

**Planning & Regulatory Working Party**  
**Tuesday 1 March 2022 at 1.00pm**

# **AGENDA**

## Planning & Regulatory Working Party Agenda

Meeting to be held via Zoom video and Teleconferencing  
on Tuesday 1 March 2022, commencing at 1.00pm

Please note: working parties and working groups carry NO formal decision-making delegations from council.  
The purpose of the working party/group is to carry out preparatory work and discussions prior to taking matters to the full council for formal consideration and decision-making. Working party/group meetings are open to the public to attend (unless there are specific grounds under LGOIMA for the public to be excluded).

### MEMBERSHIP OF THE PLANNING & REGULATORY WORKING PARTY

Cr Joce Yeoman (Chair)		
Cr Amy Macdonald	Cr Colin Kitchen	Cr Justin Blaikie
Cr Penny Smart (ex officio)	Juliane Chetham	Mira Norris
Rowan Tautari	Alyx Pivac (William Sullivan)	

#### 1.0 KARAKIA TIMATANGA

#### 2.0 NGĀ WHAKAPAHĀ | APOLOGIES

#### 3.0 NGĀ WHAKAPUAKANGA | DECLARATIONS OF INTEREST

#### 4.0 REPORTS

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#### 5.0 KARAKIA WHAKAMUTUNGA

**TITLE:** **Record of Actions**

**From:** Rachael King, Planning and Policy Administrator

**Authorised by:** Jonathan Gibbard, Pou Tiaki Taiao, on 15 February 2022

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### **Whakarāpopototanga | Executive Summary**

The purpose of this report is to present the Record of Actions of the last meeting held on 8 December 2021 for review by the meeting.

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### **Ngā tapirihanga | Attachments**

Attachment 1: Minutes of Meeting - 8 December 2021 [↓](#) 

Planning & Regulatory Working Party  
8 December 2021

## Planning & Regulatory Working Party Record of Actions

Meeting held via Zoom video and teleconferencing  
on Wednesday 8 December 2021, commencing at 9.30am

<b>Present:</b>	Cr Joce Yeoman	Chair
	Cr Amy Macdonald	
	Cr Colin (Toss) Kitchen	
	Cr Penny Smart	Ex-officio
	Rowan Tautari	TTMAC Representative
<b>In Attendance:</b>	<b>Full Meeting</b>	
	Jonathan Gibbard	GM - Environmental Services
	Colin Dall	GM - Regulatory Services
	Ben Lee	Planning & Policy Manager
	Tess Dacre	Compliance Monitoring Manager
	Justin Murfitt	Strategic Policy Specialist
	Jason Donaghy	Natural Resources Monitoring Manager
	Alison Newell	Policy Specialist
	James Griffin	Policy Specialist
	Ingrid Kuindersma	Policy Planner
	Rachael King	Planning & Policy Administrator (minutes)
	<b>Part Meeting</b>	
	Malcolm Nicolson	CEO

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**The Chair declared the meeting open at 9.33am**

### **1.0 KARAKIA TIMATANGA**

Cr Yeoman

### **2.0 NGĀ WHAKAPAHĀ | APOLOGIES**

Apologies from Cr Justin Blaikie and TTMAC Representatives Juliane Chetham, Mira Norris and Alyx Pivac were received.

### **3.0 DECLARATIONS OF INTEREST**

It was advised that members should make declarations item-by-item as the meeting progressed.

### **4.0 NGĀ RIMITI | ITEMS**

#### **4.1 Record of Actions**

- Colin Dall advised that discussions around the disposal of silage wrap have occurred and website information is to be checked

**Agreed Action:** Follow up with TAs – Cr Yeoman to follow up with Colin Dall in the New Year

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#### **4.2 Planning and Policy Work Programme**

- Taken as read
- Justin Murfitt advised that MfE has just released document adding more information, specifically around NBA and Regional Spatial Planning – asking for feedback by 28 February 2022 and the proposed way forward was outlined, given the tight timeframes and desire to consult with TTMAC.
- Discussion took place regarding background work being undertaken on Northland to Auckland corridor planning.
- TWWAG meeting was held on Monday and they have agreed to set up a smaller sub-group to look at ToR which will delay Te Mana o te Wai report to Council

*9.52am – Malcolm Nicolson joined the meeting*

#### **4.3 Regulatory Services Work Report**

- Taken as read
- Cr Kitchen – with regards to illegal dump site and FDE issues in Kaitaia – please provide updates moving forward so that he is informed should he be approached
- Discussion took place regarding the best way to deal with approaches that are before the Courts
- Update on Kohukohu – waiting for cultural impact assessment to be completed – because of this delay staff have decided not to include Opononi and Ōmāpere and to notify separately

#### **4.4 Proposed Regional Plan - Appeals Update**

- Taken as read
- Council workshop was held yesterday on appeals outcome. Council's position in relation to NES-FW and the Courts finding that wetland provisions apply in the coastal marine area is still to be outlined/decided
- Letter to the Ministers from Chair is being drafted outlining councils concerns regarding wetland provisions applying in the CMA – Cr Yeoman has requested she view the letter before it is sent

##### ***Agreed Actions:***

- Request clearer definition of a wetland from MfE – have discussion with DOC and Forest and Bird and perhaps get them on board to talk to MfE as well
- Detail and the way forward to be emailed to councillors so that they are aware of the outcome of yesterday's workshop discussion

#### **4.5 Marine Farms Bonds Update**

- Taken as read
- May end up with farms being abandoned due to bonds not being paid - this may not be an adverse result as some of them are in poor condition and there are others willing to take the sites over

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- The CEO requested that the WP take a firm stance as this has been happening for a long time and there are potential environmental consequences

**Agreed Actions:**

- Colin Dall to circulate further analysis to the members
- Ensure this item is kept on the agenda until the desired outcomes are achieved

**4.6 Wetland Mapping Update**

- Taken as read

*Secretarial Note: Rowan declared a conflict of interest as her partner works for Wildlands*

- Proceeding with tender evaluation– first meeting held yesterday and the next meeting is taking place tomorrow
- Discussion took place regarding the impact of the NPS-FM and whether this would affect the work required

**4.7 Review of the Regional Policy Statement for Northland**

- Taken as read
- At the Council meeting it was agreed that the P&RWP oversee the process
- It was advised that the consultant will be able to provide skills/knowledge etc to package information from MTAG, working on behalf of TTMAC

**Agreed Actions:**

- Ben Lee and Rowan Tautari to work together and look at documentation and processes around feedback to TTMAC
- Update the flow chart to include 3x TTMAC members attending council workshops

**5.0 KARAKIA WHAKMUTUNGA**

Cr Yeoman

**The meeting closed at 11.02am**

**TITLE:** Planning & Policy Work Programme

**From:** Ben Lee, Planning and Policy Manager

**Authorised by:** Jonathan Gibbard, Pou Tiaki Taiao, on 23 February 2022

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## Whakarāpopototanga | Executive Summary

The following table sets out the work programme for the Planning and Policy team<sup>1</sup> for the next three years. It only includes work relevant to the Planning & Regulatory Working Party's ToR.

