

27 September 2022

File Ref: OIAP-7-25581

By email: [REDACTED]

Tēnā koe [REDACTED]

Request for information 2022-142

I refer to your request for information dated 31 August 2022, which was received by Greater Wellington Regional Council (Greater Wellington) on 31 August 2022. You have requested the following:

“copies of all correspondence, documentation, communications, between GWRC and PCC/WWL, and within GWRC, that has been a consequence of the Panel’s Minute #4, BUT excluding any information already provided as an attachment to Mr A Cross’ letter to me dated 30 August 2022 (GWRC file ref. OIAP-7-24656).

Note: this probably equates to all the information about this matter received, sent, or collated by GWRC since 8 August 2022 which is the date of the most recent email included in the attachment to your 30 August 2022 letter.)”.

Greater Wellington’s response follows:

You have requested that your request be treated with urgency and have provided the following reasons “as it relates to a current and ongoing matter with restricted time frames, and the provision of this information is essential, so parties (other than GWRC and PCC) are kept up to date about the process and how the Panel’s minute is being dealt with and considered”. Greater Wellington has assessed your request for urgency and has processed your request as soon as is reasonably practicable.

In terms of your request to provide copies of: *all correspondence, documentation, communications, between GWRC and PCC/WWL, and within GWRC, that has been a consequence of the Panel’s Minute #4, BUT excluding any information already provided as an attachment to Mr A Cross’ letter to me dated 30 August 2022 (GWRC file ref. OIAP-7-24656)*, please refer to **Attachment 1**.

We have withheld (redacted) information in **Attachment 1** in accordance with the Local Government Official Information and Meetings Act 1987 (the Act) on the following grounds:

- information pertaining to the contact details of natural persons have been withheld under section 7(2)(a) of the Act in order to protect the privacy of natural persons, including that of deceased natural persons.
- Information pertaining to the 'free and frank' expression of opinion by local authority employees has been withheld under section 7(2)(f)(i) of the Act in order to maintain the effective conduct of public affairs through the free and frank expression of opinion by or between or to members or officers or employees of any local authority in the course of their duty.

In addition to the areas that have been redacted in **Attachment 1**, the following have been withheld in full:

- Email from Michelle Conland to Kerry Anderson 23 Aug 5:39pm, is withheld under section 7(2)(g) of the Act – to maintain professional legal privilege
- Attachment JWS nesf DRAFT of the email dated 23 August 2022 at 5.39pm is withheld under section 7(2)(f)(i) of the Act - in order to maintain the effective conduct of public affairs through the free and frank expression of opinion by or between or to members or officers or employees of any local authority in the course of their duty.

We have considered whether the public interest in the requested information outweighs Greater Wellington's need to withhold certain aspects of the requested correspondence. As a result, we do not consider that the public interest outweighs Greater Wellington's reason for withholding parts of the document under the grounds identified above.

If you have any concerns with the decision(s) referred to in this letter, you have the right to request an investigation and review by the Ombudsman under section 27(3) of the Act.

Please note that it is our policy to proactively release our responses to official information requests where possible. Our response to your request will be published shortly on Greater Wellington's website with your personal information removed.

Additional information

Greater Wellington values being an open and transparent local government organisation and believes that access to information is a public right. We endeavour to respond to requests for information fulsomely and in a timely manner. However, the frequency, volume and amount of information you have recently requested is significantly impacting Greater Wellington and its officers' abilities to carry out their other functions and duties. Therefore, we are advising you that we will consider our options in responding to your future requests in accordance with the Act, including charging you for the supply of information.

Nāku iti noa, nā



Al Cross
Kaiwhakahaere Matua Taiao | General Manager, Environment Management

Attachment (1)

From: [Owen Spearpoint](#)
To: [Michelle Conland](#); [Paula Hammond](#); [Pam Guest](#)
Cc: [James Luty](#); [Jude Chittock](#)
Subject: RE: Titahi Bay coastal wetland identification and effects Method.docx
Date: Monday, 8 August 2022 11:03:00 am
Attachments: [Titahi Bay coastal wetland identification and effects Method.docx](#)
[8_2021_Process_diagram.png](#)
[image002.png](#)

Morena Michelle

I have cc'd in Paula and Pam for comment also as there is considerable reference to the NPS-FM and pNRP.

My reply to section 1- Proposed method.

1. Regardless of historic wetland presence if there is wetland present now that is all that matters.
2. Ok
3. Ok
4. Ok
5. Ok
6. Ok but change to (OBL – FACW) = rapid test, can it be clearly determined wetland as per the MFE protocol.
7. Ok
8. Ok
9. This step needs to be changed to wetland species Dominance assessment test, (Must be established a wetland under the RMA definition is present before the exclusions under the plan are assessed).
10. This step needs to be changed to: If wetland species dominance assessment test inconclusive then undertake wetland species Prevalence test.
11. This step needs to be changed to: If prevalence test is inconclusive the wetland soils and hydrology tests will be conducted. (noting that given the situation soil cores or soil testing for hydric (in CMA) may not be available to test.
12. Conclude wetland presence/absence
13. If wetland is present assess natural wetland presence under the pNRP and / or the NPS FM and whether exclusions under these plans and policies apply

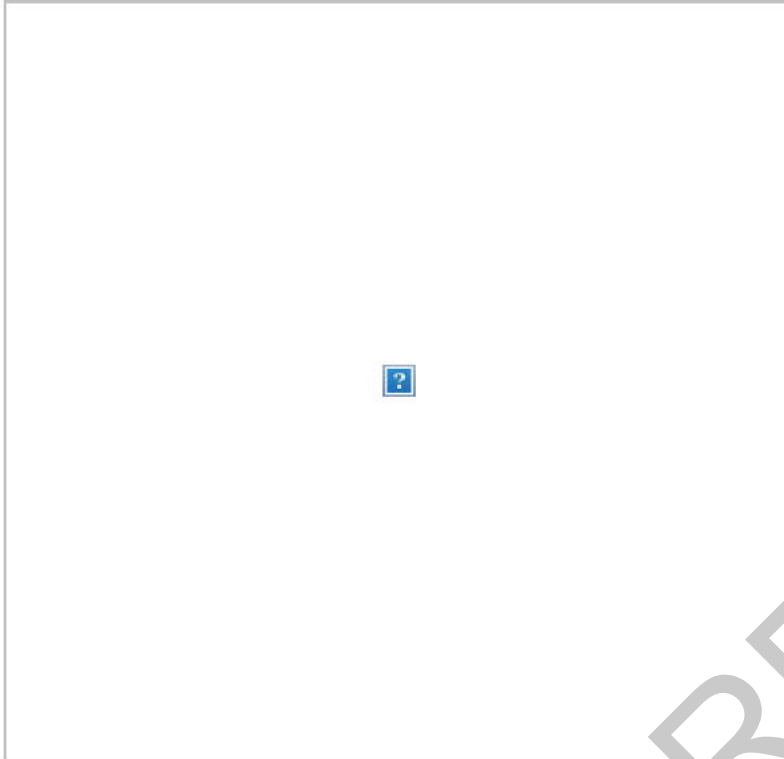
The following are effects based assessments

14. The test for significance is not part of the wetland identification method. My understanding is all natural wetlands are significant.
15. Again the Coastal policy statement is not part of the wetland identification method
16. Ok

The following wetland identification flow chart should be replaced with the more recent chart I have attached

The below flow chart, published in the wetland delineation protocols (Ministry for the Environment, 2020) outlines the pathway for identifying natural wetlands. However, this does not incorporate initial exclusions from the policy definitions (pasture coverage), so a Pasture Test is carried out following the Rapid Test to determine if the exclusion is met. **The updated wetland ID methodology is reflected in the September 2021 flow chart which clearly shows when the wetland exclusions are to be applied. The chart below is to determine the presence of wetland**

that meets the RMA definition only.



Pasture Test

A Pasture Test considers that if a plot is more than 50% covered in pasture species, it is not considered a “natural wetland”, irrespective of the Prevalence/Dominance outcomes, and no further testing is required, as the area meets the natural wetland exclusion definition. It is noted that ‘pasture’ is currently undefined, **On the contrary GWRC has defined pasture and the list of pasture species has been provided to Vaughan.**

Dominance Index

However, if there is a large FAC species presence, a Natural Wetland status is assigned with caution. In such a case, hydric soil indicators are used using guidance from the hydric soils guide (Fraser et al., 2018), followed by a Prevalence Test (described below) if further ambiguity is present.

The revised MfE protocol September 2021 and flow chart (attached) is the Prevalence test is conducted before the Hydrology and soils are tested. The soils and Hydrology are tested if the Prevalence test is uncertain.

Please get in touch if you have questions.

Nga mihi nui

Owen

I work Monday to Wednesday.

Owen Spearpoint (he/him)

[Senior Environmental Monitoring Officer]Kaiāpiha Matua Taiao

Land, Ecology and Climate

GREATER WELLINGTON REGIONAL COUNCIL

Te Pane Matua Taiao

Shed 39, Harbour Quays

PO Box 11646, Manners St, Wellington 6142
T: 04) 8304418 | Cell 027 285 8083
www.gw.govt.nz

From: Michelle Conland <Michelle.Conland@gw.govt.nz>
Sent: Thursday, 4 August 2022 12:03 PM
To: Owen Spearpoint <Owen.Spearpoint@gw.govt.nz>
Cc: James Luty <James.Luty@gw.govt.nz>; Jude Chittock <Jude.Chittock@gw.govt.nz>
Subject: FW: Titahi Bay coastal wetland identification and effects Method.docx

Hi Owen

Please find attached the methodology provided by Vaughan Keesing to undertake the wetland identification assessment as set out in Minute #4 of the Hearing Panel. Please review this methodology and let me know if you have any comments on what is proposed. Please note that the applicant is keen to get this work done next week if possible. I have let Richard know that you don't work Thursdays or Fridays.

Ngā mihi

Michelle

From: Peterson, Richard <Richard.Peterson@stantec.com>
Sent: Thursday, 4 August 2022 8:02 am
To: Michelle Conland <Michelle.Conland@gw.govt.nz>
Cc: Vaughan Keesing [REDACTED] Hudspith, Ezekiel <ezekiel.hudspith@dentons.com>; Cameron, David <David.Cameron2@stantec.com>
Subject: FW: Titahi Bay coastal wetland identification and effects Method.docx

Hi Michelle,

As I indicated earlier in the week, WWL has engaged Vaughan Keesing to provide expert advice on the potential wetland near the Porirua WWTP outfall. Vaughan has prepared the attached methodology for his fieldwork, which I'm providing to GWRC for its review in accordance with the Hearing Panel's minute #4.

Could you please arrange for the review to occur as early as possible next week to enable Vaughan to undertake his fieldwork next week.

Thanks,
Richard.

From: Vaughan Keesing [REDACTED]
Sent: Wednesday, 3 August 2022 3:56 p.m.
To: lze.Rautenbach@stantec.com
Cc: Peterson, Richard <Richard.Peterson@stantec.com>
Subject: Titahi Bay coastal wetland identification and effects Method.docx

So, folk, as I understand it the next stage is an acceptance or certification by GWRC of my proposed method so here is the method statement

Cheers

Vaughan

This electronic message together with any attachments is confidential. If you receive it in error: (i) you must not use, disclose, copy or retain it; (ii) please contact the sender immediately by reply email and then delete the emails. Views expressed in this email may not be those of Boffa Miskell Limited. **Electronic Data.** By accepting or using electronic data files provided by Boffa Miskell Limited, you acknowledge and agree that (i) The purpose for which the files were prepared may differ from the purpose that you intend to use the files, and Boffa Miskell makes no representation that the files are suitable for your intended use; (ii) Boffa Miskell gives no representation as to the accuracy, completeness or correctness of the information in the files. You acknowledge that it is your responsibility to confirm all measurements and data in the files; (iii) The provision of the files does not transfer any copyright or other intellectual property rights in the files or any information contained therein. All references to Boffa Miskell shall be removed if any information in the files is copied or altered in any way; and (iv) To the full extent permitted by law, Boffa Miskell accepts and shall have no liability whatsoever (including in negligence) for any loss, damage or liability arising from the receipt or use of the files. This e-mail message has been scanned for Viruses and Content.

