

Before the Joint Hearings Panel of Greater Wellington Regional Council and Porirua City Council

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER Land use and subdivision consent application (RC6922-SL0046/15) and Discharge, land use and water permit consent application (WGN160028)

BETWEEN Wellington Regional Council
(Local Authority)

AND Porirua City Council
(Local Authority)

AND Jagger NZ Limited
(Applicant)

**Statement of Evidence – Michelle Conland
Planning**

On behalf of Greater Wellington Regional Council (GWRC)

6 April 2016

INTRODUCTION

- 1 My full name is Michelle Andrea Conland
- 2 My qualifications and experience are presented in my addendum to the Section 42A report and are not repeated here.
- 3 I attended a meeting on Thursday 31 March 2016 to discuss suggested conditions and outstanding matters with Andrew Jones, Planner, PCC, and Bryce Holmes, Principal Planner, Land Matters Ltd.
- 4 I visited the site on Friday 1 April 2016, with Bryce Holmes, and Sonia Baker, Team Leader, Greater Wellington Regional Council. Bryce Holmes and I also viewed parts of The Banks development, or Duck Creek South.
- 5 I have read and am familiar with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2011. I agree to comply with that Code. Other than where I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

SCOPE OF EVIDENCE

- 6 I am providing evidence in relation to the planning aspects of the applications made to Greater Wellington Regional Council. My evidence outlines the following:
 - (a) Information requested by the hearing panel
 - (b) Response to evidence of the applicant in relation to planning matters
 - (c) Response to evidence of submitters in relation to planning matters
 - (d) Suggested amendments to the draft conditions of consent
 - (e) Conclusion

In preparing this statement of evidence I have read:

- the application and further information
- all submissions received
- the section 42A reports prepared by Mr Doug Fletcher, GWRC, and Mr Andrew Jones, PCC

- the primary briefs of evidence of the applicant.
- statements of evidence of PCC
- statements of evidence of GWRC expert advisers.

INFORMATION REQUESTED BY THE HEARING PANEL

Policy 41 PNRP Schedule G

- 7 As noted in the Addendum to the S42A report, Policy P40, 41 and 42 relate to protecting and restoring ecosystems and habitats with significant indigenous biodiversity values. I note that Policy 32 has similar wording in relation to aquatic ecosystem health and mahinga kai and refers to Schedule G also. Policies P41 and P42 set the mitigation hierarchy for the policy intent of Policy P40. Policy 41 states that in order to protect the ecosystems and habitats with significant indigenous biodiversity values in the first instance activities shall avoid these ecosystems and habitats.
- 8 The applicant looked at alternatives to diverting and reclaiming Duck Creek which including doing nothing and not developing the site, or leaving the stream in its existing location, but decided that these were not viable options for reasons of amenity and access, flood potential, continued stream bank erosion, as well as for economic reasons. The applicant considered that moving the stream towards the middle of the site, away from the sloping bank, would reduce stream bank erosion for this section of the stream.
- 9 Consequently, the applicant felt that diverting the stream would be the preferred option in terms of developing the site. As the more than minor effects of diverting the stream cannot be completely avoided, remedied or mitigated, clause (d) of Policy P41 is relevant. The policy states that proposals for mitigation and biodiversity offsets will be assessed against the principles listed in Schedule G. The term biodiversity offsets is defined in Chapter 2 of the PNRP as:

A measurable positive outcome resulting from an action designed to compensate for the **residual adverse effects** on biodiversity arising from an activity after avoidance, remediation and mitigation measures have been taken. **Biodiversity offsets** differ from mitigation in so far as offsets require the demonstration of no net loss of biodiversity and preferably a net gain. The principles to be applied when proposing and considering **biodiversity offsets** are provided in Schedule G (biodiversity offsetting).