Activity	Detail	When
<b>Coastal occupation charging</b>	<p>TTMAC have been working with staff and MTAG to co-design a COC discussion document to inform the development of a COC policy for Northland. At their December 2021 meeting TTMAC endorsed the draft discussion document and recommended it be presented to Council subject to staff and MTAG drafting a new section setting out 'tangata whenua perspective on coastal occupation charging'.</p> <p>It is anticipated that a draft Coastal Occupation Charging Discussion Document will be presented to Council at a workshop on 23 March.</p>	March 2022
<b>Northland to Auckland corridor plan</b>	<p>This project is led by the Ministry of Housing and Urban Development. The outcome is a spatial plan focussing on high growth areas in Northland and the connection with Auckland.</p> <p>The project has slowed as key staff within the Ministry of Housing and Urban Development (who were leading the project) have moved on and delays in holding workshops due to key attendees not being available. Workshops scheduled for December '21 and Feb '22 were postponed.</p> <p>Councils GIS team has put together a viewer of relevant geographic layers. The idea being that this will inform 'no-go' and 'go-slow' areas for urban development (e.g. outstanding natural landscapes and flood hazard area).</p>	Ongoing
<b>Proposed Regional Plan appeals</b>	Refer separate agenda item	Refer separate agenda item
<b>TOAT Beach Board (90 Mile Beach)</b>	<p>Beach management plan now operative. Planning and Policy staff have lessened their involvement as the focus moves to implementation.</p> <p>The Beach Management Plan contains a range of actions, including seeking council to undertake a plan change to the Regional Plan to, amongst other things, recognise the significant values of Te Oneroa-a-Tōhe. Staff will seek direction from council on the timing and process for undertaking the plan change by mid-March</p>	<p>Advice to board – ongoing</p> <p>Council direction – March 2022</p>

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<sup>1</sup> Only includes activities within the Planning and Regulatory Working Party's areas of interest. For example, it does not include transport or climate change planning (which Planning and Policy staff are assisting with).

Activity	Detail	When
<b>Wetland mapping</b>	<p>In accordance with the NRC procurement policy, procurement of the wetland mapping tender was initiated via an open tender process late last year. Several tenders were received. At the final tender evaluation meeting held 2 February 2022, it was agreed by the panellists that all the tenders should be rejected.</p> <p>The basis for doing so was due to there being a high risk that that the mapping output from each of the tenders would not meet NPS-FM resolution requirements to map wetlands of 500m<sup>2</sup> and larger.</p> <p>Staff are currently reviewing options to progress the mapping project, both in a timely fashion and with a methodology that we have a high degree of confidence will deliver on NPS-FM requirements.</p>	Ongoing
<b>Freshwater plan change</b>	<p>NRC have developed a draft Freshwater Plan Change Framework that will be used as the basis for consultation with The Tangata Whenua Water Advisory Group (TWWAG), Primary Sector Liaison group (PSLG) and key stakeholders. The framework will be presented to a council workshop in March along with the results of the NIWA water quality scenario monitoring and associated costs. The Freshwater Plan Change timeline has been revised to notify by <b>April 2024</b>. The first 'hard date' in the timeline is to have the feedback from the two advisory groups and key stakeholders by September 2022.</p> <p>TWWAG met on 18 February and provided their feedback on the proposal for changing remuneration to contracts only, and the suggested further amendments to their ToR (clarifying their reporting to council via TTMAC, the role of the TTMAC representatives, deletion of media clause). TWWAG also had a presentation from staff on the proposed timelines for the freshwater plan change and on the council framework, and discussed reviewing their forthcoming work in light of this.</p> <p>The PSLG meet on 25 January and 15 February 2022. They have completed a draft report outlining the freshwater issues and challenges for the primary sector in Northland. They are currently providing feedback on the long-term visions, values and objectives component of the Freshwater Plan Change Framework.</p>	Ongoing
<b>NRC input into national proposals</b>	<p>Council's response to a government discussion document on resource management reform proposals was considered at the 22 February Council meeting.</p> <p>The government is currently consulting on changes to the National Environmental Standards for Sources of Human Drinking Water.</p> <p><a href="https://environment.govt.nz/publications/improving-the-protection-of-drinking-water-sources/">https://environment.govt.nz/publications/improving-the-protection-of-drinking-water-sources/</a></p> <p>The proposals have significant implications for council and landowners – a draft council submission is in development. The consultation closes 6 March 2022.</p> <p>Council staff continue to engage with MfE (and DIA) in particular regarding RMA and LG reform and development of national guidance.</p>	Ongoing