PROACTIVE RELEASE

From: Michelle Conland
Sent: Monday, 8 August 2022 12:05 pm
To: Owen Spearpoint; Paula Hammond; Pam Guest
Cc: James Luty; Jude Chittock
Subject: RE: Titahi Bay coastal wetland identification and effects Method.docx

Thanks so much for that detailed assessment Owen. I'll need to get back to Richard with this information today, so can I please have any additional comments by 3.30pm. Sorry for the short timeframe!

From: Owen Spearpoint <Owen.Spearpoint@gw.govt.nz>
Sent: Monday, 8 August 2022 11:04 am
To: Michelle Conland <Michelle.Conland@gw.govt.nz>; Paula Hammond <Paula.Hammond@gw.govt.nz>; Pam Guest <Pam.Guest@gw.govt.nz>
Cc: James Luty <James.Luty@gw.govt.nz>; Jude Chittock <Jude.Chittock@gw.govt.nz>
Subject: RE: Titahi Bay coastal wetland identification and effects Method.docx

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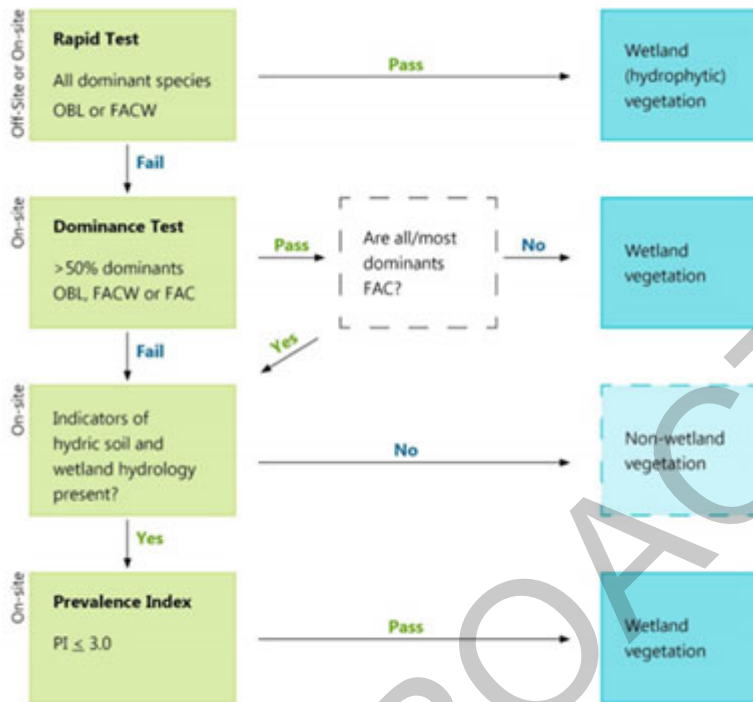
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From: [Joshua Knowles](#)
To: [Jude Chittock](#); [Michelle Conland](#)
Subject: FW: Memorandum to Hearing Panel - WWTP Consent Application
Date: Monday, 15 August 2022 3:33:00 pm
Attachments: [WWTP Hearing - Brian Warburton - Memorandum - 220815.pdf](#)
[image001.png](#)

Hi Both,

I will forward this on to the Hearing Panel for consideration.

Thanks,

Ngā mihi



Josh Knowles (he/ him)

Kaitohutohu / Resource Advisor

Greater Wellington Te Pane Matua Taiao

Mobile: 021 346778

100 Cuba Street, Te Aro, Wellington 6011

Follow us online: [Facebook](#) | [Twitter](#) | [gw.govt.nz](#)

From: brian.warburton@xtra.co.nz <brian.warburton@xtra.co.nz>
Sent: Monday, 15 August 2022 2:53 pm
To: Joshua Knowles <Joshua.Knowles@gw.govt.nz>
Subject: Memorandum to Hearing Panel - WWTP Consent Application

Hello Joshua

Please find attached my memorandum to the Panel. Please forward to them for their consideration.

Brian Warburton

IN THE MATTER OF: **The RESOURCE MANAGEMENT ACT 1991**

AND

IN THE MATTER OF: **An APPLICATION for RESOURCE CONSENTS – WASTEWATER TREATMENT PLANT at PORIRUA**

MEMORANDUM

ISSUES RELATING

to

HEARING PROCEDURES

and to

SUBSTANCE

by

BRIAN WARBURTON

15 August 2022

MEMORANDUM TO THE HEARING PANEL BY BRIAN WARBURTON

Introduction

1. This Memorandum is filed in relation to the application for resource consents associated with the Wastewater Treatment Plant (WWTP) at Porirua.
2. I wish to bring the Panel's attention to four primary matters relating to hearing procedures, and also to the substance of the matters the Panel has been asked to consider.
3. I refer to these matters under four hearings below.

Submitter Engagement

4. The Panel has adjourned the hearing of the WWTP consent application to allow the applicant (PCC) to respond to several matters, some of which relates to the 'natural wetland' issues referred to in the Panel's Minute 4. Minute 4 was issued because of the issues I raised in a memorandum to the Panel dated 20 June 2022.
5. Submitters have not been allowed direct involvement in the discussions and correspondence that has occurred, and is occurring, between the applicant (PCC) and GWRC as a result of Minute 4. I have asked GWRC to involve me and other submitters as they go about addressing the matters to which Minute 4 refers. This approach would be consistent with principles of local government and public entities being accountable and transparent.
6. GWRC has not been willing to accommodate involvement by submitters, and nor has it been willing to proactively release relevant correspondence. Consequently, submitters have found it necessary to resort to the provisions of the LGOIMA to find out what is happening with the applicant's response to Minute 4 (as well as other information requests from the Panel), and also with GWRC's assessment of it.
7. This is a particularly unsatisfactory, inefficient and ineffective mechanism for allowing meaningful public engagement and involvement.
8. Accordingly, I ask that the Panel directs GWRC staff to make available (on a publicly accessible website) all relevant correspondence and documents (including internal and external emails) post-adjournment of the hearing.

Unlawful Discharge of Untreated Wastewater at Rukutane Point.

9. I have recently become aware of the fact that there is a regular, unlawful, discharge of untreated wastewater to the marine environment and via the Rukutane Point outfall.
10. The relevant facts are as follows:
 - i. The Rukutane Point overflow occurs when the network flow from Titahi Bay to the Rukutane Point pumpstation exceeds the pump's capacity.
 - ii. The Rukutane Point pumpstation has a capacity of 135 L/s.
 - iii. When flow is less than 135L/s the pumpstation forces wastewater from Titahi Bay up to the WWTP. Any excess above the pumpstation's capacity is discharged directly as an overflow.
 - iv. Any such overflow results in untreated wastewater discharging directly to the marine environment via the main wastewater outfall.
 - v. According to WWL records, at least twenty such overflows have occurred in the preceding two years.
 - vi. WWL and PCC are currently seeking a new consent for the operation of the WWTP, and for related discharges to air and to water.
 - vii. The scope of the consent sought with the WWTP application does not encompass any overflows at the Rukutane Point pumpstation.
 - viii. PCC has an existing consent (a discharge permit) from Greater Wellington (WGN180027 [34920]). This is commonly known as the "global stormwater consent".
 - ix. The scope of the discharge approved under the terms of the existing consent (WGN180027 [34920]) is limited to "..... the discharge of stormwater, and stormwater occasionally contaminated with wastewater ...".
 - x. The overflow discharge at the Rukutane Point pumpstation is not stormwater, and nor is the discharge to the stormwater network, and therefore is not authorised by the existing discharge permit (WGN180027 [34920]).
 - xi. There is no current coastal permit allowing WWL and PCC to discharge wastewater 'overflows' at Rukutane Point directly into the coastal marine area.
11. As the Panel will appreciate this direct wastewater discharge to the CMA has direct relevance to the WWTP proposal. In simple terms, it means that, if the WWTP application is granted, there will be two discharges via the same outlet: one lawful, one unlawful. This will mean that it will be impractical to monitor compliance with the conditions of the WWTP consent. This in turn will mean that there will be no effective enforcement of the WWTP consent, and there will be environmental degradation.
12. As far as I'm aware this matter was not referred to in the WWTP application nor in expert evidence at the WWTP hearing.

13. I ask the Panel to request information from PCC/WWL and GWRC about this discharge. Further I ask the Panel to allow all submitters the opportunity to comment on this particularly and important issue once PCC/WWL and GWRC have outlined their positions on the matter.

Determination of Landward Boundary of Coastal Marine Area

14. The Panel will recall in Minute 4, and in relation to “vegetation in the coastal margin”, it sought this information: *“What parts, if any, lie above or below mean high water springs.”*
15. I note in passing that the spatial references in this context should be ‘landward’ and ‘seaward’, rather than ‘above’ and ‘below’.
16. That aside, I wish to point out that during the hearing of submissions on the proposed District Plan for Porirua and predominantly in respect of ‘Hearing Stream 1’, council officers made unequivocal assurances that, in dealing with any application for activities on, near or adjacent to an indicative CMA boundary, the Council would require the alignment of MHWS to be determined on a project and site-specific basis. They argued that this was preferable to district-wide mapping being incorporated into the district plan.
17. Under the provisions of LGOIMA I have requested and received correspondence between experts representing PCC/WWL in relation to the WWTP application. This correspondence suggests those parties are unaware of the assurances PCC staff has already given to the proposed Porirua District Plan hearing panel, in so much as staff of Stantec and Cawthron refer to simply adopting an existing GIS layer they refer to as “the Coastal Elevation Layer”.
18. I suggest that the Panel should give some consideration to the issue I have raised, and to the probability that there are conflicting approaches to resource management (as far as determining the alignment of MHWS is concerned), and that this, in fundamental terms as it creates uncertainty, is therefore undesirable.

Alignment of Landward Boundary of Coastal Marine Area

19. I wish to bring the Panel’s attention to some investigations currently underway that are in parallel to the WWTP.
20. It is a matter of public record that in September 2021 I asked PCC for information relating to the determination of the landward CMA boundary at Rukutane Point and as far as it relates to the WWTP application. It is also a matter of public record that PCC staff refused to provide the information I requested. They claimed their refusal was justified because the information was included in the WWTP consent application.

21. This public record is accessible here: <https://fyi.org.nz/request/16945-alignment-of-mhws-wastewater-treatment-plant-outfall-rukutane-point#incoming-66227>
22. The Panel will, of course, already know that the application for the WWTP project includes no information about the alignment of the MHWS at Rukutane Point.
23. PCC's refusal under s17(d) of the LGOIMA, and a related refusal by PCC to provide a copy of legal advice, are both currently the subject of complaints to the Ombudsman's Office.

Summary

24. Above, I have highlighted four matters relating to process and to substance.
25. This memorandum has been necessary because staff of GWRC, and of PCC/WWL, have been unwilling to allow submitters and interested parties the opportunity to continue their involvement in the consenting process for, what is, a project that will have very significant consequences for the Titahi Bay environment, and will adversely affect a significant number of people.
26. I ask that you give due consideration to the matters I have highlighted above and that you issue directions to all parties to ensure that the purpose and principles of the RMA, and the requirements of the Local Government Act relating to public participation, will be adequately attended to.

Brian Warburton



15 August 2022

[REDACTED]

From: Joshua Knowles
Sent: Thursday, 18 August 2022 2:12 pm
To: Mark Ashby; Liz Burge; Shane Kelly; [REDACTED]
Subject: FW: Titahi Bay coastal wetland identification and effects Method.docx
Attachments: Memorandum_method_GWRC_22.08.11.pdf; Titahi Bay coastal wetland identification and effects Method.pdf; 8_2021_Process_diagram.png

Hi All,

Please see the below confirmation from Michelle that the methodology can be certified as appropriate to use to identify the wetland in the vicinity of the Porirua WWTP.

Please let me know if you require me to do anything additional with this information.

Ngā mihi



Josh Knowles (he/ him)

Kaitohutohu / Resource Advisor

Greater Wellington Te Pane Matua Taiao

Mobile: 021 346778

100 Cuba Street, Te Aro, Wellington 6011

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From: Michelle Conland <Michelle.Conland@gw.govt.nz>
Sent: Thursday, 18 August 2022 1:45 pm
To: Joshua Knowles <Joshua.Knowles@gw.govt.nz>
Cc: Jude Chittock <Jude.Chittock@gw.govt.nz>
Subject: FW: Titahi Bay coastal wetland identification and effects Method.docx

Greater Wellington has received the attached methodology for wetland existence and identification, as required by Minute #4, from Vaughan Keesing, on behalf of the applicant. The wetland identification aspects of this methodology have been reviewed by Owen Spearpoint on behalf of Greater Wellington and feedback was provided to the applicant (see below and the attached process diagram). Mr Keesing has provided a response to that feedback in the attached memorandum dated 11 August 2022. Please note that an additional matter (3) was included in an updated methodology from Mr Keesing, so the numbering in Mr Spearpoint and Mr Keesing's earlier correspondence is out by one number.

