

IN THE ENVIRONMENT COURT
AT CHRISTCHURCH
I TE KŌTI TAIAO O AOTEAROA
KI ŌTAUTAHĪ

Decision No. [2024] NZEnvC 319

IN THE MATTER

of the Resource Management Act 1991

AND

an appeal under clause 14 of the First
Schedule of the Act

BETWEEN

DAIRY HOLDINGS LIMITED

(ENV-2023-CHC-118)

Appellant

AND

SELWYN DISTRICT COUNCIL

Respondent

Environment Judge P A Steven – sitting alone under s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 5 December 2024

CONSENT ORDER

A: Under s279(1)(b) of the RMA,¹ the Environment Court, by consent, orders
that:

- (1) the appeal is allowed to the extent that Selwyn District Council is to
amend the proposed Selwyn District Plan as set out in Appendix 1,
attached to and forming part of this consent order;

¹ Resource management Act 1991.



(2) the appeal is otherwise dismissed.

B: Under s285 of the RMA, there is no order as to costs.

REASONS

Introduction

[1] This proceeding concerns an appeal by Dairy Holdings Limited against a decision of the Selwyn District Council concerning the Proposed Selwyn District Plan ('PDP'). The PDP is now referred to as the Partially Operative Selwyn District Plan. This appeal was allocated to Topic 14: Irrigation Infrastructure.

[2] The appeal relates to the treatment of irrigation infrastructure and the provisions in the decisions version of the Proposed Plan that manage new and existing irrigation infrastructure related activities. The appellant sought amendments in relation to how new and existing irrigation infrastructure is managed.

[3] I have read and considered the consent memorandum of the parties dated 7 November 2024 which sets out the agreement reached between the parties to resolve this appeal in its entirety. The parties have agreed:

- (a) to amend rule requirements NATC-REQ1 and NATC-REQ2 to clarify that the replacement or upgrade of intake fish screens and ancillary intake infrastructure (including the associated earthworks) which existed on 19 August 2023 are excluded from the surface water body setback requirements in NATC-REQ1 and NATC-REQ2;
- (b) to amend rule requirement NFL-REQ9 to allow for earthworks in Outstanding Natural Landscapes for the maintenance and repair of existing irrigation infrastructure and the replacement or upgrade of intake fish screens and ancillary intake infrastructure which existed on 19 August 2023. The activity status of NFL-REQ9 for when

compliance is not achieved and the matters for discretion were also agreed upon;

- (c) to amend ECO-RC.3 to address indigenous vegetation clearance outside of significant natural areas. This will provide permitted activity status for indigenous vegetation clearance associated with the maintenance, repair or replacement of existing irrigation infrastructure or artificial watercourses and includes a clarification on indigenous vegetation clearance associated with the maintenance, repair or replacement of existing buildings and structures.

[4] I have also read and considered the affidavit of Jonathan Trewin affirmed 9 September 2024. The affidavit explains the scope to make the changes sought and the rationale for the agreed changes in terms of s32AA of the Resource Management Act 1991 ('the Act' or 'RMA').

Other relevant matters

[5] Six parties joined the appeal as interested parties under s274 RMA and have signed the memorandum setting out the relief sought.

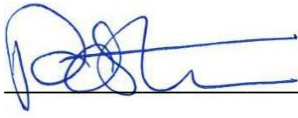
[6] The parties advise that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the Act including, in particular, Pt 2.

[7] No party seeks costs, all parties agreeing that costs should lie where they fall.

Outcome

[8] The court makes this order under s279(1) RMA, such order being by consent rather than representing a decision or determination on the merits pursuant to s297. The court understands for present purposes that all relevant parties to the proceeding have executed the memorandum requesting the orders.

On the information provided to the court, I am satisfied that the orders will promote the purpose of the Act so I will make the orders sought.



P A Steven
Environment Judge



APPENDIX 1

The additional text is shown in **bold underlined text** and deletions are shown in ~~striketrough~~.

ECO-RC Indigenous Vegetation Clearance outside of significant natural areas		
RESZ CMUZ GIZ DPZ KNOZ PORTZ TEZ	Activity Status: PER 1. Indigenous vegetation clearance outside any significant natural area.	Activity status when compliance not achieved: 2. When compliance with any of ECO-RC.1. is not achieved: Refer to ECO-RD.1.
GRUZ CHVZ CORZ FHSVZ HOHZ MPZ	Activity Status: PER 3. Indigenous vegetation clearance outside any significant natural area. Where: The clearance is for any of the following activities: - the maintenance, repair or replacement of existing fences, vehicle tracks, roads, walkways, firebreaks, dams, waterway crossings, or network utilities, limited to the area within 2m of any fence and to within the existing footprint of every other feature. - the maintenance, repair or replacement of any existing flood, erosion or drainage works administered by a Regional or Territorial Authority, limited to the area within the existing footprint of the works. - the maintenance, repair or replacement of existing <u>drains-irrigation infrastructure or artificial watercourses</u> and man-made ponds limited to the area within 2m of any <u>drain irrigation infrastructure or artificial watercourse</u> and to within the existing footprint of any pond. - indigenous vegetation clearance where the vegetation is causing an imminent danger to human	Activity status when compliance not achieved: 4. When compliance with any of ECO-RC.3. is not achieved: Refer to ECO-RC.5

