

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

IN THE MATTER of the Resource Management Act 1991
AND of appeals under cl 14 of the First Schedule
to the Act
BETWEEN HORTICULTURE NEW ZEALAND
(ENV-2017-WLG-000089)
FEDERATED FARMERS OF NEW
ZEALAND
(ENV-2017-WLG-000091)
EASTERN FISH AND GAME COUNCIL
(ENV-2017-WLG-000093)
Appellants
AND GISBORNE DISTRICT COUNCIL
Respondent

Environment Judge B P Dwyer sitting alone pursuant to s 279 of the Act

In Chambers at Wellington

CONSENT ORDER

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

(1) The appeal is allowed subject to the amendments to the Gisborne Regional Freshwater Plan set out in Appendix 1 to this order.

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

REASONS



Introduction

[1] The Court has read the notices of appeal and the memorandum of the parties dated 7 August 2018.

Other relevant matters

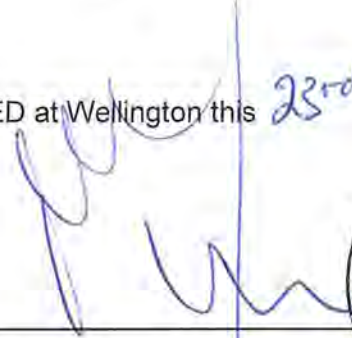
[2] Mr Murray Palmer, Royal Forest and Bird Protection Society of New Zealand, Rongowhakaata Iwi Trust and Mangatu Blocks Inc and Wi Pere Trust have given notice of an intention to become parties under s 274 to the aspects of the appeals resolved by this consent order and have signed the memorandum setting out the relief sought.

Orders

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

- (a) all parties to the proceedings have executed the memorandum 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.

DATED at Wellington this *23rd* day of November 2018



B P Dwyer
Environment Judge





Appendix 1

Amendments to the Freshwater Plan

Amendments are shown in bold text, with additions underlined and deletions in ~~strikethrough~~

Amend Policy 6.1.1

Structures within streams, rivers and lakes should be managed so that:

- a. Sediment generation is minimised to **achieve support achieving** freshwater objectives **and limits.** ~~and to be within the water quality limits for that waterbody~~

...

Amend Policy 6.1.2

Improve fish passage in the region by:

...

Advisory Note: Since 1983, under the Freshwater Fisheries Regulations 1983, culverts, fords, dams and diversion structures that impede fish passage require approval from the Department of Conservation. This is a separate statutory process that applies in addition to the requirements of the Freshwater Plan.



Amend Policy 6.1.3

Provide for new structures and activities in streams, rivers and lakes where:

...

g. There is no damage to heritage items, waahi tapu^ui, taonga and areas of cultural significance;

...

l. The health of ~~the waterbodies~~ affected by the proposed activity is maintained or improved.

Amend Policy 6.5.5

Any new damming and diversion activities, or changes to existing (at plan notification) damming and diversion activities should ensure that fish passage is maintained or enhanced, and a residual flow, and appropriate flow variations for freshes and floods are retained within the waterway, which: ~~maintains instream habitat values including the ability of native fish to migrate, provides for existing surface water takes and allows for existing assimilative requirements associated with existing discharges of contaminants to water in downstream areas.~~

- a. maintains instream habitat values including the ability of native fish to migrate;
- b. provides for existing surface water takes; and
- c. allows for existing assimilative requirements associated with existing discharges of contaminants to water in downstream areas.



Advisory Note: *Since 1983, under the Freshwater Fisheries Regulations 1983, culverts, fords, dams and diversion structures that impede fish passage require approval from the Department of Conservation. This is a separate statutory process that applies in addition to the requirements of the Freshwater Plan.*

Amend Rule 6.1.1 (General Rules)

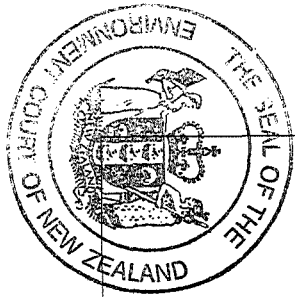
The following standards shall apply to all permitted activities in the beds of lakes, rivers and streams:

...

