

BEFORE THE ENVIRONMENT COURT

ENV-2019-AKL-

AT AUCKLAND

I MUA I TE KOOTI TAI AO

I TAMAKI MAKAURAU ROHE

IN THE MATTER

of an appeal under
Clause 14 of the First
Schedule of the Resource
Management Act 1991

BETWEEN

**Minister of
Conservation**
Appellant

AND

**Northland Regional
Council**
Respondent

**NOTICE OF APPEAL BY THE MINISTER OF
CONSERVATION**

Dated: 17 June 2019

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**Notice of appeal to Environment Court against decision on Proposed
Regional Plan for Northland**

Clause 14(1) of Schedule 1, Resource Management Act 1991 (the Act)

To: The Registrar
Environment Court
AUCKLAND

1. I, the Minister of Conservation, appeal against parts of a decision of the Northland Regional Council (the Council) on the following plan:
 - 1.1. Proposed Regional Plan for Northland (the Plan).
2. I made a submission on the Plan.
3. I am not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (the Act).
4. I received notice of the decision on 4 May 2019.
5. The decision was made by the Council.
6. The parts of the decision that I am appealing are the parts of the Council's decision regarding:

Section C.1 Coastal activities

- 6.1. Rule C.1.8 – “*Coastal works general conditions*”: the decision to decline the Minister's submission to include an additional condition that adverse effects are avoided on all indigenous coastal species wherever they occur.

Section C.2 Activities in the beds of lakes and rivers and in wetlands

- 6.2. Rule C.2.1.2 – “*Extraction of material from rivers*”: the decision to decline the Minister's submission seeking the following conditions:

- 6.2.1. Extraction does not occur closer than 5 metres from the water's edge;
 - 6.2.2. The extraction shall not extend to a level deeper than whichever is the greater of the following:
 - 6.2.2.1. 0.1m above the water level adjacent to the extraction site; or
 - 6.2.2.2. 0.5m below the original height of the beach where the extraction is occurring.
 - 6.2.3. No machinery shall operate in an area of the riverbed covered in water, unless for crossings to access and haul gravel. For this purpose, river crossing should be limited to one crossing point at each extraction location.
 - 6.2.4. Cleaning and/or other procedures must be used to prevent the spread or introduction of any pest.
- 6.3. Rule C.2.1.3 – *“Maintenance of the free flow of water in rivers and mitigating bank erosion”*: the decision to decline the Minister’s submission seeking the following conditions:
- 6.3.1. The activity shall provide for the safe passage of fish both upstream and downstream;
 - 6.3.2. The activity shall not take place during August to December inclusive;
 - 6.3.3. The activity does not take place in an outstanding freshwater body;
 - 6.3.4. The activity does not take place in in an identified inanga spawning habitat or threatened species habitat.
- 6.4. C.2.3 *“General Conditions”*: the decision to decline the Minister’s submission seeking the deletion of the condition allowing fish passage to be impeded for temporary activities.

Section C.4 Land drainage and flood control

- 6.5. Rule C.4.1 – *“Land drainage (permitted activity)”*: the decision to decline the Minister’s submission on the rule.

- 6.6. Rule C.4.1.9 (previously C.4.1.8) – “*Land drainage and flood control general conditions*”: the decision to delete clause 11 (regarding significant adverse effects on aquatic life in any river, wetland or coastal marine area), to delete reference to “the coastal marine area” in clause 12, and to decline (in part) the Minister’s submission requesting further conditions.

Section C.5 Taking and use of water

- 6.7. Rule C.5.1.1 – “*Minor takes - permitted activity*”: the decision to amend the Rule to allow take of 30 cubic metres for the purpose of dairy shed wash down and milk cooling water, and that the rate of instantaneous take does not exceed 30%.
- 6.8. Rule C.5.1.13 (previously C.5.11) – “*Water take below a minimum flow or water level – non-complying activity*”: the decision to reject the Minister’s further submission seeking that the rule be classified as prohibited.
- 6.9. Rule C.5.1.14 (previously C.5.12) – “*Water take that will exceed an allocation limit – non-complying activity*”: the decision to reject the Minister’s further submission seeking that the rule be classified as prohibited.

Section C.8 Land use and disturbance activities

- 6.10. C.8.1.2 (previously C.8.1.1) – “*Access of livestock to the bed of a water body or continually flowing artificial watercourse – permitted activity*”: the decision to amend the rule by removing “*damaged*”, including a 2000m² size threshold for wetlands, and the decision to decline the Minister’s submission seeking:
- 6.10.1. The exclusion of sheep from significant wetlands, lakes, and inanga spawning areas;
 - 6.10.2. The exclusion of beef cattle, dairy support cattle, and deer from hill country areas; and
 - 6.10.3. The additional condition: “Does not cause or induce noticeable slumping, pugging or erosion.”

- 6.11. Rule C.8.2.1 – “*Land preparation – permitted activity*” (previously “*Cultivation*”): the decision to decline the Minister’s submission requesting a wider setback from a natural wetland, the bed of a lake, or the bed of a continually or intermittently flowing river.
- 6.12. Rule C.8.3.1 – “*Earthworks – permitted activity*”: the decision to decline the Minister’s submission requesting a 30-metre setback from all wetlands, and beds of lakes and rivers.
- 6.13. Rule C8.3.2 – “*Earthworks – controlled activity*”: the decision to decline the Minister’s submission requesting a 30-metre setback from all wetlands, and beds of lakes and rivers.

