MEMO

To: Emma Cowan, Sheryl Roa, Waikato Regional Council

From: Kate Madsen, Paua Planning Ltd

Date: 13 July 2022

Re: APP144475: ADDITIONAL CONSENT UNDER S91 OF THE RMA – NATIONAL ENVIRONMENTAL STANDARDS FOR FRESHWATER 2020

PAUA PLANNING

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1. Introduction

Additional ecological investigation and reporting has determined that the proposed discharge of stormwater from sediment retention ponds designed to service the runoff from managed fill activities within Fill Areas 3 and 4 are within 100m from two small natural inland wetlands, north of the landholdings owned by Gleeson (Pt Lot 8 DP 1278, owned by Mr Mike O'Reilly). These wetlands are identified on Figure 1 below, classified by Envoco's Report: 'Ecological assessment of wetlands north of Fill Area 3', Version 2 dated July 2022 (See **Attachment 1**).

Figure 1: Aerial Plan depicting location of artificial and induced wetlands – note the 60m (Wetland 1) measurement includes the 28m measurement shown on Gleeson land, as this is the closest the managed fill activity can be to the boundary (geotechnical requirement). The discharge point will be closer to the boundary (approximately 35m) as discussed in this memo.

Mr O'Reilly has provided a memo (see **Attachment 2**) stating that the wetland/pond area is man-made, however the ecologist has determined that two small seepages southeast of the main pond are induced, and therefore afforded protection under the provisions of the NES-FW for natural inland wetlands.

This memo sets out the relevant provisions of the NES-FW that trigger consent and provides an assessment of effects under the relevant sections of the National Policy Statement for Freshwater

Management (NPS-FWM). In addition, the proposal is assessed against the relevant objectives and policies.

2. Statutory Activity Status

The discharge points from the sediment retention ponds that will service FA3 and FA4 are at the nearest point 35m (approximately) from identified natural inland (induced) wetlands. In addition, the discharge point from the deep drainage proposed for FA3 will be approx. 60m from an identified natural inland (induced) wetland, (noting that it is proposed to then pump this water back to a holding tank for testing before discharging to the sediment retention pond).

Therefore, under Regulation 53(c) the discharge of water is within 100m setback from a natural inland (induced) wetland and is considered a **non-complying activity.**

Note: The existing surface water flow in FA3 is away from the wetlands via the existing channel and engineered flow path to the Fill 4 gully. This was the existing environment prior to the NES-FW 2020 coming into force and therefore diversion of water within a 100m setback from a natural wetland under Reg.53(c) is not triggered. In addition, groundwater currently moves toward the east and does not service the wetland catchments.

The application as lodged had already applied for a stream-works consent as a discretionary activity under Regulation 57 of the NES-FW, (reclamation of the bed of any river). In addition, the application notes (see section 5.2) that the proposed earthworks and discharge of water from FA2 are further than 100m from the nearest natural inland wetland[1], meaning Regulations 52 and 53(c) do not apply to the discharge associated with FA2.

It is considered that the activities for which consents are being sought overlap to such an extent that they cannot be realistically or properly separated, and therefore it is requested that WRC/WDC bundle the suite of applications together to assess, based on the most stringent activity classification – in this case, as a non-complying activity. The AEE is to be updated to reflect this, including a s104 Gateway test.

3. Site Context and Description

The discharge point from the sediment retention ponds will be at a minimum, approximately 35m from Wetland 1 (as labelled on Figure 1).

The discharge point from the deep drainage will be at a minimum, approximately 60m from Wetland 1 (as labelled on Figure 1).

Figure 2 (below) shows the location of the proposed stormwater infrastructure for FA3, including sediment retention pond (SRP), drainage trenches, deep drainage pipes, manhole riser, storage tank (for deep drainage water to be tested before discharge to SRP), with the point of discharge being at the outlet of the pond. The design for FA4 will be similar, and slightly further away from the natural inland (induced) wetlands.

It is noted that the area of works is required to be located no closer than 28m from the northern boundary with Mr O'Reilly; a geotechnical requirement to ensure stability of the neighbouring site is maintained. It is noted that Mr O'Reilly has provided written approval to the proposed managed fill activities.

