

**BEFORE THE INDEPENDENT HEARINGS PANELS APPOINTED TO HEAR AND MAKE
RECOMMENDATIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS ON PROPOSED CHANGE 1 TO
THE REGIONAL POLICY STATEMENT FOR THE WELLINGTON REGION**

UNDER Schedule 1 of the Resource Management Act
1991 (the Act)

IN THE MATTER OF Hearing Submissions and Further
Submissions on Proposed Change 1 to the
Regional Policy Statement for the Wellington
Region

REPORTING OFFICER RIGHT OF REPLY OF KATE LOUISE PASCALL

ON BEHALF OF WELLINGTON REGIONAL COUNCIL

HEARING STREAM 5 – FRESHWATER AND TE MANA O TE WAI

20 December 2023

TABLE OF CONTENTS

RIGHT OF REPLY AUTHOR	3
SCOPE OF REPLY	3
GENERAL/ISSUES ACROSS THE HS5 SUITE	3
OBJECTIVE 12	24
POLICY FW.XX HYDROLOGICAL CONTROLS FOR URBAN DEVELOPMENT.....	26
POLICY 12	27
POLICY 14	28
POLICY FW.3.....	29
DEFINITION OF 'HYDRAULIC NEUTRALITY'	30
POLICY 42	31
POLICY FW.6.....	31
POLICY FW.7.....	32
POLICY 15	32
POLICY 41	33
POLICY 17	34
POLICY 40	34
POLICY 18.....	35
METHOD FW.2.....	36

RIGHT OF REPLY AUTHOR

- 1 My full name is Kate Louise Pascall. I am a Senior Environmental Planner at GHD Limited.
- 2 I have prepared this Reply in respect of the matters raised during the hearing of matters in Hearing Stream 5: Freshwater and Te Mana o te Wai.
- 3 My Section 42A Report, at paragraphs 16 and 17, sets out my qualifications and experience as an expert.
- 4 I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023, as applicable to this Independent Panel hearing.

SCOPE OF REPLY

- 5 This Reply follows Hearing Stream 5 held from 20 November 2023 to 22 November 2023.
- 6 [Minute 18](#) also requested that the Section 42A report author submit a written Right of Reply as a formal response to matters raised during the hearing.
- 7 The Reply covers feedback on matters raised directly by the Panels in Minute 18.

GENERAL/ISSUES ACROSS THE HS5 SUITE

- a) **Please provide information (a visual / schema or similar would be useful if possible), on the stage of each freshwater process in the region eg where each whitua process is at and expected timeframes for futures stages. Among other things, please refer to freshwater visions (for the whitua that propose to include these), mana whenua/tangata whenua statements, the scope of Variation 1, the stage each whitua is at and a high level summary of the provisions in Change 1 of the Natural Resources Plan eg will they include visions, values, target attribute states, flows etc and for certain whitua only?**
- 8 Appendix 1 provides a timeline of the Whitua Implementation Programmes (WIP) that have been completed to date and those that are expected in the future. It also shows where implementation has started in the Regional Policy Statement (RPS) and Natural Resources Plan (NRP).
- 9 The Te Mana o te Wai Statements of mana whenua/tangata whenua are related, but are separate from the whitua processes. The intention is that these statements form part of the RPS and support the local expression of Te Mana o te Wai. This is not an express

requirement of the NPS-FM but it is part of the obligation within Clause 3.2 of the NPS-FM to actively involve, and engage with, mana whenua/tangata whenua in giving effect to Te Mana o te Wai.

10 To date, the Council has received completed statements from the following mana whenua/tangata whenua:

10.1 Kahungunu ki Wairarapa

10.2 Rangitāne o Wairarapa

10.3 Taranaki Whānui (via submission)

11 It is my understanding that other mana whenua/tangata whenua may seek the inclusion of statements in the future, either as a mana whenua/tangata whenua statement or as a whitua committee statement. The timing of this is still to be confirmed.

12 Variation 1 to Change 1 to the RPS proposes the inclusion of two long-term vision objectives in the RPS, to give effect to Clause 3.3 of the NPS-FM – one for Te Awarua-o-Porirua Whitua (TAoP) and the other for Whitua Te Whanganui-a-Tara (TWT).

13 Proposed Plan Change 1 to the NRP commences the Council's implementation of the NPS-FM Subpart 2 National Objectives Framework (NOF) requirements as follows:

13.1 identification of Freshwater Management Units (FMUs) and special sites and features, including sites used for monitoring, primary contact sites, location of threatened species, monitoring sites for FMUs, and Māori freshwater values,

13.2 identifying values and setting environmental outcomes as objectives, including compulsory values, environmental outcomes set as objectives for all fresh water (rivers, lakes, wetlands, and groundwater) and connected coastal water in TAoP and TWT,

13.3 setting target attribute states (TASs) and instream concentrations and exceedance criteria for TAoP and TWT,

13.4 policies and rules (rules or limits required by NPS-FM) and methods (including action plans) to manage activities such as urban development, earthworks, stormwater, wastewater, and rural land use activities to achieve the objectives and target attribute states within TAoP and TWT, and

13.5 amendments to the water quantity policies and rules for TAoP, including amended minimum flows, and take limits.

14 As shown on the timeline in Appendix 1, implementation of the remaining whitua will be undertaken in due course, however no firm timeframe has been set at this stage.

b) All provisions in the Te Mana o te Wai topic

15 As requested in Minute 18, Appendix 2 includes all provisions that are included within the Freshwater and Te Mana o te Wai topic. This includes provisions that are not subject to recommended amendments and provisions that were not subject to submissions. For ease of reference and to aid the Panel's deliberations, I have set these provisions out in the order they appear in Proposed Change 1 as notified, rather than in the order of my section 42A report or rebuttal evidence.

16 I have also provided definitions that are referred to in evidence but are not coded to the Freshwater topic in Appendix 4.

c) The amendments Ms Pascall supports in Obj 12(ga) in her rebuttal recognise values relating to wellbeing and recreation. What are the Officer's views on the values from Appendix 1B, NPS-FM that Wairarapa Federated Farmers seek to be included?