While there is a difference of opinion in terms of which version of the wetland identification protocol is the most appropriate to use at this time, the outcome of the assessment as a result of Mr Keesing's methodology is the same in this instance, regardless of which version of the protocol is used. As such, on behalf of Greater Wellington I can confirm that the methodology can be certified as appropriate to use to identify the wetland in the vicinity of the Porirua WWTP.

If you would like more information or comment from Mr Spearpoint in relation to the versions of the protocol for wetland identification, please let me know.

Ngā mihi



Michelle Conland (she/her)

Kaitohutohu Matua | Contract Resource Advisor

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PO Box 11646, Manners St, Wellington 6142

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From: Peterson, Richard <Richard.Peterson@stantec.com>

Sent: Friday, 12 August 2022 10:31 am

To: Michelle Conland <Michelle.Conland@gw.govt.nz>

Cc: Hudspith, Ezekiel <ezekiel.hudspith@dentons.com>; Isaac Nicholson <isaac.nicholson@dentons.com>; Vaughan Keesing [REDACTED]

Subject: RE: Titahi Bay coastal wetland identification and effects Method.docx

Hi Michelle,

Thank you for arranging the feedback on the wetland assessment method. Here is the response that has been prepared by Dr Keesing.

I note that he does not agree with all points raised in the GWRC feedback. However I do not consider we need to take this any further as the points of difference do not appear to be material to this particular case.

Look forward to hearing from you before we get Dr Keesing to finalise his assessment. I note that Dr Keesing is away from the office for most of next week, so we may not be able to finalise the assessment until the end of next week or early in the week starting 22 August.

Thanks,
Richard.

From: Michelle Conland <Michelle.Conland@gw.govt.nz>
Sent: Tuesday, 9 August 2022 10:08 a.m.
To: Peterson, Richard <Richard.Peterson@stantec.com>
Cc: Hudspith, Ezekiel <ezekiel.hudspith@dentons.com>; Cameron, David <David.Cameron2@stantec.com>
Subject: FW: Titahi Bay coastal wetland identification and effects Method.docx

Hi Richard

Here are Owen's comments. Please note I haven't cc'd Vaughan Keesing into this email in case you wanted to discuss this first. The key matters are steps 6, and 9-13, and the wetland identification flow chart. However, in terms of point 14, this is set out in the note attached to Policy P40 of the pNRP.

Any questions, please give me a ring.

Thanks

Michelle

From: Owen Spearpoint <Owen.Spearpoint@gw.govt.nz>
Sent: Monday, 8 August 2022 11:04 am
To: Michelle Conland <Michelle.Conland@gw.govt.nz>; Paula Hammond <Paula.Hammond@gw.govt.nz>; Pam Guest <Pam.Guest@gw.govt.nz>
Cc: James Luty <James.Luty@gw.govt.nz>; Jude Chittock <Jude.Chittock@gw.govt.nz>
Subject: RE: Titahi Bay coastal wetland identification and effects Method.docx

Morena Michelle

I have cc'd in Paula and Pam for comment also as there is considerable reference to the NPS-FM and pNRP.

My reply to section 1- Proposed method.

1. Regardless of historic wetland presence if there is wetland present now that is all that matters.

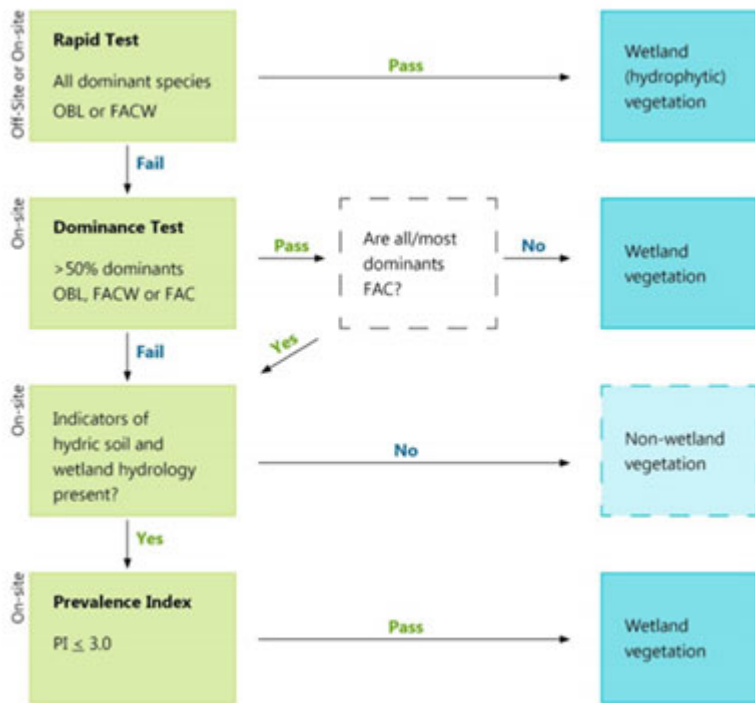
2. Ok
3. Ok
4. Ok
5. Ok
6. Ok but change to (OBL – FACW) = rapid test, can it be clearly determined wetland as per the MFE protocol.
7. Ok
8. Ok
9. This step needs to be changed to wetland species Dominance assessment test, (Must be established a wetland under the RMA definition is present before the exclusions under the plan are assessed).
10. This step needs to be changed to: If wetland species dominance assessment test inconclusive then undertake wetland species Prevalence test.
11. This step needs to be changed to: If prevalence test is inconclusive the wetland soils and hydrology tests will be conducted. (noting that given the situation soil cores or soil testing for hydric (in CMA) may not be available to test.
12. Conclude wetland presence/absence
13. If wetland is present assess natural wetland presence under the pNRP and / or the NPS FM and whether exclusions under these plans and policies apply

The following are effects based assessments

14. The test for significance is not part of the wetland identification method. My understanding is all natural wetlands are significant.
15. Again the Coastal policy statement is not part of the wetland identification method
16. Ok

The following wetland identification flow chart should be replaced with the more recent chart I have attached

The below flow chart, published in the wetland delineation protocols (Ministry for the Environment, 2020) outlines the pathway for identifying natural wetlands. However, this does not incorporate initial exclusions from the policy definitions (pasture coverage), so a Pasture Test is carried out following the Rapid Test to determine if the exclusion is met. **The updated wetland ID methodology is reflected in the September 2021 flow chart which clearly shows when the wetland exclusions are to be applied. The chart below is to determine the presence of wetland that meets the RMA definition only.**



Pasture Test

A Pasture Test considers that if a plot is more than 50% covered in pasture species, it is not considered a “natural wetland”, irrespective of the Prevalence/Dominance outcomes, and no further testing is required, as the area meets the natural wetland exclusion definition. It is noted that ‘pasture’ is currently undefined, **On the contrary GWRC has defined pasture and the list of pasture species has been provided to Vaughan.**

Dominance Index

However, if there is a large FAC species presence, a Natural Wetland status is assigned with caution. In such a case, hydric soil indicators are used using guidance from the hydric soils guide (Fraser et al., 2018), followed by a Prevalence Test (described below) if further ambiguity is present.

The revised MfE protocol September 2021 and flow chart (attached) is the Prevalence test is conducted before the Hydrology and soils are tested. The soils and Hydrology are tested if the Prevalence test is uncertain.

Please get in touch if you have questions.

Nga mihi nui

Owen

I work Monday to Wednesday.

Owen Spearpoint (he/him)

|Senior Environmental Monitoring Officer|Kaiāpiha Matua Taiao

Land, Ecology and Climate

GREATER WELLINGTON REGIONAL COUNCIL

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PROACTIVE RELEASE



Memorandum

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Tauranga
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+64 7 571 5511

Dunedin
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+64 3 470 0460

Attention: Richard Peterson
Company: Stantec
Date: 11.08.2022
From: Dr Vaughan Keesing
Message Ref: Titahi Bay Wastewater wetland

Dear Sir

I make the following responses to GWRC's review¹ of my proposed methodology to identify the potential natural wetland on the shore of Titahi Bay area.

1 Regardless of historic wetland presence if there is wetland present now that is all that matters.

Response: Agree this is not an identification method, but was part of the wider method.

6. Ok but change to (OBL – FACW) = rapid test, can it be clearly determined wetland as per the MFE protocol.

Response: The method was explaining that the species present will be classified as per Clarkson 2021 classifications (Clarkson et al. 2021) which has the range FACUP to OBL not that the rapid assessment determines wetland on that range. I agree the rapid assessment looks for dominance of FACW and OBL.

9. This step needs to be changed to wetland species Dominance assessment test, (Must be established a wetland under the RMA definition is present before the exclusions under the plan are assessed).

Response: Agree, I have moved this up the methods.

10 This step needs to be changed to: If wetland species dominance assessment test inconclusive then undertake wetland species Prevalence test.

Response: Disagree we follow the statutory documents MfE protocol (diagram included) which is to undertake the prevalence last, but after exclusions it does not matter in what order in determining if natural wetland (soils and prevalence etc).

11 This step needs to be changed to: If prevalence test is inconclusive the wetland soils and hydrology tests will be conducted (noting that given the situation soil cores or soil testing for hydric (in CMA) may not be available to test).

Response: disagree as noted above and the test of a wetland in the absence of wet adapted flora and fauna does not then depend on soils and hydrology.

¹ Set out in the email of Mr Owen Spearpoint, dated 8 August 2022.

13 If wetland is present assess natural wetland presence under the pNRP and / or the NPS FM and whether exclusions under these plans and policies apply.

Response: following the dominance test we will have already tested for exclusions.

The following are effects based assessments

14. *The test for significance is not part of the wetland identification method. My understanding is all natural wetlands are significant.*

Response: Agree that test for significance is not part of a natural wetland determination but it is part of the wider method brief.

15: *Again the Coastal policy statement is not part of the wetland identification method.*

Response : Agree, as above.

The following wetland identification flow chart should be replaced with the more recent chart I have attached.

Response : Disagree as the diagram proposed is not a statutory one, unlike the one used. The diagram proposed is simply in the MfE Guidance document, which is now somewhat out of date since the release of the exposure draft. Also, as proven in the *Adams* case the proposed diagram is fundamentally flawed.

While I have responded to the Regional Council's comments on various steps, I do not consider any differences of opinion about the methodology to be material to the identification and assessment of this particular wetland. Having already visited the site, it is clear to me that it is a natural wetland and that its assessment as such need not pass the rapid step in the methodology.

Dr Vaughan Keesing
Ecologist, Partner
Boffa Miskell

12.08.2022

Clarkson, B. R., N. B. Fitzgerald, P. D. Champion, L. Forester, and B. D. Rance. 2021. "New Zealand Wetland Plant Indicator Status Ratings 2021: Data Associated with Manaaki Whenua - Landcare Research Contract Report LC3975 for Hawke's Bay Regional Council." Manaaki Whenua - Landcare Research.

[REDACTED]

From: Joshua Knowles
Sent: Thursday, 18 August 2022 2:12 pm
To: Mark Ashby; Liz Burge; Shane Kelly; [REDACTED]
Subject: FW: Titahi Bay coastal wetland identification and effects Method.docx
Attachments: Memorandum_method_GWRC_22.08.11.pdf; Titahi Bay coastal wetland identification and effects Method.pdf; 8_2021_Process_diagram.png

Hi All,

Please see the below confirmation from Michelle that the methodology can be certified as appropriate to use to identify the wetland in the vicinity of the Porirua WWTP.

Please let me know if you require me to do anything additional with this information.