[1] ***Attachment 3*** *Watercourse Assessment in SNA, Envoco, March 2022 for details*

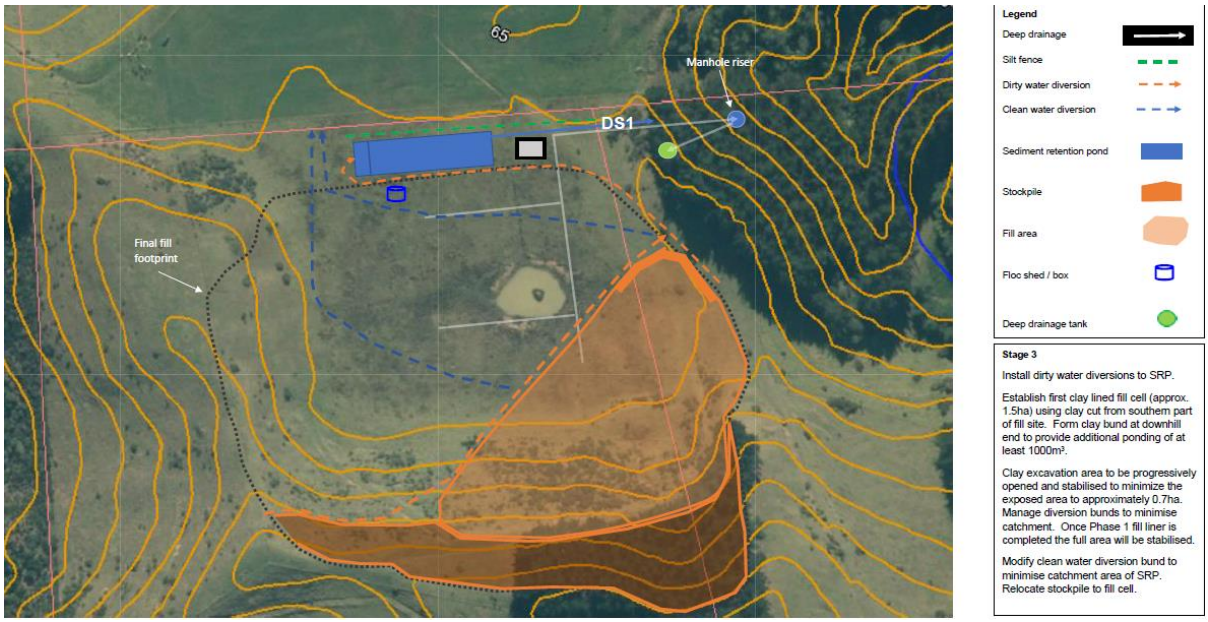

Figure 2: ESCP for Fill Area 3

4. Assessment of Effects

Relevant provisions in the NPSFM 2020 include:

- The objective and policies (Part 2) which give effect to the fundamental concept of Te Mana o te Wai (Part 1.3) and the associated hierarchy of obligations (Part 1.3(5)); and
- Some of the implementation provisions (Part 3) that apply to consenting of specific types of activities, in this case Part 3.22(3)(a) and (b) 'Natural inland wetlands'.

The effects management hierarchy is applied to the proposed discharge of treated stormwater that occurs closer than 100m from the identified natural inland wetlands. This assessment demonstrates how and why the proposed activity is consistent with the hierarchy of obligations, and with managing freshwater in accordance with the concept of Te Mana o te Wai (Policy 1) – to the best of our understanding.

Avoidance of adverse effects

In appraising the land for suitable fill sites, it was determined to avoid every gully within the Gleeson landholdings that was identified as being within a Significant Natural Area (WDP). Fill Areas 2-4 were chosen for (a) their proximity to the quarry; and (b) gullies having previously been used for quarry, farming and/or forestry activities, resulting in lower ecological values.

Additional avoidance of any adverse effect on the wetlands to the north is achieved by having a 28m setback from the common boundary (thereby increasing geographical separation from the wetlands) and in addition, determining that groundwater flows east towards the Waikato River, and therefore does not recharge these wetlands.

Figure 3 below (taken from the PDP Memo 'General Hydrogeological Setting of Managed Fills', dated 28 June 2022 – refer **Attachment 4**) demonstrates this flow towards the river.

