

**BEFORE THE INDEPENDENT HEARINGS PANELS APPOINTED TO HEAR AND MAKE
RECOMMENDATIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS ON PROPOSED PLAN
CHANGE 1 TO THE NATURAL RESOURCES PLAN FOR THE WELLINGTON REGION**

UNDER Schedule 1 of the Resource Management
Act 1991 (the Act)

IN THE MATTER OF Hearing Submissions and Further
Submissions on Proposed Plan Change 1 to
the Natural Resources Plan for the
Wellington Region

RESPONSE TO REQUEST FOR INFORMATION IN

MINUTE 3 PARAGRAPH 16 and 17

[Rule R151A]

SAMUEL O'BRIEN

ON BEHALF OF WELLINGTON REGIONAL COUNCIL

HEARING STREAM 1 -

Overarching Matters and Region-Wide

27 November 2024

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INTRODUCTION

1 My full name is Samuel Nicholas O'Brien. I am a Policy Advisor at Greater Wellington Regional Council. I have prepared this evidence response to a request for information contained in Minute 3 paragraphs 16 and 17.

"16. We ask that the Council:

a. provide more analysis of the circumstances in which the proposed permitted activity rule would apply, and the typical circumstances in which the diversions that would be captured by the rule are undertaken.

b. provide a summary of the known existing permanent diversions, lawfully established by way of resource consent and not associated with existing structures, that could be subject to this rule;

c. an assessment of the nature and scale of environmental effects of the diversions; and

d. further consideration of whether the proposed PA status is appropriate.

17. We note that the diversion of water also includes the subsequent discharge of water back into a waterway. We request consideration of how ss105 and 107 of the RMA can be given effect to under R151A."

2 My qualifications and experience are set out in Section 1.3 of my Air Quality Section 42A Report.

3 I repeat the confirmation given in that report that I have read and agree to comply with the Code of Conduct for Expert Witnesses.

Scenarios Raised in Hearing Stream 1

4 As clarified through rebuttal evidence and in Hearing Stream 1, rule R151A applies only to permanent existing diversions not associated with structures.

5 Concern was expressed in the hearing that rule R151A may conflict with RPS Change 1 direction seeking the daylighting of rivers, where practicable. I can clarify that given Rule R151A only applies to diversions not associated with structures, the rule is not relevant to this direction in the RPS as the diversion is already within an open channel.

6 There was also concern raised about whether water races diversions would continue to be permitted. Water races typically require an intake structure and would therefore not be

captured by new Rule R151A. Further, there is a take aspect to these water permits which also requires regulating.

- 7 In relation to clause (d) of paragraph 17 in Minute 3, there is no discharge element to any part of proposed diversion Rule R151A. The water in the river upstream of the diversion is the same flow as downstream, the river is only changing path.

Consenting Examples

- 8 The most common circumstances of a permanent diversion of an open channel that would be covered by Rule R151A are outlined below.

- A minor stream realignment to move an open channel to the left or right – often this is as a result of erosion of a stream bank, and the stream remains largely in the same location.
- Diversion associated with a reclamation, where new stream length is created.

- 9 In both cases a resource consent is required to undertake this activity, with a water permit for diversion required under Rule R151, and the associated works to shift the channel, reclaim the channel and in some cases to create new stream length, requiring an additional land use consents.

- 10 Through this initial resource consent process the following assessments are typically undertaken in relation to the proposal including the diversion aspect.

- An assessment of the actual or potential effects on the environment
- Consistency with high order national direction such as the National Policy Statement for Freshwater Management 2020
- Objectives and Policies in the NRP
- Objectives and Policies in the RPS and RPS Change 1

- 11 An example of the diversion process associated with a reclamation and the creation of new stream length is Wai-o-hata (Duck Creek) in the suburb of Whitby. Resource consent was obtained to divert several sections of Wai-o-hata for residential development and associated infrastructure. As highlighted above this included a water permit for the diversion component and other land use consents for the reclamation works. As part of this consent the bed material from the diverted stream extent was transferred to the new channel to encourage recolonization of the new sections of stream.