17 I agree with Ms Burkett that there is an absence of recognition of economic use of water in Objective 12 and, consistent with my rebuttal recommendations in relation to Fish and Game's relief sought, I consider there is a need for Objective 12 to recognise the importance of water for the Region's rural areas and in particular for primary production activities.

18 However, I consider that Ms Burkett's suggested values from Appendix 1B of the NPS-FM are too specific for the objective and in this specific case I consider these are values that may differ across the Region and within whitua FMUs, as the Appendix 1B values are 'values that must be considered' at the FMU level. While I do not disagree with Ms Burkett that the values she has put forward are important, I consider these are more specific than is required in Objective 12 and are more appropriately identified at the FMU level, through the NRP, rather than in the RPS.

19 To provide further guidance on how these values could be recognised at the objective level, I have reviewed the WIPs completed to date, in particular the Ruamāhanga WIP. I note that

the Ruamāhanga Whaitua committee identified the following community value that is relevant to this matter¹:

He taonga te wai, water is life.

Water sustains our livelihood; water grows our people and communities.

Reliability of water supply supports our: incomes, employment and innovation, our farming, industry, tourism and commercial fishing.

Sustainable economic use of water brings resilience and prosperity.

20 Similarly, the Te Awarua-o-Porirua Whaitua WIP sets out seven community values, including²:

Ohaoha o te wai – Economic uses of water and waterways as a resource

The use of water and waterways provides for economic opportunities and benefits

21 Te Whanganui-a-Tara WIP identifies ‘commercial, industrial use and the production of food and beverages’ as a community value that needs to be provided for while not compromising the health of freshwater, aquatic ecosystems and human health.

22 Based on this review and considering the evidence of Ms Burkett, I recommend a new clause is added to Objective 12 that recognises the role of water in supporting activities that support the Region’s economic wellbeing but at the same time represent reasonable, sustainable and efficient use of water. I recommend the following clause is added:

(gc) Supports the reasonable, sustainable and efficient use of water for activities that benefit the Region’s economy, including primary production activities, innovation and tourism.

23 I consider it is important to include the words ‘reasonable, sustainable and efficient’ because this ensures that the use of water for these activities is undertaken within reasonable limits, while not inadvertently ‘closing the door’ on this use where it meets these tests. It will need to be determined, via future changes to the NRP, and in particular the review of the water allocation policy (as required by Method 48) what ‘reasonable, sustainable and efficient’ means in specific contexts. Importantly, this clause (as is the case for other similar clauses in Objective 12) will need to be applied within the context of the Te Mana o te Wai hierarchy

¹ Ruamāhanga Whaitua Committee (August 2018), *Ruamāhanga Whaitua Implementation Programme*, page 16

² Te Awarua-o-Porirua Whaitua Committee (2019) *Te Awarua-o-Porirua Whaitua Implementation Programme*, page 18

of obligations, as set out in clause (h). In this regard, these activities remain part of the third priority of the hierarchy.

d) Is it appropriate in the Officer's view to include a reference to 'of desirable species' in Obj 12(gb)?

24 I agree with Ms Campbell that my recommended clause (gb) of Objective 12 broadens the scope of the objective to protect the habitats of all freshwater species. As drafted, this goes beyond the intent of the NPS-FM in regard to the protection of the habitat of indigenous freshwater species (Policy 9) and the protection of the habitat of trout and salmon (Policy 10). However, I consider the addition of 'of desirable species' is too broad, and subjective. A species may well be 'desirable' to a certain group of people but the NPS-FM affords protection only to habitats of indigenous freshwater species and trout and salmon (where this is consistent with the former). On this basis, I consider it is appropriate to provide more specificity in clause (gb), and recommend the following amendment:

(gb) Supports and protects an abundance and diversity of habitats for indigenous freshwater species and, where appropriate, the habitat of trout and salmon.

e) Can you please consider the legal submissions and evidence presented by the Director General of Conservation and advise whether the PC1 provisions remove from the RPS, coastal protection provisions in the NZCPS (for example by deleting 'coastal wetlands' from draft Policy 18(c) and deleting 'coastal marine area' from Policy 40(b)). If the provisions do not give appropriate effect to the NZCPS, what amendments do you propose and are there any issues of scope with these amendments. Is the caselaw in paragraph (o) below relevant to this analysis?

25 I have reviewed the provisions of Change 1 with respect to coastal protection and the NZCPS and consider the only policy gap that is apparent as a result of my recommended amendments relates to Policy 40(b). In addition to giving effect to Objective 12, Policy 40 also gives effect to Objective 6 of the Operative RPS. Objective 6 requires:

***Objective 6:** The quality of coastal waters is maintained or enhanced to a level that is suitable for the health and vitality of coastal and marine ecosystems.*

26 Clause (b) of Policy 40 as notified is as follows:

(b) that, ~~requiring~~ as a minimum, water quality in the coastal marine area is ~~to be~~ managed in a way that protects and enhances the health and well-being of waterbodies and the health and wellbeing of marine ecosystems ~~for the purpose of maintaining or enhancing aquatic ecosystem health;~~

- 27 Through my section 42A report I recommended deleting the references to ‘coastal marine area’ and ‘marine ecosystems’ from clause (b). On further review following evidence presented by counsel for the Director-General of Conservation during Hearing Stream 5, I note that the notified version of clause (a) addresses freshwater quality and clause (b) addresses water quality in the coastal marine area. Clause (b) is therefore important to give effect to Objective 6 of the RPS. On this basis, I recommend reinstating much of the notified version of clause (b). I still support my recommended deletion of ‘as a minimum’, given this policy is to be applied in a resource consent process and these words create ambiguity. I also still support my rebuttal recommendation to replace the word ‘protects’ with the exception ‘maintain’ as this aligns with the wording of Objective 6.
- 28 Policy 18 differs from Policy 40 insofar as it does not give effect to Objective 6 or any other coastal objective in the operative RPS. Accordingly I consider amendments are not required to this policy. Moreover, I consider the objectives and policies within the Coastal Environment chapter (Chapter 3.2) of the Operative RPS sufficiently give effect to the NZCPS such that no further amendments are required to the freshwater policies. In any case, Chapter 3.2, and coastal water more generally, is not within the scope of Change 1.
- 29 On this basis, I do not consider the case law referenced in paragraph (o) of Minute 18 is relevant to this analysis.