Ngā mihi



Josh Knowles (he/ him)

Kaitohutohu / Resource Advisor

Greater Wellington Te Pane Matua Taiao

Mobile: 021 346778

100 Cuba Street, Te Aro, Wellington 6011

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From: Michelle Conland <Michelle.Conland@gw.govt.nz>
Sent: Thursday, 18 August 2022 1:45 pm
To: Joshua Knowles <Joshua.Knowles@gw.govt.nz>
Cc: Jude Chittock <Jude.Chittock@gw.govt.nz>
Subject: FW: Titahi Bay coastal wetland identification and effects Method.docx

Greater Wellington has received the attached methodology for wetland existence and identification, as required by Minute #4, from Vaughan Keesing, on behalf of the applicant. The wetland identification aspects of this methodology have been reviewed by Owen Spearpoint on behalf of Greater Wellington and feedback was provided to the applicant (see below and the attached process diagram). Mr Keesing has provided a response to that feedback in the attached memorandum dated 11 August 2022. Please note that an additional matter (3) was included in an updated methodology from Mr Keesing, so the numbering in Mr Spearpoint and Mr Keesing's earlier correspondence is out by one number.

While there is a difference of opinion in terms of which version of the wetland identification protocol is the most appropriate to use at this time, the outcome of the assessment as a result of Mr Keesing's methodology is the same in this instance, regardless of which version of the protocol is used. As such, on behalf of Greater Wellington I can confirm that the methodology can be certified as appropriate to use to identify the wetland in the vicinity of the Porirua WWTP.

If you would like more information or comment from Mr Spearpoint in relation to the versions of the protocol for wetland identification, please let me know.

Ngā mihi



Michelle Conland (she/her)

Kaitohutohu Matua | Contract Resource Advisor

Greater Wellington Te Pane Matua Taiao

101 Cuba Street, Te Aro

PO Box 11646, Manners St, Wellington 6142

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Cc: Hudspith, Ezekiel <ezekiel.hudspith@dentons.com>; Isaac Nicholson <isaac.nicholson@dentons.com>; Vaughan Keesing [REDACTED]

Subject: RE: Titahi Bay coastal wetland identification and effects Method.docx

Hi Michelle,

Thank you for arranging the feedback on the wetland assessment method. Here is the response that has been prepared by Dr Keesing.

I note that he does not agree with all points raised in the GWRC feedback. However I do not consider we need to take this any further as the points of difference do not appear to be material to this particular case.

Look forward to hearing from you before we get Dr Keesing to finalise his assessment. I note that Dr Keesing is away from the office for most of next week, so we may not be able to finalise the assessment until the end of next week or early in the week starting 22 August.

Thanks,
Richard.

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To: Peterson, Richard <Richard.Peterson@stantec.com>
Cc: Hudspith, Ezekiel <ezekiel.hudspith@dentons.com>; Cameron, David <David.Cameron2@stantec.com>
Subject: FW: Titahi Bay coastal wetland identification and effects Method.docx

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Any questions, please give me a ring.

Thanks

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Sent: Monday, 8 August 2022 11:04 am
To: Michelle Conland <Michelle.Conland@gw.govt.nz>; Paula Hammond <Paula.Hammond@gw.govt.nz>; Pam Guest <Pam.Guest@gw.govt.nz>
Cc: James Luty <James.Luty@gw.govt.nz>; Jude Chittock <Jude.Chittock@gw.govt.nz>
Subject: RE: Titahi Bay coastal wetland identification and effects Method.docx

Morena Michelle

I have cc'd in Paula and Pam for comment also as there is considerable reference to the NPS-FM and pNRP.

My reply to section 1- Proposed method.

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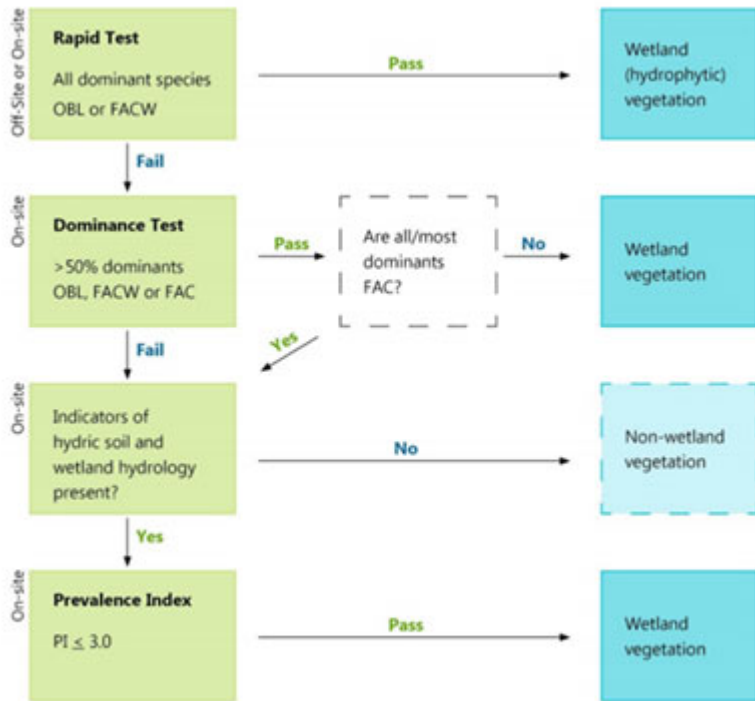
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Dominance Index

However, if there is a large FAC species presence, a Natural Wetland status is assigned with caution. In such a case, hydric soil indicators are used using guidance from the hydric soils guide (Fraser et al., 2018), followed by a Prevalence Test (described below) if further ambiguity is present.

The revised MfE protocol September 2021 and flow chart (attached) is the Prevalence test is conducted before the Hydrology and soils are tested. The soils and Hydrology are tested if the Prevalence test is uncertain.

Please get in touch if you have questions.

Nga mihi nui

Owen

I work Monday to Wednesday.

Owen Spearpoint (he/him)

|Senior Environmental Monitoring Officer|Kaiāpiha Matua Taiao

Land, Ecology and Climate

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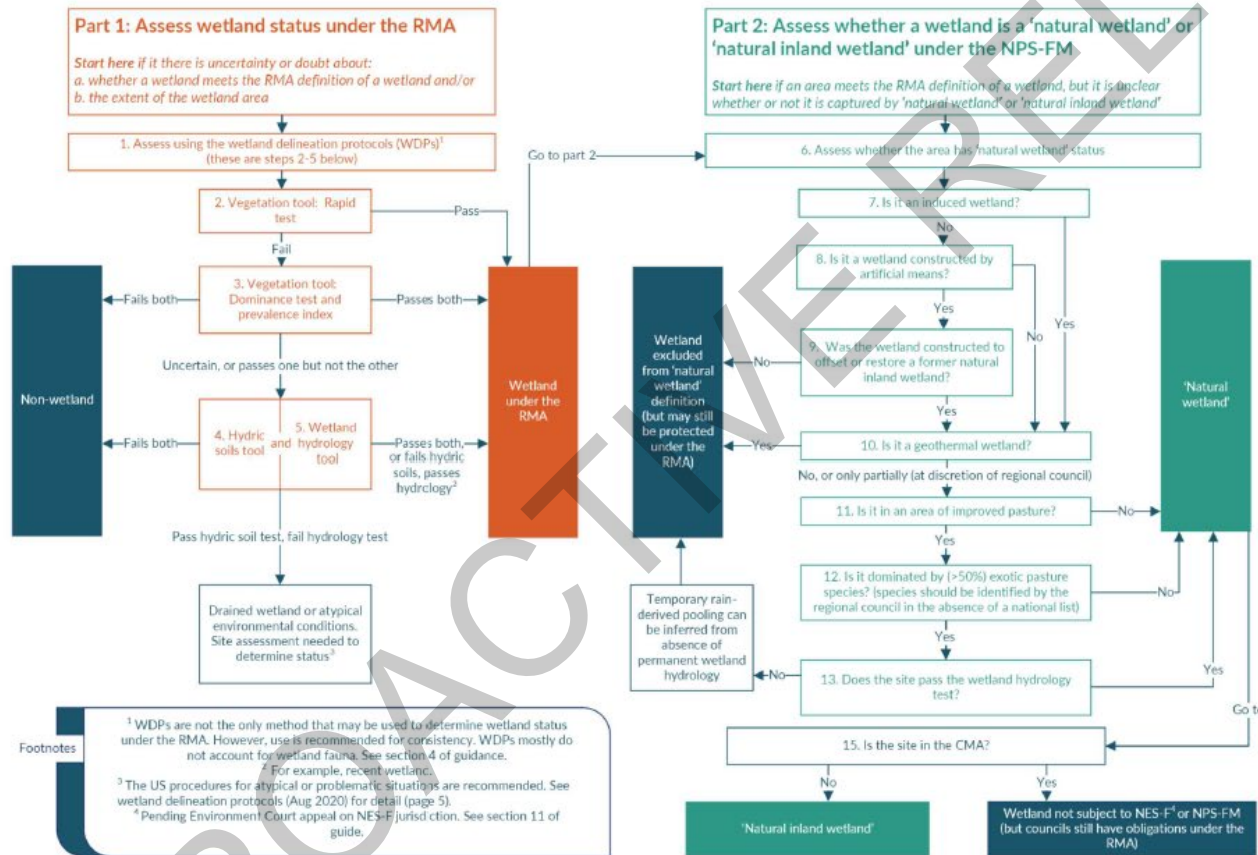
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PROACTIVE RELEASE

3.4 A process to assess 'natural wetland' and 'natural inland wetland' status

Figure 1 Assessing 'natural wetland' and 'natural inland wetland' status under the NPS-FM



¹ WDPs are not the only method that may be used to determine wetland status under the RMA. However, use is recommended for consistency. WDPs mostly do not account for wetland fauna. See section 4 of guidance.
 For example, recent wetland.

² The US procedures for atypical or problematic situations are recommended. See wetland delineation protocols (Aug 2020) for detail (page 5).

³ Pending Environment Court appeal on NES-F jurisdiction. See section 11 of guide.

From: Michelle Conland
Sent: Friday, 19 August 2022 10:54 am
To: Peterson, Richard
Cc: Hudspith, Ezekiel; Vaughan Keesing; Joshua Knowles
Subject: RE: Titahi Bay coastal wetland identification and effects Method.docx

Categories: Saved to OurSpace

Good morning

On behalf of Greater Wellington I can confirm that this methodology has been certified as appropriate to use to determine the existence of and identification of the wetland in the vicinity of the Porirua WWTP in relation to point 11 of Minute #4.

Ngā mihi



Michelle Conland (she/her)

Kaitohutohu Matua | Contract Resource Advisor

Greater Wellington Te Pane Matua Taiao

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From: Peterson, Richard <Richard.Peterson@stantec.com>

Sent: Thursday, 18 August 2022 1:04 pm

To: Michelle Conland <Michelle.Conland@gw.govt.nz>

Cc: Hudspith, Ezekiel <ezekiel.hudspith@dentons.com>; Vaughan Keesing

Subject: FW: Titahi Bay coastal wetland identification and effects Method.docx

Hi Michelle,

Vaughan has updated the method statement as requested.

Cheers,
Richard.

From: Vaughan Keesing [REDACTED]
Sent: Thursday, 18 August 2022 12:58 p.m.
To: Peterson, Richard <Richard.Peterson@stantec.com>
Subject: Titahi Bay coastal wetland identification and effects Method.docx

Hi, I have added item 3 to the methods list to cover MHWS
V

This electronic message together with any attachments is confidential. If you receive it in error: (i) you must not use, disclose, copy or retain it; (ii) please contact the sender immediately by reply email and then delete the emails. Views expressed in this email may not be those of Boffa Miskell Limited. **Electronic Data.** By accepting or using electronic data files provided by Boffa Miskell Limited, you acknowledge and agree that (i) The purpose for which the files were prepared may differ from the purpose that you intend to use the files, and Boffa Miskell makes no representation that the files are suitable for your intended use; (ii) Boffa Miskell gives no representation as to the accuracy, completeness or correctness of the information in the files. You acknowledge that it is your responsibility to confirm all measurements and data in the files; (iii) The provision of the files does not transfer any copyright or other intellectual property rights in the files or any information contained therein. All references to Boffa Miskell shall be removed if any information in the files is copied or altered in any way; and (iv) To the full extent permitted by law, Boffa Miskell accepts and shall have no liability whatsoever (including in negligence) for any loss, damage or liability arising from the receipt or use of the files. This e-mail message has been scanned for Viruses and Content.

Titahi Bay Wastewater discharge to sea potential coastal wetland identification and effects Method.

The background to the development of this specific site methodology is presented in section 2. The proposed method for site survey, analysis and effects determination is as follows.