Activity	Detail	When
<b>District plan changes and consents</b>	<p>Staff lodged a submission on a publicly notified application to the Kaipara District Council for subdivision consent at Devich Rd, Mangawhai. The submission on the application (lodged under delegated authority) sought requirements to provide appropriate rainwater capture and on-site storage to provide for drinking water and firefighting supply given reticulated water is not available.</p> <p>Mediation on Plan Change 78 (Mangawhai Central) and further discussion with parties has been undertaken. NRC proposed several changes to the provisions to provide for appropriate consideration of water availability at the time of development. These changes have been agreed by Kaipara District Council and the applicants Mangawhai Central Ltd. On this basis, NRC filed a memorandum with the court to withdraw from the proceedings.</p> <p>The submission on the sand mining resource consent at Pakiri was lodged with Auckland Council and formally acknowledged. However, no further correspondence has been received and a hearing date has not yet been set.</p>	Ongoing
<b>Treaty settlement process</b>	Supporting Treaty settlements as there are implications for council's activities. Currently involved in the Kaipara Moana settlement process.	Ongoing
<b>Regional Plan guidance material</b>	It has been identified that, due to the ongoing implementation of national regulations and updates resulting from the resolution of appeals to the Regional Plan, there is a need for guidance to ensure consistent interpretation. A meeting was held with relevant staff to determine areas of priority for developing guidance material which identified a number of areas for internal and external guidance, mainly related to wetlands but also including agrichemical provisions.	Ongoing
<b>Additional sites of significance to tangata whenua – plan change</b>	<p>It was originally anticipated that this would be a standalone plan change. The Proposed Regional Plan includes a policy and rule framework for sites of significance to tangata whenua (SOS). During development of the proposed plan, tangata whenua were offered opportunity to include SOS, however, only a few were included. The idea was to undertake a process with tangata whenua providing an opportunity to include additional SOS.</p> <p>There is the potential for SOS to be included via the freshwater plan change should tangata whenua request their inclusion.</p>	On pause
<b>Mana Whakahono o Rohe (MWR)</b>	The Policy and Planning Team are assisting Māori Relationships team with roll-out of joint hapū MWR and development of implementation plans as required.	Ongoing
<b>RPS – five-year review</b>	We are in the process of contracting a Māori resource management practitioner to assist with the process and then work will begin on preparing the draft report.	Ongoing

Activity	Detail	When
<b>Te Mana o Te Wai</b>	<p>Council has budgeted \$250k/year (starting 22/23) to support tangata whenua involvement in freshwater management. A paper will be going to the March council meeting seeking that about \$110k of next years \$250k is brought forward to this year to provide funding for the Tangata Whenua Water Advisory Group to undertake work for the freshwater plan change (e.g. understanding what Te Mana o te Wai means for Taitokerau).</p> <p>Staff held an initial workshop with council in February to discuss ideas for developing a plan for how the funding should be spent. It's anticipated a paper will go to the May TTMAC meeting to seek their views.</p>	Paper to March council meeting
<b>Regional Biodiversity Strategy</b>	<p>Delays in releasing the NPS Indigenous Biodiversity are ongoing. This presents a risk that processes required of council may change, particularly partnerships with specific other parties. Staff are reviewing options to focus initially on establishing a biodiversity strategy for council, much like our strategy for tackling climate change. This would act as a stopgap until there is clear national direction. It would also help in the way biodiversity is taken into account in council work. A specific paper on this is going to the Biosecurity and Biodiversity Working Party for guidance and direction.</p>	2021 – 2023
<b>Section 17A Review</b>	<p>Council undertakes reviews of its functions to ensure it's being implemented in the most effective way. The reviews are a requirement of Section 17A, Local Government Act 2002. The review of the planning and policy service was completed in August 2021.</p> <p>A key recommendation was for Council investigate potential efficiencies, savings, and benefits of having in-house legal counsel due to the significant costs incurred in recent years both in the planning and policy, and regulatory areas. It was also recommended that shared legal counsel across the four Northland councils should be considered.</p> <p>The council's strategy team have recently started a review of all of council's legal counsel needs.</p>	N/A

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## Ngā mahi tūtohutia | Recommended Actions

Nil – presented for information purposes only

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## Tuhinga | Background

Not applicable

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## Ngā tapirihanga | Attachments

Nil

## TITLE: Regulatory Services Work Report - February 2022

From: Tess Dacre, Compliance Monitoring Manager

Authorised by: Colin Dall, Pou Whakaritenga, on 23 February 2022

### Whakarāpopototanga | Executive Summary

Over the period 30 November 2021 to 31 January 2022 there were 955 compliance activities undertaken. Of these, seven (1%) were assessed as significantly non-compliant. These were made up of water discharges (3); coastal discharges (2) and a land discharge and a FDE discharge.

The 2021/22 year-to-date rate of significant non-compliance is 1.3%. A summary of consent compliance by consent type is shown in Figure 1 below. A summary of NES-PF compliance by subpart is shown in Figure 2 below.