- 12 The first reach of the Wai-o-hata diverted was shifted to provide roading access for the development. Figure 1 shows the stream prior to diversion with the relocated channel shown in Figure 2.



Figure 1: Wai-o-hata (Duck Creek) 2012



Figure 2: Wai-o-hata (Duck Creek) 2024

Figure 3 below shows the old stream channel which the road now runs over to provide access for houses within the development.



Figure 3: Wai-o-hata (Duck Creek) showing the historical stream path (Blue) and the current stream path (Red)

The following photos show the new stream extent created as a result of the diversion carried out approximately 10 years ago.



Figure 4 and 5: Wai-o-hata (Duck Creek) New Stream Extent (2024)

The second reach of the Wai-o-hata diverted was associated with reclamation for residential development.



Figure 7: Wai-o-hata (Duck Creek) 2012



Figure 8: Wai-o-hata (Duck Creek) 2024

Figure 9 below shows the old stream channel where approximately 32 private properties, reserves areas, and roads are now located.

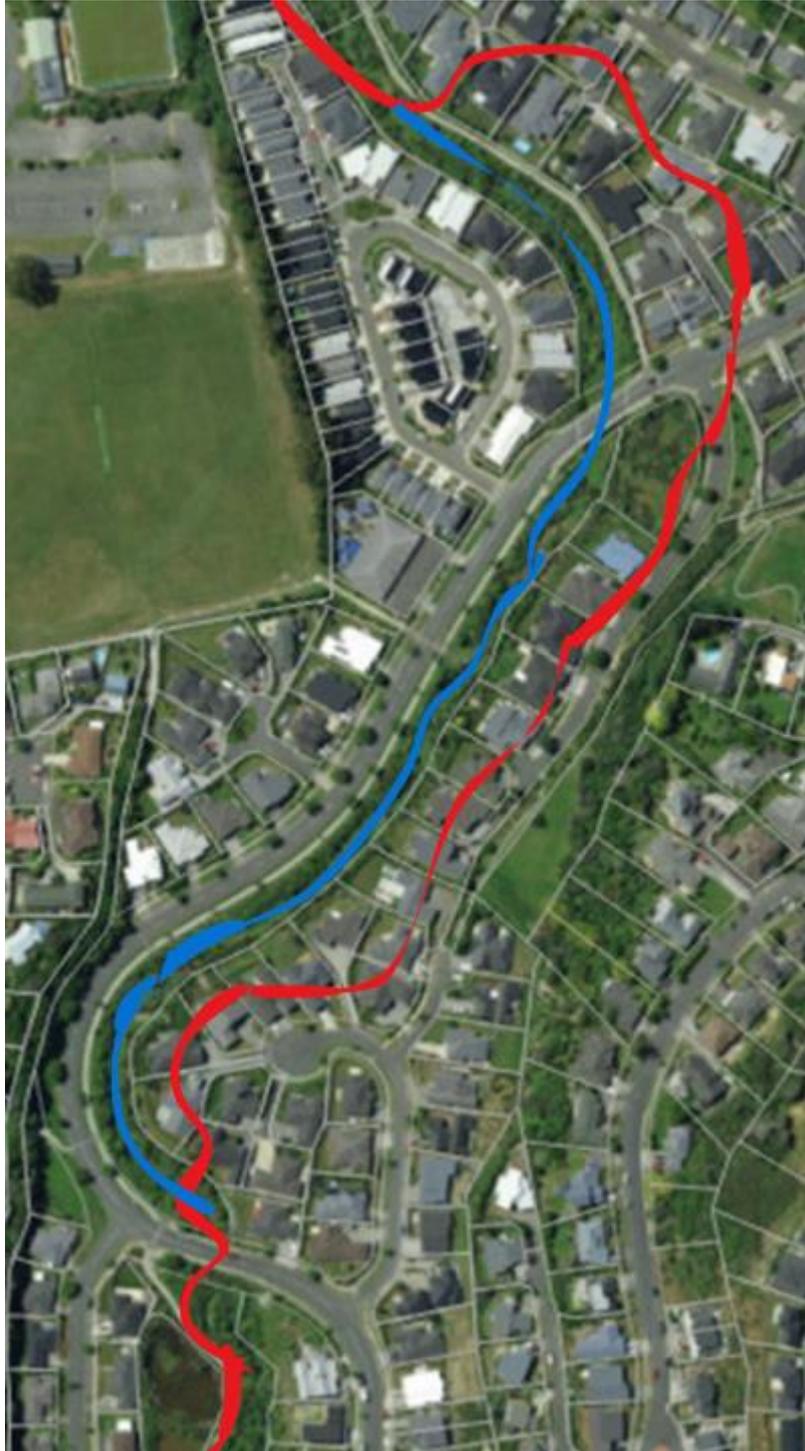


Figure 9: Wai-o-hata (Duck Creek) showing historical stream path (Red) and current stream path (Blue)



Figure 10,11,12, and 13: Wai-o-hata (Duck Creek) New Stream Extent (2024)

- 13 Water permits for the diversion aspect of a resource consent under Rule R151 generally expire after a minimum of 10 years and typically around 35 years.
- 14 Requiring a new resource consent application as a discretionary activity (as is the status quo under the Operative NRP) would require an assessment of the actual or potential effects on the environment of continuing to divert the stream. As there are no proposed works to be undertaken, any adverse effects are likely to be *de minimus* or unable to be observed.