f) The chapeau to draft Policy FWXXB has a particular structure which is different from similar policies in this topic eg Policies 40 and 42. Can you please assess these provisions across the topic for consistency of terminology eg ‘have regard to’ vs ‘have particular regard to’, and also confirm when notices of requirement may be relevant or when the consenting matters in issue are solely regional council functions

- 30 I have reviewed all the consideration policies within Hearing Stream 5, being Policy 40, Policy 41, Policy 42, Policy 44, Policy FW.5, and Policy FWXX.B. **Error! Not a valid bookmark self-reference.** sets out the outcome of that review. Except for Policy FW.5 and Policy FWXX.B, these policies apply to regional resource consents only. Policy FW.5 applies to regional plan changes. Policy FW.XXB applies to district and regional consents and to notices of requirement. Policy FW.XXB is the only policy that applies to notices of requirement.
- 31 I agree there is inconsistency across these policies in relation to how the chapeau is structured and the direction that it provides.

- 32 As *Table 1* demonstrates, there is a variety of direction provided and this is inconsistent with the requirements of section 104 of the Act which requires a consent authority to ‘have regard to... (b) any relevant provisions of a regional policy statement or proposed regional policy statement.’
- 33 There is further complexity created in Policy 44 and Policy FW.5 which provide an additional direction to ‘give effect to’ Te Mana o te Wai. I consider the reference to ‘giving effect to’ Te Mana o te Wai in the chapeau is unnecessary in these policies because the policies themselves already give effect to Te Mana o te Wai, and therefore in implementing the policy this is implicit. These policies also give effect to Objective 12 which is focused on Te Mana o te Wai.
- 34 On this basis, I recommend amendments to Policies 40, 41, 42, 44, and FW.5 to provide a consistent approach across the freshwater consideration policies and ensure alignment with the statutory direction in section 104 of the Act.
- 35 In relation to Policy FWXX.B, I do not recommend further amendment. As a policy that applies to notices of requirement, I consider that it is helpful to separate the requirements using clauses (a) and (b) as I have recommended in my rebuttal evidence.

Table 1: Review of consideration policies in Hearing Stream 5 and structure of chapeaux

Consideration Policy	Regional or district consents?	Relevant for a notice of requirement?	Existing Chapeau terminology (either as notified or as at rebuttal amendments)	Recommended chapeau terminology via Right of Reply
Policy 40	Regional	No	'have particular regard to' (as notified)	Amend to 'have regard to'
Policy 41	Regional	No	'particular regard shall be given to' (as notified)	Amend to 'have regard to'
Policy 42	Regional	No	As notified: 'give effect to Te Mana o te Wai and in doing so...have particular regard to' Section 42A Recommended amendment to 'have regard to'. Reference to giving effect to Te Mana o te Wai retained.	<ul style="list-style-type: none"> • Delete reference to giving effect to Te Mana o te Wai. • Retain 'have regard to' as recommended to be amended in section 42A report.
Policy 44	Regional	No	'Te Mana o te Wai must be given effect to so that..' (as notified)	<ul style="list-style-type: none"> • Delete reference to giving effect to Te Mana o te Wai.

Consideration Policy	Regional or district consents?	Relevant for a notice of requirement?	Existing Chapeau terminology (either as notified or as at rebuttal amendments)	Recommended chapeau terminology via Right of Reply
				<ul style="list-style-type: none"> Amend to 'have regard to' and make consequential grammatical amendments to the clauses
Policy FW.5	Regional	No	'... must give effect to Te Mana o te Wai, and particular regard shall be given to...' (as notified)	<ul style="list-style-type: none"> Delete reference to giving effect to Te Mana o te Wai. Amend to '....have regard to'
Policy FWXX.B (New policy recommended through rebuttal)	Regional and district	Yes	(a) Resource consent, have regard to... (b) A notice of requirement, have particular regard to...	Retain as recommended in rebuttal evidence.

g) Can Ms Pascall, in conjunction with the Reporting Officer for HS3 (Climate Change) and any technical experts who presented evidence for Council, please review alignment and workability of the nature based solutions provisions with the HS5 provisions regarding hydrological control, hydraulic neutrality and water sensitive urban design. Do these provisions and definitions work as a cohesive, easy to understand and implement suite of provisions across the RPS? Please review the appropriateness of definitions when considering this issue. Are the directions to regional and district plans and for consent applications clear, consistent, workable and for an RMA purpose?

36 As noted in the HS3 Officer's recommended definition, the term 'nature-based solutions' is an umbrella term and concepts and methods such as water sensitive design and hydrological control are subsets of nature-based solutions. Hydrological control is a very specific concept that is focussed on managing the effects of stormwater runoff on freshwater ecosystem health and is part of implementing Te Mana o te Wai in the RPS.

