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BARRISTER

5 December 2025

Environmental Protection Authority
Private Bag 63002
Wellington 6140

To: Matt Casey KC
Expert Panel Chair
Green Steel Fast Track Project

By email: [redacted]

Dear Matt

RE: Wetland Classification – Green Steel Fast Track Application

INTRODUCTION

1. You have sought legal advice to assist in the resolution of an ecological issue arising in the context of National Green Steel Limited's (**Green Steel**) application for resource consents under the Fast Track Approvals Act 2024 (**FTAA**) for the construction and operation of a structural steel manufacturing plant in Te Kauwhata.

2. The issue to resolve is whether two areas on the project site identified by Waikato Regional Council (**WRC**) meet the criteria for classification as a wetland under the Resource Management Act 1991 (**RMA**).

3. This advice addresses that question.

EXECUTIVE SUMMARY

4. The RMA definition of "wetland" requires that the area supports a natural ecosystem of both plants *and* animals that are adapted to wet conditions.

5. While WRC's assessment confirms the presence of wetland-adapted plants (glyceria species) in the identified areas, Green Steel's subsequent ecological assessment concludes that the areas do not support a natural ecosystem for

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animals adapted to wet conditions. If that is correct, in accordance with *Page v Greater Wellington Regional Council*,[1] the areas in question are not wetlands as defined under the RMA and no related issue arises for the Expert Panel's consideration under the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NES freshwater**). However, Green Steel's ecological assessment provides only an assertion by the ecologist that no animals adapted to wet conditions have been observed there, without detailed analysis or supporting evidence on the matter.

6. Given the insufficiency of the information currently available to determine whether the areas support animals adapted to wet conditions, I recommend that the Expert Panel seek further expert ecological evidence on this narrow issue before making a final determination as to whether the areas constitute wetlands under the RMA.

BACKGROUND

7. Green Steel proposes to establish a steel manufacturing plant, and associated activities (including monofills) on an historic dry stock grazing farm at 61 Hampton Downs Road, Te Kauwhata. The proposal is a listed project under Schedule 2 of the FTAA.

8. In relation to National Environmental Standards, Green Steel's Assessment of Environmental Effects (**AEE**) for the project records as follows:[2]

> An assessment of the overland flows and artificial drainage networks for the site has been undertaken as part of the Ecological Impact Assessment (EIA) by Pattle Delmore Partners Limited, as included as Attachment 22. The EIA has confirmed that the site does not relate to any natural wetland areas…On the basis of this assessment, further consents under the NES freshwater are not anticipated to be necessary.

9. Under 'Ecological Effects', it records:[3]

> No wetlands were identified on-site under the NPS-FM 2020 definition, with wetted areas dominated by exotic pasture species and therefore not classified as wetlands.

10. As a relevant local authority pursuant to s 53(2)(a) of the FTAA, WRC was invited to provide comments on the application. WRC's comments record that its wetlands ecologist conducted a site visit on 22 October 2025 to view areas on the project site that could potentially be classified as a wetland.[4] It records her advice from the site visit as follows:

[1] [2024] NZCA 51.
[2] AEE, para 5.16.
[3] AEE, para 7.136.
[4] WRC Comments, pg 5.

> Upon viewing the locations in question it was confirmed that the majority of the area meets the pasture exclusion criteria and therefore is not natural inland wetland per the NPS-FM. The exception was two small areas on the low lying flats (approximately within the area of the red circle below, GPS location was not recorded) which were dominated by Glyceria and therefore did meet the definition of natural inland wetland. These areas were identified by the applicant during the site visit (though had not previously been assessed as wetland) but were not measured/marked out. These two areas were each estimated to be under 100m2 (the exact areas and locations would need to be delineated and measured).
>
> The wetland areas were dominated by exotic species but would still provide ecological and hydrological values. These values could be offset by creation/restoration of at minimum the area of wetland to be lost. A suitable location, adjacent to current wetland (such as part of the proposed riparian plantings), would be needed and appropriate best practice restoration methods should be used to ensure the offsetting is undertaken and maintained appropriately.