Section 1 - In brief then the proposed method for this assessment is:

1. View the site in retrolens and look for evidence in the literature of its presence historically.
2. Go to site and view from a vantage point the feature in question (photograph)
3. Determine, by way of physical signs, where the typical high tide line is (i.e. the mean high water spring - the highest level that spring tides reach on the average over a period of time (often 19 years)). This level is generally close to being the "high water mark" where debris accumulates on the shore. I shall explore the feature to locate debris lines as well as consider the topology of the beach and the vegetation clues. All these are not indications of the highest spring tide average, but are sign of the typical high tide mark which is the relevant tidal reach in terms of effects to the feature.
4. Determine the heterogeneity of the vegetation, are there 1 or more distinct vegetation communities – roughly map the feature and communities.
5. Check the context and note wider aspects - is the topography and visually present hydrology suggestive of potential wetland?
6. Are there unusual circumstances or effects in play on or influencing the feature?
7. Enter and rapidly assess the vegetation cover dominance and classification (FACU-OBL) - can it be clearly determined to be wetland or dryland?
8. If it cannot be determined- select representative plot positions in each of the identified vegetation communities, several may be required if the communities are variable in cover, record this variability if present.
9. Undertake plot/s placement and species cover percentage cover estimates
10. Using the data and context test exclusions
11. Failure to meet exclusions use the wetland dominance test,
12. If result still ambiguous use the other indicators (noting that given the situation soil cores or soil testing for hydric (in CMA) may not be available or applicable to test.
13. Lastly utilise the prevalence indices.
14. Conclude if a natural wetland under the PNRP and / or the NPS FM
15. Test for significance under policy 23 of the GWRC RPS.
16. Utilise this result to examine NZCPS policy 11 applicability.
17. Use literature, research and similar effects records from experience to determine the likelihood of adverse effects related to the proposed discharge (water level, sedimentation, contaminants), Consider future state up to 2043 and consider also climate change effects.

Section 2. Relevant policies and protocols

GWRC PNRP (Appeals version 2022)

A natural wetland is - a permanently or intermittently wet area, shallow water and land water margin that supports a natural ecosystem of plants and animals that are adapted to wet conditions, including in the beds of lakes and rivers, the coastal marine area (e.g. saltmarsh), and groundwater-fed wetlands (e.g. springs).

Here the PNRP does not distinguish wetland in the CMA as separate as does the NPS FM (2020)

Natural wetlands do not include:

- (a) a wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing former natural wetland); or
- (b) a geothermal wetland; or
- (c) any area of improved pasture that, at 3 September 2020, is dominated by (that is more than 50% of) exotic pasture species and is subject to temporary rain derived water pooling.

In the case of uncertainty or dispute about the existence or extent of a natural wetland, a regional council must have regard to the Wetland Delineation Protocols available at <https://environment.govt.nz/publications/wetland-delineation-protocols/>. This is the Clarkson (2013, 2018) wetlands delineation process also now include in the NPS FM (2020) as MfE wetland delineation protocol (2020).

The definition of a wetland in New Zealand is outlined in the RMA (Resource Management Act, 1991):

“Wetland includes permanently or intermittently wet areas, shallow water, and land water margins that support a natural ecosystem of plants and animals that are adapted to wet conditions”

A ‘Natural Wetland’ is defined in the NPS-FM using the same definition as ‘Wetland’ in the RMA, but with the following exclusions:

- (a) *A wetland constructed by artificial means (unless it was constructed to offset impacts on, or restore, an existing or former Natural Wetland); or*
- (b) *A geothermal wetland; or*
- (c) *Any area of improved pasture that, at the commencement date, is dominated by (that is more than 50 per cent of) exotic pasture species and is subject to temporary rain-derived water pooling.*

A revised definition of the exclusions is proposed by MfE (but not yet confirmed) in the Exposure Draft of the NPS-FM. The anticipated date for confirmation of these changes is around November 2022.

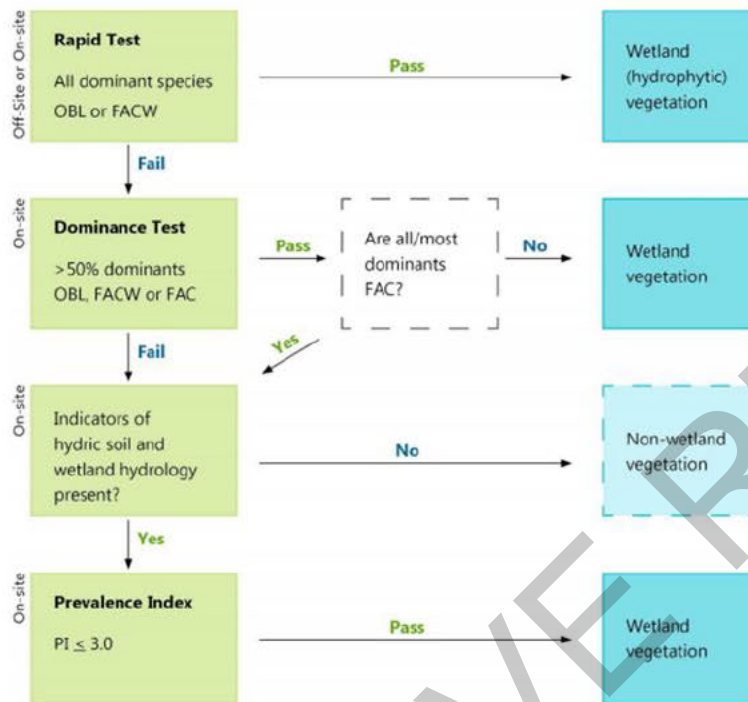
The proposed changes are below:

- (a) *a deliberately constructed wetland, other than a wetland constructed to offset impacts on, or to restore, an existing or former natural wetland as part of giving effect to the effects management hierarchy; or*
- (b) *a wetland that has developed in or around a deliberately constructed water body, since the construction of the water body; or*
- (c) *a geothermal wetland; or*
- (d) *a wetland that:*
 - (i) *is within an area of pasture; and*
 - (ii) *has ground cover comprising more than 50% exotic pasture species (as identified in the National List of Exotic Pasture Species (see clause 1.8)); and*
 - (iii) *is not known to contain threatened species*

“Natural inland wetland” also means a natural wetland that is not in the coastal mariner area (CMA).

Natural wetland assessment

The below flow chart, published in the wetland delineation protocols (Ministry for the Environment, 2020) outlines the pathway for identifying natural wetlands. However, this does not incorporate initial exclusions from the policy definitions (pasture coverage), so a Pasture Test is carried out following the Rapid Test to determine if the exclusion is met.



The procedure for determining natural wetland status is carried out by establishing broad vegetation communities of a feature and the outer boundaries of a feature and then rapidly visually assessing the dominant species in the communities of the feature, using topography (and hydrology) to assist with these broad areas. Once these areas are identified, three tests (Pasture test, Dominance Index, and Prevalence Index) are conducted to determine wetland viability or otherwise. These tests require at least one representative 2 x 2 m vegetation plot in each established community, whereby the percent cover of all species within the plot is estimated (based on above-ground live biomass). Locations of areas and the delineations which resulted from this are identified in Figure 1.

Each vegetation species identified within a 2 x 2 m vegetation plot is allocated to a prescribed category based on its degree of affinity for water, as described by Clarkson (2013). These categories are:

- **OBL:** Obligate. Almost always is a hydrophyte, rarely in uplands (estimated probability >99% occurrence in wetlands)
- **FACW:** Facultative Wetland. Usually is a hydrophyte but occasionally found in uplands (estimated probability 67–99% occurrence in wetlands)
- **FAC:** Facultative. Commonly occurs as either a hydrophyte or non-hydrophyte (estimated probability 34–66% occurrence in wetlands)

- **FACU:** Facultative Upland. Occasionally is a hydrophyte but usually occurs in uplands (estimated probability 1–33% occurrence in wetlands)
- **UPL:** Obligate Upland. Rarely is a hydrophyte, almost always in uplands (estimated probability <1% occurrence in wetlands)

These categories, in conjunction with percent cover estimates from each plot, feed into the resulting Pasture Test, Dominance Index and Prevalence Index results:

Pasture Test

A Pasture Test considers that if a plot is more than 50% covered in pasture species, it is not considered a “natural wetland”, irrespective of the Prevalence/Dominance outcomes, and no further testing is required, as the area meets the natural wetland exclusion definition. It is noted that ‘pasture’ is currently undefined, but the draft exposure of the NPS-FM provides a restricted list of species which are likely to be the only species considered to be ‘pasture’ once the draft exposure changes are made, and those have been used in this report.

Dominance Index

This test ascertains the “dominant” species following a 50/20 rule, whereby all species are ranked according to their percentage cover, and the highest covering species are sequentially selected until cumulative coverage exceeds 50%. Any other species which comprise at least 20% coverage are also selected. If more than 50% of the dominant species are OBL, FACW, or FAC species, then the “Dominance Test” threshold is met and the area is considered a natural wetland. However, if there is a large FAC species presence, a Natural Wetland status is assigned with caution. In such a case, hydric soil indicators are used using guidance from the hydric soils guide (Fraser et al., 2018), followed by a Prevalence Test (described below) if further ambiguity is present.

Hydric soils

Hydric soils are considered in ambiguous scenarios, whereby soil is observed to a depth and features typical of hydric soils (e.g. iron mottling, peat, gleying) are noted to aid with wetland determination.

Prevalence Index

Using the vegetation plot percent cover data, a Prevalence Index Score is calculated for each plot. Mathematically, this score must fall between 1 and 5, with 1 indicating entirely wetland species (OBL), and 5 indicating entirely upland species (UPL). A score below 3 is indicative of a wetland/hydrophilic community, though Clarkson (2013) cautions that a score between 2.5 and 3.5 is not reliable for determining a hydrophilic community on vegetation measures alone.

From: Joshua Knowles
Sent: Friday, 19 August 2022 9:56 am
To: Michelle Conland
Subject: RE: Titahi Bay coastal wetland identification and effects Method.docx

I sent already sorry!

Shane, Liz, and Mark have all responded to say that it seems ok.

Thanks,

Ngā mihi



Josh Knowles (he/ him)
Kaitohutohu / Resource Advisor
Greater Wellington Te Pane Matua Taiao
Mobile: 021 346778
100 Cuba Street, Te Aro, Wellington 6011
Follow us online: [Facebook](#) | [Twitter](#) | gw.govt.nz

From: Michelle Conland <Michelle.Conland@gw.govt.nz>
Sent: Friday, 19 August 2022 9:52 am
To: Joshua Knowles <Joshua.Knowles@gw.govt.nz>
Subject: RE: Titahi Bay coastal wetland identification and effects Method.docx

Hold off sending this to the panel if you haven't already – Jude wants some extra introductory text

From: Michelle Conland
Sent: Thursday, 18 August 2022 1:45 pm
To: Joshua Knowles <Joshua.Knowles@gw.govt.nz>
Cc: Jude Chittock <Jude.Chittock@gw.govt.nz>
Subject: FW: Titahi Bay coastal wetland identification and effects Method.docx

Greater Wellington has received the attached methodology for wetland existence and identification, as required by Minute #4, from Vaughan Keesing, on behalf of the applicant. The wetland identification aspects of this methodology have been reviewed by Owen Spearpoint on behalf of Greater Wellington and feedback was provided to the applicant (see below and the attached process diagram). Mr Keesing has provided a response to that feedback in the attached memorandum dated 11 August 2022. Please note that an additional matter (3) was included in an updated methodology from Mr Keesing, so the numbering in Mr Spearpoint and Mr Keesing's earlier correspondence is out by one number.

While there is a difference of opinion in terms of which version of the wetland identification protocol is the most appropriate to use at this time, the outcome of the assessment as a result of Mr Keesing's methodology is the same in this instance, regardless of which version of the protocol is used. As such, on behalf of Greater Wellington I can confirm that the methodology can be certified as appropriate to use to identify the wetland in the vicinity of the Porirua WWTP.

If you would like more information or comment from Mr Spearpoint in relation to the versions of the protocol for wetland identification, please let me know.