Section D Policies

- 6.14. Policy D.2.15 – “*Managing adverse effects on natural character, outstanding natural landscapes and outstanding natural features*”: the decision to include a policy that does not give effect to the New Zealand Coastal Policy Statement and does not refer to the coastal environment.
- 6.15. Policy D.4 – “*Land and water*”: the decision to reject the Minister’s submission requesting policies in the Plan to manage diffuse discharges of nitrogen, phosphorous, sediment, and microbial pathogens.
- 6.16. Policy D.4.1 - “*Maintaining overall water quality*” (previously D.4.5): the decision to include clause (3) in this policy.
- 6.17. Policy D.4.12 - “*Minimum flows and levels*” (previously D.4.19): the decision to reject the Minister’s submission requesting rootstock protection be removed from the policy.

Section F.1 Objectives

- 6.18. F.1.2 - “*Water quality*”: the decision to reject the freshwater limits set out in the Minister’s submission.

H Appendices

- 6.19. H.3.1 – “*Water quality standards for continually or intermittently flowing rivers* (previously D.4.1): the decision to reject the Minister’s submission requesting specific freshwater limits for rivers.
- 6.20. H.3.2 – “*Water quality standards for lakes*” (previously D.4.2): the decision to reject the Minister’s submission requesting Lake SPI standards and targets for macrophyte depth limits.
- 6.21. H.4.2 – “*Minimum levels for lakes and natural wetlands*” (previously D.4.15): the decision to reject the Minister’s submission requesting no change to lake levels.

Water quality (general)

- 6.22. The decision of the Council not to include a comprehensive water quality framework as requested by the Minister. The decision of the Council did not accept the Minister’s submission that where existing water quality is unknown, or the effect on water quality of a particular activity is unknown, then activities shall be managed with a precautionary approach.
- 6.23. The decision did not include numeric water quality goals for the following matters:
- 6.23.1. Multi-stressor effect (Dissolved Oxygen, pH, and temperature)
 - 6.23.2. Temperature change
 - 6.23.3. Periphyton biomass (NOF requirement)
 - 6.23.4. Periphyton cover (for recreation standard)
 - 6.23.5. Quantitative Macroinvertebrate Community Index (QMCI) reduction
 - 6.23.6. Deposited fine sediment
 - 6.23.7. Escherichia coli (E. coli) faecal indicator bacteria
 - 6.23.8. Benthic cyanobacteria for hard bottomed rivers
 - 6.23.9. Water clarity
 - 6.23.10. Visual clarity change
 - 6.23.11. Toxicants, metals and metalloids
7. The reasons for the appeal are as follows:

Section C.1 Coastal activities

Rule C.1.8 Coastal works general conditions

- 7.1. Rule C.1.8(8): Condition (8) of this Rule requires that there is no damage to areas that are shellfish beds within mapped Significant Ecological Areas, saltmarsh, or seagrass meadows. However, certain permitted activities in Section C.1, including the erection, placement, alteration, or extension of a coastal structure in the coastal marine area in Rule C.1.1.3 have the potential to cause significant adverse effects, especially cumulative effects, on a wider range of coastal ecosystems and fragile, slow-growing species. Such ecosystems, habitats, and species include fragile subtidal biogenic structures such as rhodolith beds, sponge and bryozoan assembles, horse mussel beds, and vermetid reefs.
- 7.2. The decision to omit reference to a wider range of ecosystems, habitats and species leaves a significant gap in the management of the coastal environment and does not give effect to the New Zealand Coastal Policy Statement 2010.

Relief sought

- 7.3. Replace condition (8) of Rule C.1.8 with the following:

“There must be no damage to shellfish beds in mapped Significant Ecological Areas (refer I Maps/Nga mahere matawhenua) and no damage to saltmarsh or seagrass meadows, rhodolith and bryozoan beds, sponge gardens or other sensitive biogenic habitats except as necessary for the installation of an aid to navigation under Rule C.1.1.4.”

Section C.2 Activities in the beds of lakes and rivers and in wetlands

C.2.1.2 – Excavation of material from rivers (permitted activity)

- 7.4. Rule C.2.1.2: the activity of excavating material from rivers can have significant adverse effects on native fauna and their habitats through damage and disturbance, either related to the release of sediment, changing in-stream conditions or spreading of weeds or other pests. It may also have significant adverse effects on the natural character of rivers and their

margins. Additional conditions are required to be included in Rule C.2.1.2 in order to prevent such adverse effects.

Relief sought

7.5. Add the following conditions to rule C.2.1.2:

- “x) *Extraction must not occur closer than 5 metres from the water’s edge;*
- x) *the extraction shall not extend to a level deeper than whichever is the greater of the following:*
 - (i) *0.1m above the water level adjacent to the extraction site; or*
 - (ii) *0.5m below the original height of the beach where the extraction is occurring;*
- x) *no machinery shall operate in an area of the river bed covered in water, unless for crossings to access and haul gravel. For this purpose, river crossing should be limited to one crossing point at each extraction location.*
- x) *cleaning and/or other procedures must be used to prevent the spread or introduction of any pest;”*

Rule C.2.1.3 – Maintenance of the free flow of water in rivers and mitigating bank erosion (permitted activity)

7.6. Rule C.2.1.3: It is unclear what this rule is designed to permit due to the vagueness of the terminology used. In particular, “*maintaining the free flow of water in a river*” are broad terms to use in a permitted activity rule and may allow for activities to be undertaken outside of the intended scope of the rule. Works of the nature allowed by such a broad permitted activity rule should only be allowed through a consent. The rule has the potential to cause significant adverse effects on native freshwater fauna and their habitats.

