

**Before the Environment Court  
At Wellington  
I Mua I te Kōti Taiao  
Te Whanganui-a-Tara Rohe**

**ENV-2019-346-103**

**Under** Clause 14, Schedule 1 of the Resource Management Act  
1991

**In the matter of** appeals on the Proposed Natural Resources Plan

**Between** **Various**  
**Appellants**  
**ENV-2019-000103, 105-133**

**And** **Wellington Regional Council**  
**Respondent**

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**Memorandum of counsel on behalf of Wellington Regional Council:  
Updating Court as to consent order process**

**Date: 23 April 2021**

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## **MAY IT PLEASE THE COURT:**

### **Introduction**

1 The purpose of this memorandum is to provide the Court with an update on the consent orders as directed by the Court in its Minute of 21 April 2021. In addition, this memorandum seeks directions on an issue with the Proposed Plan's approach to defining river mouths in the region.

### **Consent orders**

2 At paragraph [4] of its Minute of 21 April 2021, the Court directed the following:

The Respondent is to file a memorandum, by 5pm, 23 April 2021, listing matters that are subject to consent memoranda that are being distributed or drafted, and timeframes for their lodgement with the Court.

3 At this stage, there are sets of consent order documentation outstanding on 37 appeal topics. Of those 37 topics:

3.1 3 sets have been filed with the Court and are pending determination.

3.2 9 sets are with the parties for comment. This includes topic 40, which following receipt of the memorandum from [REDACTED] [REDACTED] dated 22 April 2021, cannot yet be sent in final. Subject to any comments received, the others should be sent in final for signing by the end of next week.

3.3 7 sets are with the parties for signing. This includes a set originally sent in mid-February and one on 24 March that are yet to be signed by all parties.

3.4 14 sets are currently being drafted by the Council for circulation to the parties. 7 of which have been drafted and should be circulated to parties for comment within the next two weeks.

- 3.5           4 sets cannot yet be drafted but will be drafted following confirmation of the outstanding issues on topics 42, 44 and NZCPS 11(a), which also has implications on topic 16. Council understands these issues are largely resolved subject to confirmation of final drafting by the parties.
- 4             The relevant consent order status and topics they relate to are set out in **Appendix 1** to this memorandum.
- 5             The Council cannot confirm a timeframe for lodgement of the outstanding consent orders, as it is reliant on the parties signing and returning documentation.
- 6             In that regard, the Council requests that the Court direct a timetable for finalising consent documentation as follows:
- 6.1           once circulated by the Council in draft, the parties have 5 working days to provide comment or confirm agreement with the documentation; and
- 6.2           once circulated by the Council in final, the parties have 5 working days to sign and return or be deemed to have accepted. At which point, the Council will file, confirming who has signed, and who has not.

**Definition of River Mouth - proposed section 293 application**

- 7             The Council wishes to advise the Court that a new issue has arisen related to the identification of river mouths in the Proposed Plan. Council intends to file a section 293 application to seek this is remedied.

8 In summary, the Operative Regional Coastal Plan (**RCP**) included the following statement after its list of specified river mouth and coastal marine area boundary locations:<sup>1</sup>

For the remaining rivers in the Wellington Region, the mouth is deemed to be a straight line representing the continuation of the line of Mean High Water Springs on each side of the river at the river outlet.

9 This statement enabled the Council and plan users to determine where the mouth of a river was for the purpose of defining the landward boundary of the coastal marine area where that river mouth was not expressly listed in the RCP.

10 This is important given the RMA defines the CMA as:

**coastal marine area** means the foreshore, seabed, and coastal water, and the air space above the water—

- (a) of which the seaward boundary is the outer limits of the territorial sea;
- (b) of which the landward boundary is the line of mean high water springs, except that where that line crosses a river, the landward boundary at that point shall be whichever is the lesser of—
  - (i) 1 kilometre upstream from the mouth of the river; or
  - (ii) the point upstream that is calculated by multiplying the width of the river mouth by 5

11 'Mouth' is also defined in the RMA:

for the purpose of defining the landward boundary of the coastal marine area, means the mouth of the river either—

- (a) as agreed and set between the Minister of Conservation, the regional council, and the appropriate territorial authority in the period between consultation on, and notification of, the proposed regional coastal plan; or
- (b) as declared by the Environment Court under section 310 upon application made by the Minister of Conservation, the regional council, or the territorial authority prior to the plan becoming operative,—

and once so agreed and set or declared shall not be changed in accordance with Schedule 1 or otherwise

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<sup>1</sup> Regional Coastal Plan, p221.

