

---

## Court of Appeal decision to overturn convictions related to activities within wetlands

Share with EPA?: N

On 11 March, the Court of Appeal (the Court) overturned 29 of 35 convictions from a District Court decision, initially brought forward by the Greater Wellington Regional Council (the Council), in which found the appellants were found guilty under the Resource Management Act 1991 (RMA) relating, substantially, to activities within areas identified as “wetlands”.<sup>1</sup> There has been media interest on the ruling.

As part of the second appeal, the appellants called on expert evidence from ecologists and hydrologists which was pivotal to the Court’s decision to allow the appeals.

The Court found that the Council had not established beyond reasonable doubt for a criminal conviction that the relevant areas were “natural wetlands”<sup>2</sup>, or “significant natural wetlands”<sup>3</sup> as defined by the Council’s Proposed Natural Resources Plan (pNRP) or “wetlands” as defined by the RMA.<sup>4</sup> The Court’s reasoning for overturning the convictions was the Council’s initial investigation of whether the area is a wetland relied on vegetation considerations alone and did not prove the existence of animals that are adapted to wet conditions in any of the alleged wetlands (as per the pNRP definition and the RMA definition which references both a natural ecosystem of plants *and animals* that are adapted to wet conditions being present).

It is possible that other cases in which criminal charges have been laid against activities within wetlands may now be subject to similar appeals. We are concerned about the implications of the decision regarding the inclusion of fauna for the delineation of wetlands. In practice, ecologists delineate wetland types (e.g. bog, fen) based on their soils, hydrology and plant assemblages as do the NES-Freshwater regulations. Incorporating assessments of animals into wetland delineations will add considerable cost to councils and applicants alike.

Through the Resource Management reform and freshwater work programmes there is an opportunity to provide clarity for regional authorities and land users. Next steps could include revisiting the definition in the RMA or exploring whether there are tools to support more efficient delineation efforts, for example, eDNA<sup>5</sup>.

**Business Group:** Natural Environment Policy

**Owner:** Hayden Johnston, 022 153 0221

---

<sup>1</sup> Page v Greater Wellington Regional Council [2023]

<sup>2</sup> 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, including in the beds of lakes and rivers, the coastal marine area (e.g. saltmarsh), and groundwater-fed wetlands (e.g. springs). (Exclusions apply)

<sup>3</sup> A natural wetland that meets one or more of criteria (a) to (d) listed in Policy 23 of the Regional Policy Statement 2013 being: representativeness; rarity; diversity; ecological context.

<sup>4</sup> 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.

<sup>5</sup> Environmental DNA or eDNA is DNA that is collected from a variety of environmental samples such as soil, seawater, snow or air, rather than directly sampled from an individual organism.