11. Based on this advice, WRC recommended amending the native planting plan to provide for offset planting for the area of wetland to be lost. WRC also raised the question of whether the Panel needs to consider the gateway test in Regulation 45B of the NES freshwater that must be satisfied before resource consent can be granted for construction and operation of a cleanfill area or landfill within or near a natural inland wetland.

12. In response to WRC's comments, Green Steel's ecologist conducted an assessment of the areas identified by WRC in accordance with the Ministry for the Environment Wetland Delineation Protocols and Pasture assessment methodology (2022). The assessment concludes:[5]

> …While it is marginal as to whether there is more than 50% of exotic pasture species present, it is clear that there are no animals adapted to wet conditions at the site.
>
> In the absence of animals adapted to wet conditions on the site my overall conclusion is that there is no wetland that meets the relevant legislative definitions.

13. On the basis of this assessment and in accordance with the Court of Appeal decision in *Page v Greater Wellington Regional Council*[6], Green Steel's Memorandum of Counsel dated 25 November 2025 concludes that there are no natural inland wetlands on the project site and therefore the NES freshwater does not apply.[7]

[5] Memorandum of counsel for Green Steel – Response to Comments dated 25 November 2025, Appendix 7 Memo: Wetland Delineation for 61 Hampton Downs Road prepared by Dr Mark Bellingham dated 25 November 2025.
[6] [2024] NZCA 51.
[7] Memorandum of counsel for Green Steel – Response to Comments dated 25 November 2025, para 5.9.

14. Based on these contrasting analyses, the Panel must resolve the live question of whether the areas identified by WRC meet the statutory requirements for classification as a wetland.

RELEVANT LAW

15. Section 2 of the RMA defines "wetland" as follows:

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

16. The definition has two key components:

    a) Permanently or intermittently wet areas, shallow water, and land water margins; that

    b) Support a natural ecosystem of plants and animals that are adapted to wet conditions.

17. If the wetlands are 'natural inland wetlands' then specific requirements apply under the National Policy Statement for Freshwater Management 2020 (**NPS-FM**) and the NES freshwater. The NPS-FM defines a natural inland wetland as follows:

> **natural inland wetland** means a wetland (as defined in the Act) that is not:
> (a) In the coastal marine area; or
> (b) A deliberately constructed wetland, other than a wetland constructed to offset impacts on, or to restore, an existing or former natural inland wetland; or
> (c) A wetland that has developed in or around a deliberately constructed water body, since the construction of the water body; or
> (d) A geothermal wetland; or
> (e) A wetland that:
> (i) Is within an area of pasture used for grazing; and
> (ii) Has vegetation cover comprising more than 50% exotic pasture species (as identified in the National List of Exotic Pasture Species using the Pasture Exclusion Assessment Methodology (see clause 1.8)); unless
> (iii) The wetland is a location of a habitat of a threatened species identified under clause 3.8 of this National Policy Statement, in which case the exclusion in (e) does not apply.

18. It is important to note the hierarchical relationship between these definitions. An area must first meet the definition of "wetland" under the RMA before the NPS-FM definition of "natural inland wetland" can be engaged. The NPS-FM definition expressly incorporates the RMA definition by stating "natural inland wetland means a wetland (as defined in the Act)" followed by a series of exclusions. If an area meets the RMA definition and is not excluded under the NPS-FM definition, it constitutes a "natural inland wetland" and the

requirements of the NPS-FM and the NES freshwater apply.

19. The Court of Appeal recently considered the RMA definition of "wetland" in the context of an appeal against conviction for breaches of the RMA in relation to activities within areas identified as wetlands; see *Page v Greater Wellington Regional Council* [2024] NZCA 51.