	life, structures, infrastructure, or important infrastructure. e. indigenous vegetation clearance by Ngāi Tahu whānui for the purposes of mahinga kai or other customary uses, where the clearance is in accordance with tikanga protocols. f. g. indigenous vegetation clearance where the vegetation has been managed as part of a domestic or public garden, for amenity purposes, or as a shelterbelt; h. indigenous vegetation clearance where the vegetation: i. has been planted and managed specifically for the purpose of harvesting; or - ii. iii. has grown within an area of plantation forestry; or iv. is in accordance with, and explicitly specified within, an approved reserve management plan, national park management plan or conservation management plan or strategy, or Te Waihora Joint Management Plan Mahere Tukutahi o Te Waihora, or a registered conservation covenant or protective covenant. i. within the Indigenous Biodiversity Overlay, grazing that is not over-grazing/trampling within an area of improved pasture. j. for the maintenance, repair or replacement of existing buildings and structures, including an area no further than 2m from the exterior wall of the existing building. <u>limited to the area within 2m of any building and to within the existing footprint of every other feature.</u>	
--	---	--

	k. necessary in the course of removing pest plants and pest animals in accordance with any regional pest management plan or the Biosecurity Act 1993, including the clearance of material infected by unwanted organisms. l. m. n. o. within an area of horticulture cropping or planting.	
GRUZ CHVZ CORZ FHSVZ HOHZ MPZ	Activity Status: RDIS 5. Indigenous vegetation clearance outside a significant natural area that does not comply with ECO-RC.3. Where: a. the application is accompanied by a Biodiversity Management Plan which has been prepared in accordance with the requirements of ECO-SCHED2 - Biodiversity Management Plan Requirements Matters for discretion: 6. The exercise of discretion in relation to ECO-RC.5 is restricted to the following matters: a. ECO-MAT1 Indigenous Vegetation Clearance; and b. Where within an ONL Overlay or VAL Overlay: i. NFL-MAT5 Vegetation clearance in Outstanding Natural Landscapes and Visual Amenity Landscapes	Activity status when compliance not achieved: 7. When compliance with any of ECO-RC.5 is not achieved: DIS
GRAZ	Activity Status: PER	Activity status when compliance not achieved: 9. When compliance with any of ECO-RC.8 is not achieved: RDIS

	8. Indigenous vegetation clearance outside any significant natural area. Where: a. The indigenous vegetation clearance is not located in the GRAZ natural resource area as identified on GRAZ-FIG1 or b. Within the GRAZ natural resource area as identified on GRAZ-FIG1, the indigenous vegetation clearance is the clearance of material infected by unwanted organisms.	Matters for discretion: 10. The exercise of discretion in relation to ECO-RC.9 is restricted to the following matters: a. ECO-MAT1 Indigenous Vegetation Clearance; and b. NFL-MAT5 Vegetation clearance in Outstanding Natural Landscapes and Visual Amenity Landscapes
PRZ	Activity Status: PER 11. Indigenous vegetation clearance outside any significant natural area. Where: a. any removal is associated with Controlled or Restricted Discretionary earthworks as outlined in EW-R4C Earthworks in Porters Recreation Zone; or b. the indigenous vegetation clearance is necessary for the clearance of material infected by unwanted organisms.	Activity status when compliance not achieved: 12. When compliance with any of ECO-RC.11 is not achieved: RDIS Matters for discretion: 13. The exercise of discretion in relation to ECO-RC.12 is restricted to the following matters: a. ECO-MAT1 Indigenous Vegetation Clearance b. NFL-MAT5 Vegetation clearance in Outstanding Natural Landscapes and Visual Amenity Landscapes

ECO-RD Indigenous Vegetation Clearance within significant natural areas		
RESZ CMUZ DPZ GIZ	Activity Status: PER 1. Indigenous vegetation clearance within any significant natural area.	Activity status when compliance not achieved: 2. When compliance with any of ECO-RD.1. is not achieved: NC