Relief sought

7.7. Classify Rule C.2.1.3 as a controlled activity;

and

Insert the following condition:

- “x) *the activities do not occur in an outstanding freshwater body”*

and

Insert the following matters of control:

- “x) *Effects on indigenous fish habitat including inanga spawning sites.*
- x) *Timing of the activity in relation to peak migration and spawning.*”

C.2.3 General Conditions

7.8. Rule C.2.3: condition 21(b) of Rule C.2.3 effectively provides that fish passage may be impeded during “*permitted temporary activities such as works to enable structure repair and replacement.*” The Plan does not clarify which activities constitute “permitted temporary activities”.

7.9. Temporary activities can lead to permanent, or cause cumulative, adverse effects on native fauna and their habitats. Temporary structures can present a barrier to fish passage, resulting in reduction of the distribution and abundance of migratory fish in a waterway and cause gradual decline in, or even loss of, fish species from some rivers and streams.

Relief sought

7.10. Delete condition 21(b) from Rule C.2.3.

Section C.4 Land drainage and flood control

C.4.1.1 – Land drainage and flood control

7.11. Rule C.4.1.1: the damming, diversion and discharge of water associated with land drainage has the potential to have significant adverse effects on the values of aquatic ecosystems.

7.12. Rule C.4.1.1 refers to the requirement to comply with the conditions with Rule C.4.1.9, however the conditions in Rule C.4.1.9 are currently insufficient to address adverse effects generated from land drainage. The lack of adequate conditions to protect significant flora and fauna is contrary to section 6(c) of the Act by failing to recognise and provide for

the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna.

Relief sought

7.13. Insert the following condition:

“The activity does not have adverse effects on areas of significant indigenous vegetation and significant indigenous vegetation and significant habitats of indigenous fauna in terrestrial, freshwater and marine environments, as determined by the assessment criteria of Appendix 5, Regional Policy Statement for Northland.”

Rule C.4.1.9 – Land drainage and flood control general conditions (previously C.4.1.8)

7.14. Rule C.4.1.9: section 70(1)(g) of the Act effectively prevents permitted activity rules for discharges into water or into or onto land where a contaminant may enter water unless the Council is satisfied:

that none of the following effects are likely to arise in the receiving water, after reasonable mixing, as a result of the discharge of the contaminant (either by itself or in combination with the same, similar, or other contaminants):

...
(g) any significant adverse effects on aquatic life.

Rule C.4.1.9 fails to meet section 70(1)(g) as there is no requirement to avoid significant adverse effects on aquatic life (particularly via the deletion of clause 11). The conditions in C.4.1.9 are insufficient to ensure significant adverse effects on aquatic life do not occur.

Clause 12 has been unduly amended to apply to outstanding freshwater bodies and coastal water as opposed to all water bodies and the coastal marine area. Section 70 applies to discharges to all water irrespective of whether it is in a significant water body or outside the coastal marine area.

Relief sought

7.15. Amend clause 10 of rule C.4.1.9 (previously clause 12 of C.4.1.8) to read:

“Where a discharge from land drainage enters a water body or the coastal marine area beyond the zone of reasonable mixing, the discharge does not:”

7.16. Amend clause C.4.1.9 by reinstating the following clause as contained in the notified version of the Plan:

“x) any discharge of drainage water does not contain concentrations of contaminants which have or are likely to have significant adverse effects on aquatic life in any river, wetland, or the coastal marine area.”

7.17. Add the following conditions to rule C.4.1.9:

- “x) The activity shall not take place during August to December inclusive (to avoid inward migration of indigenous freshwater fish).*
- x) Bank disturbance is limited to one side of the waterway.*
- x) Excavation does not widen or deepen the original grade or cross section of the channel (unless for constructing a sediment retention trap).*
- x) When clearing aquatic vegetation, a weed bucket shall be used with a curved flat base and a slatted back.*
- x) Work shall be undertaken from upstream to downstream.*
- x) Woody debris are not removed unless it is causing, or has the potential to cause, a flood or erosion risk or threat to infrastructure.*
- x) The activity does not take place in an identified inanga spawning area or threatened species habitat.*
- x) Where a discharge from land drainage enters an outstanding freshwater body beyond the zone of reasonable mixing, the discharge does not cause the natural temperature of the receiving water body to be changed by more than one degree Celsius.”*

Section C.5 Taking and use of water

Rule C.5.1.1 Minor takes – permitted activity

7.18. Rule C.5.1.1: The addition of clause (2)(b) to Rule C.5.1.1 allows for 30 cubic metres of take for the purposes of dairy-shed wash-down and milk cooling-water, regardless of minimum flow, as a permitted activity. Such takes are not provided for by section 14(3)(b) of the Act and are inconsistent with the National Policy Statement for Freshwater Management 2014 (as amended 2017) (NPSFM).