Figure 1: RMA consent compliance 30 November 2021 – 31 January 2022

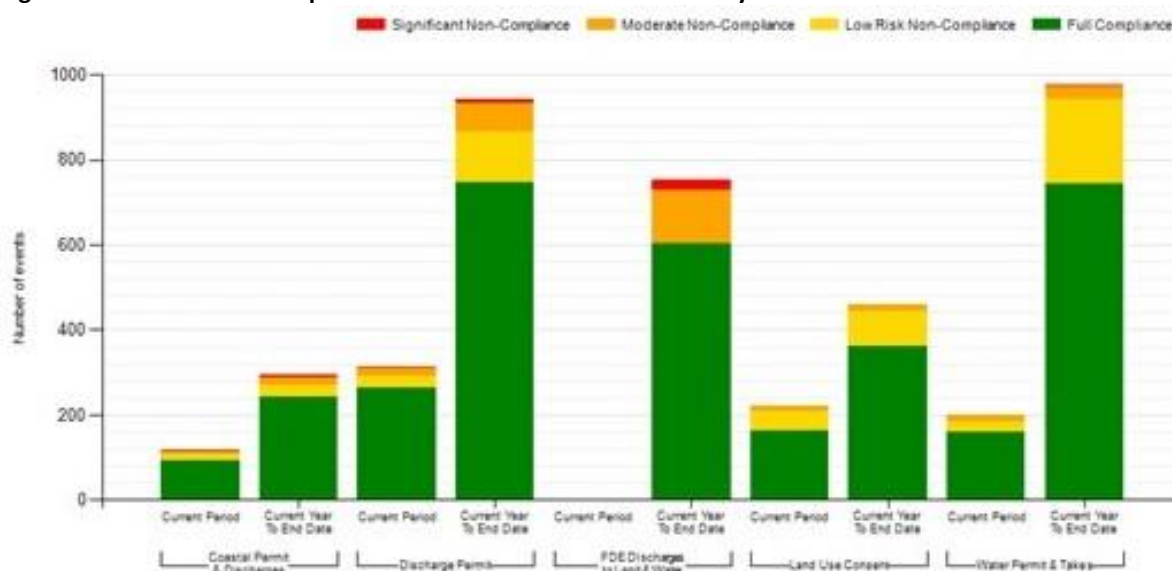
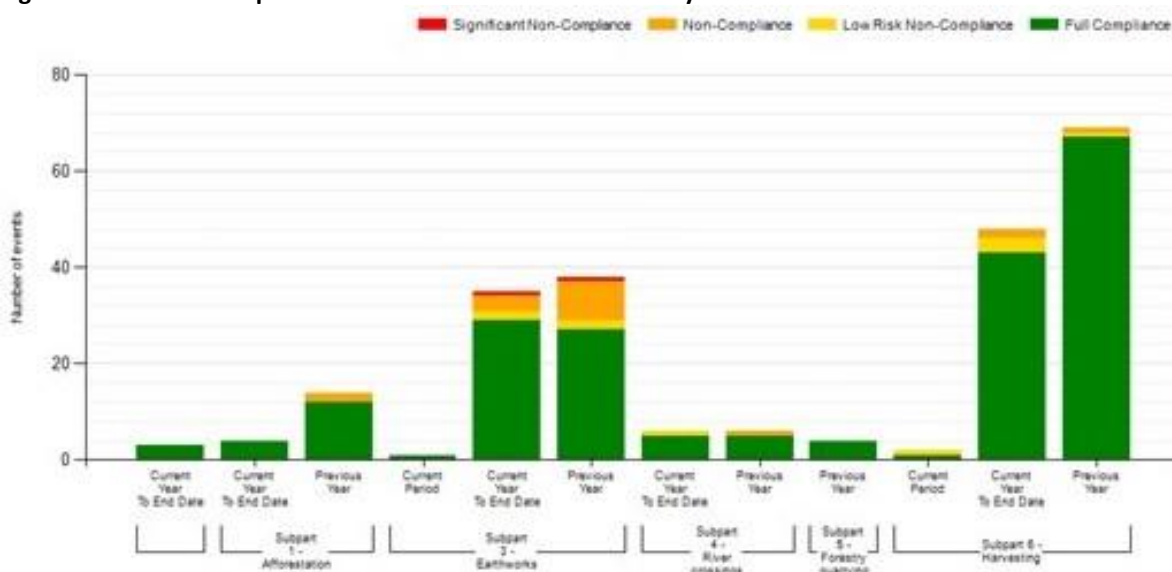


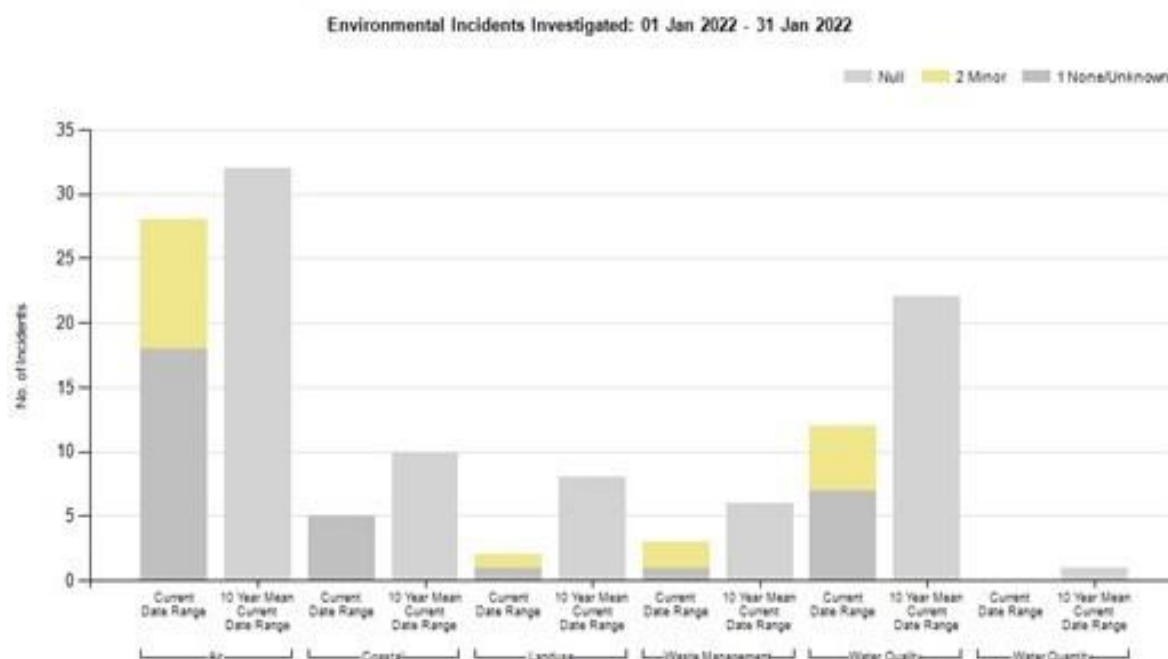
Figure 2: NES – PF compliance 30 November 2021 – 31 January 2022



A total of 135 environmental incidents were recorded from 30 November to 31 January 2022. The most frequent incident type was burning and smoke nuisance, which accounted for 41 (30%) of the incidents, followed by sewage (15), earthworks/vegetation clearance (14), “other water incident”

(12), and odour (10). A comparison of the number of incidents for the month of January is shown in Figure 3.

**Figure 3: Incidents in January 2022 compared with average January last 10 years**



Compliance staff issued ten infringement notices (3 for FDE; 2 for burning and smoke nuisance, and 5 various other) and 25 abatement notices (7 for burning and smoke nuisance, 6 for sediment discharges and 12 various other) in relation to non-compliant activities from 30 November 2021 to 31 January 2022.