37 I have reviewed the Hearing Stream 3 and Hearing Stream 5 provisions in relation to 'nature-based solutions', hydrological control, hydraulic neutrality, and water sensitive urban design and consider that there is currently duplication between the nature-based solutions policies (Policy CC.4, Policy CC.4A, Policy CC.14 and Policy CC.14A) as recommended by Ms Guest³, and some of the freshwater policies (Policy 14, Policy FW.3, Policy FW.XX and Policy 42). This duplication is as follows:

37.1 Policy CC.4 and Policy FW.3 both require district plans to include provisions relating to water sensitive urban design principles

37.2 Policy CC.4 requires district plans to include provisions that apply methods to minimise flooding and maintain, to the extent practicable natural stream flows. Policy FW.3 similarly requires district plans to include requirements for hydraulic neutrality

37.3 Policy CC.4 also requires district plans to include requirements for hydrological control in urban development. This conflicts with my recommended Policy FW.XX which requires regional plans to include requirements for hydrological control

37.4 Policy CC.4A requires regional plans to include provisions that require the application of water sensitive urban design principles and methods to improve

³ [HS3-Right-of-Reply-Climate-Resilience-and-Nature-Based-Solutions-Appendix-1-Recommended-Amendments-to-proposed-provisions-Pam.pdf \(gw.govt.nz\)](#)

water quality and overall environmental quality, including by requiring stormwater contaminants to be avoided or minimised. This duplicates the requirements in Policy 14 in Hearing Stream 5 which also requires the application of water sensitive urban design principles and the management of contaminants in stormwater

37.5 Policy CC.14A and Policy 42 both require the consideration of water sensitive urban design principles and techniques for regional resource consents. Policy CC.14A also requires the management of stormwater flow rates and volumes to minimise flooding and to maintain, to the extent practicable, natural stream flows. This duplicates Policy 42(k) which requires consideration of the extent to which hydrological control minimises adverse effects of runoff quantity (flows and volumes) on natural stream flows

38 In discussion with Ms Guest, I recommend removing the unnecessary duplication by deleting Policy CC.4(b), Policy CC.4A(a) and (b), Policy CC.14(b), and Policy CC.14A(a) and (b) and adding text to the policy explanations of each of these policies to provide appropriate linkages to Policy 14, Policy FW.3, and Policy FW.XX where there are more specific requirements that also contribute to achieving climate-resilience. These amendments are shown in Appendix 3.

39 I note that as at the Hearing Stream 3 Right of Reply stage Ms Guest recommended requiring district plans to require hydrological control in new development, while I have subsequently recommended that this is a regional plan requirement. Again, Ms Guest and I have discussed the implications of this change and agree that my recommended policy more appropriately aligns with what has recently been notified in Plan Change 1 to the NRP, which includes rules requiring hydrological control in all scales of urban development⁴. It is therefore unnecessary for the RPS to require district plans to also include these provisions.

40 I consider these amendments provide greater efficiency within Change 1, by removing unnecessary duplication and avoiding the potential for additional costs associated with applying multiple policies that ultimately achieve the same outcome.

41 Based on these recommended amendments I consider that these provisions do work as a cohesive whole and are consistent. They are also for an RMA purpose that is managing the effects of both increased urban development and increased rainfall intensity as a result of

⁴ [Full-Plan-Provisions-including-Clause-16-changes-made-on-6-December-2023.pdf \(gw.govt.nz\)](#)

climate change to protect the health and wellbeing of waterbodies, freshwater ecosystem health and supporting more climate-resilient communities.

h) Some submitters were of the view that there was not an appropriate balance in the suite of provisions between protection and use/development (other than urban development). For example, Wairarapa Federated Farmers noted that Policy 17 does not refer to all the limbs of Te Mana o Te Wai. Having heard submitters, does the Reporting Officer consider that the balance in the provisions she supports is appropriate in light of the direction in the NPS-FM and Te Mana o Te Wai?

42 I do not agree with the views put forward by Wairarapa Federated Farmers that Policy 17 requires reference to the third priority in the Te Mana o te Wai hierarchy of obligations in the NPS-FM.

43 I consider the HS5 provisions, and my recommended amendments in my section 42A report and rebuttal evidence to recognise different uses, are appropriate in light of the direction of the NPS-FM and the requirements to give effect to Te Mana o te Wai.

i) Sometimes ‘urban development’ in the HS5 provisions is italicised (ie to refer to the defined term) and sometimes it is not eg in Policy FW.3(e), (g), Policy 42(a) and (j). Can you please check this across all the provisions for consistency/intent.

44 I have reviewed all the provisions across HS5 to check that all defined terms have been italicised. Where this was not previously shown, I have provided amendments as shown in Appendix 2.

j) Concerns were raised by submitters about possible duplication of local authority roles/functions eg Wellington Water commented that a territorial authority may not act if they think the matter is in the jurisdiction of the regional council, and vice versa. The legal submissions of the Director General of Conservation referred to various cases. The *Otago Regional Council* case (footnote 16 of Ms Anton’s legal submissions) refers to *Canterbury Regional Council v Banks Peninsula District Council [1995] 3 NZLR 189* where the Court stated that “Neither a regional council nor a territorial authority has power to make rules for purposes falling within the functions of the other, except to the extent that they fall within its own functions and for the purpose of carrying out its own functions.” We also note that s 75(4)(b) of the RMA states that a district plan must not be inconsistent with a regional plan for any matter specified in section 30(1).

Can you please review your advice on the RPS direction in the HS5 provisions regarding local authority functions/roles and jurisdiction in light of submitters' evidence and legal submissions including the views of Mr Brass for the Director-General of Conservation?

45 I have reviewed my advice in relation to the Hearing Stream 5 provisions and the direction these provisions provide to regional and district plans. My view has not changed with regard to local authority functions/roles. However, I do consider greater clarification is required in Policy FW.6, based on the evidence of Wellington Water.

46 Wellington Water were concerned that there was duplication between Policy 14 and Policy FW.3 and noted that Policy FW.6 provides insufficient direction about the split of responsibilities between the Council and territorial authorities. There will be areas where both the Council and territorial authorities will both be responsible for managing the effects of urban development and I consider this is appropriate given the direction in the NPS-FM, particularly clause 3.5(4). I agree with Wellington Water that Policy FW.6 is the appropriate location for providing further clarity.

47 I agree the current wording of Policy FW.6 does not provide sufficient direction about the split of responsibilities, nor does it provide guidance on how those areas of overlapping responsibility should be managed.

48 I also note that in my section 42A report I recommended replacing 'city and district councils' with 'territorial authorities' in clause (c), however the reporting officer for Hearing Stream 2 recommended retaining the former on the basis that this term is used across the RPS and making this change through Change 1 would be a significant change that is not warranted at this stage⁵. I therefore recommend reinstating 'city and district councils' in Policy FW.6. I also recommend making the same amendment in Method FW.1, Method FW.2, and Method FW.X (Technical Guidance for Stormwater Management in Urban Development).