7.19. Policy B5 of the NPSFM requires the Council to ensure that no decision will likely result in future over-allocation. Such “decisions” include the

making of permitted activity rules. Unconsented authorisations in the form of permitted activities need to be accounted for in the management regime to ensure limits are met and to prevent cumulative adverse effects.

7.20. Objective 3.3. of the Northland Regional Policy Statement directs the following:

Maintain flows, flow variability and water levels necessary to safeguard the life-supporting capacity, ecosystem processes, indigenous species and the associated ecosystems of freshwater.

7.21. Policy 4.3.2 of the Northland Regional Policy Statement directs the Council to “establish regulatory methods to avoid or phase out the over-allocation of region-wide ecological flows and water levels”.

7.22. As such, it is appropriate that the take of water for dairy-shed wash-down and milk cooling-water is excluded from permitted activities so that it can be accounted for in allocation limits. The Plan is unclear as to how such allocation limits are to be measured and applied.

7.23. Clause (2)(b) of C.5.1.1 effectively removes discretion to determine when it is appropriate to reduce such takes for the purpose of safeguarding the life-supporting capacity requirements of native fish and other aquatic life. Clause (2)(b) does not recognise alternative methods of avoiding or mitigating adverse effects, such as the use of alternative water sources, storage options, or relocating or drying off stock.

Relief sought

7.24. Delete clause (2)(b) from Rule C.5.1.1;

And

Insert a new rule assigning either restricted discretionary or discretionary status for 30 cubic metres of take for the purposes of dairy-shed wash-down and milk cooling-water, with the following conditions:

“x) *the take must not be from outstanding freshwater bodies or freshwater habitats of indigenous fauna that are significant using*

the assessment criteria in Appendix 5 of the Regional Policy Statement.

7.25. Replace the reference to “30%” in clause 3) with “10%”;

Or

Amend clause 3 to read:

“the rate of take from a river does not exceed whichever is the lesser of:

- a) 10% of the instantaneous flow at the point and time of take, or*
- b) An absolute limit of 2.5 l/s.”*

Rule C.5.1.13 – Water take below a minimum flow or water level – non-complying activity (previously C.5.1.11)

7.26. It is inappropriate to assign non-complying activity status to water takes below a minimum flow or water level. Non-complying activity status is particularly problematic in light of Policy D.4.12 (previously D.4.19), which makes provision for water to be abstracted below minimum flow for takes that are not captured by section 14(3)(b) of the Act. There is the potential for cumulative effects from multiple takes to cause effects that may not be easily detected through individual applications.

Relief sought

7.27. Classify Rule C.5.1.13 as a prohibited activity.

Rule C.5.1.14 Water take that will exceed an allocation limit – non-complying activity (previously C.5.1.12)

7.28. It is inappropriate to assign non-complying activity status to water takes that will exceed an allocation limit. Non-complying activity status provides less assurance that adverse effects, including cumulative effects, arising from takes greater than the allocation limit will be avoided.

Relief sought

7.29. Classify Rule C.5.1.14 as a prohibited activity.

C.8 Land use and disturbance activities

C.8.1.2 - Access of livestock to the bed of a water body or continually flowing artificial watercourse – permitted activity (previously C.8.1.1)

7.30. Rule C.8.1.2: Northland is one of the regions with the greatest amount of wetland loss, with only a small proportion of wetlands remaining (estimated at 5.5% in 2008).¹

7.31. Table 12 (previously Table 7) requires livestock to be excluded from natural wetlands greater than 2000m². It is insufficient to only require livestock to be excluded from wetlands that are greater than 2000m² as there are still significant wetlands in Northland that would not meet this size threshold but would meet the significance criteria set out in Appendix 5 of the Northland Regional Policy Statement. For example, a wetland smaller than 2000m² may be considered significant if it contains the presence of a threatened species such as Northland mudfish. The 2000m² is therefore inappropriate as it could lead to significant wetlands which will not be captured by the requirement to exclude livestock.

7.32. It is not appropriate to remove the words “is not damaged” from C.8.1.2(1), E.3.4.1(1), and E.3.5.1(1). The removal of the words “is not damaged” from C.8.1.2(1), fails to recognise that activities such as grazing and trampling, which may not necessarily lead to immediate destruction of the vegetation can still have an adverse effect on habitat for freshwater species, for example īnanga spawning areas. Damaged vegetation is less likely to prevent sediment entering wetlands or provide suitable habitat for freshwater fish.

7.33. Livestock access can cause significant adverse effects on freshwater fish and their habitat by causing slumping, pugging or erosion to the beds and

¹ AG Ausseil, P Gerbeaux, WL Chadderton, T Stephens, D Brown and J Leathwick, J “Wetland ecosystems of national importance for biodiversity: Criteria, methods and candidate list of nationally important inland wetlands” *Landcare Research Contract Report LC0708/158* (Landcare Research Palmerston North, New Zealand, 2008) at 162.

banks of waterbodies. Effects include destruction of fish spawning habitat, and increased sediment and nutrient input into the waterways.