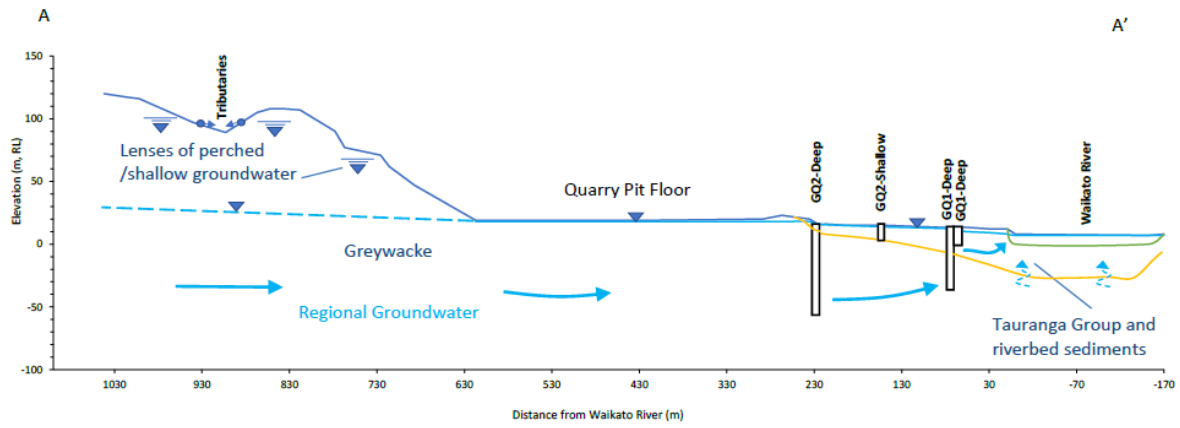

Figure 3: Hydrological Cross-section

The discharge points also discharge into a natural (unnamed) stream system, that flows east towards the Waikato River, thereby avoiding any impact on these wetland areas to the north.

Minimisation and remediation of adverse effects

Overall, it is not considered that there are any potential adverse effects on these areas of wetland north of the managed fill operation. Adopting and implementing best practice geotechnical and ESC design guidelines and expert advice, as well as robust monitoring and compliance systems (see Management Plans provided with the application) ensure the risk of adverse effects on these wetlands is minimised and/or can be remediated quickly.

Ecosystem health and hydrological functioning

As both surface and groundwater flow in an easterly direction towards the Waikato River, the proposed discharges are highly unlikely to impact on the health of the local wetland ecosystem as they do not contribute to recharging the wetlands.

Indigenous biodiversity

Geographical distance of the discharges from the wetlands (being at least 35m and feeding into a stream that flows to the east) as well as the short to medium term nature of the discharges (only for the life of the fill site) assist in minimising any impact on indigenous biodiversity attributable to the discharges.

Māori freshwater values

Pt Lot 8 DP1278 (O'Reilly land) was also a gully backfilled with material hauled from Weavers Pit (State Coal), that is now Lake Puketirini. This is similar to the land under FA3. Mr O'Reilly has provided a memo explaining how the pond area was formed and excavated to create a duckpond and surrounds for both recreational hunting and amenity purposes (see **Attachment 2**). The land formed part of O'Reilly's Opencast Mining, and as the mine is now closed, has been restored to pasture.

In terms of Māori values, historic use of the site and surrounding area for mining and fill activities has already degraded freshwater values. Now the mine is closed, the land has opportunity to settle and regain value over time. The diversion of the shallow perched water trapped within the clay layers of old mine tailings within FA3 via a deep drainage system (10m depth) into a holding tank for testing will ensure that the water that has previously seeped either to the surface or via groundwater channels into the adjacent stream (albeit flows east towards the river and not north towards the wetlands) is treated before discharging back to the catchment, providing opportunity to improve

localised freshwater values. Iwi may view this as a step towards improving freshwater values, alongside the proposed water treatment system and restoration of the compensation gully west of the fill areas.

Amenity value

The proposed discharges within 100m of natural wetlands will not result in any loss of amenity value as Mr O'Reilly has provided written approval (as the owner/occupier of Lot 8), and the discharge points are not visible from any public vantage point. The wetlands themselves are little more than ground seepages, and therefore have little existing amenity value to offer.

Potential value

There is no loss of potential value, as Mr O'Reilly may choose to restore these wetland areas with negligible risk of any adverse effect from the proposed managed fill discharges. It is noted that the water to be discharged is considered 'clean', in that the operation of the sediment retention ponds will remove 95% dissolved and total metals from the discharge. It is possible that the stormwater treatment system will improve the water quality currently being discharged from the site. Furthermore, once the fill operation is completed, the SRP can either be retained to provide ongoing amenity and farm support or returned to pasture.

It is not considered the is any loss of extent or values of the wetland that would result in cumulative effects.

Aquatic Offsetting

As there are no minor residual adverse effects that cannot be avoided/minimised/remedied, no aquatic offsetting is considered appropriate in this instance (over and above that already offered with the application).

5. NPS-FW Objectives & Policies Assessment

The objectives and policies below also encompass the hierarchy of obligations within the NPS_FW.

