingency measures in place to ensure compliance with conditions 1), 2) and 3) of this rule in the event of power outage or the failure of a pump, pipe, irrigator or other equipment, and
- 10) upon the written request by the Regional Council, the person doing the activity keeps a written record of the following information and provides it to the Regional Council's Compliance Manager in the form and the frequency specified in the request:
- a) dates and time of discharge, and
  - b) land application area, and
  - c) application rates and depths, and
  - d) maximum number of cows being milked and milking regime, and
  - e) maintenance records.

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

- Discharge of **farm wastewater** onto or into land where it may enter water (s15(1)).
- Discharge of **farm wastewater** onto or into land and any associated discharge of odour into air (s15(2A)).

## Rule C.6.3.2 Horticulture wastewater discharges to land – permitted activity

The discharge of **horticulture wastewater** onto or into land is a permitted activity, provided:

- 1) there is no discharge onto or into land within:
  - a) 20 metres of a stream, continually or **intermittently flowing river**, **artificial watercourse**, lake, **natural wetland**, or the coastal marine area, or
  - b) 20 metres of a neighbouring **property** owned or occupied by another person, or
  - c) 50 metres of any dwelling owned or occupied by another person, or
  - d) 20 metres of the head of any drinking water supply **bore**, and
- 2) the discharge does not result in ponding on the land for longer than three hours, and



- 3) the discharge of vegetable washwater is undertaken in accordance with Section 2 of Horticulture New Zealand's *Vegetable Washwater Discharge Code of Practice 2017*, and
- 4) the discharge of greenhouse nutrient solution is undertaken in accordance with the *Code of Practice for the Management of Greenhouse Nutrient Discharges 2007*, and
- 5) upon written request by the Regional Council, the person doing the activity keeps a written record of the following information and provides it to the Regional Council's Compliance Manager in the form and frequency specified in the request:
  - a) dates and time of the discharge, and
  - b) land application area, and
  - c) application rates.

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

- Discharge of **horticulture wastewater** onto or into land (s15(1) and s15(2A))

### Rule C.6.3.3 Discharges associated with the making or storage of silage – permitted activity

The discharge of a contaminants onto or into land resulting from the making or storage of silage, and any associated discharge of odour to air, are permitted activities, provided:

- 1) there is no discharge onto land within a setback distance in condition 2), and
- 2) the storage site is not located within:
  - a) 50 metres of **surface water**, a continually or **intermittently flowing river**, **artificial watercourse**, lake, **natural wetland** or the coastal marine area, or
  - b) 50 metres of the head of any water supply **bore**, or
  - c) 50 metres of a dwelling owned or occupied by another person, or
  - d) 20 metres of a public road or space, and
- 3) the discharge does not contaminate any groundwater supply or **surface water**, and
- 4) catchment runoff is prevented from entering the storage site, and
- 5) the discharge does not cause an offensive or objectionable odour beyond the **property** boundary.

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

- Discharge of a contaminant onto or into land where it may enter water resulting from the making or storage of silage (s15(1)).
- Discharge of a contaminant onto or into land resulting from the making or storage of silage and any associated discharge of odour into air (s15(2A)).

## Rule C.6.3.4 Discharges associated with the disposal of dead animals or offal – permitted activity

The discharge of a contaminants onto or into land resulting from the disposal of dead animals or offal, and any associated discharge of odour to air, are permitted activities, provided:

- 1) the disposal site is not located within:
  - a) 50 metres of **surface water**, a continually or **intermittently flowing river**, **artificial watercourse**, lake, **natural wetland** or the coastal marine area, or
  - b) 50 metres of the head of any water supply **bore**, or
  - c) 50 metres of a dwelling owned or occupied by another person, or
  - d) 20 metres of a public road or space, and
- 2) the discharge does not contaminate any groundwater supply or **surface water**, and
- 3) catchment runoff is prevented from entering the disposal site, and
- 4) the disposal site is covered or otherwise contained, and
- 5) the discharge does not cause an offensive or objectionable odour beyond the **property** boundary, and
- 6) where a composting process is used, only dead animals or animal parts from the production land activity within the **property** are to be composted, and industry guidelines specific to the type of dead animal being composted are complied with.