- 10 Another key aspect to note of this policy is that it states that only when more than minor adverse effects on ecosystems and habitats cannot be avoided, remedied, mitigated or redressed through biodiversity offsets, is the activity considered inappropriate. I consider that the applicant is seeking to redress the residual adverse effects through biodiversity offsets.
- 11 Turning to Schedule G, I will discuss each matter. Clause 1 relates to the adherence to the mitigation hierarchy. I agree that the documentation of the appropriate measures taken to avoid in particular, any adverse effects of the activity on biodiversity could be more comprehensive. While there has been some disagreement between the applicant's and GWRC's experts in relation to the calculation of the Environmental Compensation Ratio, the applicant is seeking to address the residual adverse effects of the diversion through riparian compensation planting and other compensatory measures.
- 12 Clause 2 relates to the limits of what can be mitigated or offset. I consider that the values of the section of the stream being diverted are not highly vulnerable or irreplaceable as there are other similar sections of the stream within the site that will remain undisturbed. The applicant's experts are confident that they can successfully design and implement adequate mitigation, with lessons learnt from Duck Creek South to be used to improve outcomes. As such, this clause is met.
- 13 Clause 3 relates to additional conservation outcomes. Given that the land that the stream flows through is privately owned, if the applicant did not require resource consent to divert the stream, there would be no ability for GWRC to require the landowner to undertake riparian planting along the entire length of the site or create inanga habitat. As such, the proposed mitigation meets this clause.
- 14 Clause 4 relates to the landscape context. I consider the proposed mitigation meets these requirements. The positive effects are to be achieved on the site. The mitigation will complement the habitats of threatened fauna at the local level at the very least. The applicant and GWRC has taken into account available information on the values of biodiversity and supports an ecosystem scale approach. Regarding (d), given that this is the last portion of land to be developed in the lower catchment of Duck Creek, any future developments, if consent is granted to this proposal, are likely to be very small scale.
- 15 Clause 5 relates to long-term outcomes. An adaptive management approach is proposed for the compensation planting, and conditions incorporate monitoring and

evaluation. A condition relating to legal protection in perpetuity was accidentally omitted from the suggested consent conditions attached to the Section 42A report. Suggested wording for the condition is as follows:

Legal protection

xx. The consent holder shall ensure that all mitigation riparian planting undertaken in accordance with the approved Planting Plan required by condition ## of this consent is legally protected in perpetuity.

xx. The consent holder shall provide documentation which demonstrates that all areas of mitigation as detailed in the Ecological Compensation Plan required by condition ## of this permit have been legally protected in perpetuity.

16 The other matters referred to in Clause 5 are provided for in the suggested consent conditions for land use consent [33624] including specific, time-bound targets, milestones, methods to determine non-achievement of milestones, and responses.

17 Clause 6 relates to no net loss. This issue has been considered by Mr Lowe and Mr Young in their evidence.

18 In summary, I consider that the proposal generally meets the requirements of Policy P40, and do not consider that this policy prohibits granting consent for the diversion of the stream.

Ecological Compensation Plan

19 Mr Lowe and Mr Young have provided evidence in relation to the provision of an Ecological Compensation Plan in relation to the SEV assessment and any other environmental compensation.

20 I agree that the extent and type of compensation needs to be included in the conditions for clarity. It was never envisaged that the quantum of environmental compensation be decided by the Manager Environmental Regulation, as this would be an unauthorised delegation of the judicial function.

21 However, at the time of providing the Section 42A report to all parties, significant uncertainty remained in relation to the nature of compensation, and whether this issue would be resolved prior to the hearing. As such, a consent condition of this nature was not included at that time.

22 Consequently, it is recommended that the further details of how the ecological compensation will be provided be included in the Ecological Compensation Plan for

certification by the Manager, Environmental Regulation. This certification will allow the Manager to ensure that the agreed type and quantum of compensation will be able to be achieved, and that details are provided of the ecological functions predicted to be improved following the works. This in turn will be used to assess the riparian restoration monitoring proposed to be submitted as part of the Progress Monitoring Reports.

Boulder cascade

- 23 Given Mr Miller's comments about the introduction of proposed boulder design elements to the stream habitat, and the potential fish passage barrier that these structures could create, I would recommend that these design elements be deleted. As you have heard, this view is supported by Mr Young. Mr Miller noted that these elements are not currently found within this section of Duck Creek and have been proposed for landscaping amenity purposes. I do not consider that this is sufficient reason to include these elements within the created sections of Duck Creek, when they could adversely affect fish passage. Mr Young has also advised that boulder features such as these can divert the flow onto the stream banks, exacerbating bank erosion.

RESPONSE TO EVIDENCE OF THE APPLICANT IN RELATION TO PLANNING MATTERS

Monitoring triggers

- 24 Mr Miller, in his statement of evidence recommends that the water quality monitoring triggers be set within the EMAMP, rather than the conditions of consent.
- 25 The use of management plans is consistent with GWRC's general approach to large scale applications and earthworks sites. Typically draft plans are provided as part of the application documents and these are finalised by way of conditions of consent, subject to certification by GWRC.
- 26 The proposed management plans promote the use of an adaptive management approach. This approach is based on the results of baseline and construction monitoring, and establishes triggers for responses to be implemented by the consent holder in the event that activities have the potential to cause adverse effects on the receiving environment.
- 27 However, some conditions of consent are required which provide confidence that the proposed mitigation and environmental outcomes will be achieved. To

counteract the flexibility that the management plan approach allows, conditions are required that clarify or restrict the scope of the activities and provide suitable performance criteria. Such conditions provide greater certainty that any adverse effects due to the works would be avoided, remedied or mitigated.