- 15 This is the situation for the Wai-o-hata and likely for any other diversions not associated with structures. Through this re consenting process, there would be no need to require daylighting (the channel is already open), there are no structures to be removed, and no ability to consider consent compliance issues, or effects from any earthworks (as there are none proposed). After a relatively short period of time (generally less than 10 years) the river becomes part of the environment and if the consent were declined there would likely

be, in fact, significant adverse effects associated with reinstating the original course of the stream.

- 16 Also, it is often impracticable to reinstate the original course of the stream as further resource consents (water permit and land use consent) for these works as well as landowner approvals would be required. In the case of the Wai-o-hata this would involve over 30 landowner approvals, as well as the removal of a number of houses and sections of road.
- 17 It could also be argued that it is 'fanciful or unrealistic' to assess the existing environment as if the diversion were not in place¹. Case law has confirmed that for activities that are seeking to be reconcented, the activities subject to those consents should not form part of the existing environment. However, in this situation, the channel is already constructed and does not need to be reconcented. With the diversion proposed to continue as before, it could be concluded that there are, in fact, no adverse effects as a result of the diversion, because the assessment of effects would be of the existing environment, where the diversion is already in place.

Plan Consistency and Consent Pathway

- 18 Rule R151A also provides plan consistency for the approach to permanent surface water diversions. Figure 14 shows the relative pathways for diversions associated with structures and those not associated with structures.

¹ *Port Gore Marine Farms Ltd v Marlborough District Council* [2012] NZEnvC 72.