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

- Discharge of a contaminant into water or onto or into land where it may enter water resulting from the disposal of dead animals or offal (s15(1)).
- Discharge of a contaminant onto or into land resulting from the disposal of dead animals or offal and any associated discharge of odour into air (s15(2A)).

## Rule C.6.3.8 Farm wastewater discharges to water – non-complying activity

The discharge of treated **farm wastewater** into water is a non-complying activity, provided the discharge is not into a dune lake, **surface water** flowing into any dune lake, an **outstanding freshwater body** or a **significant wetland**.

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

- Discharge of treated **farm wastewater** into water (s15(1)).



## Rule C.6.4.1 Stormwater discharges from a public stormwater network – permitted activity

The diversion and discharge of **stormwater** from a **public stormwater network** into water or onto or into land where it may enter water is a permitted activity, provided:

- 1) the discharge is not from a **public stormwater network** servicing an urban area listed in Table 10: Urban areas, and
- 2) the diversion and discharge does not cause permanent scouring or erosion of the bed of a water body at the point of discharge, and
- 3) the discharge is not within 100 metres of a **geothermal surface feature**, and
- 4) the discharge does not contain contaminants used, stored or generated in trade or industrial premises, and
- 5) the discharge does not contain more than 15 milligrams per litre of total petroleum hydrocarbons, and
- 6) the discharge does not cause any of the following effects in the receiving waters beyond the **zone of reasonable mixing**:
  - a) the production of conspicuous oil or grease films, scums or foams, of floatable or suspended materials, or
  - b) a conspicuous change in the colour or visual clarity, or
  - c) an emission of objectionable odour, or
  - d) the rendering of fresh water unsuitable for consumption by farm animals, or
  - e) the rendering of freshwater taken from a mapped priority drinking water abstraction point (refer I Maps | Ngā mahere matawhenua) unsuitable for human consumption after existing treatment.

**Table 10: Urban areas**

Far North district	Whangārei district	Kaipara district
Kaitiāia	One Tree Point-Marsden Cove	Dargaville
Kaikohe	Ruakaka	Mangawhai-Mangawhai Heads
Kerikeri	Waipū	
Paihia	Whangārei City	
Waipapa-Haruru		

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

- Diversion of **stormwater** (s14(2)).
- Discharge of **stormwater** from a **public stormwater network** into water or onto or into land where it may enter water (s15(1)).



## Rule C.6.4.2 Other stormwater discharges – permitted activity

The diversion and discharge of **stormwater** into water or onto or into land where it may enter water from an **impervious area** or by way of a **stormwater collection system**, is a permitted activity, provided:

- 1) the discharge or diversion is not from:
  - a) a public **stormwater network**, or
  - b) a **high-risk industrial or trade premises**, and
- 2) the diversion and discharge does not cause or increase flooding of land on another **property** in a storm event of up to and including a 10 percent annual exceedance probability, or flooding of buildings on another **property** in a storm event of up to and including a one percent annual exceedance probability, and
- 3) where the diversion or discharge is from a **hazardous substance** storage or handling area:
  - a) the **stormwater collection system** is designed and operated to prevent hazardous **substances** stored or used on the site from entering the **stormwater** system, or
  - b) there is a **secondary containment system** in place to intercept any spillage of **hazardous substances** and either discharges that spillage to a trade waste system or stores it for removal and treatment, or
  - c) if the **stormwater** contains **oil contaminants**, the **stormwater** is passed through a **stormwater** treatment system designed in accordance with the Environmental Guidelines for Water Discharges from Petroleum Industry Sites in New Zealand (Ministry for the Environment, 1998) prior to discharge, and
- 4) where the diversion or discharge is from an industrial or trade premises:
  - a) the **stormwater collection system** is designed and operated to prevent any contaminants stored or used on the site, other than those already controlled by condition 3) above, from entering **stormwater** unless the **stormwater** is discharged through a **stormwater treatment system**, and
  - b) any process water or liquid waste stream on the site is bunded, or otherwise contained, within an area of sufficient capacity to provide secondary containment equivalent to 100 percent of the quantity of any process water or liquid waste that has the potential to spill into a **stormwater collection system**, in order to prevent trade waste entering the **stormwater collection system**, and
- 5) the diversion or discharge is not into **potentially contaminated land**, or onto **potentially contaminated land** that is not covered by an **impervious area**, and
- 6) the diversion and discharge does not cause permanent scouring or erosion of the bed of a water body at the point of discharge, and
- 7) the discharge does not contain more than 15 milligrams per litre of total petroleum hydrocarbons, and
- 8) the discharge does not cause any of the following effects in the receiving waters beyond the zone of **reasonable mixing**:

- a) the production of conspicuous oil or grease films, scums or foams, of floatable or suspended materials, or
- b) a conspicuous change in the colour or visual clarity, or
- c) an emission of objectionable odour, or
- d) the rendering of fresh water unsuitable for consumption by farm animals, or
- e) the rendering of freshwater taken from a mapped priority drinking water abstraction point (refer I Maps | Ngā mahere matawhenua) unsuitable for human consumption after existing treatment.

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

- Diversion of **stormwater** (s14(2)).
- Discharge of **stormwater** into water or onto or into land where it may enter water from an **impervious area** or by way of a **stormwater collection system** (s15(1)).

### C.6.8.1 Investigating potentially contaminated land – permitted activity

The disturbance of land for a site investigation to assess the concentration of hazardous substances in soil, water or air is a permitted activity, provided:

- 1) the site investigation is supervised and certified by a **suitably qualified and experienced practitioner**, and
- 2) the person or organisation initiating the site investigation provides a copy of the site investigation report to the Regional Council within three months of the completion of the investigation, and
- 3) site investigations undertaken to assess the concentrations of contaminants in soil are undertaken in accordance with *Contaminated Land Management Guidelines No. 5: Site Investigation and Analysis of Soils (Ministry for the Environment, 2011)*.

**Note:**

*The construction of a **bore** in contaminated land is a controlled activity (refer Rule C.8.5.3).*

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

- Disturbance of land for a site inspection to assess the concentration of a hazardous substance in soil or water (s9(2)).
- Discharge of a contaminant onto or into land, or onto or into land where it may enter water, or into air incidental to the activity (s15(1)).
- Discharge of a contaminant onto or into land and into air incidental to the activity (s15(2A)).



## Rule C.6.8.2 Discharges from contaminated land – permitted activity

The **passive discharge** of a contaminant from contaminated land into water, or onto or into land where it may enter water is a permitted activity, provided:

- ~~1) a site investigation has been supervised and certified by a **suitably qualified and experienced practitioner**, and~~
- ~~2) the site investigation report demonstrates that the **passive discharge** of the **contaminants of concern** is equal to or less than the relevant contaminant concentrations set out in clauses 3 to 9 below:~~
  - 1) in **sensitive** groundwater the concentration of a contaminant at the **property** boundary or within 50 horizontal metres of the contaminant source (whichever is less), does not exceed:
    - a) the relevant contaminant concentrations in the *Drinking Water Standards for New Zealand 2005 (revised 2008)*, and
    - b) the relevant contaminant concentrations measured as dissolved concentrations in Table 3.4.1 in the Australian and New Zealand Guidelines for Fresh and Marine Water Quality, Volume 1 (ANZECC 2000) at the level of 80 percent protection of species, except for benzene which is to be applied at a level of 1 milligram per litre (95 percent protection of species), and
  - 2) in non-sensitive groundwater the concentration of a contaminant at the **property** boundary or within 50 horizontal metres of the contaminant source (whichever is less), does not exceed the relevant contaminant concentrations measured as dissolved concentrations in Table 3.4.1 in the Australian and New Zealand Guidelines for Fresh and Marine Water Quality, Volume 1 (ANZECC 2000) at the level of 80 percent protection of species, except for benzene which is to be applied at a level of 1 milligram per litre (95 percent protection of species), and
- 3) in surface water, the concentration of a contaminant, at the property boundary or within 50 horizontal metres of the contaminant source (whichever is less), or immediately adjacent to any surface water or coastal water, does not exceed the relevant contaminant concentrations measured as dissolved concentrations in Table 3.4.1 in the Australian and New Zealand Guidelines for Fresh and Marine Water Quality, Volume 1 (ANZECC 2000) at the level of 95 percent protection of species, and
- 4) concentrations of chlorinated solvents in soil gas do not exceed the land use specific Interim Health Investigation Levels for soil gas at one metre depth in Table 1A(2) of Schedule B1 (Guideline on Investigation Levels for Soil and Groundwater) of the National Environment Protection (Assessment of Site Contamination) Measure 1999 (updated 2013) at the property boundary or within 50 horizontal metres of the contaminant source (whichever is less), and
- 5) concentrations of petroleum hydrocarbons in soil gas do not exceed the land use specific target soil air concentrations at one metre depth in Appendix 4J of the Guidelines for Assessing and Managing Petroleum Hydrocarbon Contaminated

- Sites in New Zealand (Ministry for the Environment, 2011) at the property boundary or within 50 horizontal metres of the contaminant source (whichever is less), and
- 6) light non-aqueous phase liquids (LNAPLs) must have a LNAPL transmissivity of less than 0.07 square metres per day, or a **suitably qualified and experienced practitioner** must certify that the LNAPL is unlikely to be mobile using a lines of evidence approach, and
  - 7) for dense non-aqueous phase liquids (DNAPL) a **suitably qualified and experienced practitioner** must certify that the DNAPL is unlikely to be mobile and in free phase form using a lines of evidence approach, and
  - 8) non-aqueous phase liquids do not extend across the **property** boundary.
  - 9) a site investigation has been supervised and certified by a **suitably qualified and experienced practitioner** that the passive discharge complies with clauses 12 to 79 of this rule as relevant, and
  - 10) the site investigation report demonstrates that the **passive discharge** of the **contaminants of concern** is equal to or less than the relevant contaminant concentrations set out in clauses 13 to 79 above below:

**Note:**

*Rules C.6.8.1 and C.6.8.2 reference several standards which list a range of contaminants. It is expected that compliance with these Rules will focus on contaminants that may be present at concentrations that could pose a potential human health and/ or environmental risk. These are known as **contaminants of concern**. Dischargers are not expected to test for, or otherwise demonstrate compliance for, contaminants that are not relevant to the site's history. The Rules also require dischargers to "demonstrate" compliance. This can be achieved, depending on site-specific circumstances, through a lines of evidence approach using one or more or a combination of expert knowledge of contamination mechanisms and the physical and chemical properties of the contaminants that may be present, testing or sampling, chemical fate and transport assessment or modelling, or similar techniques.*

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

- Diversion of a contaminant into water or onto or into land where it may enter water (s15(1)).
- Discharge of a containment onto or into land (s15(2A)).

## **Rule C.6.8.4 Re-consenting passive discharges from contaminated land – controlled activity**

An application for a new resource consent to replace an existing resource consent for a **passive discharge** of a contaminant into water, or onto or into land where it may enter water, is a controlled activity.