20. The Court confirmed that both components of the definition must be satisfied for an area to qualify as a wetland. The Court observed:

> [22] To succeed in proving its case in respect of the majority of charges faced by the appellants (being those premised on the existence of a natural wetland or significant natural wetland), the Council was required at the outset to establish to the criminal standard: a permanently or intermittently wet area, shallow water and land water margin that supports a natural ecosystem of plants *and* animals that are adapted to wet conditions.
>
> …
>
> [24] In respect of three charges, the requirement was only to prove the existence of a wetland as defined in the RMA. We note that this definition likewise references the existence of a natural ecosystem of plants and animals adapted to wet conditions.

21. The Court emphasised that the presence of wetland-adapted plants alone is insufficient. There must also be evidence that the area supports animals adapted to wet conditions as part of a natural ecosystem. As the council in *Page* was unable to establish beyond reasonable doubt the existence of fauna adapted to wet conditions (no analysis of animal species was undertaken in classifying the wetlands), the contested charges were dismissed.

ANALYSIS

22. WRC's ecologist confirms the dominant presence of glyceria in the two areas, which are plants adapted to wet conditions. However, WRC's comments are silent on whether the areas support animals adapted to wet conditions. WRC does not address this aspect of the RMA definition.

23. In his wetland assessment, Green Steel's ecologist states that "On the many times I have visited the site I have not observed any animals adapted to wet conditions being present". However, this assessment provides only a general assertion that no animals adapted to wet conditions are present without any detailed analysis, methodology, or supporting evidence. The memorandum does not, for example:[8]

    a) Describe what survey methods were used to assess fauna;

[8] See discussion on fauna in *Page v Greater Wellington Regional Council* [2024] NZCA 51 from [65].

b) Identify what species were searched for or observed;

c) Specify when surveys were conducted or under what conditions;

d) Provide any analysis of habitat suitability for wetland-adapted fauna; or

e) Explain the basis for concluding that no animals adapted to wet conditions are present (other than simply that none were observed when on site).

24. Accordingly, the Panel will need to determine, in the absence of this information, whether the current state of the evidence presents a sufficiently robust basis to reach its conclusion.

25. In addressing that question, the Panel may find it relevant that the term "animal" is not defined in the RMA and should be given its ordinary and natural meaning. In ecological terms, "animal" is generally considered to encompass a broad range of fauna including, but not limited to, mammals, birds, reptiles, amphibians, fish, and invertebrates such as insects, molluscs, crustaceans, and worms.[9] The definition is not limited to larger, readily observable species. Wetland ecosystems commonly support a diverse range of fauna adapted to wet conditions. A proper assessment of whether an area supports "animals that are adapted to wet conditions" must therefore consider the full spectrum of potential fauna that may require targeted survey methods to detect. The absence of visible vertebrate fauna does not, without further analysis, establish that an area does not support animals adapted to wet conditions.

26. On this basis, the ecological evidence currently available to the Panel may not be an adequate evidential basis to determine whether the areas meet both limbs of the RMA definition of wetland. Ultimately that is a matter for the Panel to determine.

CONCLUSION

27. For the reasons set out above, I consider that:

a) The areas identified by WRC satisfy the "plants" component of the wetland definition under the RMA, being dominated by wetland-adapted glyceria species;

b) It is questionable that sufficient evidence has been provided to determine whether these areas also support animals adapted to wet conditions, which is a necessary component of the statutory definition;

[9] See for example definition of 'animal' in the Animal Welfare Act 1999 and discussion on fauna in *Page v Greater Wellington Regional Council* [2024] NZCA 51 from [65].

c) Green Steel's ecological assessment provides only a general assertion that no such animals are present, without detailed analysis, methodology, or supporting evidence;

d) The broad definition of "animal" indicates that the absence of easily visible vertebrate fauna may not be sufficient evidence to prove the absence of animals adapted to wet conditions;

e) If the Panel considers this to be an evidential gap, it cannot make a proper determination as to whether the areas constitute wetlands under the RMA and should seek further evidence on the point; and

f) If further evidence establishes that the areas do meet the RMA definition and are a natural inland wetland as defined under the NPS-FM, the Panel would then need to consider the gateway test in Regulation 45B of the NES freshwater. This is a secondary issue not addressed in this advice.

Yours faithfully,

Lachlan Muldowney
Barrister