Ngā mihi



Michelle Conland (she/her)
Kaitohutohu Matua | Contract Resource Advisor
Greater Wellington Te Pane Matua Taiao
101 Cuba Street, Te Aro
PO Box 11646, Manners St, Wellington 6142
Follow us online: [Facebook](#) | [Twitter](#) | gw.govt.nz

From: Peterson, Richard <Richard.Peterson@stantec.com>
Sent: Friday, 12 August 2022 10:31 am

To: Michelle Conland <Michelle.Conland@gw.govt.nz>

Cc: Hudspith, Ezekiel <ezekiel.hudspith@dentons.com>; Isaac Nicholson <isaac.nicholson@dentons.com>; Vaughan Keesing [REDACTED]

Subject: RE: Titahi Bay coastal wetland identification and effects Method.docx

Hi Michelle,

Thank you for arranging the feedback on the wetland assessment method. Here is the response that has been prepared by Dr Keesing.

I note that he does not agree with all points raised in the GWRC feedback. However I do not consider we need to take this any further as the points of difference do not appear to be material to this particular case.

Look forward to hearing from you before we get Dr Keesing to finalise his assessment. I note that Dr Keesing is away from the office for most of next week, so we may not be able to finalise the assessment until the end of next week or early in the week starting 22 August.

Thanks,
Richard.

From: Michelle Conland <Michelle.Conland@gw.govt.nz>

Sent: Tuesday, 9 August 2022 10:08 a.m.

To: Peterson, Richard <Richard.Peterson@stantec.com>

Cc: Hudspith, Ezekiel <ezekiel.hudspith@dentons.com>; Cameron, David <David.Cameron2@stantec.com>

Subject: FW: Titahi Bay coastal wetland identification and effects Method.docx

Hi Richard

Here are Owen's comments. Please note I haven't cc'd Vaughan Keesing into this email in case you wanted to discuss this first. The key matters are steps 6, and 9-13, and the wetland identification flow chart. However, in terms of point 14, this is set out in the note attached to Policy P40 of the pNRP.

Any questions, please give me a ring.

Thanks

Michelle

From: Owen Spearpoint <Owen.Spearpoint@gw.govt.nz>

Sent: Monday, 8 August 2022 11:04 am

To: Michelle Conland <Michelle.Conland@gw.govt.nz>; Paula Hammond <Paula.Hammond@gw.govt.nz>; Pam Guest <Pam.Guest@gw.govt.nz>

Cc: James Luty <James.Luty@gw.govt.nz>; Jude Chittock <Jude.Chittock@gw.govt.nz>

Subject: RE: Titahi Bay coastal wetland identification and effects Method.docx

Morena Michelle

I have cc'd in Paula and Pam for comment also as there is considerable reference to the NPS-FM and pNRP.

My reply to section 1- Proposed method.

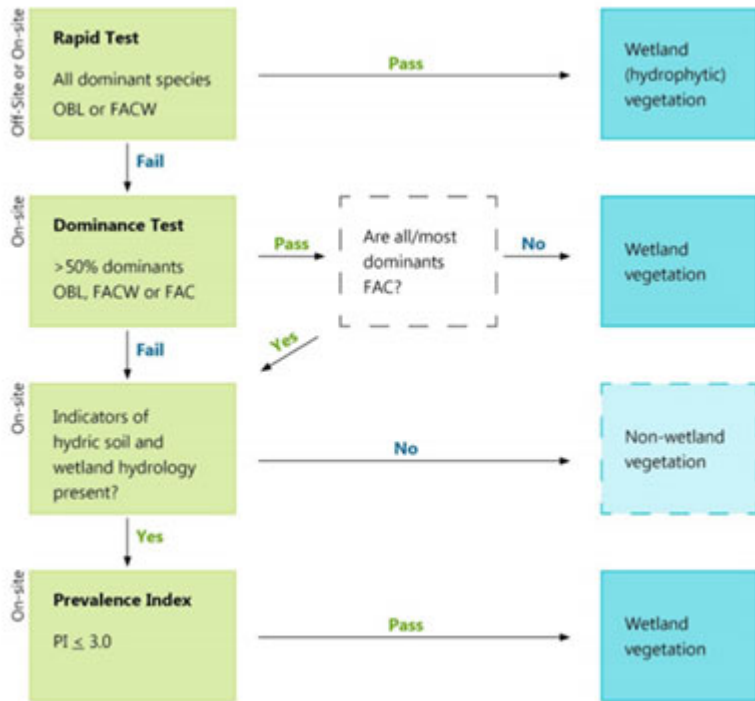
1. Regardless of historic wetland presence if there is wetland present now that is all that matters.
2. Ok
3. Ok
4. Ok
5. Ok
6. Ok but change to (OBL – FACW) = rapid test, can it be clearly determined wetland as per the MFE protocol.
7. Ok
8. Ok
9. This step needs to be changed to wetland species Dominance assessment test, (Must be established a wetland under the RMA definition is present before the exclusions under the plan are assessed).
10. This step needs to be changed to: If wetland species dominance assessment test inconclusive then undertake wetland species Prevalence test.
11. This step needs to be changed to: If prevalence test is inconclusive the wetland soils and hydrology tests will be conducted. (noting that given the situation soil cores or soil testing for hydric (in CMA) may not be available to test.
12. Conclude wetland presence/absence
13. If wetland is present assess natural wetland presence under the pNRP and / or the NPS FM and whether exclusions under these plans and policies apply

The following are effects based assessments

14. The test for significance is not part of the wetland identification method. My understanding is all natural wetlands are significant.
15. Again the Coastal policy statement is not part of the wetland identification method
16. Ok

The following wetland identification flow chart should be replaced with the more recent chart I have attached

The below flow chart, published in the wetland delineation protocols (Ministry for the Environment, 2020) outlines the pathway for identifying natural wetlands. However, this does not incorporate initial exclusions from the policy definitions (pasture coverage), so a Pasture Test is carried out following the Rapid Test to determine if the exclusion is met. **The updated wetland ID methodology is reflected in the September 2021 flow chart which clearly shows when the wetland exclusions are to be applied. The chart below is to determine the presence of wetland that meets the RMA definition only.**



Pasture Test

A Pasture Test considers that if a plot is more than 50% covered in pasture species, it is not considered a “natural wetland”, irrespective of the Prevalence/Dominance outcomes, and no further testing is required, as the area meets the natural wetland exclusion definition. It is noted that ‘pasture’ is currently undefined, **On the contrary GWRC has defined pasture and the list of pasture species has been provided to Vaughan.**

Dominance Index

However, if there is a large FAC species presence, a Natural Wetland status is assigned with caution. In such a case, hydric soil indicators are used using guidance from the hydric soils guide (Fraser et al., 2018), followed by a Prevalence Test (described below) if further ambiguity is present.

The revised MfE protocol September 2021 and flow chart (attached) is the Prevalence test is conducted before the Hydrology and soils are tested. The soils and Hydrology are tested if the Prevalence test is uncertain.

Please get in touch if you have questions.

Nga mihi nui

Owen

I work Monday to Wednesday.

Owen Spearpoint (he/him)

|Senior Environmental Monitoring Officer|Kaiāpiha Matua Taiao

Land, Ecology and Climate

GREATER WELLINGTON REGIONAL COUNCIL

Te Pane Matua Taiao

Shed 39, Harbour Quays

PO Box 11646, Manners St, Wellington 6142

T: 04) 8304418| Cell 027 285 8083

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PROACTIVE RELEASE

From: [Michelle Conland](#)
To: [Peterson, Richard](#)
Subject: Meeting on Thursday if possible
Date: Tuesday, 23 August 2022 11:32:00 am
Attachments: [image001.png](#)

Hi Richard

I'm a bit belatedly following up on my idea to have a teams meeting to discuss the NES-F with Zeke and Kerry also. Could you please let me know if you and Zeke (and anyone else who wishes to join us) are available this Thursday? Morning or afternoon is fine for us. If not please suggest some times that work for you.

Thanks

Michelle



Michelle Conland (she/her)

Kaitohutohu Matua | Contract Resource Advisor

Greater Wellington Te Pane Matua Taiao

M [REDACTED]

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IN THE MATTER OF: **The RESOURCE MANAGEMENT ACT 1991**

AND

IN THE MATTER OF: **An APPLICATION for RESOURCE CONSENTS – WASTEWATER TREATMENT PLANT at PORIRUA**

MEMORANDUM

SUPPLEMENTARY STATEMENT

by

BRIAN WARBURTON

20 June 2022

SUPPLEMENTARY STATEMENT TO THE HEARING PANEL BY BRIAN WARBURTON

Introduction

1. This Memorandum is filed in relation to the application for resource consents associated with the Wastewater Treatment Plant (WWTP) at Porirua.
2. I seek leave from the Panel to file a supplementary statement in support of my submission, and in respect of the provisions and implications of the National Environmental Standards for Freshwater that have been the subject of:
 - the representation to the Panel by Mr Peterson for the applicant (PCC) on 13 June 2022,
 - the preliminary legal submissions by Mr Hudspith for the applicant (PCC) on 13 June 2022,
 - my presentation to the Panel on 14 June 2022, and
 - the reply on behalf of GWRC by Ms Conland on 16 June 2022.
3. I am conscious of the fact that on 14 June 2022 I provided information in my verbal presentation that is material to the Panel's deliberations. I referred to advice I had (then) recently received from a reliable source suggesting the presence of a natural wetland in the vicinity of the WWTP outfall. The tardiness of this advice was genuine. I have prepared and sent this memorandum because I think it is materially important to the proceedings, and the Panel's considerations.

Natural Wetland

4. I have sought, and now received, clarification about the natural wetland in the vicinity of the WWTP outfall to which I referred on 14 June 2022.
5. I am informed that this is part of the coastal environment in the vicinity of the WWTP outfall is best described as an: "*Apodasmia similis-Selliera radicans- Samolus repens var. repens* rushland".
6. The area to which I refer is generally defined on the attached aerial photograph (Attachment A). The image in Attachment B shows this area in relation to the seaward edge of the 'LINZ NZ Coastlines – MWS' polygon which is accessible here: <https://data.linz.govt.nz/layer/105085-nz-coastline-mean-high-water/> and to which I also referred on 14 June 2022. The highlighted part of these images has an area of about 85m², and encompasses land between 59 and 80 metres from the site of the WWTP outfall.
7. The three species encompassed by the description cited above are all indicator wetland species. In this regard I refer to GWRC's Technical Guidance here:

<https://archive.gw.govt.nz/assets/Biodiversity/Wetland-Technical-Determination.pdf>

I also provide the following links to technical information relating to each species accessible from the New Zealand Plant Conservation Network website.

<https://www.nzpcn.org.nz/flora/species/apodasmia-similis/>

<https://www.nzpcn.org.nz/flora/species/selliera-radicans/>

<https://www.nzpcn.org.nz/flora/species/samolus-repens-var-repens/>

8. I have attached photographs of examples of these three species (Attachment C). These photos were taken at Rukutane Point on 18 June 2022 and show vegetation within the 85m² area along with some immediately adjacent land.

Consent Requirements

9. From my perspective, the Panel has received some conflicting and inconclusive advice about the status of the proposed WWTP upgrade as far as the requirements and obligations of the NES-F are concerned.
10. On 13 June 2022 Mr Peterson (planner for the applicant) referred to potential consent obligations under the NES-F but intimated that no consents were required because the performance conditions under Reg. 46(3)(a) could be met. I can't recall Mr Peterson confirming that he was relying on ecological advice in coming to his conclusion. I also can't recall Mr Peterson bringing the Panel's attention to the fact that the conditions under Reg. 55 of the NES-F are also applicable.
11. On 16 June 2022 Ms Conland (GWRC resource advisor) presented to the Panel and spoke to her amended section 42A RMA report. As far as this matter is concerned, Ms Conland focused on two aspects:
- a. She claimed that I had said that: "*the application is a non-complying activity under Reg 54*"
 - b. She agreed with the applicant that in terms of Reg. 46(3)(a) of the NES-F the proposal is encompassed by the term: "*operation or maintenance*".
12. Furthermore, in response to a question from Commissioner Burge, Ms Conland advised the Panel that she had visited the Rukutane Point site, but she had not seen anything that would resemble a wetland: "*as that term is commonly understood.*"
13. For clarity, I did not make the statement Ms Conland assigns to me. As the Panel will recall, at Para. 65 of my 14 June 2002 statement I said this:
- "Should consent under the NES-F be required** (because the discharge is within 100 metres of a natural wetland) *I think the activity for which PCC is seeking consent would be categorised as a non-complying activity under Regulation 54(c) under the NES-F."*
14. In addition, I recall Ms Conland suggesting her professional qualification and experience are confined to general planning, and resource advisory aspects, related to the RMA.