**Matters of control:**



- 1) The content, adequacy and implementation of a detailed site investigation (contaminated land), including:
  - a) site sampling, and
  - b) laboratory analysis, and
  - c) risk assessment.
- 2) The need for, contents, adequacy and implementation of a remedial action plan, site management plan, validation report and an ongoing site management plan, prepared by a **suitably qualified and experienced practitioner**, in accordance with *Contaminated Land Management Guidelines No. 1: Reporting on Contaminated Sites in New Zealand (Ministry for the Environment, 2011)*.
- 3) The need for a financial bond **to secure ongoing performance of conditions relating to:**
  - a) **remedial, restoration or maintenance work**
  - b) **ongoing monitoring of long-term effects**

**Having regard to factors including the:**

  - c) **means of the consent holder to achieve compliance with consent conditions, and**
  - d) **risk of abandonment of the site**

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

- Discharge of a contaminant into water or onto or into land where it may enter water (s15(1)).

## **Rule C.6.8.5A Investigating potentially contaminated land – Restricted discretionary activity**

**The disturbance of land for a site investigation to assess the concentration of hazardous substances Site investigations to assess the concentration of hazardous substances that may be present in soil that is not a permitted activity under Rule C.6.8.1 is a restricted discretionary activity.**

**Matters of discretion:**

- 1) **Effects on water quality.**
- 2) **Effects on air quality beyond the site boundary.**
- 3) **The area and volume of material to be disturbed.**
- 4) **Methods to manage the discharge of contaminants, including but not limited to:**
  - a) **volume and composition of the discharge, and**
  - b) **the location and velocity of the discharge, and**
  - c) **sediment control measures, and**
  - d) **consideration of the treatment of the discharge prior to disposal.**
- 5) **The adequacy of the detail site investigations, including**
  - a) **site sampling**
  - b) **laboratory analysis**
  - c) **risk assessment.**

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

- **Disturbance of land for a site inspection to assess the concentration of a hazardous substance in soil (s9(2)).**
- **Discharge of a contaminant onto or into land, or onto or into land where it may enter water, or into air incidental to the activity (s15(1)).**
- **Discharge of a contaminant onto or into land and into air incidental to the activity (s15(2A)).**

## Definition of Sensitive Groundwater

*Sensitive groundwater is groundwater which is:*

1) *not artesian, and*

2) *not less than 10 metres below the source or suspected source of contamination (or greater depth below ground surface where the geology suggests contamination may readily migrate to greater depth; for example, clean sands or gravels, fractured basalts), and*

3) *currently used or is of a quality appropriate for use and can yield water at a useful rate.*

4) *where the source of contamination is less than 100 metres from a sensitive surface water body (that is, a surface water body where limited dilution is available to mitigate the impact of contaminated groundwater discharging into the surface water body).*

### Rule C.8.3.1 Earthworks – permitted activity

**Earthworks** outside the bed of a river, lake, **wetland** and the coastal marine area, and any associated damming and diversion of stormwater and discharge of **stormwater** onto or into land where it may enter water, are permitted activities provided:

- 1) the area and volume of **earthworks** at a particular location or associated with a project complies with the thresholds in *Table 13*:

**Table 13: Permitted activity earthworks thresholds**

Location	Earthworks thresholds
Within 10m of a <b>natural wetland</b> , the bed of a continually or <b>intermittently flowing river</b> or lake	200 square metres of exposed <b>earth</b> at any time, and 50 cubic metres of moved or placed <b>earth</b> in any 12-month period.
Catchment of an <b>outstanding lake</b>	2500 square metres of exposed <b>earth</b> at any time.
<b>Erosion-prone land</b>	2500 square metres of exposed <b>earth</b> at any time.
<b>High-risk flood hazard area</b>	50 cubic metres of moved or placed <b>earth</b> in any 12-month period.



Coastal riparian and foredune management area	Excluding for coastal dune restoration, 200 square metres of exposed earth at any time.
Flood hazard area	100 cubic metres of moved or placed earth in any 12-month period.
Other areas	5000 square metres of exposed earth at any time.