There was court action in relation to the following enforcement matters:

1. Earthworks without erosion and sediment controls – Totara North; The defendant, Mr James Jones, vacated his not guilty pleas and subsequently entered guilty pleas to all six charges. On 14 February 2022, the judge convicted and discharged Mr Jones. An enforcement order was also issued requiring Mr Jones to pay council \$3,270 to cover the costs of remedial works and surveying. The judge commended both counsels for seeking a reasonable resolution in very difficult circumstances in the midst of the current COVID pandemic.
2. Dumping of trade and industrial waste – Kaitaia; NRC made an ex parte application to the Environment Court for interim enforcement orders which were issued on 6 November 2020. NRC continues to check compliance with the court orders. Progress by the defendant has been very slow.
3. Burning on industrial/trade property – Whangārei; Charges were laid in the Whangārei District Court on 27 November 2020 against an individual. The September 2021 hearing did not proceed due to lockdown. The court arranged a judicial telephone conference in early December 2021 to discuss a new hearing date, which has now been set down for May 2022.
4. Farm dairy effluent – Kaitaia; Charges were laid in relation to a discharge of farm wastewater on dates between 31 August and 8 September 2020. At the hearing on 21 February 2022 the case was adjourned for three months.
5. Asbestos removal from CMA – Whangārei; The NRC has applied for an enforcement order for the recovery of costs incurred by the NRC in the removal of asbestos from a boatshed. Settlement is currently being negotiated.

6. Earthworks and vegetation clearance in and near a wetland and the discharge of sediment – Teal Bay; Charges have been laid against one individual and three companies for alleged offences in late 2020. Disclosure was done on 21 January 2022.

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### **Ngā mahi tūtohutia | Recommended Actions**

Nil – presented for information purposes only


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### **Tuhinga | Background**

Not applicable

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### **Ngā tapirihanga | Attachments**

Attachment 1: WWTP Update - at February 2022 [!\[\]\(0b5e7e25e8775f7e7e80906ada4f0021\_img.jpg\)](#) 

Location / Consent Status	Plant Description	Issues & Status as at February 2022	Action(s)
<b>Ahipara</b> (FNDC) Consent issued 2013, expires 2033.	<ul style="list-style-type: none"> <li>• Oxidation pond, surface flow wetland, overland flow to drain.</li> <li>• Discharges to a tributary of Wairoa Stream.</li> </ul>	<ul style="list-style-type: none"> <li>• On-going non-compliance with (bacteriological) water quality conditions of consent.</li> </ul>	<ul style="list-style-type: none"> <li>• Ongoing non-compliances with water quality conditions of consent.</li> <li>• Under current abatement notice.</li> </ul>
<b>Hihi</b> (FNDC) Consent issued 2011, expires 2022.	<ul style="list-style-type: none"> <li>• Extended aeration treatment system with flow equalisation and UV disinfection followed by surface flow wetland.</li> <li>• Discharges to the Hihi Stream.</li> </ul>	<ul style="list-style-type: none"> <li>• No current water quality issues, except for a slight issue with ammonia levels at times.</li> </ul>	<ul style="list-style-type: none"> <li>• Project to upgrade plant has not progressed.</li> </ul>
<b>Kāeo</b> (FNDC) Change consent issued 2011, expires 2022.	<ul style="list-style-type: none"> <li>• Settlement and oxidation ponds</li> <li>• Packed bed reactor incorporating vermiculture.</li> <li>• Wetland.</li> <li>• Discharges to the Kāeo River.</li> </ul>	<ul style="list-style-type: none"> <li>• No current issues.</li> <li>• Wetland 2 no longer used due to infiltration issues when area floods.</li> </ul>	<ul style="list-style-type: none"> <li>• No action required.</li> </ul>
<b>Kaikohe</b> (FNDC) Change consent issued 2011, expires 2021. Application for replacement consent received in September 2021.	<ul style="list-style-type: none"> <li>• Anaerobic pond, large facultative pond, three surface flow wetlands.</li> <li>• Discharges to a tributary of the Wairoro stream.</li> </ul>	<ul style="list-style-type: none"> <li>• Ongoing, intermittent non-compliance with average dry weather flow measurement, ammonia and bacteriological conditions of RC.</li> <li>• The major effect of the WWTP discharge on the Wairoro Stream is eutrophication, which won't be addressed by treating for ammonia.</li> <li>• Outflow meter unreliable.</li> <li>• Facility appears overdue for de-sludging.</li> </ul>	<ul style="list-style-type: none"> <li>• Ongoing non-compliances to be addressed in replacement consent.</li> </ul>
<b>Kaitaia</b> (FNDC) Change consent issued 2015, expires 2021. Application for replacement consent received August 2021.	<ul style="list-style-type: none"> <li>• Three ponds plus floating wetland cells.</li> <li>• Discharges to the Awanui River.</li> </ul>	<ul style="list-style-type: none"> <li>• Over summer in some years, there are problems with algae in the ponds and discharge. Cell counts downstream have at times exceeded stock drinking water guidelines. However, to date actual toxins have not been detected.</li> <li>• Current abatement notice for overflows from the network (issued 2016).</li> </ul>	<ul style="list-style-type: none"> <li>• Compliance issues will be addressed in replacement consent.</li> </ul>
<b>Kawakawa</b> (FNDC) Consent issued 2012, expires 2036.	<ul style="list-style-type: none"> <li>• Aeration tank, a secondary clarifier, a disc filter, UV treatment and then to constructed wetlands.</li> <li>• Discharges to Kawakawa River.</li> </ul>	<ul style="list-style-type: none"> <li>• No current issues.</li> </ul>	<ul style="list-style-type: none"> <li>• No action required.</li> </ul>
<b>Kerikeri</b> (FNDC) Consent issued 2016, expires 2036.	<ul style="list-style-type: none"> <li>• New plant.</li> <li>• Discharges to the Waitangi Forest natural wetland (a tributary of the Kerikeri Inlet).</li> </ul>	<ul style="list-style-type: none"> <li>• No obvious issues from new plant, which was commissioned in December 2020.</li> <li>• AN issued November 2020 is still in effect.</li> </ul>	<ul style="list-style-type: none"> <li>• No action required.</li> </ul>

