

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

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

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

**STATEMENT OF REBUTTAL EVIDENCE OF SAMUEL O'BRIEN
ON BEHALF OF GREATER WELLINGTON REGIONAL COUNCIL
HEARING STREAM 1 – Region Wide [Air Quality and Beds of
Lakes and Rivers]**

24 October 2024

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INTRODUCTION

- 1 My full name is Samuel Nicholas O'Brien. I am a Policy Advisor at Greater Wellington Regional Council.
- 2 I have reviewed the evidence of:
 - 2.1 Forest and Bird – Legal submissions prepared by M Downing [Further Submitter 23]
 - 2.2 Porirua Harbour Trust and Guardians of Pāuatahanui Inlet [Submitter 176]
 - 2.3 Wellington Water Ltd – Letter from Julie Alexander [Submitter 151]
 - 2.4 Wellington Fish and Game Council – Submissions prepared by Ami Coughlan [Submitter 188].

QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

- 3 My qualifications and experience are set out in Section 1.3 of my Air Quality Section 42A Report. I repeat the confirmation given in that report that I have read and agree to comply with the Code of Conduct for Expert Witnesses.

RESPONSES TO SUBMITTER EVIDENCE

- 4 This section responds to submitter evidence and submissions filed in relation to the Air Quality and Beds of Lakes and Rivers topics and submissions allocated to these topics.
- 5 Appendix 1 sets out all the amendments sought by submitters through their evidence. Appendix 2 sets out my recommended amendments in response to submitter evidence. Within Appendix 2, my Section 42A report recommended amendments are shown in red underlined or ~~strike through~~ and further amendments recommended in this rebuttal evidence are shown in blue underline or ~~strike through~~.

Air Quality Report - Rule R35 – Water and wastewater processes – permitted activity

- 6 Wellington Water in accordance with its submission seeks that *Rule R35: Water and wastewater processes* includes specific reference to drinking water processes that would provide clarity for plan users. Wellington Water consider “*It is not particularly clear that Rule R35 includes drinking water processes*”. I consider that the rule intends to capture water processes, and I do not foresee a situation in which water processes for drinking purposes

would be excluded or the rule would be misinterpreted. I do not consider that amendments are required to Rule R35 unless evidence is provided to demonstrate why drinking water processes need to be specified.

5.4.4 Uses of beds of lakes and rivers general conditions

7 Wellington Water is *“concerned that requiring a third party to assess when named birds are identified as nesting, roosting and foraging at the work site, in all cases, may be unduly restrictive.”* While I understand the concern of the submitter, I remain of the opinion that this assessment is required to ensure that the scheduled birds are sufficiently protected from activities in the beds of lakes and rivers. I do not consider that it is unduly restrictive given that this clause only applies within stretches of six scheduled rivers in *Schedule F2a: Significant habitats for indigenous birds in rivers* and two *Schedule F2b Significant habitats for indigenous birds in lakes* sites. Further, for many activities resource consent is likely required for the activity regardless and the assessment can be undertaken as part of this process.

Rule R128 New Structures – Permitted Activity

8 Wellington Water in its submission *“considers that the rule should refer to both pipes and pipelines, and also that what is meant by ‘pipeline’ (as opposed to ‘pipe’) is unclear, and needs defining in PC1”*. I disagree that both pipes or pipelines should be permitted under this rule. Larger pipes are intended to be excluded from permitted status given their potential for significant environmental effects.

9 I do consider that defining pipelines within the rule would provide added clarity for plan users. I consider that it is most appropriate to define pipelines for the purpose of this rule within the rule itself rather than providing a plan wide definition. The intent of the rule is to exclude large scale pipes (and culverts which are provided for under Rule R126). Therefore, I consider that expressly permitting pipelines with an external diameter no greater than 400mm under Rule R128 is appropriate. While I consider that setting a defined limit is inherently arbitrary, I am of the opinion that this captures the structures that are intended to be permitted by Rule R128. Further, 400mm has previously been used as a limit in GWRC Regional Plans. I therefore recommend adding an amendment to specify the diameter which is permitted in this rule as follows.