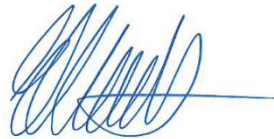
varied, altered, questioned, or reviewed in any way until the next review of the regional coastal plan, unless the Minister of Conservation, the regional council, and the appropriate territorial authority agree

- 12 Similar to the RCP, the Proposed Plan expressly identifies some, but not all, river mouths in the region. Unlike the RCP, there is no equivalent general statement as to location for the remaining rivers in the region. As a result, in some cases the Proposed Plan does not identify the location of all river mouths in the region. That, in the Council's view, provides an area of uncertainty for the Council and plan users as determining where the coastal marine area is (and therefore, where the RCP provisions apply) is not possible.
- 13 The failure to include the text was an inadvertent error. The text was not included in the notified version of the PNRP or picked up during the decision-making process. Therefore, the clause 16 correction process is unavailable as the correction goes beyond scope of that provision.
- 14 In addition, the Council has reviewed the scope of all appeals filed and does not consider the addition of the above text to be within scope of any appeal or appeal point. As the Proposed Plan was a replacement for the five existing regional plans, including the RCP, the change is considered to be within the scope of the Proposed Plan.
- 15 Given the appeals on the Proposed Plan remain live, the Council would like to rely on the section 293 process to address this issue. It does not wish to delay resolution of the appeals by notifying a variation to the Proposed Plan, or by waiting until the conclusion of the appeals process to notify a new plan change to address this issue.
- 16 The Council has contacted the Minister and the territorial authorities within the Wellington region. All support the inclusion of the amended text as the method to identify river mouths in the region.
- 17 The Council intends to formally apply to the Court for the utilisation of this process, which would include the specific amendment sought, why it is necessary and an assessment against section 32. However, in the

interests of transparency, the Council wished to draw the Court's attention to this issue now.

18 The Council is aware of the limitations of the section 293 process, and the necessity for it to follow a hearing on the Proposed Plan. In addition, as noted above, while this is not directly related to a specific appeal, the Council is raising it in the context of the appeals more generally. These matters will be addressed in further detail at the time of formal application.

**Date:** 23 April 2021



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K M Anderson / E L Manohar / K H Rogers  
Counsel for Wellington Regional Council

## Appendix 1 - Consent order status

*Key - with Court (grey), drafted (orange), with parties (green), to draft (purple), pending resolution (red)*

Topic	Consent order status
Topic 12: Coastal structure modifications <sup>2</sup>	Granted for Issues 1, 3 and 4.
Topic 15: Balance of coastal activities <sup>3</sup>	Filed on 17 Feb for Issue 4.
Topic 22: Bores and Dewatering	Filed on 8 April.
Topic 24: Wellington Hutt Whaitua provisions	Filed on 8 April.
Topic 5: RSI definitions	With parties for signing.
Topic 11: Coastal structures. <sup>4</sup>	With parties for signing.
Topic 17: Mana whenua sites	With parties for signing.
Topic 19: Balance of mana whenua	With parties for signing.
Topic 25: Reasonable & Efficient use	With parties for signing.
Topic 26: Region wide rules	With parties for signing.
Topic 39: Cultivation and breakfeeding	With parties for signing.
Topic 1: Agrichemicals	With parties for comment.
Topic 2: Balance of air quality	With parties for comment.
Topic 7 & 8: Outstanding natural character & ONFL	With parties for comment.
Topic 9: Significant surfbreaks	With parties for comment.
Topic 20: Contaminated land and hazardous substances	With parties for comment.
Topic 23: Supplementary allocation <sup>5</sup>	With parties for comment.

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<sup>2</sup> Note issue 2 moved to Topic 11(a)

<sup>3</sup> Note issues 1, 2 and 3 moved to Topic 11(a)

<sup>4</sup> Note issues 5, 6 and 11 moved to Topic 11(a) or Minimise

<sup>5</sup> Note issues in respect of Policy P11 and Objective O52 are going to hearing and not subject to consent documentation.

<b>Topic</b>	<b>Consent order status</b>
Topic 27: Balance of water quality	With parties for comment.
Topic 37: Balance of discharges to land	With parties for comment.
Topic 40: Earthworks and vegetation clearance	With parties for comment.
Topic 28: Introduction, Interpretation and Ki uta ki tai	Drafted to circulate.
Topic 32: Wastewater	Drafted to circulate.
Topic 33: Stormwater	Drafted to circulate.
Topic 34A & B: Balance of water quality	Drafted to circulate.
Topic 41: Wetlands	Drafted to circulate.
Topic 43: Fish passage	Drafted to circulate.
'Minimise' definition (and some related provisions)	Drafted to circulate.
Topic 38: Stock access	With Council for drafting.
Topic 4: Importance of land and water	With Council for drafting.
Topic 6: Balance of RSI	With Council for drafting.
Topic 35: Wastewater to land	With Council for drafting.
Topic 45: Drains and highly modified rivers or streams	With Council for drafting.
Topic 46: Reclamation	With Council for drafting.
Topic 47: Balance of beds of lakes and rivers	With Council for drafting.
Topic 16: Natural hazards and seawalls <sup>6</sup>	To draft when outstanding issues resolved
Topic 42: Biodiversity, aquatic ecosystem health and mahinga kai	To draft when outstanding issues resolved
Topic 44: Mitigation hierarchy	To draft when outstanding issues resolved

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<sup>6</sup> Issues 10 and 11 moved to Topic 11(a) although have an impact on the finalisation of this documentation due to overlap



<b>Topic</b>	<b>Consent order status</b>
NZCPS 11(a)	To draft when outstanding issues resolved.