Location / Consent Status	Plant Description	Issues & Status as at February 2022	Action(s)
<b>Kohukohu</b> (FNDC) Consent issued 2002, expired 2016. Operating under s124 protection – application is on hold.	<ul style="list-style-type: none"> <li>Septic tanks followed by oxidation pond and surface flow wetland.</li> <li>Discharges to Hokianga Harbour.</li> </ul>	<ul style="list-style-type: none"> <li>Occasional intermittent issues with bacteriological conditions of consent.</li> </ul>	<ul style="list-style-type: none"> <li>No action required.</li> </ul>
<b>Opononi &amp; Omāpere</b> (FNDC) Consent issued 2009, expired 2019. Operating under s124 protection while replacement consent is processed. Currently receiving submissions.	<ul style="list-style-type: none"> <li>Primary screen, aerated pond, facultative pond, surface flow wetland.</li> <li>Discharges to Hokianga Harbour (on outgoing tide).</li> </ul>	<ul style="list-style-type: none"> <li>Significant non-compliance with bacteriological consent limits both 12-month median and 90<sup>th</sup> percentile up until October 2020 and ammonia since 2016.</li> <li>Issues &amp; Options report completed with upgrade options recommended to address TAN and E. coli levels.</li> </ul>	<ul style="list-style-type: none"> <li>Current abatement notice (issued 2016).</li> <li>Replacement consent will address required upgrade.</li> </ul>
<b>Paihia</b> (FNDC) Consent issued 2014, expires 2034.	<ul style="list-style-type: none"> <li>Anaerobic ponds – two.</li> <li>Two aerated ponds with Bio-Shells.</li> <li>Dosing with sodium bicarbonate.</li> <li>Discharges to the Waitangi Forest natural wetland (a tributary of the Kerikeri Inlet).</li> </ul>	<ul style="list-style-type: none"> <li>Enforcement order was issued in December 2018. FNDC complied with the order.</li> <li>Plant was upgraded in 2019 with Bio-Shells. However, alkalinity issues are preventing plant operating at optimum performance for ammonia treatment.</li> </ul>	<ul style="list-style-type: none"> <li>Alkalinity improvement project still in progress.</li> </ul>
<b>Rangiputa</b> (FNDC) Consent issued 2008, expires 2032.	<ul style="list-style-type: none"> <li>Oxidation ponds.</li> <li>Discharges to ground via the base of a third pond.</li> </ul>	<ul style="list-style-type: none"> <li>No current issues.</li> </ul>	<ul style="list-style-type: none"> <li>No action required.</li> </ul>
<b>Rāwene</b> (FNDC) Consent issued 2013, expires 2023.	<ul style="list-style-type: none"> <li>Screen.</li> <li>Anaerobic pond, facultative pond and surface flow wetland.</li> <li>Discharges to Omanaia River.</li> </ul>	<ul style="list-style-type: none"> <li>Excessive solids in the anaerobic pond.</li> </ul>	<ul style="list-style-type: none"> <li>Plant requires desludging.</li> <li>Five infringement notices issued in relation to a discharge from the reticulation system</li> </ul>
<b>Russell</b> (FNDC) Consent issued 2013, expires 2024.	<ul style="list-style-type: none"> <li>Screen.</li> <li>Aerated treatment system, surface flow wetland, filtration and UV disinfection.</li> <li>Discharges to deep bores.</li> </ul>	<ul style="list-style-type: none"> <li>Occasional non-compliances with E. coli condition of consent post UV.</li> <li>2017 AN is still in effect.</li> </ul>	<ul style="list-style-type: none"> <li>Under current abatement notice.</li> <li>Infringement notice issued January 2022.</li> </ul>
<b>Taipā</b> (FNDC) Consent issued 2021, expires 2029.	<ul style="list-style-type: none"> <li>Screen. Replacement underway.</li> <li>Three small lagoons (it is intended to reconfigure these to anaerobic, aerated, anoxic).</li> <li>Maturation Pond.</li> <li>Discharges to a tributary of the Parapara Stream.</li> </ul>	<ul style="list-style-type: none"> <li>Replacement resource consent issued.</li> <li>FNDC has access issues with sampling sites.</li> </ul>	<ul style="list-style-type: none"> <li>Monitoring parameters against new consent conditions.</li> <li>Abatement notice issued for odour issues for pump station in Mangonui.</li> </ul>

Location / Consent Status	Plant Description	Issues & Status as at February 2022	Action(s)
<b>Whatuhihihi</b> (FNDC) Consent issued 2007, expires 2025.	<ul style="list-style-type: none"> <li>Screen.</li> <li>Two aerated ponds equipped with biological growth media.</li> <li>Dosing.</li> <li>UV.</li> <li>Discharges to natural wetland which extends down to Karikari Bay.</li> </ul>	<ul style="list-style-type: none"> <li>Issues with elevated TSS levels. Levels may not be appropriate.</li> </ul>	<ul style="list-style-type: none"> <li>FNDC to seek consent variation to address TSS levels – however this is not a priority.</li> </ul>
<b>Dargaville</b> (KDC) Consent issued 2007, expires 2022.	<ul style="list-style-type: none"> <li>Facultative pond and wetland/maturation pond.</li> <li>Discharges to the Northern Wairoa River.</li> </ul>	<ul style="list-style-type: none"> <li>Frequent non-compliances with water quality conditions and discharge volumes since 2018.</li> <li>Desludging carried out in 2020 to mitigate water quality issues.</li> </ul>	<ul style="list-style-type: none"> <li>Under current abatement notice for non-compliances with consent conditions for Dargaville WWTP.</li> <li>Under current abatement notice for unauthorised discharges from Dargaville network pumpstations.</li> </ul>
<b>Glinks Gully</b> (KDC) Consent issued 2014, expires 2024.	<ul style="list-style-type: none"> <li>Individual septic tanks followed by dose pumping to land.</li> </ul>	<ul style="list-style-type: none"> <li>No current issues.</li> </ul>	<ul style="list-style-type: none"> <li>No action required.</li> </ul>
<b>Kaiwaka</b> (KDC) Consent issued 2010, expires 2022.	<ul style="list-style-type: none"> <li>Aerated pond and constructed wetland.</li> <li>Discharge to Pukekaroro Stream</li> </ul>	<ul style="list-style-type: none"> <li>Water quality improvements since the installation of the membrane filter in mid-2020.</li> </ul>	<ul style="list-style-type: none"> <li>Latest monitoring results show improvement.</li> </ul>
<b>Mangawhai – Ecocare</b> (KDC) Consent issued 2007, expires 2042.	<ul style="list-style-type: none"> <li>Screening, CASS tanks, chlorination and then pumped to storage dam.</li> <li>Irrigated to farmland.</li> </ul>	<ul style="list-style-type: none"> <li>Odour complaints being received from neighbours.</li> <li>Some historic exceedances of the Total Dissolved Solids (TDS) consent limit, mostly in summer.</li> </ul>	<ul style="list-style-type: none"> <li>Under current abatement notice for odour from irrigation area.</li> <li>Infringement notice issued in December 2021 for odour from the irrigation area.</li> </ul>
<b>Maungaturoto</b> (KDC) Consent issued 2008, expires 2032.	<ul style="list-style-type: none"> <li>Aerated pond, membrane filtration plant, storage pond, discharge to rock filter.</li> <li>Discharges to the Wairau River.</li> </ul>	<ul style="list-style-type: none"> <li>Have had intermittent non-compliant discharges, generally due to high rainfall events.</li> <li>Current abatement notice for non-compliant discharges (issued April 2018).</li> </ul>	<ul style="list-style-type: none"> <li>No compliance issues since winter.</li> </ul>
<b>Te Kopuru</b> (KDC) Consent issued 2010, expires 2044.	<ul style="list-style-type: none"> <li>Oxidation ponds and constructed wetland.</li> <li>Discharges to Northern Wairoa River.</li> </ul>	<ul style="list-style-type: none"> <li>Intermittent minor non-compliance with water quality consent conditions.</li> <li>Abatement notice issued September 2018.</li> <li>Second aerator installed in September 2020.</li> </ul>	<ul style="list-style-type: none"> <li>September 2021 monitoring results shows improvement in discharge quality.</li> </ul>