- 2) the discharge is not within 20 metres of a geothermal surface feature, and
- 3) except for coastal dune restoration activities, good management practice erosion and sediment control measures equivalent to those set out in the *Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region 2016 (Auckland Council Guideline Document GD2016/005)*, are implemented for the duration of the activity, and
- 4) batters and side castings are stabilised to prevent slumping, and
- 5) exposed earth is stabilised upon completion of the earthworks to minimise erosion and avoid slope failure, and
- 6) earth and debris are not deposited into, or in a position where they can enter, a natural wetland, a continually or intermittently flowing river, a lake, an artificial watercourse, or the coastal marine, and
- 7) the earthworks activity does not:
  - a) reduce the height of a dune crest in a coastal riparian and foredune management area, except where dunes are recontoured to remove introduced materials or to remediate dune blow-outs as part of coastal dune restoration work, or
  - b) exacerbate flood or coastal hazard risk on any other property, or
  - c) create or contribute to the instability or subsidence of land on other property, or
  - d) divert flood flow onto other property, and
- 8) any associated damming, diversion and discharge of stormwater does not give rise to any of the following effects in the receiving waters beyond the zone of reasonable mixing:
  - a) any conspicuous change in colour or visual clarity, or
  - b) the rendering of fresh water unsuitable for consumption by farm animals, and or
  - c) contamination which may render freshwater taken from a mapped priority drinking water abstraction point (refer I Maps | Ngā mahere matawhenua) unsuitable for human consumption after existing treatment, and
- 9) information on the source and composition of any clean fill material and its location within the disposal site are recorded and provided to the Regional Council on request, and
- 10) the Regional Council's Compliance Manager is given at least five working days' notice (in writing or by email) of any earthworks activity being undertaken within a high-risk flood hazard area, flood hazard area, where contaminated land will be



exposed, or in sand dunes within a coastal-riparian and foredune management area.

**Notes:**

- 1) Work affecting *archaeological sites* is subject to an authority process under the Heritage New Zealand Pouhere Taonga Act 2014. If any activity could modify, damage or destroy any *archaeological site(s)*, an authority (consent) from Heritage New Zealand must be obtained for the work to proceed lawfully.
- 2) This rule enables progressive closure and stabilisation works being utilised as part of a continuing project to remain within the permitted thresholds.
- 3) The thresholds identified within Table 13 Permitted Activity Earthworks Thresholds apply to the land disturbance activity, irrespective of whether or not the activity occurs on 'contaminated land' or 'potentially contaminated land'. Discharges from 'contaminated land' or 'potentially contaminated land' are provided for under Section C.6.8 Contaminated Land, while the territorial authority is responsible for managing the disturbance of contaminated land.

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

- Earthworks (s9(2)).
- Damming and diversion of *stormwater* associated with *earthworks* (s14(2)).
- Discharge of *stormwater* associated with *earthworks* into water or onto or into land where it may enter water (s15(1)).

## Rule C.8.3.2 Earthworks – controlled activity

*Earthworks* outside the bed of a river or lake, *wetland* and the coastal marine area that exceed 5000 square metres of exposed *earth* at any time at a particular location or associated with a project area, and any associated damming and diversion of *stormwater* and discharge of *stormwater* onto or into land where it may enter water, are controlled activities, provided the *earthworks* are not located:

- 1) within 10 metres of a *natural wetland*, the bed of a continually or *intermittently flowing river* or lake, or
- 2) within 10m of an *īnanga* spawning site, or
- 3) in a catchment of an *outstanding lake*, or
- 4) on *erosion-prone land*, or
- 5) in a *flood hazard* or *high-risk flood hazard area*, or
- 6) in the *coastal riparian and foredune management area*.