- 7.34. Rule C.8.1.2 does not require sheep to be excluded from lakes, significant wetlands, and inanga spawning sites, and is therefore not supported. While sheep have less affinity for directly entering water than other stock and are less likely to cause bank erosion and slumping as they are lighter, the camping and browsing habits of sheep mean they can have an adverse effect on indigenous vegetation in riparian margins and wetland edges, thereby affecting spawning habitats.
- 7.35. Rule C.8.1.2 does not require cattle, dairy support cattle and deer to be excluded from hill country areas, which is not supported. Targeting hill country areas, which include headwater streams, has significant water quality and habitat benefits.
- 7.36. The lack of mapped inanga spawning sites and reference to “*inanga spawning sites identified by the Regional Council*” in clause 3 of C.8.1.2 does not clarify for users which sites are identified. It would benefit from further clarity via an advice note referring users to a GIS layer, or similar, of comprehensive and current spawning sites identified by the Council.
- 7.37. Amending Rule C.8.1.2 as sought by the Minister is consistent with sections 5(2)(b) and 6(c) of the Act and would achieve Objectives A2 and B4 of the NPSFM, which directs that significant values of wetlands are protected, and Objective 3.4 of the Northland Regional Policy Statement.

Relief sought

- 7.38. Amend clause (1) of Rules C.8.1.2, E. 3.4.1, and E.3.5.1, to reinstate reference to “damage or destroyed” as contained in the notified version of the Plan:

“1) indigenous vegetation in a natural wetland is not damaged or destroyed.”

- 7.39. Amend clause (3) of Rule C.8.1.2 to require sheep to be excluded from any inanga spawning sites identified by the Regional Council.

7.40. Replace Table 12 (previously Table 7) with the following table:

Table 12: Dates when livestock must be effectively excluded from water bodies and continually artificial watercourses

Livestock type	Continually flowing rivers, streams and artificial watercourses greater than one metre wide	All continually flowing rivers, streams and artificial watercourses	Natural wetlands	Lakes (>1ha) and significant wetlands
Pigs and dairy cows	Excluded from the date Rule C.8.1.2 becomes operative.	Excluded from 1 January 2023.	Excluded from 1 January 2023.	Excluded from the date Rule C.8.1.2 becomes operative.
Beef cattle, dairy support cattle and deer	Lowland areas as mapped in I 'Maps Ngā mahere matawhenua': Excluded from 1 January 2025 Hill country areas as mapped in I 'Maps Ngā mahere matawhenua': Excluded from 1 January 2025	Lowland areas as mapped in I 'Maps Ngā mahere matawhenua': Excluded from 1 January 2030 Hill country areas as mapped in I 'Maps Ngā mahere matawhenua': Excluded from 1 January 2030	Excluded from 1 January 2025	Excluded from the date Rule C.8.1.2 becomes operative.
Sheep	No exclusion required	No exclusion required	No exclusion required	Excluded from the date Rule C.8.1.2 becomes operative.

7.41. Include the following condition to rule C.8.1.2:

“x) does not cause or induce noticeable slumping, pugging or erosion of the bed or banks of the waterbody.”

- 7.42. Include an advice note that refers users to a GIS layer of comprehensive and current spawning sites identified by the Council, or such alternative relief as to allow users to access a comprehensive and current inventory of īnanga spawning sites identified by the Council.

C.8.2.1 Land preparation (previously cultivation)

- 7.43. Rule C.8.2.1: a ten-metre buffer width from a natural wetland, bed of a lake, or bed of a continually or intermittently flowing rivers (as opposed to a five-metre buffer wide) is required to ensure fine sediment particles are removed, and to prevent significant adverse effects on freshwater ecosystems.

- 7.44. Riparian margins are critical to the spawning and recruitment success of īnanga. A buffer width of 20 metres is therefore required for īnanga spawning sites as these are particularly vulnerable to water quality impacts that can arise from land preparation activities.

Relief sought

- 7.45. Replace reference to “five metres” in clause (2)(b) of Rule C.8.2.1 with “ten metres”.

- 7.46. Include the following standard:

“x) Land preparation is not a permitted activity where land preparation occurs within 20 metres of any īnanga spawning sites identified by the Regional Council.”

C.8.3.1 – Earthworks – permitted activity

- 7.47. For the reasons set out at paragraph 7.44 of this notice, a buffer width of 20 metres is required for īnanga spawning sites.

Relief sought

- 7.48. Include the following condition to Rule C.8.3.1:

“x) earthworks do not occur within 20 metres of any īnanga spawning sites identified by the Regional Council.”

C.8.3.2 – Earthworks – controlled activity

7.49. For the reasons set out at paragraph 7.44 of this notice, a buffer width of 20 metres is required for īnanga spawning sites.

Relief sought

7.50. Add the following condition to C.8.3.2:

“x) within 20 metres of any īnanga spawning sites identified by the Regional Council.”

Section D Policies

D.4 Land and water (general)

7.51. Degraded water quality, particularly resulting from diffuse inputs of nutrients, sediment, and faecal contaminants, is a particular concern for Northland waterways. Despite this, the Plan does not include a policy to manage diffuse discharges of nitrogen, phosphorous, sediment and microbial pathogens. To allow otherwise creates a risk of continued degradation of water quality and continued decline in water quality dependant values.

7.52. The lack of policy on diffuse discharges also undermines the ability to meet Objective F.1.2 of the Plan which requires that “the sedimentation of continually or intermittently flowing rivers, lakes and coastal water is minimised”.