28 With regard to the triggers, I view these as environmental bottom lines. Given the sensitivity of the Duck Creek and Pauatahanui Inlet catchments, it is unlikely that GWRC would be agreeable to making the water quality triggers for pH, turbidity or total suspended solids more lenient.

29 Furthermore, at Appendix 11 of the Application and Assessment of Environmental Effects, these trigger levels were provided as draft condition 24 of the water permit. As such, some submitters may not have submitted on this issue as they were satisfied that the proposed conditions would provide for this matter. In addition, we heard from Mr Lindsay Gow from Guardians of Pauatahanui Inlet that he was satisfied with the water quality monitoring conditions recommended in the Section 42A report. If the consent is granted with such a condition and the applicant sought to change this condition at a later date, the application would have to apply to change this condition under Section 127 of the Resource Management Act 1991 (the Act). This section outlines the process to change a condition, which is similar to an application for a resource consent, and includes Section 127(4) of the Act which states:

For the purposes of determining who is adversely affected by the change or cancellation, the consent authority must consider, in particular, every person who—

(a) made a submission on the original application; and

(b) may be affected by the change or cancellation.

30 Consequently, I do not believe having water quality triggers within a management plan that could potentially be amended without consultation is appropriate.

31 Finally, with the variety of management plans proposed for this project, I consider that it is necessary that these important water quality triggers are not lost in the detail of the management plans.

32 While the applicant states that the purpose of the baseline monitoring is to confirm or amend the water quality triggers, it is nonetheless also useful in providing data to assess any effects the proposed works may have, rule out effects due to other causes, and provide data for other monitoring that might be required.

Soil Testing

- 33 Mr Miller in his evidence made a suggestion regarding soil testing prior to the planting works. I propose an amendment to the suggested conditions of land use consent [33624] to require the results of soil testing be included in the planting plan. Given the experience with Duck Creek South, I view this as being crucial for the establishment and viability of the riparian margin planting.

Restriction of works during instream spawning

- 34 Mr Miller's provided advice regarding a restriction of instream works during the spring tide period during inanga spawning between February and April. Mr Miller recommended that this restriction be within 1.5 hours of high tide. Most of the works proposed will occur outside the flowing channel. All bank stabilisation works should be achieved without requiring instream works. However, there are likely a few key activities which should not occur during this time, including the diversion of Duck Creek. I support a condition restricting works during spring tides between 1 March and 31 May (the inanga spawning times) be included on the consents where instream works are possible.

Baseline monitoring

- 35 Mr Miller discussed undertaking additional baseline monitoring within the site. I would support this as currently, the only baseline data analysed relates to that undertaken for Duck Creek South and Transmission Gully. As such, it is suggested that the conditions relating to the baseline monitoring report be amended to provide for this.

RESPONSE TO EVIDENCE OF SUBMITTERS

Angela Penfold - NZTA

- 36 NZTA proposed a condition of consent to manage adverse effects on a culvert located approximately 100 metres west of the James Cook Drive intersection where Duck Creek passes from the wetland under the road out into the Pauatahanui Inlet. Mr Bryce Holmes has confirmed that the applicant is happy for that condition to be included as a condition of consent.
- 37 As the condition relates to the potential siltation of the culvert from sediment runoff from the bulk earthworks, I consider that it is appropriate that this condition be included on Discharge Permit [33622].

38 However, with regard to the timeframe for implementing maintenance, set out in part (c) of the condition, it will not be possible to comply with this timeframe. Maintenance of culverts is a permitted activity under the PNRP and the RCP, provided the conditions of those rules can be complied with. Rule R149 of the PNRP states that the maintenance must meet the coastal management general conditions in Section 5.7.2 of the PNRP. These conditions include that in areas identified as inanga spawning habitat in Schedule F1b, no disturbance of or deposition in, on or under the foreshore or seabed shall occur and no diversion of open coastal water or sediment discharge shall occur between 1 March and 31 May. As such, the suggested condition needs to be modified to allow any maintenance required to be undertaken after 31 May, once inanga spawning has had an opportunity to occur.

Peter Anderson - Forest and Bird

39 A number of the matters raised by Mr Anderson have been addressed in paragraphs 7 to 22 of this evidence. I am happy to answer any further questions you may have about the matters raised by Mr Anderson.

Ash Johnstone

40 In relation to the matters raised by Mr Ash Johnstone, I will limit my comments to stating that if wetland ponds were provided on the site, these could require further resource consent applications from GWRC. Consents required could include land use consent for excavating a hole/bore that intersects groundwater, diversion of groundwater, and the diversion of surface water (if any pond was connected to the surface flows of Duck Creek). The proposed 'dry' stormwater retention areas/ponds that are currently proposed by the applicant do not require resource consents of this nature. However, the earthworks to form these areas require resource consent to discharge sediment in stormwater runoff (Discharge permit [33622]).