Location / Consent Status	Plant Description	Issues & Status as at February 2022	Action(s)
<b>Hikurangi</b> (WDC) Consent issued 2007 (re-issued 2010), expires 2025.	<ul style="list-style-type: none"> <li>Settling pond, aerated pond, wetland and floating wetlands.</li> <li>Discharges to Mangawhero Stream.</li> </ul>	<ul style="list-style-type: none"> <li>Intermittent issues with plant performance resulted in the removal of the membrane filtration system.</li> <li>WDC has engaged a consultant to review plant performance and implement a series of improvements.</li> </ul>	<ul style="list-style-type: none"> <li>Additional monitoring in place to assess suitable changes to system.</li> </ul>
<b>Ngunguru</b> (WDC) Consent issued 2010, expires 2035.	<ul style="list-style-type: none"> <li>Aerated pond, settling pond, constructed wetland and UV unit.</li> <li>Discharges to tributary of the Waitoi Creek.</li> </ul>	<ul style="list-style-type: none"> <li>No current issues.</li> <li>Installed a new membrane in September 2020.</li> </ul>	<ul style="list-style-type: none"> <li>No action required.</li> </ul>
<b>Oakura</b> (WDC) Consent issued 2006, condition change in 2017, expires 2025.	<ul style="list-style-type: none"> <li>Screening, sedimentation tanks, biological contactor unit, disc filter and UV unit.</li> <li>Discharges to forest land via dripper lines.</li> </ul>	<ul style="list-style-type: none"> <li>No current issues.</li> </ul>	<ul style="list-style-type: none"> <li>No action required.</li> </ul>
<b>Portland</b> (WDC) Consent issued 2004, expires 2024.	<ul style="list-style-type: none"> <li>Oxidation pond and constructed wetland.</li> <li>Discharges to Tokitoki Creek.</li> </ul>	<ul style="list-style-type: none"> <li>No current issues.</li> </ul>	<ul style="list-style-type: none"> <li>No action required.</li> </ul>
<b>Ruakākā</b> (WDC) Consent issued 2019, expires 2046.	<ul style="list-style-type: none"> <li>Aerated pond and constructed wetlands.</li> <li>Discharges to Bream Bay sand dunes.</li> </ul>	<ul style="list-style-type: none"> <li>Some recent (November 2021) non-compliances have been reported.</li> </ul>	<ul style="list-style-type: none"> <li>No action required.</li> </ul>
<b>Tutukaka</b> (WDC) Consent issued 2004, expires 2024.	<ul style="list-style-type: none"> <li>Screening, primary treatment, denitrification recirculation tanks, sand filters, UV unit and constructed wetland.</li> <li>Discharges to a tributary of Tutukaka Harbour.</li> </ul>	<ul style="list-style-type: none"> <li>No current issues.</li> </ul>	<ul style="list-style-type: none"> <li>No action required.</li> </ul>
<b>Waiōtira</b> (WDC) Consent issued 2008, expires 2030.	<ul style="list-style-type: none"> <li>Septic tank and constructed wetland.</li> <li>Discharges to Waiōtira Stream.</li> </ul>	<ul style="list-style-type: none"> <li>No current issues.</li> </ul>	<ul style="list-style-type: none"> <li>No action required.</li> </ul>
<b>Waipū</b> (WDC) Consent issued 2009, expires 2030.	<ul style="list-style-type: none"> <li>Aerated pond and constructed wetland with discharge to rapid in-fill basins.</li> <li>Discharges to the Bream Bay coast via subsurface flow.</li> </ul>	<ul style="list-style-type: none"> <li>No current issues.</li> </ul>	<ul style="list-style-type: none"> <li>No action required.</li> </ul>
<b>Whangārei Main WWTP</b> (WDC) Change consent issued 2015, expires 2022.	<ul style="list-style-type: none"> <li>Screening, primary clarifiers, 1<sup>st</sup> and 2<sup>nd</sup> stage trickling filters, activated sludge basin and clarifiers, effluent filter, UV unit and normal to high flows go through wetlands.</li> <li>Discharges to Limeburners Creek.</li> </ul>	<ul style="list-style-type: none"> <li>No current issues.</li> </ul>	<ul style="list-style-type: none"> <li>No action required.</li> </ul>

**TITLE:** Proposed Regional Plan - Appeals Update

**From:** Michael Payne, Policy Specialist

**Authorised by:** Jonathan Gibbard, Pou Tiaki Taiao, on 21 February 2022

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## Whakarāpopototanga | Executive Summary

Since the last Working Party update (8 December 2021), Environment Court decisions have been released on:

- *Topic 16 – (Livestock exclusion)* - decision released 11 February 2022. Next step is for council to circulate final wording of provisions in light of the February decision to parties to the appeals and for finalised wording to be submitted to the Court for a final decision.