7.53. The lack of policy also fails to meet policies 21 and 22 of the New Zealand Coastal Policy Statement (NZCPS), which require management by plans to address water quality and sedimentation in the coastal environment. The NZCPS also addresses the discharge of contaminants and the need to manage the adverse effects of this through Policy 23.

7.54. Careful management of sediment generating activities is vital if the objectives of the Northland Regional Policy Statement, the NPSFM and NZCPS are to be achieved and the life supporting capacity of water and associated ecosystems safeguarded.

Relief sought

7.55. Inclusion of an additional policy to manage diffuse discharges of nitrogen, phosphorous, sediment and microbial pathogens.

D.4.1 - Maintaining overall water quality (previously D.4.5)

7.56. Policy D.4.1: does not provide adequate certainty that life supporting capacity of freshwater including on any ecosystem associated with freshwater will be safeguarded. The addition of clause 3 and use of the words “*generally not grant a proposal*” creates uncertainty as to the circumstances in which adverse effects will be considered to be acceptable. It also undermines Policy D.4.5 of the Plan (which reflects the transitional under Policy A4 of the NPSFM, which directs the Council to avoid contamination that would have an adverse effect or have a more than minor adverse effect.

7.57. The Minister seeks removal of the “term” overall from Policy D.4.1 (and Objective F.1.2), for the following reasons:

7.57.1. The reference to “overall” creates uncertainty in the absence of a prescribed, repeatable and measurable framework to determine “overall” water quality”.

7.57.2. The consideration of “overall” water quality creates the risk that ecosystem health is determined by one or a combination of specific attributes if a water quality threshold is exceeded. The aggregation of multiple attributes of water quality may mask the effects of a single attribute on ecosystem health.

7.57.3. Attempts to spatially aggregate water quality across multiple sites limits the ability to consider locality specific effects in an appropriate

level of detail and is limited by the representatives of the monitoring network.

Relief sought

7.58. Delete clause (3) of Policy D.4.1.

7.59. Delete the term “overall” in Policy D.4.1.

D.4.12 – Minimum flows and levels (previously D.4.19)

7.60. Policy D.4.12: section 14(3)(b) of the Act provides for the taking of water for stock drinking and domestic takes. However, the taking of water below a minimum flow or minimum level for root survival water is not a matter provided for under section 14(3) of the Act. Policy D.4.12 would effectively enable the take of rootstock survival water below minimum flow. Allowing these takes below a minimum flow which has been identified in order to safeguard the life supporting capacity of ecosystems could have unacceptable adverse effects, including cumulative adverse effects.

7.61. When a river is at or below minimum flow, aquatic ecosystems are likely to be under considerable stress. This will be a particular concern for smaller water bodies where aquatic life may already be under stress by virtue of poor water quality.

7.62. The required allocation for rootstock survival water needs to be accounted for in pre-existing limits, to encourage rationing and storage before minimum flow levels are reached.

Relief sought

7.63. Remove reference to “root stock survival water” by deleting clause (2)(b) from D.4.12.

Policy D.2.15 – Managing adverse effects on natural character, outstanding natural landscapes and outstanding natural features

7.64. Policy D.2.15 does not give effect to policies 13 and 15 of the New Zealand Coastal Policy Statement. The decision to omit reference to the coastal environment ignores the Council’s jurisdiction over some land use activities in the coastal environment and the potential for adverse effects on natural character, features and landscapes of activities that are regulated by this Plan, such as structures in rivers and lakes, modification of wetlands, and discharges. This leaves a gap in the management of outstanding natural character, outstanding natural features and outstanding natural landscapes in the coastal environment.

Relief sought

7.65. Amend Table 15 as follows:

<u>Place / value</u>	<u>Location of the place</u>	<u>Effects to be avoided</u>
Areas of outstanding natural character	Coastal environment.	Adverse effects on the characteristics, qualities and values that contribute to make the place outstanding.
Outstanding natural features		
Outstanding natural landscapes, including seascapes	Coastal environment.	
Natural character	The coastal environment and freshwater bodies.	Significant adverse effects on the characteristics, qualities and values that contribute to natural character.
Outstanding natural features	Outside the coastal environment.	Significant adverse effects on the characteristics, qualities and values that contribute to make the natural feature outstanding.

Or

Such alternative relief to give effect to Policies 13 and 15 of the NZCPS.

F Objectives

Objective F.1.2 Water Quality

7.66. Objective F.1.2: This objective does not provide adequate certainty that life supporting capacity of freshwater including on any ecosystem associated with freshwater will be safeguarded. For the same reasons set out in paragraph 7.57 of this notice, the Minister seeks removal of the term “overall” from Objective F.1.2.

Relief sought

7.67. Delete “overall” from clause (1) of Objective F.1.2.

H Appendices

H.3.1 Water quality standards for continually or intermittently flowing rivers (previously D.4.1)

7.68. Whilst the Council has indicated it will develop more comprehensive limits through a later plan change, the Minister seeks more robust standards in the interim to ensure further degradation of water quality does not occur.

7.69. H.3.1 creates the potential for further deterioration of water quality as resource consents could be approved that decrease water quality for attributes not listed in Table 20, and is contrary to sections 5 and 6 of the Act.

Relief sought

7.70. The relief as set out in paragraphs 7.78.2 of this notice.

H.3.2 Water quality standards for lakes (previously D.4.2)

7.71. Whilst the Council has indicated it will develop more comprehensive limits through a later plan change, the lack of robust interim standards with respect to lake water quality is contrary to sections 5 and 6 of the Act.