KNOZ PORTZ TEZ	Where: a. the indigenous vegetation clearance is the clearance of material infected by unwanted organisms.	
GRUZ CHVZ CORZ GRAZ FHSVZ HOHZ MPZ PRZ	Activity Status: PER 3. Indigenous vegetation clearance within a significant natural area. Where: a. The clearance is for any of the following activities: i. the maintenance, repair or replacement of existing fences, vehicle trucks, roads, walkways, firebreaks, dams, waterway crossings, or network utilities, limited to the area within 2m of any fence and to within the existing footprint of every other feature. ii. the maintenance, repair, or replacement of existing flood, erosion or drainage works administered by a Regional or Territorial Authority, limited to the area within the existing footprint of the works. iii. the maintenance, repair or replacement of existing <u>drains irrigation infrastructure or artificial watercourses</u> and man-made ponds limited to the area within 2m of any <u>drain irrigation infrastructure or artificial watercourse</u> and to within the existing footprint of any pond. iv. indigenous vegetation clearance where the vegetation is causing an imminent danger to human life, structures, or utilities. v. indigenous vegetation clearance by Ngāi Tahu whānui for the purposes of mahinga kai or other customary uses, where the clearance is in accordance with tikanga protocols.	Activity status when compliance not achieved: 2. When compliance with any of ECO-RD.3. is not achieved: NC

	vi. indigenous vegetation clearance that is clearance of material infected by unwanted organisms.	
--	---	--

NATC-REQ1 Setbacks from Surface Water Bodies – Earthworks and Earthworks Stockpiles		
RESZ CMUZ GIZ DPZ KNOZ PORTZ	1. All earthworks and earthworks stockpiles are to be located at least: a. 20m from the bank of a surface water body listed in NATC-SCHED1; and b. 10m from the bank of any other surface water body.	Activity Status when compliance not achieved: 2. When compliance with any of NATC-REQ1.1 is not achieved: RDIS Matters for discretion: 3. The exercise of discretion in relation to NATC-REQ1.2 is restricted to the following matters: a. NATC-MAT1 Natural Character b. SASM-MAT3 Ngā Wai
GRUZ GRAZ MPZ TEZ CHVZ CORZ FHSVZ HOHZ	4. All earthworks and earthworks stockpiles are to be located at least 20m from the bank of any surface water body excluding those required for: a. a conservation activity; or b. the clearance of artificial watercourses within 20m of the junction of a surface water body; c. <u>irrigation infrastructure activities listed in NATC-REQ2.A</u>	Activity Status when compliance not achieved: 5. When compliance with any of NATC-REQ1.4. is not achieved: RDIS Matters for discretion: 6. The exercise of discretion in relation to NATC-REQ1.5 is restricted to the following matters: a. NATC-MAT1 Natural Character b. SASM-MAT3 Ngā Wai
PRZ	7. All earthworks and earthworks stockpiles are to be located at least: a. in the Village Sub Area, 5m from Porters Stream, shown in PRZ-FIGURE2 - Village Sub-Area Plan; or b. in the Porters Lower Slopes Sub Area, 15m from Porters Stream, shown in PRZ-FIGURE1 - Location of Sub-Areas; and c. 20m from the bank of any other surface water body.	Activity Status when compliance not achieved: 8. When compliance with any of NATC-REQ1.7. is not achieved: RDIS Matters for discretion: 9. The exercise of discretion in relation to NATC-REQ1.8 is restricted to the following matters: a. NATC-MAT1 Natural Character b. SASM-MAT3 Ngā Wai

		c. NFL-MAT2 Earthworks in Porters Recreation Zone d. The need for earthworks to improve public access to and along Porters Stream; e. The effect of earthworks on the natural character of Porters Stream and its margins Notification 10. Any application required by this rule shall not be publicly or limited notified and the written approval of any party will not be required.
--	--	---

NATC-REQ2 Setbacks from Surface Water Bodies – Buildings and Structures

All Zones	1. All buildings and structures shall comply with the following setbacks from any surface water body: a. 100m from the bank of any lake and any wetland adjoining a lake, or 30m from any artificial lake or wetland that was created as part of residential development; b. 25m from the bank of any surface water body listed in NATC-SCHED1 – Water bodies adjoining Residential Zones or NATC-SCHED2 – Water bodies adjoining Rural Zones 1, other than from the bank of any lake, where NATC-REQ2.1.a. applies; c. 20m from the bank of any surface water body listed in NATC-SCHED3 – Water bodies adjoining Rural Zones 2, except for pump sheds and irrigation structures less than 10m² and traveling irrigators which must be setback a minimum 10m from a bank of a surface water body listed in d. NATC-SCHED3 - Water bodies adjoining Rural Zones 2; and e. 10m from the bank of any other surface water body, except within the Porters Village Base lower slopes Sub Area, where a 5m setback shall apply from the edge of Porter Stream. <u>A.</u> Excluded from the above setback requirements are: <u>a.</u> fences and signage posts; <u>b.</u> maintenance of existing buildings and structures; <u>c.</u> alterations to existing buildings and structures <u>d.</u> additions or extensions to existing buildings, where the addition or extension has a maximum floor area of 10m²; <u>and</u>	Activity Status when compliance not achieved: 2. When compliance with NATC-REQ2.1 is not achieved: RDIS Matters for discretion: 3. The exercise of discretion in relation to NATC-REQ2.2 is restricted to the following matters: a. NATC-MAT1 Natural Character b. SASM-MAT3 Ngā Wai
-------------------------	---	---