**Matters of control:**

- 1) The design and adequacy of erosion and sediment control measures with reference to *good management practice* guidelines, equivalent to those set out in the *Erosion and Sediment Control Guidelines for Land Disturbing Activities in the Auckland Region 2016 (Auckland Council Guideline Document GD2016/005)*.
- 2) The location, extent, timing, and duration of *earthworks*.
- 3) The adequacy of site rehabilitation and revegetation measures to control erosion and sediment discharges.



- 4) Adverse effects on water bodies and coastal water.
- 5) Management of flooding effects and avoiding increased natural hazard risks on [other property](#).
- 6) Adverse effects on [regionally significant infrastructure](#).
- 7) Adverse effects on the following, where present in adjacent fresh waterbodies or the coastal marine area:
  - a) [wāhi tapu](#), and
  - b) the identified values of mapped Sites and Areas of Significance to tangata whenua (refer [I Maps | Ngā mahere matawhenua](#)).

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

- [Earthworks](#) (s9(2)).
- Damming and diversion of [stormwater](#) associated with [earthworks](#) (s14(2)).
- Discharge of [stormwater](#) associated with [earthworks](#) into water or onto or into land where it may enter water (s15(1)).

## Rule C.8.4.2 Vegetation clearance in riparian areas – permitted activity

[Vegetation clearance](#) within 10 metres of a [natural wetland](#) or within 10 metres of the bed of a continually or [intermittently flowing river](#) or lake, and any associated damming and diversion of [stormwater](#) and discharge of [stormwater](#) onto or into land where it may enter water, are permitted activities, provided:

- 1) the area of cleared vegetation does not exceed 200 square metres in any 12-month period, and
- 2) vegetation is felled away from rivers, lakes, and [natural wetlands](#), except where it is unsafe or impractical to do so, and
- 3) vegetation, slash, disturbed soil or debris is not deposited in a position where it could mobilise because of heavy rain or flood flows and:
  - a) be deposited on [other property](#), or
  - b) divert or [dam](#) water, or
  - c) cause bed or bank erosion, or
  - d) damage receiving environments, downstream infrastructure, or [property](#), and
- 4) any discharge of sediment originating from the cleared area does not give rise to any of the following effects in the receiving waters beyond a 20 metre radius of the point of discharge:
  - a) any [conspicuous change in colour or visual clarity](#), or
  - b) the rendering of fresh water unsuitable for consumption by farm animals, [or](#)
  - c) [the rendering of surface water taken from a mapped priority drinking water abstraction point \(refer I Maps | Ngā mahere matawhenua\) unsuitable for human consumption after existing treatment.](#)

## Definition of Vegetation Clearance

The cutting, burning, crushing, removal or destruction of vegetation, but does not include clearing:

- 1) hedges and amenity plants, or
- 2) vegetation along fences and around dams and ponds, or
- 3) vegetation around network utilities, or
- 4) vegetation alongside roads and tracks, or
- 5) vegetation that is infected by an unwanted organism as declared by the Ministry of Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993, or
- 6) pasture, or
- 7) agricultural or horticultural crops, or
- 8) weeds and pest plants.

### **Note:**

*The vegetation clearance definition only applies to vegetation clearance in the coastal riparian and foredune management area or within 10 metres of a natural wetland, or within 10 metres of the bed of a continually or intermittently flowing river or lake, as provided for by the rules in C.8.4 Vegetation clearance in riparian areas and foredune management areas and related policies.*

## D.4.3 Municipal, domestic and production land wastewater discharges

An application for resource consent to discharge municipal, domestic, horticultural or farm wastewater to water will generally not be granted unless:

- 1) the storage, treatment and discharge of the wastewater is done in accordance with recognised industry good management practices, and
- 2) a discharge to land has been considered and found not to be environmentally, economically or practicably viable.

## Definition of Passive Discharge

The movement of contaminants from contaminated land that are entrained in soil or groundwater through groundwater or surface water movement or the movement of soil gas vapour.