Relief sought

7.72. Amendments to H.3.2 to include a specific Lake SPI standard with the following levels:

- >50% for deep lakes (i.e. high Lake SPI);
- 20-50% for shallow lakes (moderate Lake SPI).

7.73. Amendments to H.3.2 to include targets for macrophytes depth limits at:

- >7 m for deep lakes; and
- >3 m for shallow lakes.

H.4.2 – Minimum levels for lakes and natural wetlands (previously D.4.15)

7.74. Northland's lake ecosystems have high conservation values and are likely sensitive to hydrological alteration. As a matter of precaution, it is appropriate to amend the minimum lake levels to protect their high conservation values until a specific assessment has been carried out to show that changes to the water levels will not have unforeseen ecological impacts.

Relief sought

7.75. Amend the minimum levels for lakes (both deep and shallow) to no change to lake level.

Water quality (general)

7.76. The Council's decision not to include a comprehensive management framework for water quality, not to adopt a precautionary approach for managing activities that may affect water quality, and to not include numeric water quality goals:

7.76.1. Is contrary to Part 2 of the Act by not achieving the sustainable management of water and ecosystems, in particular:

7.76.1.1. Section 5(2)(b) as it fails to safeguard the life-supporting capacity of water and ecosystems;

- 7.76.1.2. Section 6(a) as it fails to recognise and provide for the preservation of the natural character of wetlands, lakes and rivers and their margins; and
- 7.76.1.3. Section 6(c) as it fails to protect significant habitats of indigenous fauna.
- 7.76.2. Fails to assist the Council in achieving its function under section 30 of the RMA to control land use and other activities for the purpose of “the maintenance and enhancement of the quality of water”.
- 7.76.3. Fails to give effect to the NPSFM and the NZCPS as required by section 67(3) of the RMA.
- 7.76.4. Fails to give effect to the Regional Policy Statement for Northland.

Relief sought

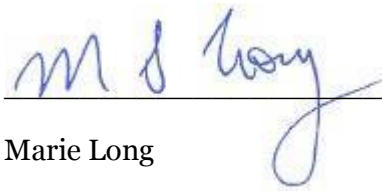
- 7.77. That the Plan contains a water quality management approach which achieves the purpose of the RMA and is in accordance with Part 2 and the Council’s functions under the Act, gives effect to the NPSFM, the NZCPS, and the Regional Policy Statement for Northland.
- 7.78. That such a water quality management approach would include the following matters:
 - 7.78.1. An objective which clearly sets out the environment outcome for water quality which is consistent with the purpose of the RMA.
 - 7.78.2. A policy and method framework that manages water quality in the following way:
 - 7.78.2.1. Numeric water quality goals for rivers, lake and the coastal marine area are set as outlined in the table attached as **Annexure A** (which is an amended version of Table 20), Table 21, and Table 22 of the Appendices to the Plan as amended by decisions, or numeric water quality goals that are

more or less stringent if that is required to achieve the purpose of the Act by giving effect to the NPSFM.

- 7.78.2.2. That the framework and numeric water quality goals take account of multi-stressor effects and water quality goals are set to reflect this.
- 7.78.2.3. Where a numeric water quality goal is currently met, activities shall be managed so that the goal continues to be met. An activity that would result in the goal being exceeded must be avoided.
- 7.78.2.4. Where a numeric quality goal is not met, activities shall be managed so that water quality is improved over time to meet that goal. To assist in achieving this:
 - 7.78.2.4.1. Any new activity that would result in a numeric quality goal being further exceeded (it would result in water quality declining) should be avoided.
 - 7.78.2.4.2. Any existing activity that contributes to a numeric quality goal not being met, may be appropriate if:
 - 7.78.2.4.2.1. The activity is undertaken in accordance with a defined programme of work for upgrading the activity, to reduce adverse effects of the activity and improve water quality; and
 - 7.78.2.4.2.2. There is no discharge which results in a toxic adverse effect at a point source discharge location.
- 7.78.2.5. Where existing water quality is unknown, or the effect on water quality of a particular activity is unknown, activities shall be managed with a precautionary approach which includes the direction under paragraphs 7.78.2.4.2.1 and 7.78.2.4.2.2.

General

8. The parts of the decision appealed do not promote the sustainable management of natural and physical resources as required by Part 2 of the Act.
9. I seek the following relief:
 - 9.1. The relief specified in this notice of appeal under each heading “*Relief sought*”; and
 - 9.2. such further orders, alternative relief, consequential amendments or other amendments as are considered appropriate or necessary to address the concerns set out above.
10. I attach the following documents to this notice:
 - 10.1. a copy of my submission and further submission (**Annexure B**);
 - 10.2. a copy of the decision (**Annexure C**);
 - 10.3. a list of names and addresses of persons to be served with a copy of this notice (**Annexure D**).



Marie Long

Director, Planning, Permissions and Land
Department of Conservation
Acting pursuant to delegated authority on behalf of the Minister of
Conservation²

17 June 2019

² A copy of the Instrument of Delegation may be inspected at the Director-General’s office at Conservation House (*Whare Kaupapa Atawhai*, 18-32 Manners Street, Wellington 6011).