49 On this basis, I recommend amendments that more clearly specify, at a general level, the split of freshwater management responsibilities between the Council and territorial authorities, as follows:

⁵ [RPS Change 1 S42A Report Template \(gw.govt.nz\)](#), Paragraph 188.

Policy FW.6: Allocation of responsibilities for land use and development controls for freshwater

Regional and district plans shall recognise and provide for the responsibilities below, when developing objectives, policies and methods, including rules, to protect and enhance the health and well-being of water bodies and freshwater ecosystems:

- (a) Wellington Regional Council has primary responsibility for freshwater. Wellington Regional Council shall be responsible for managing the direct effects of the use and development of land on waterbodies and receiving environments including discharges of contaminants, implementing the National Objectives Framework of the NPS-FM 2020, managing the effects of stormwater runoff volumes on freshwater ecosystem health, and protecting and enhancing riparian margins ~~the control of the use and development of land~~ for the purposes of water quality and quantity the maintenance and enhancement of water quality and ecosystems in water bodies, and the maintenance of water quantity.
- ~~(b)~~ In relation to wetlands, Wellington Regional Council is responsible for managing land use within, and within a 100m margin setback of natural wetlands as directed by the NES-F 2020, as well as areas adjoining and/or upstream of a wetland for the purpose of protecting wetlands:
 - ~~(a)~~ ~~(ba)~~ Wellington Regional Council is responsible for earthworks and vegetation clearance in riparian margins of water bodies.
 - (c) ~~City and district councils Territorial authorities are responsible for the control of land use and subdivision. City and district councils Territorial authorities~~ City and district councils are responsible for managing the effects of urban development on the health and wellbeing of waterbodies, freshwater ecosystems and receiving environments insofar as it relates to stormwater management and managing the design and materials of development (such as roof materials and impervious surfaces) that may affect the health and wellbeing of waterbodies. must include objectives, policies, and methods in district plans to promote positive effects, and avoid, remedy or, or mitigate adverse effects (including cumulative effects) of land use and subdivision on the health and wellbeing of water bodies, freshwater ecosystems and receiving environments (as required by NPS-FM 3.5 (4)). They must carry out their responsibility in regard to the NPS-FM through their functions under Section 31 of the RMA.
 - (d) Wellington Regional Council and city and district councils have joint responsibility for the location and design of urban development in relation to waterbodies and receiving environments, and the protection and enhancement of waterbodies and receiving environments from the effects of urban development insofar as this relates to their respective functions under section 30 and section 31 of the RMA.

Explanation

Policy FW.6 outlines the allocation of responsibilities for land use and development controls for freshwater between Wellington Regional Council and territorial authorities city and district councils. There are some areas of responsibility that overlap and in these cases the Wellington Regional Council and city and district councils shall work together to develop plan provisions and operational arrangements to provide for the coordinated management and control of subdivision, use and development to maintain, and where required improve,

the health and wellbeing of waterbodies and freshwater ecosystem health. This includes working collaboratively at different scales, such as during structure planning, rezoning, subdivision, and site-development, so that the location, layout and design of development is managed in an integrated manner.

k) Does Council have any views on whether a Memorandum of Understanding between the Council and the territorial authorities may assist in clarifying roles/functions (see *Otago Regional Council [2022] NZEnvC 101* referred to in Ms Anton’s submissions and whether a Method could be included requiring the development of an MOU. Are there scope issues with this?

50 In my opinion, a MOU is unnecessary and potentially challenging to administer in the Wellington context where there are eight territorial authorities. My understanding of the case reference by Ms Anton is that this related to a very specific set of circumstances around the Queenstown-Lakes Proposed District Plan which was ‘ahead’ of Otago Regional Council’s Water plan change.

51 In my opinion, a more efficient way of addressing the matters in the Wellington context is via appropriate policies and methods. Policy FW.6 allocates responsibilities in relation to freshwater management and I have recommended amendments to this Policy in response to concerns by Wellington Water that the policy is unclear. I also note that the Integrated Management provisions of Change 1 include direction about how the Council and territorial authorities can achieve integrated management, notably in Policy IM.1 and Method IM.1. These provisions were the subject of Hearing Stream 2, and I note the Reporting Officer recommended amendments to these provisions in his Right of Reply⁶, such that they now read⁷:

Policy IM.1: Integrated management – ki uta ki tai - consideration

When considering an application for a resource consent, notice of requirement, or a change, variation or review of a regional or district plan, local authorities shall adopt an integrated approach to the management of the region’s natural and physical resources, including by:

(a) partnering with mana whenua / tangata whenua to provide for mana whenua / tangata whenua involvement in resource management and decision making; and

⁶ [HS2-Reply-Evidence-Intergrated-Managment-Reporting-officer-Jerome-Wyeth-28-July-2023.pdf \(gw.govt.nz\)](#)

⁷ For readability and to avoid confusion, I have provided a ‘clean’ version of these provisions, with the Officer’s tracked changes removed.

(b) recognising the interconnectedness between air, freshwater, land, coastal marine areas, ecosystems and all living things – ki uta ki tai; and

(c) recognising that the effects of activities may extend beyond immediate and directly adjacent area, and beyond organisational or administrative boundaries; and

(d) recognising the interrelationship between natural and physical resources; and

(e) making decisions based on the best available information, improvements in technology, science, and mātauranga Māori; and

(f) requiring Māori data and mātauranga Māori to be interpreted within Te Ao Māori while upholding Māori data sovereignty.

Explanation: This policy requires that a holistic, integrated view is taken when making resource management decisions. It also requires both regional and district councils to provide for mana whenua/tangata whenua are to be actively involved in resource management and decision making, including the protection of mātauranga Māori and Māori data.