15. I also can't recall Ms Conland, nor Mr Peterson, making any reference to ecological advice they might have been relying upon, nor that the conditions under Reg. 55 of the NES-F are also applicable.
16. As far as I am aware, the applicant and the consenting authority have not presented any evidence that addresses the inherent ecological questions about the applicability and implications of the NES-F.

Consequences of the Information Provided with this Memorandum

17. I consider the NES-F is drafted so that activity status and consent requirements cannot be determined without ecological input. However, that does not appear to be Mr Peterson's, nor Ms Conland's, approach.
18. Applying ecological input is particularly important as a consequence of the High Court's recent judgment (<https://www.nrc.govt.nz/media/c5tlyt5s/high-court-decision-on-jurisdiction-of-nes-f-in-cma-2021-nzhc-3113-18-november-2021.pdf>).
19. For the Panel's benefit I have compiled the attached 'decision tree' (Attachment D). This outlines the key matters a consent authority must take into consideration in the circumstances of this WWTP application as far as it relates to the NES-F.
20. I have attempted to appropriately colour-code this diagram so the main areas of uncertainty (which should be resolved before any consent is granted) are apparent.
21. One such matter is Reg. 55(3)(a)(ii) of the NES-F.
22. In fundamental terms this says that consent is required if the discharge results in: "*production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials.*"
23. Images are attached at Appendix D showing probable non-compliance with this condition. Photos showing the spatial relationship between the wetland, and the outfall and the driftwood line are also included (Attachment E). All images were taken on 18 June 2022.

Summary

24. The information I've provided suggests there is land within 100m of the WWTP outfall that potentially meets the RMA definition of 'natural wetland' and the activity (for which consent is being sought) is such that the restrictions under the NES-F likely apply.
25. I think it should be apparent to the Panel that the provisions of the NES-F are sufficiently relevant to the proposed activity as to require additional information from the applicant.

26. As I noted in my presentation on 14 June 2022, the consenting authority is precluded from granting consent to an activity if an essential RMA consent is required but application for that consent has not been made.
27. I think that is the case here, and the Panel must therefore defer considering the proposal until this aspect of the proposed activity, and all related proceedings, are satisfactorily resolved.

Brian Warburton

A handwritten signature in black ink, appearing to read 'Warburton', written in a cursive style.

20 June 2022

PROACTIVE RELEASE

ATTACHMENT A: Location and Outline of Wetland



ATTACHMENT B:

Location and Outline of Wetland and Notional CMA Boundary



ATTACHMENT C:

Images of Wetland Species at Outfall



Apodasmia similis



Selliera radicans

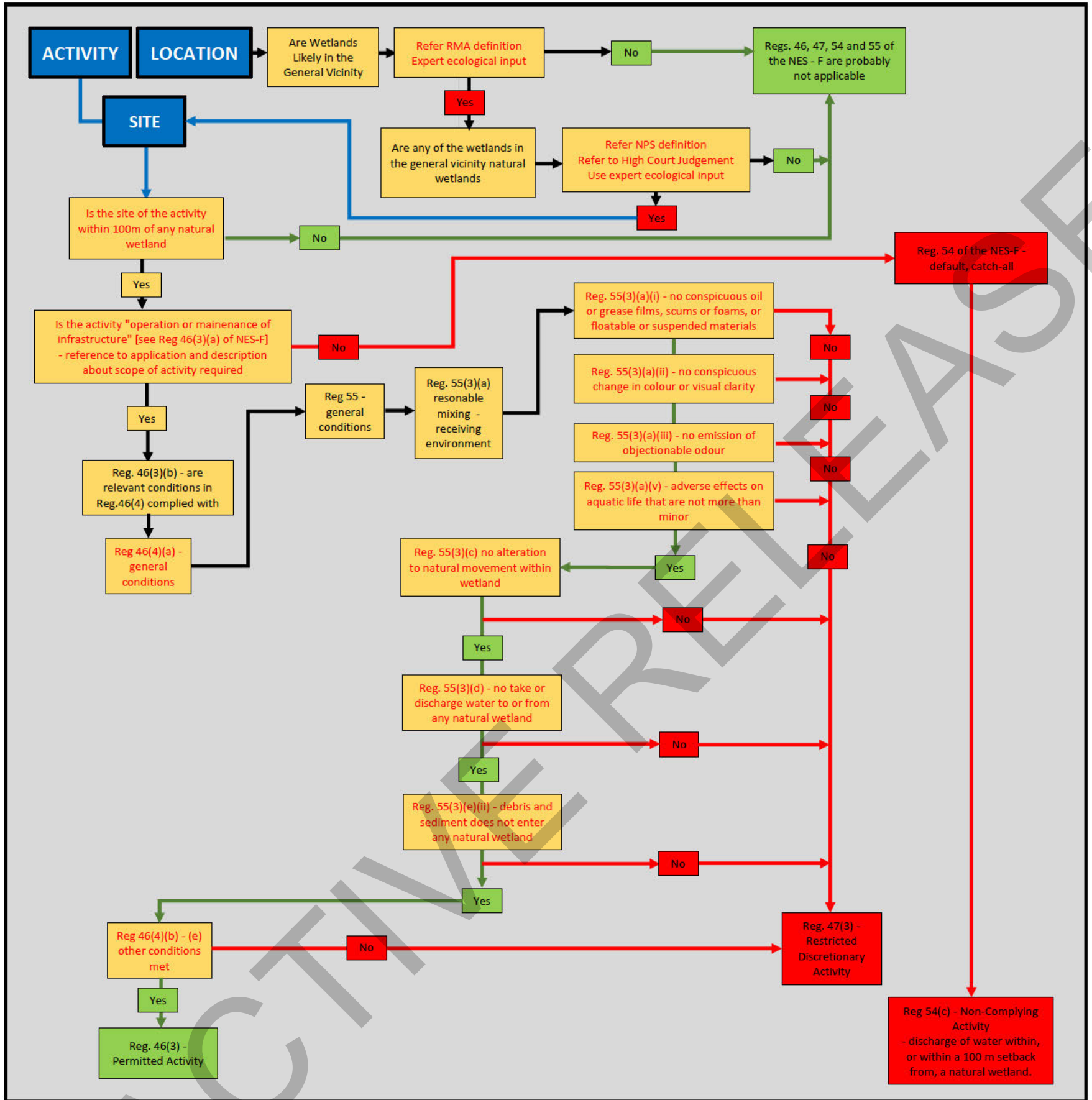


Samolus repens var. *repens*

ATTACHMENT D:

Consenting Decision Tree

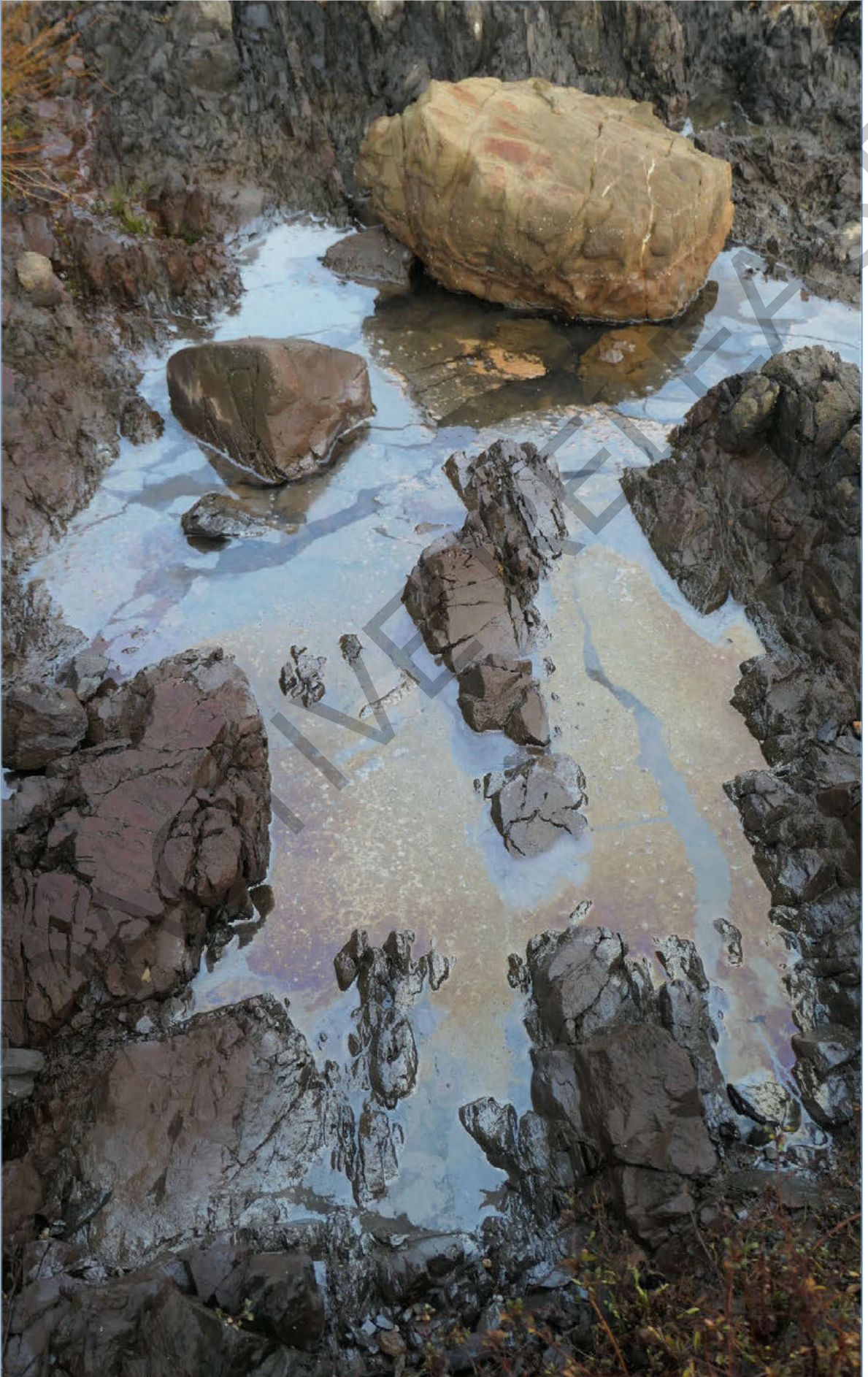
PROACTIVE RELEASE



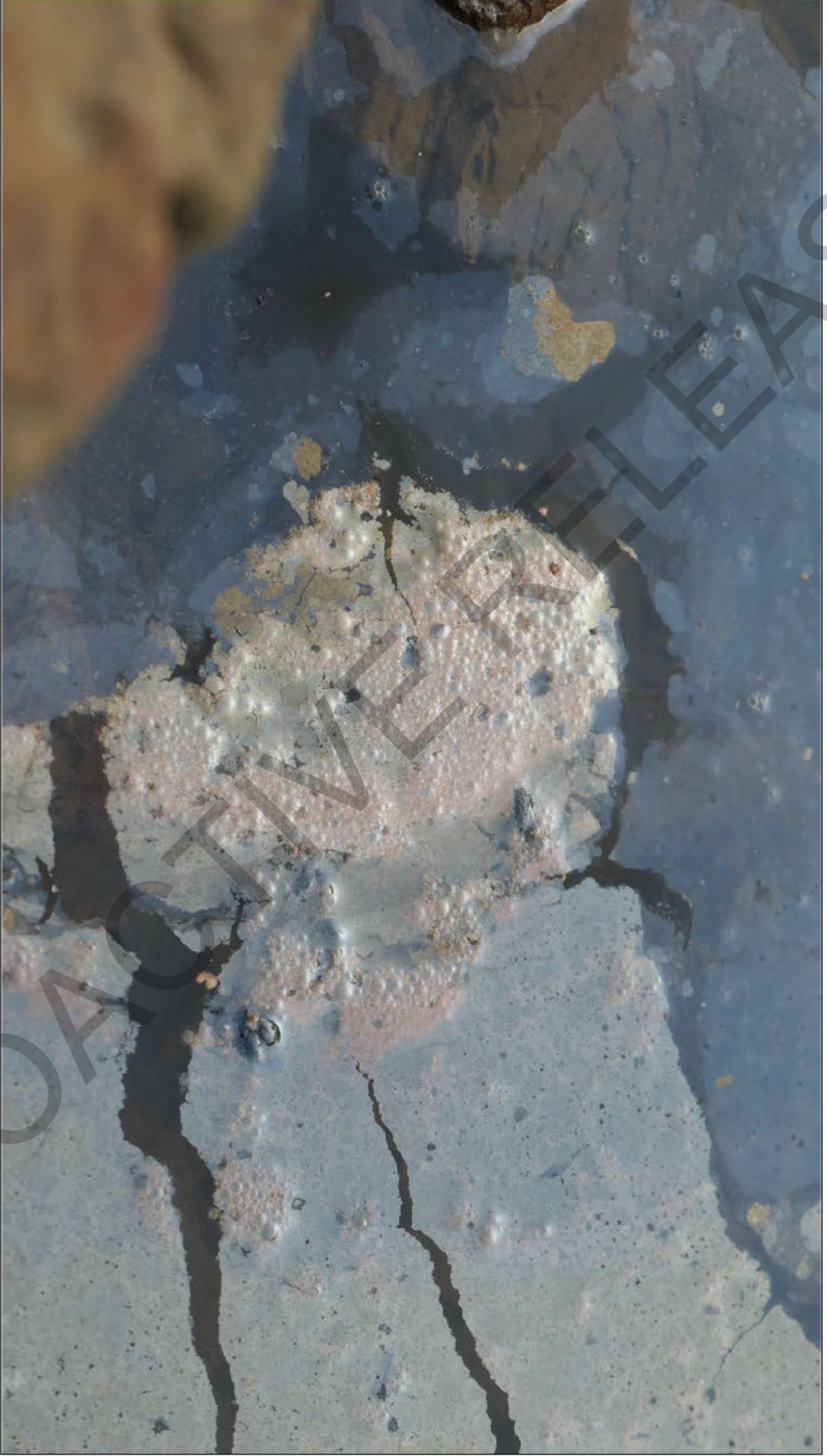
PROA

ATTACHMENT E: Images Showing Probable Non-Compliance with Reg. 55(3)(a)(i) of NES-F (*“production of conspicuous oil or grease films, scums or foams, or floatable or suspended materials.”*)











ATTACHMENT F: Images Showing Spatial Relationship between Wetland, and the Outfall and the Driftwood Line



BEFORE GREATER WELLINGTON REGIONAL COUNCIL

IN THE MATTER OF

**Resource Consent application for
Porirua Wastewater Treatment Plant**

APPLICANT

Porirua City Council

MINUTE # 4 OF HEARING COMMISSIONERS:

COASTAL WETLAND

DATED 23 JUNE 2022

Minute # 4 of Hearing Commissioners
Porirua Wastewater Treatment Plant
WGN200229

Introduction

1. This Minute addresses a request by Mr Warburton (submitter 947) that the commissioners should accept a supplementary statement he provided to us, dated 20 June 2022. The commissioners have agreed to Mr Warburton's request. The statement outlines matters related to interpretation of the National Environmental Standard for Freshwater (NES-F) and the possible existence of an area of coastal wetland near the existing sewer outfall at Rukutane Point.
2. In accepting Mr Warburton's supplementary statement, we consider that it should be responded to by both the Applicant and Greater Wellington Regional Council (GWRC). The hearing panel anticipates that this information will contribute to a more robust decision.
3. The hearing is still in progress, having been adjourned on Thursday 16 June. We will not officially close the hearing until after all additional information sought by the panel has been provided to our satisfaction.
4. On Thursday 16 June, the panel signalled to the Applicant and other parties present that a Minute or Minutes would be issued to seek further information. Minute # 4 requesting information related to Mr Warburton's supplementary statement has been prepared on that basis.
5. The subject matter of our request for further information includes:
 - The existence of a natural wetland near the existing outfall
 - If it exists, the status of that wetland under the NES-F
 - The relevance of the wetland's NES-F status to the discharge consent process
6. We make the request for further information under the authority delegated to us by section 41C of the Resource Management Act (RMA).

Warburton Supplementary Statement

7. Mr Warburton (submitter 947) appeared at the hearing on Tuesday 14 June. His original written statement at the hearing included references to the NES-F, and its possible relevance to the status of the proposed discharge under that Standard. He has since provided a supplementary statement which expands on those matters. Mr Warburton's supplementary statement is included as Attachment 1 to this Minute.
8. The commissioners have decided to accept his supplementary statement (20 June) on the basis that:
 - The hearing is not closed.
 - The supplementary statement provides further information in relation to a matter covered in the original statement presented at the hearing.
 - A hearing panel has the ability to "receive as evidence any statement, document, information, or matter that in its opinion may assist it to deal effectively with the subject of the inquiry".

- Our ability is conferred via section 41 of the Resource Management Act, and section 4B of the Commissions of Inquiry Act.
9. In our opinion the matters raised by Mr Warburton are worthy of review and clarification by both the Applicant and GWRC, notwithstanding that this may require some further fieldwork on the part of the Applicant.

Matters for Review and Response

10. Having regard to the contentions of Mr Warburton, as set out in his supplementary statement, we require the Applicant and GWRC to review and respond to the matters outlined below.

Wetland Existence

11. Mr Warburton identifies some vegetation on the coastal margin, with parts potentially being either above or below mean high water springs. We require relevant experts of the Applicant to undertake fieldwork that establishes:
- a) What the vegetation is.
 - b) What parts, if any, lie above or below mean high water springs.
 - c) Whether and to what extent the vegetation is affected by the current discharge.
 - d) Whether and to what extent the vegetation would be affected by the future discharge (up to 2043).

Legal Status of Vegetation

12. Mr Warburton refers to the possible status of the vegetation under the NES-F, which may have implications for the RMA consent process. We therefore require the Applicant to:
- a) Follow the guidance prepared by Ministry for the Environment¹ in assessing² whether the vegetation comprises a wetland (and what type of wetland).
 - b) Consider relevant case law.
 - c) Identify the status of the vegetation under the New Zealand Coastal Policy Statement (NZCPS), Proposed Natural Resources Plan (PNRP), or any other relevant document or classification system.
 - d) Advise what regulation of the NES-F, if any, we should consider the vegetation under.

Consent Process

13. Outcomes from the fieldwork and review outlined above will have implications for the consent process. We require the Applicant to set out those implications and the reasons for reaching any conclusions. The Applicant should distinguish between facts, assumptions, and opinions in reaching those conclusions.

Review

14. We require GWRC ecology and planning experts to:

¹ *Defining 'natural wetlands' and 'natural inland wetlands'*, Ministry for the Environment, September 2021

² Including use of the various 'tools' referred to in Figure 1 of the Guidance

- a) Prior to the fieldwork described under paragraph 11 taking place, review and certify the Applicant's methodology.
- b) Critically review and report to the panel on the Applicant's outputs from the work described under paragraphs 11, 12 and 13.

Timeframe

15. We have not set a date for providing a response to these matters. However, in discussion with the Applicant's counsel at the hearing, we discussed an indicative delivery timeframe. It was agreed that any information provided in response to our directions, should be provided in time for the Applicant's legal counsel to draft and submit their right of reply (closing legal statement) to us within a month. This remains an indicative timeframe and we may change it in response to requested information as it is received. All parties to the hearing will receive timeframe updates.

Correspondence

16. Any correspondence with the commissioners should be directed through Joshua Knowles, Joshua.Knowles@gw.govt.nz, 021 346 778



Mark Ashby
Hearing Panel Chair
On behalf the Commissioners

From: [Peterson, Richard](#)
To: [Michelle Conland](#)
Cc: [Hudspith, Ezekiel](#)
Subject: RE: Meeting on Thursday if possible
Date: Tuesday, 23 August 2022 1:47:36 pm
Attachments: [image001.png](#)

Hi Michelle,

Zeke and I can make a meeting on Thursday either before 10 or between 12 and 1 pm.

Thanks for setting this up,
Richard.

From: Michelle Conland <Michelle.Conland@gw.govt.nz>
Sent: Tuesday, 23 August 2022 11:32 a.m.
To: Peterson, Richard <Richard.Peterson@stantec.com>
Subject: Meeting on Thursday if possible

Hi Richard

I'm a bit belatedly following up on my idea to have a teams meeting to discuss the NES-F with Zeke and Kerry also. Could you please let me know if you and Zeke (and anyone else who wishes to join us) are available this Thursday? Morning or afternoon is fine for us. If not please suggest some times that work for you.

Thanks

Michelle



Michelle Conland (she/her)

Kaitohutohu Matua | Contract Resource Advisor

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From: [Jude Chittock](#)
To: [Michelle Conland](#)
Subject: RE: Meeting with Zeke and Kerry
Date: Tuesday, 23 August 2022 4:06:35 pm
Attachments: [image001.png](#)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

From: Michelle Conland <Michelle.Conland@gw.govt.nz>
Sent: Tuesday, 23 August 2022 3:33 pm
To: Jude Chittock <Jude.Chittock@gw.govt.nz>
Subject: Meeting with Zeke and Kerry

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

- [Redacted]

[Redacted]

- [Redacted]

- [Redacted]

[Redacted]

[Redacted]

[Redacted]

- [Redacted]

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[Redacted]

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M [REDACTED]

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PROACTIVE RELEASE

From: [Joshua Knowles](#)
To: [REDACTED]
Cc: [Jude Chittock](#)
Subject: FW: Memorandum to Hearing Panel - WWTP Consent Application
Date: Monday, 15 August 2022 3:38:00 pm
Attachments: [WWTP Hearing - Brian Warburton - Memorandum - 220815.pdf](#)
[image001.png](#)

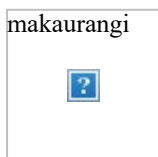
Hi All,

Please see the attached Memorandum from Brian Warburton in relation to the Porirua WWTP.

Also the submitters from Your Bay Your Say are really wanting you to accept the revised Hearing Presentation Notes (which I sent on to you on 25 July 2022) as additional evidence.

Please let me know if you would like me to respond directly to either party.

Ngā mihi



Josh Knowles (he/ him)

Kaitohutohu / Resource Advisor

Greater Wellington Te Pane Matua Taiao

Mobile: 021 346778

100 Cuba Street, Te Aro, Wellington 6011

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From: brian.warburton@xtra.co.nz <brian.warburton@xtra.co.nz>
Sent: Monday, 15 August 2022 2:53 pm
To: Joshua Knowles <Joshua.Knowles@gw.govt.nz>
Subject: Memorandum to Hearing Panel - WWTP Consent Application

Hello Joshua

Please find attached my memorandum to the Panel. Please forward to them for their consideration.

Brian Warburton

From: [Michelle Conland](#)
To: [Jude Chittock](#)
Subject: RE: Meeting with Zeke and Kerry
Date: Wednesday, 24 August 2022 1:20:00 pm
Attachments: [image001.png](#)

Unfortunately Zeke and the others from their side could only do midday

From: Jude Chittock <Jude.Chittock@gw.govt.nz>
Sent: Tuesday, 23 August 2022 4:13 pm
To: Michelle Conland <Michelle.Conland@gw.govt.nz>
Subject: RE: Meeting with Zeke and Kerry

[REDACTED]

From: Michelle Conland <Michelle.Conland@gw.govt.nz>
Sent: Tuesday, 23 August 2022 4:09 pm
To: Jude Chittock <Jude.Chittock@gw.govt.nz>
Subject: Re: Meeting with Zeke and Kerry

[REDACTED]

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From: Jude Chittock <Jude.Chittock@gw.govt.nz>
Sent: Tuesday, August 23, 2022 4:06:33 PM
To: Michelle Conland <Michelle.Conland@gw.govt.nz>
Subject: RE: Meeting with Zeke and Kerry

[REDACTED]

[REDACTED]

From: Michelle Conland <Michelle.Conland@gw.govt.nz>
Sent: Tuesday, 23 August 2022 3:33 pm
To: Jude Chittock <Jude.Chittock@gw.govt.nz>
Subject: Meeting with Zeke and Kerry

[REDACTED]

[REDACTED]

■

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Michelle Conland (she/her)

Kaitohutohu Matua | Contract Resource Advisor

Greater Wellington Te Pane Matua Taiao

M [REDACTED]

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