Address for service of appellant:

Minister of Conservation

Planning Shared Services
Department of Conservation
Private Bag 3072, Hamilton 3240

Contact persons

Jacob Williams, RMA Planner – Planning Shared Services
Telephone: 027 578 4094
Email: jwilliams@doc.govt.nz

And

May Downing, Solicitor – Legal Services
Telephone: 027 564 1428
Email: mdowning@doc.govt.nz

Attachments

Copies of my submission and further submission and the decision of the Northland Regional Council has been forwarded to the Environment Court with this notice of appeal. If any party served with this notice requires a copy of the submission and decision to be served on them, please contact the appellant at the address for service given above and provide an email address so that these documents can be forwarded electronically.

Advice to recipients of copy of notice

How to become a party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in [form 33](#)) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

Annexure A: numeric quality goals sought for rivers

Text which is underlined are the changes the Minister requests from the decision version of the Northland Regional Plan

H.3 Water quality standards and guidelines

Policy H.3.1 Water quality standards for continually or intermittently flowing rivers

The water quality standards in Table 20 'Water quality standards for ecosystem health in rivers' apply to Northland's continually or intermittently flowing rivers, and they apply after allowing for reasonable mixing.

Table 20: Water quality standards for ecosystem health in rivers

Attribute	Unit	Compliance metric	Outstanding rivers	Other rivers
Nitrate (toxicity)	mg NO ₃ -N/L	Annual median	≤1.0	≤1.0
		Annual 95th percentile	≤1.5	≤1.5
Ammonia (toxicity)	mg NH ₄ -N/L	Annual median	≤ 0.03*	<u>³Hill country rivers – annual median ≤ 0.03*</u> <u>Lowland rivers – annual median ≤ 0.24*</u>
		Annual maximum	≤ 0.05*	<u>Hill country rivers – annual maximum ≤ 0.05*</u> <u>Lowland rivers – annual maximum ≤ 0.40*</u>
Temperature	maritime climate	Summer period measurement of the Cox-Rutherford Index (CRI), averaged over the	≤ 18°C	<u>Hill country rivers ≤ 20°C</u> <u>Lowland rivers ≤ 24°C</u>

Attribute	Unit	Compliance metric	Outstanding rivers	Other rivers
		five (5) hottest days (from inspection of a continuous temperature record).		
Dissolved oxygen	mg/L	7 day mean minimum	≥ 8.0	<u>Hill country rivers ≥ 7.0</u> <u>Lowland rivers ≥ 5.0</u>
		1-day minimum	≥ 7.5	<u>Hill country rivers ≥ 5.0</u> <u>Lowland rivers ≥ 4.0</u>
pH			$6.5 < \text{pH} < 8.0$	<u>Hill country rivers $6.5 < \text{pH} < 8.0$</u> <u>Lowland rivers $6.0 < \text{pH} < 9.0$</u>
<u>Temperature change</u>	$^{\circ}\text{C}$		$\leq 1^{\circ}\text{C}$	<u>Hill country rivers $\leq 2^{\circ}\text{C}$</u> <u>Lowland rivers $\leq 3^{\circ}\text{C}$</u>
<u>Benthic cyanobacteria cover</u>	%	<u>Only applies to hard bottomed rivers</u>	$< 20\%$	$< 20\%$
<u>Periphyton biomass (chlorophyll a)</u>	Mg/m^2	<u>As per NPSFM Appendix 2</u> <u>Only applies to hard bottomed rivers</u>	<u>Band A</u>	<u>Hill country rivers B band</u> <u>Lowland rivers C Band</u>
<u>Periphyton cover (periphyton weighted composite cover – periWCC)</u>	%	<u>Only applies to hard bottomed rivers used for recreation</u>	$\leq 30\%$	$\leq 30\%$

Attribute	Unit	Compliance metric	Outstanding rivers	Other rivers
<u>QMCI</u>	<u>Percentage change between suitably matched upstream and downstream habitats</u>	<u>Maximum</u>	<u>≤20%</u>	<u>≤20%</u>
<u>Toxicants, metals and metalloids (species protection level)</u> <u>Excludes nitrate or ammonia toxicity</u>	<u>Toxicants are usually expressed as potential effects on a proportion of sensitive species or 'species protection level'</u>	<u>Point source discharges should be assessed against toxic effects on species protection levels</u>	<u>99%</u>	<u>Hill country rivers 95%</u> <u>Lowland rivers 80%</u>
<u>Visual clarity</u>	<u>meters</u>	<u>Annual median</u>	<u>>3m</u>	<u>Hill country rivers >3m</u> <u>Lowland rivers >1.6m</u>
<u>Visual clarity change</u>	<u>meters</u>	<u>Annual median</u>	<u>≤20%</u>	<u>Hill country rivers ≤20%</u> <u>Lowland rivers ≤30%</u>
<u>Escherichia coli (E. coli)</u>	<u>E. coli/100 mL</u>	<u>As per NPSFM Appendix 2</u>	<u>Band A</u>	<u>Hill country rivers B band</u> <u>Lowland rivers C Band</u>
<u>Deposited fine sediment change</u>	<u>Change in % cover</u>	<u>Only applies to hard bottomed rivers only</u>	<u>≤10%</u>	<u>≤10%</u>

*Based on pH 8 and temperature of 20 degrees Celsius. Compliance with the water quality standard should be undertaken after pH adjustment