Method IM.1 – Integrated Management – ki uta ki tai

To achieve integrated management of natural resources and physical resources built environments, the Wellington Regional Council, district and city councils shall:

(a) partner with and provide support to mana whenua / tangata whenua to provide for their involvement in resource management and decision making; and

(b) partner with and provide support to mana whenua / tangata whenua to provide for mātauranga Māori in natural resource management and decision making; and

(c) work with communities to achieve effective integrated management outcomes;

(d) work together with other agencies to ensure consistent implementation of the objectives, policies and methods of this RPS; and

(e) enable connected and holistic approach to resource management that looks extends beyond organisational or administrative boundaries; and

(f) recognise that the impacts of activities extend beyond the immediate and directly adjacent area; and

(g) require Māori data, including mātauranga Māori, areas and sites of significance, wāhi tapu, and wāhi tūpuna are only shared in accordance with agreed tikanga and kawa Māori; and

(h) share data and information (other than in (f) above) across all relevant agencies; and

(i) incentivise opportunities and programmes that achieve multiple objectives and benefits.

Implementation: Wellington Regional Council and city and district councils.*

52 I have underlined the specific and relevant clauses which relate to concerns about roles and responsibilities. These provisions apply across the RPS and necessitate a change in approach in how the Council and territorial authorities work together. For example, where a consent is required under the regional plan and a district plan, clause (d) requires the agencies to work together to ensure consistent implementation. This is not intended to be joint processing but requires communication between the councils about the approach, key issues and ensuring consistent advice.

l) ‘Water Sensitive Urban Design’ is referred to in various places eg FW.3(i). This is a defined term so we understand that it should be in italics. Please review / confirm and also advise on whether the definition (which was considered as part of HS3) is appropriate for the HS5 suite of provisions.

53 I can confirm that I agree with the definition of ‘water sensitive urban design’ that has been recommended to be included in Change 1 as part of Hearing Stream 3. On this basis the intent is that where water sensitive urban design is referenced in the Hearing Stream 5 provisions, this same definition applies.

54 On this basis, this term should be italicised, and I have recommended further amendments to correct this.

m) ‘Nature based solutions’ is referred to only in draft Policy FW.7 in the HS5 suite of provisions. Please advise whether ‘nature based solutions’ should also be mentioned in draft Policies FW.3 and 14. We query whether FW.7 should refer to ‘prioritising’ nature based solutions given the description of the policy intent in the Explanation, and also draft Policy CC4.A (in HS3) which require district and regional plans to include provisions requiring development and infrastructure to be located, designed and constructed in ways that provide for climate change mitigation, adaptation and resilience, ‘prioritising’ the use of nature based solutions and informed by mātauranga Māori.

55 The term ‘nature-based solutions’ has been the subject of submissions, analysis and officer recommendations through Hearing Stream 3 (Climate Resilience and Nature-based solutions topic). Through the Officer’s Right of Reply to HS3 the definition of this term is recommended as follows⁸:

Use and management of natural ecosystems and processes or engineered systems that mimic natural processes, to reduce greenhouse gas emissions, support climate change adaptation and/or strengthen the resilience and well-being of people, indigenous biodiversity, and natural and physical resources to the effects of climate change.

Note that “nature-based solutions” is an umbrella term that encompasses concepts such as green infrastructure (including as defined in the National Planning Standards), green-blue infrastructure, and water-sensitive urban design.

56 I consider the term ‘nature-based solutions’ is much broader than the freshwater and Te Mana o te Wai topic, although some of the concepts within the freshwater topic, notably water sensitive urban design, hydraulic neutrality, and hydrological control, do fall within the umbrella concept of nature-based solutions. ‘Nature-based solutions’ is utilised in Change 1 to address broader climate-resilience issues such as reducing emissions, managing more extreme weather events, and restoration of indigenous ecosystems. In my opinion, it is unnecessary to reference ‘nature-based solutions’ in Policies 14 and FW.3 as the more specific concepts that relate directly to freshwater management are already utilised. Moreover, adding this concept to these policies would in my view add unnecessary ambiguity and complexity to the suite of policies.

57 Policy FW.7 gives effect to a broader range of objectives, not just those within the Freshwater chapter, including Objective 16A (Chapter 3.6 – Indigenous Ecosystems), (Chapter 3.8 – Natural Hazards), and Objectives 22 and 22B (Chapter 3.9 Regional form and function). As such, I consider it is appropriate to use the broader term ‘nature-based solutions’ in Policy FW.7 given the broad suite of objectives it gives effect to.

⁸ Hearing Stream 3, 13 November 2023, Officer Right of Reply – Climate Resilience and Nature-Based Solutions, Appendix 1, page 1. [HS3-Right-of-Reply-Climate-Resilience-and-Nature-Based-Solutions-Appendix-1-Recommended-Amendments-to-proposed-provisions-Pam.pdf \(gw.govt.nz\)](https://www.govt.nz/government/consultation/HS3-Right-of-Reply-Climate-Resilience-and-Nature-Based-Solutions-Appendix-1-Recommended-Amendments-to-proposed-provisions-Pam.pdf).

58 I do not agree that the chapeau should be changed to 'prioritise'. As a non-regulatory policy I consider this language is too directive. I recommend 'promote and support' be retained in Policy FW.7.

n) Are the NPS-FM 'natural inland wetland' and 'rivers' consenting pathways in clauses 3.22 and 3.24 of the NPS-FM given appropriate effect to in Policies 18 and 40? Should the pathways be recognised in a consistent way, for instance functional need and the effects management hierarchy is recognised for some activities, but others refer to 'to the extent practicable'. Mr Slyfield, Counsel for Wellington Water and others presenting at the hearing talked about the 'absolute' language in provisions such as Policy 18(c) which do not reflect the nuances in the NPS-FM. Can you please review the HS5 provisions and recommend any amendments you consider are needed to give appropriate effect to the NPS-FM. Please consider, among other things, the comments in para 4.2 of Ms Tancock's hearing presentation notes on this issue and Mr Slyfield's submissions (from para 17).