Advisory Note 2: *Since 1983, under the Freshwater Fisheries Regulations 1983, culverts, fords, dams and diversion structures that impede fish passage require approval from the Department of Conservation. This is a separate statutory process that applies in addition to the requirements of the Freshwater Plan.*

Insert new Rule 6.1.9A

| Rule | Activity | Classification | Permitted Activity Standards Matters for Control/Discretion |
|-------------|--|----------------------------------|---|
| Rule 6.1.9A | <p><u>Use, erection and placement of game shooting structures in, on or under the bed of a lake or river where the structure:</u></p> <p>(a) <u>Is less than 5m² in floor area;</u></p> <p>(b) <u>Does not protrude into the water flow in excess of 5% of the average river channel width;</u></p> | <p><u>Permitted Activity</u></p> | <p>(a) <u>The structure shall be open piled and not impede the free flow of water;</u></p> <p>(b) <u>The structure shall be located at least 20 metres from any flood gate, culvert, bridge, stopbank or confluence;</u></p> <p>(c) <u>The floor of the structure shall be no higher than 0.5 metres above maximum water level;</u></p> |



(c) Is not located in an Outstanding Waterbody.

(d) The overall (maximum) height of the structure shall not exceed 2.5 metres from the floor height;

(e) The structure shall not cause a hazard to navigation;

(f) All practicable measures shall be taken to avoid vegetation, soil, slash or any other debris being deposited into a water body or placed in a position where it could readily enter or be carried into a water body during the activity;

(g) The structure shall at all times be maintained in a structurally sound condition for the purpose for which it was constructed, and be kept clear of accumulated debris;

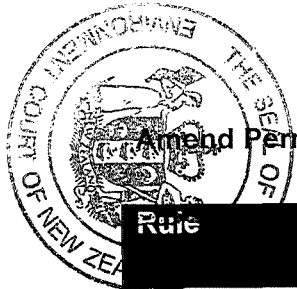
(h) All equipment and surplus construction materials shall be removed from the site on the completion of that activity;

(i) The structure shall not be used as a temporary dwelling or for camping.

Advice Note:

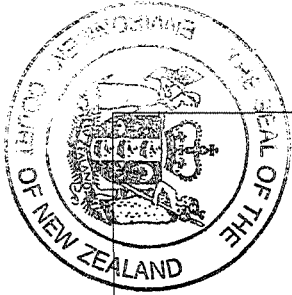
On land held or administered by the Department of Conservation additional requirements and permits may be required.

The Department of Conservation Office should be contacted prior to undertaking works on Public Conservation Land.



Amend Permitted Activity Standards in Rule 6.1.13

| Rule | Activity | Classification | Permitted Activity Standards Matters for Control/Discretion |
|---------------------------|---|----------------------------|---|
| <p>Rule 6.1.13</p> | <p>The maintenance, repair, alteration and reconstruction of lawfully established structures in, on or under the bed of a lake, river or stream (including river control works, but excluding the extension of dams which act to impound water) which have been identified that the structure:</p> <ul style="list-style-type: none"> a. Prevents the passage of migrating fish, or b. Is causing more than minor adverse flooding effects on land, property owned or occupied by another person, buildings or accessways. <p>But the activity otherwise complies with all the Permitted Activity standards of Rule 6.1.3</p> | <p>Controlled Activity</p> | <p>Council shall limit its control to the matters specified below:</p> <ul style="list-style-type: none"> a. <u>The ability to provide for the passage of:</u> <ul style="list-style-type: none"> i. <u>migrating native fish; and</u> ii. <u>migrating trout, where the structure is within a river or stream listed in Schedule 1E;</u> b. <u>methods necessary to reduce flooding effects.</u> <p>Advisory Note</p> <p><u>Since 1983, under the Freshwater Fisheries Regulations 1983, culverts, fords, dams and diversion structures that impede fish passage require approval from the Department of Conservation. This is a separate statutory process that applies in addition to the requirements of the Freshwater Plan.</u></p> <p><u>Under the Freshwater Fisheries Regulations 1983</u></p> |



| | | |
|--|--|--|
| | | <p><i>culverts and fords may not be built to impede fish passage without a permit from the Department of Conservation.</i></p> |
|--|--|--|

Amend Rule 6.3.2

| Rule | Activity | Classification | Permitted Activity Standards Matters for Control/Discretion |
|--------------------------|--|---------------------------|---|
| <p>Rule 6.3.2</p> | <p>Stock access and associated disturbance of the bed of any lake, river or stream by livestock access resulting from a formed stock crossing provided that:</p> <p>a. The stock crossing is not within an Outstanding Waterbody as identified in Schedule 4, or in a wetland.</p> <p><u>This rule does not apply to stock access permitted under Rules 5.3.2, 5.3.4 or 5.3.5</u></p> | <p>Permitted Activity</p> | <p>...</p> <p><i>Advisory Notes:</i></p> <p>...</p> <p><i>4. This rule applies to activities not covered by Rules 5.3.2, 5.3.4 and 5.3.5.</i></p> |