

**BEFORE THE ENVIRONMENT COURT
I MUA I TE KOOTI TAI AO 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)
DIRECTOR-GENERAL OF CONSERVATION
(ENV-2017-WLG-000090)
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 notice of appeal and the memorandum of the parties dated 15 January 2019.

Other relevant matters

[2] Mr Murray Palmer, Royal Forest and Bird Protection Society of New Zealand, Riversun Nursery Ltd 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.

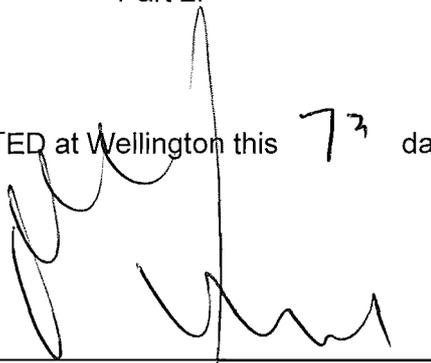
[3] The Court notes that Rongowhakaata Iwi Trust is not a party to the consent memorandum, but has confirmed it does not intend to pursue any Topic 2 appeal points in the Environment Court.

Orders

[4] 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 remaining 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 7th day of March 2019



B P Dwyer
Environment Judge





Appendix 1

Amendments to the main body of the Freshwater Plan:

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

Amend definition of "*Allocation cap*" [consequential amendment to address Fish and Game's appeal point on Policy 4.1.11]

Allocation cap	The total amount of water allocated within A ₁ or B <u>or Survival Water</u> block which can be abstracted from a water quantity zone at any one time.
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Amend definition of "*Minimum flow*" [consequential amendment to address Fish and Game's appeal point on Policy 4.1.11]

Minimum flow	Is the minimum level, specified in Appendix 2 of the NPSFM or within a Catchment Plan, at which a freshwater objective may be set in order to provide for the associated national value. <u>Includes A Block minimum flows or water levels, B Block minimum flows or water levels and survival water minimum flows.</u>
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Amend definition of "*Paper allocation*"

Paper allocation	In relation to water quantity this is where water is allocated in a water permit, but is not being used by the permit holder, <u>under a reasonable use test.</u>
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Insert new definition of "Reasonable use test"

Reasonable use test	<u>Means a test of the technical efficiency of water use in the particular circumstances of the activity, including consideration of the water requirements for the intended land use activity; whether there are already existing resource consents for the use of water for the same area of land (either partially or totally); on-site physical factors such as soil water-holding capacity and climatic factors such as rainfall and evaporation.</u>
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Amend definition of "Recharge"

Recharge	The addition of water to a zone of saturation; the amount of water added. <u>Recharge can be natural, induced or artificial.</u> Recharge may be by deep percolation of rainwater through the unsaturated zone to an aquifer (natural) or from hydraulically connected lake or stream, or as leakage from an adjoining aquifer (induced).
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Amend Policy 4.1.7

Where an allocation cap has been reached or exceeded:

- a. Renewals of existing water permits shall have priority over new applications provided that there is no increase in allocation;
- ~~b. Renewals and transfers will be assessed against water meter records of actual past use, and any paper allocation not used will be removed;~~
- ~~e.b.~~ Where a waterbody is over-allocated ~~in actual use, rather than paper only over-allocation~~, reductions of allocation will be undertaken at each ~~five yearly~~ consent renewal until the water source is no longer over-allocated;
- c. Renewals and transfers will be assessed against water meter records of actual past use, and any paper allocation will be removed;

...

Insert new Policy 4.1.7A [consequential amendment to address the appeals on Policy 4.1.7]

Where an application for recharge demonstrates significant positive social, cultural, and environmental effects; alongside a significant enduring reduction in over-allocation of freshwater resources; allowing an exceedance of the allocation cap may be considered



Amend Policy 4.1.9 [consequential amendment to address Fish and Game's appeal point on Policy 4.1.11]

The timing and procedures for the partial restriction of water permits will be implemented through the conditions of water permits on the following basis:

...

- f. Identification of horticultural and viticultural rootstock survival water requirements **and within** survival water allocations **and above minimum flows**; and
- g. Any specific restriction procedures identified in a catchment plan.