59 Following the hearing and the evidence presented by representatives for Winstone Aggregates and Wellington Water, I agree that Clauses 3.22 and 3.24 of the NPS-FM are not given full effect in Policies 18 and 40. My earlier position in rebuttal was that the relief sought by Winstone Aggregates to include the consenting pathways in clause 3.24 was out of scope. However, I have reviewed this position following the hearing and I now consider that it would be appropriate to include these consenting pathways in Change 1.

60 Policy 18 applies to all use and activity and is not limited to urban development activities. It addresses matters relating to the effects of all activities on freshwater, which includes the activities listed in clause 3.22 of the NPS-FM. The policy is proposed to be amended through Change 1 to give effect to the NPS-FM and includes reference to avoiding loss of natural inland wetlands and loss of river extent and values. It is logical to address this matter in Policy 18, rather than in the Soils and Minerals chapter of the RPS as I had suggested in my rebuttal evidence⁹.

61 I agree with Ms Clarke and Ms Tancock that without reference to the consenting pathways, these policies will not give effect to the NPS-FM Clauses 3.22 and 3.24 and will create an inconsistency in the hierarchy between the NPS-FM, the RPS, and the regional plan (when that change is made). I also agree with Ms Tancock's hearing statement¹⁰ that as drafted clause (n) of Policy 18 is narrower than clause 3.24 of the NPS-FM and does not sufficiently

⁹ [HS5-GWRC-Statement-of-Rebuttal-Evidence-Kate-Pascall-101123.pdf](#), paragraph 196

¹⁰ [Evidence - Environment Court \(gw.govt.nz\)](#), Paragraph 4.2

reflect the wider range of activities that the NPS-FM provides for in relation to the loss of river extent and values.

62 While I agree there is a need to provide for these activities, I do consider that any provision for consenting pathways in the RPS must be very closely aligned to the NPS-FM wording. This aligns with the NPS-FM approach of providing the specific wording that must be inserted into regional plans. I consider that a different approach in the RPS could result in unintended outcomes both in relation to inadvertently providing for a broader range of activities, which is not the intent of the NPS-FM, or inconsistencies in the planning policy hierarchy.

63 On this basis, I recommend adding two new policies – one relating to natural inland wetlands (Policy 18A) and the other to rivers (Policy 18B) – to address this matter in a way that is clear and that adopts the same wording and approach as the relevant clauses of the NPS-FM to provide certainty and clarity for all users of the RPS. This approach is also one of practicality as including the exceptions and consenting pathways in the existing Policy 18 would make this a very long policy.

64 As a consequential change, I also recommend deleting clauses (c), (e), and (n) from Policy 18 as these will no longer be required if Policy 18A and Policy 18B are adopted. Similar consequential deletions can be made in Policy 14, specifically clause (ia) and clause (m) because the new policies I have recommended will apply across all activities, including urban development, and as such there is no need to duplicate these policies in Policy 14. Finally, I recommend including the definition of ‘specified infrastructure’ from Clause 3.21 of the NPS-FM to provide clarity in interpretation, as this is an activity that is provided for in the NPS-FM consenting pathways.

65 In relation to Policy 40, I recommend a similar approach as for Policy 18, by providing two new policies to address resource consents in relation to natural inland wetlands and rivers. These are Policy 40A and Policy 40B respectively. Again, the wording mirrors that of clauses 3.22 and 3.24 of the NPS-FM, but the explanation notes that these policies will cease to have effect once Policies 18A and 18B have been given effect in the regional plan. This assists users of the RPS by providing clarity that these policies are an interim policy measure until such time as the NRP is updated. I therefore recommend consequential changes to Policy 40 to delete clauses (o) and (p) as these matters are now addressed in full in the recommended new policies.

o) Related to the question above, can Counsel for the Council please advise whether the recognition Winstone Aggregates seek for quarrying activities is within the scope of Proposed Change 1 and whether we are required or permitted to grant the relief sought on the basis of caselaw including Southern Cross Healthcare Ltd v Auckland Council [2023] NZHC 948 and Balmoral Developments (Outram) Ltd v Dunedin City Council [2023] NZEnvC referred to in Ms Tancock’s hearing presentation notes.

66 Legal counsel for the Council has provided a separate reply in response to this question.

p) Ms Burns for Rangitāne o Wairarapa raised some consistency and alignment concerns in her evidence regarding Policies 14 and 18. We ask that the Council please review these draft policies taking into account Ms Burns’ views. There are some policies in PC1 that are focused on urban development impacts on freshwater and receiving environments, and other policies that apply across the region. Can the Officer please explain the rationale for these different approaches?

67 I have reviewed Policies 14 and 18 in light of Ms Burns’ evidence and also in light of the scope of Change 1. My opinion has not changed from my section 42A report – I consider broadening the scope of Policy 14 to all activities is beyond the scope of Change 1 which is primarily a response to the National Policy Statement on Urban Development (NPS-UD) and anticipated increased intensification in the Region’s urban areas as a result¹¹. This change is also important to provide appropriate direction in the RPS for Plan Change 1 to the NRP which was recently notified.

68 I acknowledge that Policy 18 is not restricted to urban development in its application but nevertheless the amendments that are part of Change 1 are largely limited to matters that the Council has limited discretion over from the NPS-FM. It is my understanding that the current intention is that further changes will be promulgated to the RPS to ensure the NPS-FM is given full effect (i.e. to all activities), either prior to or alongside a plan change to the NRP that addresses the rural environment. In my view, this will likely necessitate further review and potential amendments to Policy 18 to ensure all activities that may have adverse effects on freshwater (such as rural activities) are sufficiently captured and managed in line with the NPS-FM. This would include providing more specific direction from the whitua processes (such as Ruamāhanga and Kāpiti) which have a larger rural focus than the Te Awarua-o-Porirua Whitua and Whitua Te Whanganui-a-Tara.