“pipelines (such as a natural gas pipeline) with an external diameter no greater than 400mm”

Rule R151A Ongoing diversion of a river – Permitted Activity

10 Submitter evidence has been provided by Forest and Bird, Porirua Harbour Trust and Guardians of Pāuatahanui Inlet, Wellington Water Ltd, and Wellington Fish and Game Council in relation the *Rule R151A Ongoing diversion of a river – Permitted Activity*. Similar concerns are raised across this evidence.

11 Wellington Fish and Game Council’s evidence for Hearing Stream 1 makes several references to structures that will be permitted through Rule 151A that could have effects on waterbodies and ecosystems. Rule R151A conditions (a) and (b) state that the rule only applies to permanent diversions that are not associated with existing structures.

12 Porirua Harbour and Catchments Community Trust concerns with Rule 5.4.8 (presumed Rule R151A) are similar to those of Wellington Fish and Game Council in that the concern sits with the potential for structures to have environmental effects, in particular restricting fish passage. As highlighted above Rule R151A only applies to permanent diversions that are not associated with existing structures. Any concerns associated with damming of waterways are managed in other rules in *Section 5.4.8 Damming and diverting water*.

13 Fish & Game are concerned that accepting a waterway as naturalised is accepting a level of degradation. Forest & Bird raise similar points, considering that:

“Full Discretionary Activity status is appropriate as it provides Council the ability to decline or at least impose conditions in order to:

a. Address unanticipated adverse environmental effects;

b. Respond to changing preferences of tangata whenua and the community; and

c. Enable consideration of all relevant matters including those that may become apparent over time as a consequence of ongoing scientific research or new environmental phenomena including the impacts of climate change.”

14 I consider that environmental effects of a diversion would be dealt with at the time of the original consent including changing river geomorphology and interrupting fish passage. Over the period of the consent (a minimum of 10 years under this rule and typically around 35 years) compliance with consent conditions is required and any potential issues

can be investigated by the Greater Wellington compliance team. After this period and the river is naturalised, it can be difficult to determine whether any environmental effects are as a direct result of the diversion itself.

15 An ongoing diversion is only a permitted activity if the consent conditions have been complied with. Forest & Bird raised concerns that *“this approach ultimately leaves the consent holder with discretion to determine whether conditions are in fact being met where this should be subject to Council oversight and confirmation”*. Compliance with the consent conditions must be maintained throughout the term of the resource consent not just at the end of the consent period.

16 From a practical perspective, reinstating the course of water is often difficult. There is usually a reason that a consent holder has sought to divert the watercourse originally, including for housing developments, and so returning the watercourse to its original position would require removal of those developments. Currently if a replacement application were to be declined, resource consents (water permit and land use consent for works) as well as landowner approvals would still be required. It is also possible that after at least 10 years, and potentially up to 35 years, the diversion of water to reinstate the original course would cause significant environmental effects. I therefore recommend that this activity for the ongoing diversion of water is most efficient to remain as a permitted activity.

17 I agree with the evidence of Forest & Bird that reconsidering the appropriateness of a diversion with particular respect to tangata whenua values may be valuable. Reassessment of the activity through a resource consent process may be appropriate given that this may not be an obvious environmental effect or one that was managed through the conditions of a consent, particularly older consents. I therefore recommend that Schedule C (mana whenua) sites are excluded from this rule as outlined below.

“(e) the activity does not occur within a site identified in Schedule C (mana whenua), and”

18 While I consider that resource consent conditions appropriately manage the environmental effects of ongoing diversions, I consider that additional reference to compliance with beds of lakes and rivers general condition (j) would add value. Condition (j) states that *“the activity shall not result in erosion or scour of the river banks or shall not result in flooding of any neighbouring property, and”*. I therefore recommend that this clause is included in Rule R151A as outlined below.

(f) the activity shall comply with the beds of lakes and rivers general condition (i) specified above in Section 5.4.4.