Amend Policy 4.1.10

When there is a water shortage declared under Section 329 of the Act, water use will **managed with particular regard to the following factors: be prioritised as follows (highest to lowest):-**

- ~~a.~~ Human health and safety;
- ~~b.~~ Maintenance of animal **welfare health**;
- ~~c.~~ **The importance of A**avoiding significant damage to instream ecosystems, lake ecosystems and wetlands; and
- ~~d.~~ **The desirability of providing for E**essential use for continued operation of a business or industry.

Advice note: Section 14(3)(e) of the RMA applies despite this policy.



Guidance Policy 4.1.11

The taking and use of water to provide for the survival of horticultural or viticultural root stock may be applied to relevant water permits subject to the following criteria:

- a. The total amount of water available for survival water shall be identified in an **survival water** allocation block in the relevant catchment plan where root stock survival water is required;

b. A survival water minimum flow for the freshwater management unit, water quantity zone or river shall be set;

c. b. Survival water is not available:

i. beyond two weeks after A block minimum flows are reached; or

ii. if the survival water minimum flow is reached; or

iii. if there is a practicable alternative source of water available.

~~The water shall be available for up to two weeks after minimum flows are reached; and~~

~~c. There is no practicable alternative sources of water available.~~



Amend Policy 4.1.12

To help improve and maximise the efficient allocation and use of water, water permit transfers, including temporary transfers, shall be enabled provided that:

- a. The transfer of water is within the same water quantity zone;
- b. There is no increase in allocation;
- c. For over-allocated water quantity zones, there is no increase in **the water allocated beyond that assessed under the reasonable use test for the** current ~~actual~~ water use; and
- d. The transferee take and use is assessed against the relevant water permit criteria.

Amend Policy 4.1.13

In addition to the policies above, when considering applications to take and use water, the following assessment criteria shall be used:

...

- h. Access to survival water **within survival water blocks and above minimum flows, including rostering or application rates;**
- i. The effects the take or use has on any other authorised takes and uses;
- j. Whether and how fish are prevented from entering the water intake;
- k. The effects of the ~~take and use~~ **proposal** on the quantity and quality of all water resources that may be affected by the proposed activity;



actual or potential ~~adverse~~ effects on significant indigenous biodiversity or aquatic ecosystem values identified in Schedule 1;

Amend Rule 4.1.4

Rule	Activity	Classification	Permitted Activity Standards and Matters for Control or Discretion
Rule 4.1.4	The taking and use of surface water, spring water or groundwater for the purpose of stock drinking water at rates of less than 5 litres/second per property <u>(or at not less than 1km from another take on the same property)</u> unless a Farm Environment Plan demonstrates that a larger abstraction is an efficient use of water that causes no adverse effects on any waterbodies and this has been certified by the Consent Authority.	Permitted Activity	



Amend Rule 4.1.6

Rule	Activity	Classification	Permitted Activity Standards and Matters for Control or Discretion
Rule 4.1.6	The renewal of water abstraction permits lawfully established before the date of notification of this Plan.	Restricted Discretionary Activity	For the purpose of Rules 4.1.7 to 4.1.10 Council shall restrict its discretion, with guidance from the relevant polices, to matters a - q specified below: ... k. Access to survival water, <u>within survival water blocks and above minimum flows, including rostering or application rates;</u> ... t. q . The requirement for an Irrigation Management Plan in accordance with Schedule 13



Amend Rule 4.1.8

Rule	Activity	Classification	Permitted Activity Standards and Matters for Control or Discretion
Rule 4.1.8	The transfer of water permits, including temporary transfers, and partial transfers, provided that: a. The transfer of water is within the same water quantity zone; b. There is no increase in allocation; c. For over-allocated water quantity zones, <u>the applicant demonstrates that</u> there is no increase in <u>the water allocated beyond that assessed under the reasonable use test for the</u> current actual water use.	Restricted Discretionary Activity	See matters a - t above



Amendments to provisions in the Waipaoa Catchment Plan

Amend Water Quantity Objectives in the Waipaoa Catchment Plan at 2.3.2.2 (Poverty Bay Flats FMU, Waipaoa Catchment Plan)

Amend heading [consequential amendment; to correct numbering error]

~~2.4.2.2~~-2.3.2.2 Water Quantity Objectives

Amend Objective 4 [consequential amendment]

4. Allocations of water made through ~~within~~ resource consents in the Poverty Bay Flats reflects the reasonable use test. ~~actual water used by the consent holder.~~

Amend Objective 7 [consequential amendment to address Fish and Game's appeal point on Policy 4.1.11]

7. A survival water allocation block and minimum flow is provided for rootstock of permanent horticultural and viticultural crops.