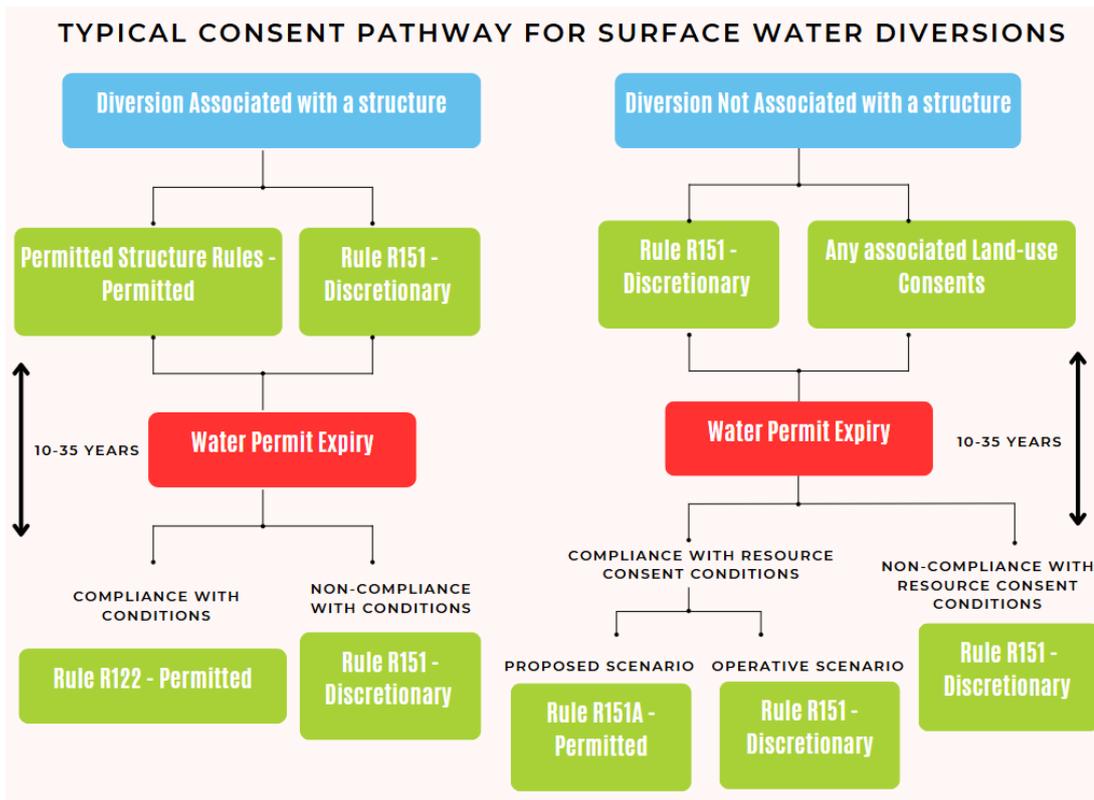


Figure 14: Typical Consent Pathway for Surface Water Diversions

19 Currently through the Operative NRP, diversions associated with structures are typically managed by Rule R151 as a discretionary activity or through one of the individual permitted structure rules. When the water permit expires, the diversion is managed through the following permitted activity rule.

Rule R122: Maintenance, repair, replacement, upgrade or use of existing structures (excluding the Barrage Gates) – permitted activity...including any associated... (c) diversion of water...provided the following conditions are met.

20 This means that diversions associated with the use of an existing lawfully established structure do not generally require a further water permit following the expiry of the original resource consent. However, for diversions not associated with structures a similar pathway does not exist. Rule R151A seeks to address this issue by providing a permitted pathway following the expiry of the original diversion water permit.

Determining which existing resource consents will be captured by Rule R151A

21 In the consents database, existing water permits for permanent diversion resource consents are not easily differentiated between those associated with structures and those that are not. In addition, the database does not allow us to readily determine whether the

diversion is located within a Schedule C (mana whenua) site. The total number of diversion consents is significant, and it is not feasible to undertake an assessment of every consent. The vast majority of these will be associated with a structure or be of a temporary nature while stream works are being undertaken.

- 22 The 75 consents referenced in the Section 32 Report was a very conservative estimate from the officer at the time. The likely number is significantly lower than 75. In my view there is enough information on the nature of the activity proposed by Rule R151A to provide for a permitted activity status, without an analysis of every resource consent.

DATE:

27 November 2024

SAMUEL O'BRIEN

**POLICY ADVISOR, GREATER WELLINGTON REGIONAL
COUNCIL**