Objective 2.1 (a) Health and well-being of water bodies and freshwater ecosystems (including Policy 3,4,5 and 6)

The discharges as proposed do not result in any loss of extent of natural inland wetlands. The existing values of these wetlands are protected as surface and groundwater flows from the managed fill and discharge points do not recharge these wetlands, and while there is no intent to restore them (due to their small, isolated and induced characteristics), large areas of natural inland wetlands are being restored and enhanced within the compensation area – involving circa 6000m² of wetland within a 3.9ha indigenous ecosystem, which will be covenanted and protected in perpetuity.

In addition, the deep drainage proposed in FA3 may assist in improving the local freshwater ecosystem, as this water will now be treated before discharging back into the same catchment.

Objective 2.1 (b) Health needs of the people, such as drinking water (including Policy 12,13 and 14)

Due to the type of activities proposed, the fill areas have the potential to impact on the quality of water discharged from the site. The proposed works will be undertaken with appropriate erosion and

sediment controls in place to protect the quality of freshwater. The operation of the sediment retention ponds will remove 95% dissolved and total metals from the discharge. It is possible that the stormwater treatment system will improve the water quality currently being discharged naturally from the site. Ongoing monitoring and compliance as laid out in the Fill Management Plan and other supporting management plans (such as an Adaptive Management Plan) allow for the proposal to respond to water quality testing results quickly and apply the most up to date methods to improve water quality at the point of discharge as best possible.

Based on the above, no discharge from the site will adversely impact the health of the surrounding people.

Objective 2.1 (c) Ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future (including Policy 11 and 15).

The proposed managed fill areas are appropriately located to receive a mix of overburden and managed fill materials in order to meet district and regional demands of the construction industry and associated economic growth.

The NPS-FM 2020 Policy 6 requires that "there is no further loss of extent of natural inland wetlands…" The proposed managed fill does not result in the loss of any natural inland wetlands, and therefore upholds this policy.

It is considered (on balance) that the development of the subject site to allow for the establishment and operation of a managed fill site that will be able to accommodate for the future growth and waste demand of the region without any loss of natural inland wetlands is appropriate, and consistent with the direction of the NPS-FM. The proposed compensation and restoration of 4ha of bush, stream and wetland will, in the long term, provide better (and more sustainable) opportunity for regeneration of natural inland wetland areas.

Waikato Regional Policy Statement and Regional Plan

The NPS-FW has not yet been amended to align with the WRPS and WRP. This is being undertaken by Waikato Regional Council over the next two years. An assessment against the current objectives and policies of both the RPS and WRP are included in the AEE lodged with the application and are not repeated here.

6. S104D Gateway Test

When dealing with non-complying activities, before granting an application a council must be satisfied that either the adverse effects of the activity on the environment will be minor (s104D(1)(a)), or the proposed activity will not be contrary to the objectives and policies of a proposed plan and/or plan (s104D(1)(b)).

The adverse effects associated with discharge of water within 100m of induced natural inland wetlands will be less than minor, for the reasons discussed above. In regard to the objectives and policies of the NPS-FW, the discharge does not result in the loss of any natural inland wetland, and does not recharge the wetland areas, therefore the existing health and wellbeing of the wetland areas remains intact. The proposal considers the potential impacts on freshwater on a whole-of-catchment basis, providing best practice water treatment devices, a suite of monitoring and compliance measures and restoration of natural wetland areas within a nearby identified SNA. Information on water quality will be regularly reported to Council, utilising adaptive management and other management plans (as submitted) to improve results where possible. There is no adverse effect on

the health needs of people from the proposed discharge, and there is no loss of natural wetland as a result of the discharge (or proposal). The activities are in response to a regional economic and social need to provide for the deposition of managed fill, which in turn allows for infrastructure creation and enables new housing areas to be established, without adversely impacting any natural inland wetland.

Overall, the proposed discharges result in less than minor adverse effects on natural wetland areas and are consistent with the NPS-FW objectives and policies, and therefore meets both limbs of the RMA s104D threshold test.

As the bundling of consents results in an over-arching 'non-complying' status, a more detailed s104D assessment has been completed within the AEE for the application.

Attachments

Attachment 1: Envoco Report: 'Ecological assessment of wetlands north of Fill Area 3', Version 2 July 2022

Attachment 2: Mr Mike O'Reilly Memo:

Attachment 3: Envoco: 'Watercourse Assessment in SNA', March 2022

Attachment 4: PDP Memo: 'General Hydrogeological Setting of Managed Fills', 28 June 2022