### Other Appeals or Next Steps directed by the Court

- *Topic 1 (Vehicles on Beaches and Aquaculture)* – This appeal is impacted by the High Court decision and council had to report to the Environment Court by 18 February on next steps.
- *Topic 14 (Marine protected areas / Fishing controls)* - this topic is still awaiting the Court decision following the August 2021 hearing. In the interim, the Court has directed parties on two matters:
  - i) The court required parties to give their position on the relevance of two matters: The Trans-Tasman Resources Supreme Court decision and an article by Dame Anne Salmond<sup>2</sup>. On 11 February 2022 A Joint Memorandum was filed with Court confirming parties' agreement over these matters.
  - ii) Parties were to continue to work towards resolving outstanding matters and report the outcome of 'substantive discussion' no later than 4 March 2022. Parties have agreed on a facilitated conference call (details to be confirmed) to enable their positions to be reported back to the court.
- *Topic 15 (Mangroves)* - Following the November 2021 High Court decision that the NES-F applies to "natural wetlands" in the Coastal Marine Area (CMA), the Environment Court has directed council and other parties to confirm their updated positions by 18 February. At a council workshop on 9 February, council supported the staff recommendation to 'retain the PRP mangrove rules and argue there is no conflict because text states that NESs apply where PRP rules are less stringent and where PRP rules are more stringent, they apply'. This position has been relayed to other parties and in accordance with the 18 February deadline, the Court will receive a memorandum that outlines the Council and other parties' positions to the Court.
- *Topic 17 (Outstanding Natural Landscapes (ONLs) in the CMA)* - The Court has approved council's proposed process for undertaking the mapping of ONLs in the CMA which was submitted at the end of last year. Council is now in the process of approaching nominated consultants to assist with facilitation of tangata whenua input to the process.
- *Declaration on NES-F and Wetlands in CMA* - Council is preparing an application for a declaration to submit to the Environment Court to confirm the definition of a natural wetland in the coastal marine area (CMA) for the purposes of implementing the NES Freshwater wetland regulations.

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<sup>2</sup> Trans-Tasman Resources Limited v Taranaki-Whanganui Conservation Board & Ors [2021] NZSC 127, the article titled "Te Tiriti and Democracy" by Dame Anne Salmond and the article titled "Lex Aotearoa" by Williams J.

- *Other matters* - There are several other relatively minor appeal points that staff continue to work towards resolution with parties. The next reporting date on all other outstanding appeals to the Court is 17 March.

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## Ngā mahi tūtohutia | Recommended Actions

THAT the Planning and Regulatory Working Party receive this report.

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## Tuhinga | Background

### Topic 16 (Livestock exclusion)

This was a hearing in relation to the stock exclusion provisions of the Proposed Regional Plan for Northland. Hearings were held 10 – 12 November 2021. The hearing focused on:

- The minimum area for natural wetlands to be fenced to prevent stock access.
- The extent to which sheep should be excluded from waterways and wetlands
- The definition of “inanga spawning site”

In making its decision the Court grappled with practical issues that arose with the introduction of the new National Policy Statement for Freshwater Management (**NPSFM 2020**), Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES-F**) and the Stock Exclusion Regulations 2020 (**SER**). All of which came into force after the council decisions on the plan were issued, after appeals had been lodged and after most of these matters had been through mediation and were prepared for hearing.

In the decision the Court provides interesting and insightful comment on the role of the Court and council in applying the NPSFM 2020, NES-F and SER at this late stage in the planning process as well as commentary on the recent level of litigation in the Environment Court “*spurred by various government departments unhappy with the outcomes before the Council and the Courts*”.<sup>3</sup>

Generally speaking, the decision found in Council’s favour, and the Court’s decision clearly shows the frustration that the Court is feeling with changing planning regimes, and poor definitions in national legislation. Key decisions included:

- The minimum area for natural wetlands to be fenced will be 500m<sup>2</sup> rather than 2,000m<sup>2</sup> as currently in the plan.
- That sheep should be excluded from Inanga spawning areas but not otherwise.
- The court concluded that Inanga spawning site be defined as:

*The margins of rivers and estuaries that are inundated by spring high tides.*

*Advice Note: In the context of this definition "margins of rivers and estuaries that are inundated at spring high tide" refers to the area of land adjacent to the water in a river or estuary that is not normally covered in water, but that is covered in water during high tides near full and new moon, when the tidal range is at its highest. This occurs twice a month all year round.*

The next step toward final resolution of Topic 16 is for staff and appeal parties to agree plan wording that implements the Court’s finding and submit this to the Environment Court for consideration in its final decision.

### Declaration on NES-F and Wetlands in CMA

During the hearings on appeals relating to mangroves, the question arose as to whether the NES-F had jurisdiction within the CMA in terms of “natural wetlands”. As reported in the 8 December

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<sup>3</sup> <https://www.nrc.govt.nz/your-council/about-us/council-projects/new-regional-plan/consent-orders/>

Planning and Regulatory Working Party meeting, the High Court determined that the 'natural wetland' components of the NES-F do apply in the CMA<sup>4</sup>.

One key question now to be determined is the definition of a 'natural wetland' in the CMA given that this was not a question that the High Court considered. Given that there is no clear definition of what constitutes a natural wetland in the CMA, this decision has a significant impact on various aspects of the Proposed Regional Plan.

In order to create some clarity on this issue, staff have had initial discussions with our legal team and other councils on the content of a declaration to the Environment Court. The declaration will be cast to enable the Court to confirm our proposed definition of a natural wetland in the coastal marine area (using Whangārei Harbour examples) for the purposes of implementing the NES Freshwater wetland regulations. Staff are working on what that definition might be.

Once the draft declaration has been framed it will be circulated to other councils for their feedback and it is possible for them to add to examples from their own regions to be included in the declaration (ie. joint application) if they choose to. The declaration will be brought to council for approval before lodgement with the Environment Court.

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### Ngā tapirihanga | Attachments

Nil

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<sup>4</sup> (<https://www.nrc.govt.nz/media/c5tlyt5s/high-court-decision-on-jurisdiction-of-nes-f-in-cma-2021-nzhc-3113-18-november-2021.pdf>).