	<u>e. replacement or upgrade of intake fish screens and ancillary intake infrastructure which existed on 19 August 2023.</u>	
--	---	--

NFL-REQ9 Earthworks in ONL and VAL		
ONL Overlay: Front Ranges ONL Overlay: Malvern Hills ONL Overlay: Rakaia Catchment ONL Overlay: Waimakariri Catchment (excluding GRAZ PRZ)	1. The earthworks: a. comply with NFL-TABLE1 - ONL Earthworks Thresholds and are located below 600m elevation; or b. are for the maintenance and repair of existing erosion control structures, underground infrastructure, drains, fence lines, roads, or tracks; c. are for the installation of underground infrastructure and ancillary structures; d. are in association with the maintenance, operation and repair of buildings and structures at Coleridge HEPS; or e. are in association with the upgrading of network utility poles	Activity status when compliance not achieved: 2. When compliance with any of NFL-REQ9.1. is not achieved: NC
ONL Overlay: Banks Peninsula ONL Overlay: Waimakariri River ONL Overlay: Rakaia River	A. The earthworks <u>either</u> : a. comply with NFL-TABLE1 - ONL Earthworks Thresholds; or b. are for the maintenance and repair of existing control structures, underground infrastructure, drains, <u>irrigation infrastructure</u>, fence lines, roads, or tracks; c. are for the installation of underground infrastructure and ancillary structures; d. are in association with the maintenance, operation and repair of buildings and structures at Coleridge HEPS;	Activity status when compliance not achieved: <u>C. When compliance with any of NFL-REQ9.A.f is not achieved: RDIS</u> B. When compliance with any of NFL-REQ9.A. <u>a</u> , <u>NFL-REQ9.A.b</u> , <u>NFL- REQ9.A.c</u> , <u>NFL-REQ9.A.d</u> , or <u>NFL-REQ9.A.e</u> is not achieved: NC <u>Matters for Discretion:</u> <u>D. The exercise of discretion in relation to NFL-REQ9.C is restricted to the following matters:</u> <u>a. Whether the proposal is consistent with protecting the values of the ONL as described in NFL-SCHED1 –</u>

	e. are in association with the upgrading of network utility poles; <u>or</u> f. <u>are for irrigation infrastructure, specifically replacement or upgrade of intake fish screens and ancillary intake infrastructure which existed on 19 August 2023, with the area of earthworks limited to 200m².</u>	<u>Outstanding Natural Landscape Areas - Values and Attributes.</u> b. <u>Whether the proposal will integrate into the landscape and the appropriateness of the scale and any mitigation measures, such as planting.</u> c. <u>The impact of development on views from public places and roads (including unformed legal roads), ease of accessibility to that place, and the significance of the view point.</u> d. <u>The extent to which the proposal will result in adverse cumulative effects.</u> e. <u>Whether the proposal supports the continuation of rural production.</u> f. <u>The extent to which the proposal has functional needs or operational needs for its location.</u>
VAL Overlay	3. The earthworks: a. comply with NFL-TABLE3 - VAL Earthworks Thresholds; or b. are for maintenance and repair of existing erosion control structures , underground infrastructure, drains fence lines, roads, or tracks; c. are for the installation of underground infrastructure and ancillary structures; d. are in association with maintenance, operation and repair of buildings and structures at Coleridge HEPS; or e. are in association with the upgrading of network utility poles.	Activity status when compliance not achieved: 4. When compliance with NFL-REQ9.3 is not achieved: RDIS Matters for Discretion: 5. The exercise of discretion in relation to NFL-REQ9.3 is restricted to the following matters: a. Whether the proposal is consistent with maintaining the values of the VAL as described in NFL-SCHED2 – Visual Amenity Landscape Areas - Values and Attributes. b. Whether the proposal will integrate into the landscape and the appropriateness of the scale and any mitigation measures, such as planting. c. The impact of development on views from public places and roads (including unformed legal roads), ease of accessibility to that place, and the significance of the view point.

		d. The extent to which the proposal will result in adverse cumulative effects. e. Whether the proposal supports the continuation of rural production. f. The extent to which the proposal has functional needs or operational needs for its location.
--	--	---

