

**Before the Hearings Panel
At Wellington**

Under the Resource Management Act 1991 (**RMA**)

In the matter of Proposed Natural Resources Plan for the Wellington Region
(Hearing Stream 5)

**Introduction and legal overview on behalf of Wellington Regional Council:
Hearing Stream 5**

Date: 9 April 2018



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Introduction to the team

- 1 The Greater Wellington team here today is:
 - 1.1 Kerry Anderson and Kate Rogers - legal counsel.
 - 1.2 Section 42A report authors:
 - 1.2.1 Ms Pam Guest, who has written the section 42A report on beds of lakes and rivers and the section 42A report on wetlands and biodiversity, and
 - 1.2.2 Mr Barry Loe, who has written the section 42A report on discharges to land.
- 2 Also present are a range of other Council experts and officers who will present to support either Ms Guest or Mr Loe, who we will discuss in more detail below.
- 3 As an introduction we propose to cover:
 - 3.1 The format for presentations today, including who is presenting, the order and topics they will address.
 - 3.2 The evidence of Dr Adam Canning
 - 3.3 A brief comment on our legal submissions filed in advance
- 4 We will then be available to answer any legal questions.

Format for Council presentation

- 5 The proposed format for the team's presentation is:
 - 5.1 A brief legal overview followed by summaries of the section 42A reports and supporting presentations.

- 6 As there are multiple presentations, we have set out a roadmap of the presentations at **Appendix 1**. This sets out the order of presenters, which topic or 42A report they are supporting, their area of expertise, where to find their written evidence (if any) and what topics they will address.
- 7 Some of these presenters have provided written evidence in the form of separate reports, some have inputted directly to the section 42A report and some have no written evidence (usually presenting on implementation issues and/or practical examples). All of these presenters will be presenting a brief summary today and then will be available to answer questions. You will be provided with hardcopies of their presentations.
- 8 In our legal submissions dated 23 March 2018, we indicated that Ms Heidi Andrewartha would be available to answer questions from the Panel. Ms Andrewartha prepared the section 42A assessment of activity rules R112-R120, R124 -R126 and R129-R135 relating to beds of lakes and rivers (as opposed to a separate brief of evidence). However, she is no longer available to attend the hearing. Ms Guest will explain that she has adopted Ms Andrewartha's evidence and is able to answer any questions in relation to this section of the beds of lakes and rivers section 42A Report.
- 9 In our legal submissions dated 23 March 2018, we also referred to Dr McArthur's evidence on indigenous bird habitat. Unfortunately, he is currently on Great Barrier Island undertaking research and will not be able to attend the hearing. If the Panel has any questions for Dr McArthur, he will be able to address them as part of the Council's right of reply.

Dr Adam Canning

- 10 Dr Adam Canning is providing evidence for the Council. He is also employed by Fish & Game and has provided evidence on behalf of Fish & Game as a submitter in other hearing streams.

- 11 Dr Canning is an expert and understands that the role of an expert is to provide their expert opinion to assist the Panel. Dr Canning has confirmed in his written evidence that he has read Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and has agreed to comply with the Code.
- 12 Dr Canning is presenting evidence for the Council on trout fisheries. Fish & Game has the specialist trout expertise in the region - they hold the data on, and undertake the research into, trout. The Council does not have the same degree of specialist knowledge on trout fisheries and therefore, relies on the work Fish & Game have completed. This is a similar situation as the Council using evidence provided by mana whenua to complete the Schedule C part of the proposed Plan.

Legal issues

- 13 We filed legal submissions on 23 March 2018 which covered the following issues:
- 13.1 Caselaw commentary on terms used in the proposed Plan including, 'restore', 'practicable', 'reasonably practicable' and 'manage'. For convenience, the submissions also attached a glossary pulling together all terminology we have provided caselaw on in previous legal submissions.
- 13.2 The relevant caselaw on the meaning of 'off-setting' compared to mitigation.
- 13.3 Submissions on the consistency with the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 (**NES-PF**) and the requirements to remove duplication or conflict with the NES-PF and identify which are allowed to be more stringent than the NES-PF.
- 13.4 Whether an artificial drain is a 'river' under the RMA.