Ngāti Toa Rangatira

41 The applicant through its consultation with Ngāti Toa Rangatira offered to provide the environmental monitoring reports to Ngāti Toa. This provision was omitted from the suggested conditions of consent provided as Appendix 1 to the Section 42A report, and I recommend that this provision be included. I acknowledge and understand Ms Leana Barriball's view, that receiving environmental monitoring reports is not considered by Ngāti Toa as fulfilling the role of kaitiaki but have suggested included this condition as a starting point for greater involvement in

monitoring Duck Creek and the Pauatahanui Inlet. I acknowledge Ngāti Toa's interest in undertaking cultural health monitoring in these catchments.

Heritage NZ

42 As discussed by Mr Jones, following the submission of the s42A report, Heritage NZ advised that given that there is recorded archaeology on the site, it would not consider the discovery of archaeological or cultural material to be an 'accident'. Consequently, Heritage NZ would like to avoid this word being used in the resource consent conditions. Heritage NZ also notes that because of the recorded sites, the applicant/consent holder should apply for an archaeology authority prior to work commencing. The terms of the authority will set out the steps to be followed if archaeological or cultural material is found. Heritage NZ acknowledges that it is ultra vires for resource consent condition to require compliance with another statute, but considers that the EMPC condition is a good opportunity to convey a reminder about whether an archaeological authority is needed before commencing work.

43 Heritage NZ suggested that the proposed conditions in relation to the Environmental Management Plan for Construction for both Councils be amended to:

Provisions for archaeology, including whether an archaeological authority is required under the Heritage New Zealand Pouhere Taonga Act 2014 and/or procedures to be followed in the event that archaeological or cultural material is discovered.

and include the advice note:

Note: Recorded archaeological sites in the vicinity of the subdivision indicate the possibility of further unrecorded archaeological sites that may be disturbed by soil disturbance associated with development of the new lots. An application for an Archaeological Authority must be made to Heritage New Zealand under the Heritage New Zealand Pouhere Taonga Act 2014, to modify or destroy any archaeological site or if there is reasonable cause to suspect that an archaeological site may be modified or destroyed. It is an offence to modify or destroy a site for any purpose without an authority and the Heritage New Zealand Pouhere Taonga Act 2014, contains penalties for unauthorised site damage. These provisions apply irrespective of whether the works are permitted under the Resource Management Act 1991, by the provisions of plan or resource consent. Seeking advice from Heritage New Zealand is recommended when planning for any soil disturbances, such as building platforms, fencing and landscaping

44 I agree that the amendments proposed by Heritage NZ improve the clarity of this part of the condition in relation to the archaeological authority.

SUGGESTED AMENDMENTS TO THE DRAFT CONDITIONS OF CONSENT

- 45 Other minor amendments are suggested to the consent conditions to provide more certainty that the effects of the proposal will be avoided, remedied or mitigated. Such amendments include stating the minimum size of SRPs in relation to the contributing catchment. Given the sensitivity of the receiving environments, and that the applicant has committed to over-sizing the SRPs in relation to the requirements of the GWRC Erosion and Sediment Guidelines, I consider that it is important that this is captured within the conditions of the discharge permit, to reduce the likelihood of this requirement being relaxed in the future.
- 46 Some minor amendments have been suggested in relation to the proposed environmental monitoring. Dr Oliver has noted some of these matters in her evidence. In addition, I recommend some amendments to the conditions for consistency. For example, the requirements of condition 26 of Water Permit [33621] should be more consistent with the General Monitoring Conditions for the EMAMP (condition 31 of Water Permit [33621] which is repeated in Discharge Permit [33622] and Land Use consent [33624]). Other minor amendments are suggested in relation to the location of monitoring, to be consistent with other monitoring being undertaken within the catchment.
- 47 I support the opportunity to caucus the suggested consent conditions which will allow the opportunity for these conditions to be refined.

CONCLUSION

- 48 In conclusion, I agree with the recommendation of the s42A report subject to the amendment of some of the conditions, and agreement on the exact amount of compensation planting and other works to offset the residual adverse effects of the proposal. The PNRP is considered to still be in the early stages of the plan development process, and so has less weight than if hearings had been held or decisions made. Regardless, the conclusion of my policy assessment is that the proposal generally meets the objectives and policies of this plan, as well as the objectives and policies of the operative Regional Plan for Discharges to Land and the Regional Freshwater Plan.
- 49 In relation to the effects of the proposal, I consider that the adverse effects of the proposal on the environment can be avoided, remedied, or mitigated, with any

residual effects of the works being compensated for through riparian planting and other works.

Michelle Conland
7 April 2016