DATE:

24 October 2024

SAMUEL O'BRIEN

Policy Advisor

Appendix 1 – Recommended Amendments



Rule R128: New structures – permitted activity

The placement of a new ~~structure, including~~ sediment retention weirs, pipelines (such as a natural gas pipeline) with an external diameter no greater than 400mm, ducts, cables, hydrological and water quality monitoring equipment, fences, ~~erosion protection structures, debris arrestor structures or a~~ and structures associated with **vegetative bank edge protection** ~~except a structure permitted by Rules R125, R126 and R127 and passive flap gates,~~ that is fixed in, on, under, or over the bed of any river or lake, ~~excluding activities regulated by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 except general condition 5.4.4(n),~~ including any associated:

- (a) disturbance of the river or lake bed, and
- (b) deposition on the river or lake bed, and
- (c) diversion of water, and
- (d) discharge of sediment to water, and
- (e) temporary damming of water,

excluding activities regulated by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 except when general condition 5.4.4(n) applies,

is a permitted activity, provided the following conditions are met:

- (f) the activity shall comply with the beds of lakes and rivers general conditions specified above in Section 5.4.4, and
- (g) the activity does not occur within a site identified in Schedule C (mana whenua), excluding adding pipelines or cables to an existing structure or providing for fish refuge, and
- (h) the activity does not occur in or on any part of the river bed identified as inanga spawning habitat in Schedule F1 (rivers/lakes), and
- (i) the structure does not occupy a bed area any greater than 10m², except for where the structure is associated with **vegetative bank edge protection**, or a pipeline, duct, fence or cable which is located over or under the bed where no bed occupancy limits apply, and

- (j) the catchment upstream of any sediment retention weir is not greater than 200ha, and
- (k) the height of any sediment retention weir from the upstream base to the crest of the weir at the time of construction shall be no more than 0.5m, and
- (l) the placement of a weir other than a customary weir, in, on over or under the bed of any river or connected area must also comply with the following:
 - (i) the fall height of the weir must be no more than 0.5m, and
 - (ii) the slope of the weir must be no steeper than 1:30, and
 - (iii) the face of the weir must have roughness elements that are mixed grade rocks of 150 to 200mm diameter and irregularly spaced no more than 90mm apart to create a hydraulically diverse flow structure across the weir (including any wetted margins), and
 - (iv) the weir's lateral profile must be V-shaped, sloping up at the banks, and with a low-flow channel in the centre, with the lateral cross-section slope between 5° and 10°, and
- (m) for all new weirs (except customary weirs), non-passive flap gates, aprons and ramps, placed in rivers or connected areas, the information requirements of Regulations 62, 64, 65, and 68 as relevant for the structure, of the *Resource Management (National Environmental Standards for Freshwater) Regulations 2020* shall be provided as set out in the regulations.

Note

~~The placement of a passive flap gate in, on, over or under the bed of any river or connected area is a non-complying activity regulated by the *Resource Management (National Environmental Standards for Freshwater) Regulations 2020*.~~

5.4.5

Damming and diverting water

Rule R151A: Ongoing diversion of a river – permitted activity

The diversion of a river as a result of:

- (a) an existing permanent diversion, that is not associated with existing structures, that was lawfully established by way of a resource consent as at the date of this rule becoming operative on (insert date), or
- (b) a permanent diversion, that is not associated with existing structures, that has been lawfully established by way of a resource consent after the operative date of this rule,

is a permitted activity subject to the following conditions:

- (c) the permanent diversion has been in place for at least 10 years, and
- (d) all of the conditions of the resource consent to lawfully establish the diversion have been complied with, and
- (e) the activity does not occur within a site identified in Schedule C (mana whenua), and
- (f) the activity shall comply with the beds of lakes and rivers general condition (j) specified above in Section 5.4.4.

Note

Diversion of water in association with existing structures is subject to permitted activity rule R122 (Maintenance, repair, replacement, **upgrade** or use of existing structures (excluding the Barrage Gates) – permitted activity).