14 No new relevant caselaw has arisen since we completed the submissions to draw to the attention of the Panel.

15 We do not propose to work through the details of the legal submissions, but we are available to answer any questions that the Panel may have.

Date: 9 April 2018



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Kerry Anderson/Kate Rogers
Counsel for Wellington Regional
Council

APPENDIX 1: Hearing Stream 5 - outline of Council presentation

WETLANDS AND BIODIVERSITY			
Person	Title	Reference	Topic
Ms Pam Guest	GW Senior Policy Advisor Environmental Policy	Section 42A report	Overview of section 42A report - wetlands and biodiversity
Mr Alton Perrie	GW Senior Environmental Scientist	Appendix H	Summary of technical evidence on freshwater biodiversity, criteria and process for identifying outstanding and significant rivers and lakes, rivers and lakes included in Schedules A and F
Dr Philippa Crisp	GW Team Leader Terrestrial Ecosystems and Quality	Appendix H	Summary of technical evidence on wetland types, wetland health, criteria and process for identifying significant and outstanding wetlands and wetlands included in Schedule A and F
Dr Adam Canning	Freshwater ecologist	Appendix H	Summary of technical evidence on criteria and process for identifying important trout fishery rivers and spawning waters and rivers included in Schedule I
Dr Jamie Steer	GW Senior Biodiversity Advisor	No written pre-filed evidence - part of section 42A report	Summary of technical evidence on the new national guidelines for biodiversity offsetting under the RMA, the biodiversity mitigation hierarchy and how it works in practice
Ms Anna Martin	GW Resource Advisor - Consents and Compliance	No written pre-filed evidence	Implementing the wetland activity rules
Mr Paul Denton	GW Senior Policy Advisor Environmental Policy	No written pre-filed evidence - part of section 42A report	Implications of the National Environmental Standard for Plantation Forestry for wetland activity rules

DISCHARGES TO LAND			
Person	Title	Reference	Topic
Mr Barry Loe	Contract Policy Advisor	Section 42A report	Overview of section 42A report - discharges to land
Ms Paula Pickford	GW Resource Advisor - Consents and Compliance	No written pre-filed evidence	Implementing the discharges to land provisions - delayed due to ill health

BEDS OF LAKES AND RIVERS			
Person	Title	Reference	Topic
Drain maintenance			
Ms Pam Guest	GW Senior Policy Advisor Environmental Policy	Section 42A report	Overview of section 42A report - drain maintenance
Dr Michael Greer	GW Senior Environmental Scientist	Appendix F	Summary of technical evidence on the freshwater values of drains and highly modified watercourses, effects of drain maintenance and best practice management
Ms Anna Martin	GW Resource Advisor - Consents and Compliance	No written pre-filed evidence	Implementing the drain maintenance rules
Reclamation			
Ms Pam Guest	GW Senior Policy Advisor Environmental Policy	Section 42A report	Overview of section 42A report - reclamation

BEDS OF LAKES AND RIVERS (cont'd)			
Person	Title	Reference	Topic
Drain maintenance (cont'd)			
Dr Michael Greer	GW Senior Environmental Scientist	Appendix F	Summary of technical evidence on the freshwater values of headwater streams
Mr Dave Grimmond	GW Economist	Appendix F	Summary of technical evidence on the economic costs associated with stream piping
Kirsty van Reenen	GW Senior Resource Advisor - Consents and Compliance	No written pre-filed evidence	Implementing the reclamation policy and rules
Ms Katya Huls	Manager Healthy Waters Resource Management Team, Auckland Council	No written pre-filed evidence	Development examples in the Auckland region involving stream retention
Other beds of lakes and rivers rules			
Ms Pam Guest	GW Senior Policy Advisor Environmental Policy	Section 42A report	Overview of section 42A report - issues 3 and 4
Mr Doug Fletcher	GW Resource Advisor - Consents and Compliance	No written pre-filed evidence	Implementing the other beds of lakes and rivers rules
Mr James Snowden	GW Acting Team Leader, Environmental Protection	No written pre-filed evidence	Practical experience with enforcement of beds of lakes and rivers rules
Mr Paul Denton	GW Senior Policy Advisor Environmental Policy		Implications of the National Environmental Standard for Plantation Forestry for beds of lakes and rivers activity rules