¹¹ [RPS Change 1 - S42A Report Freshwater Te Mana o te Wai - Final.docx \(gw.govt.nz\)](#), paragraph 349

OBJECTIVE 12

q) Obj 12(d) -does 'recognise and provide for' appropriately reflect s 6(a) RMA?

69 Section 6(a) of the RMA requires 'the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development.' While I agree that this must be addressed in the RPS and lower order documents, I consider that the preservation of natural character as it relates to wetlands, lakes, rivers and their margins is outside the scope of Change 1. The section 32 report does not identify natural character as an issue that is within the scope of Change 1 (aside from minor proposed amendments to Policy 3 which relates to natural character in the coastal environment).

70 Objective 12 relates specifically to Te Mana o te Wai and does not address natural character. The concept of Te Mana o te Wai in the NPS-FM does not include reference to natural character as a matter that falls within the concept. The focus is on the health and wellbeing of the water body and freshwater ecosystems.

71 Even if it was within scope, the inclusion of the preservation of natural character in Objective 12 would necessitate additional policy direction in order to give effect to this aspect of the objective, which in my opinion would be a significant change at this late stage of the hearings process when there is no further avenue for submitters to comment.

r) Can you please comment on the relief sought by Fish and Game Council to add a new clause into Objective 12 relating to engagement with communities, stakeholders and territorial authorities (similar to the wording in draft Policy 12(a)).

72 I consider that it is appropriate to include a subclause relating to engagement with communities, stakeholders and territorial authorities be added to Objective 12. This is in line with the principles of Te Mana o te Wai, in particular that of 'governance' and 'stewardship', and also gives effect to Clause 3.2(b) of the NPS-FM. I consider the wording put forward by Ms Campbell at the hearing would be appropriate, with some minor amendment to ensure this works grammatically with the amended chapeau, as shown in my recommended amendments.

s) Having heard mana whenua/tangata whenua concerns about including Statements of Te Mana o te Wai in an Appendix to the RPS, is the Officer able to propose an alternative location in the RPS

for the Statements while also ensuring their impact/effect and how they are to be interpreted alongside other provisions in the RPS, NOF and NRP, is clear?

- 73 I consider the only alternative location for the Statements of Te Mana o te Wai would be within the body of the RPS, as was proposed in the notified version of Change 1. I have outlined in my section 42A report¹² the reasons why I consider this to be unworkable from an implementation perspective, largely due to the references to ‘objectives’, ‘policies’, and other content in the statements which is similar to the content in the body of the RPS. Several submitters identified that this was confusing and sought that either the content of the statements be changed, or that the statements be relocated elsewhere in the RPS. Rangitāne and Kahungunu indicated that they did not support further changes to the content of their statements and I considered that it would be inappropriate for me to recommend such changes. As a result, I recommended relocating the statements to a new appendix along with two new policies to provide regulatory basis for the statements and to reduce implementation issues.
- 74 The location of the statements in an appendix is not intended to diminish their importance, and I respectfully disagree with Ms Gibb’s opinion that this approach is inconsistent with the Te Mana o te Wai principles of Mana Whakahaere, Manaakitanga, and Kaitiakitanga. The appendix remains part of the statutory document of the RPS and in my opinion the critical component is having the policy direction within the body of the RPS that directs how the statements are to be applied. Users of the RPS, and those applying these policies, will be required to read the statements in the process of ‘recognising and providing’ for them (Policy FW.XXA) or ‘having particular regard’ to the statements (Policy FW.XXB). On a spectrum of RMA policy directives, these policies are at the more directive end.
- 75 I acknowledge the concerns of Ms Gibb, that the Kāpiti Whaitua process is being undertaken within the Te Tiriti Whare Model and the approach I have outlined does not align with that. However, at the time of developing Change 1 and in preparing the section 42A report and evidence for this hearing stream, this information was not available and consideration of it is out of scope for this process. Once complete, the Kāpiti WIP will need to be applied in the RPS through a separate Schedule 1 process. At that stage, the Council will need to turn its mind to how the different approaches to each of the whaitua processes can best be recognised in the RPS in a way that does not detract from the importance of the processes

¹² Paragraphs 181-189

that have been undertaken and ensures that the outcomes sought from those processes can continue to be achieved through the related RPS provisions.

76 On this basis my opinion remains unchanged on the location of the Statements of Te Mana o te Wai. It is my view that locating the statements in an appendix, with directive policies within the body of the RPS, provides a more practical approach to their application.

t) In the tables showing the mana whenua/tangata whenua statements and applicable territorial authority areas, is it also helpful to reference the applicable whitua?

77 I agree that it would be useful to reference the applicable whitua in the tables in Policy FW.XXA and Policy FW.XXB. I have provided amendments to this effect in Appendix 2. To avoid confusion, I have only referenced the whitua with a completed WIP.

POLICY FW.XX HYDROLOGICAL CONTROLS FOR URBAN DEVELOPMENT

u) What are the Officer's and Mr Farrant's views on Wellington Water's relief to not include the methodology in Policy FW.X, but just to include the outcome and require the regional plan to develop the methodology? Have your views on Policy FW.X and the appropriateness of the proposed hydrological control standards changed at all in light of the evidence Ms Lockyer presented during the hearing? Is it appropriate to require the regional plan to prescribe the methodology?

78 Following the hearing I have reflected on the concerns raised by Wellington Water and on the evidence of Mr Farrant. I consider there are two key issues. One is that there is disagreement between the experts (Mr Farrant and Ms Lockyer) about the metric to be used for achieving hydrological control and the second issue is the detailed nature of the policy, given this is in a RPS context.

79 Given the disagreement between Mr Farrant and Ms Lockyer, I have concerns about retaining the methodology in the new policy at this stage. Wherever the methodology is located, experts need to be confident that it can be implemented and is achievable.

80 In terms of the location of the methodology, I agree with Ms Horrox that this is a very detailed policy for a RPS. I have reviewed the content of Plan Change 1 to the NRP, which includes requirements for hydrological control through the rules and standards. That content is less prescriptive than the recommended RPS policy, which is inconsistent with the plan hierarchy. This could create a scenario where technically the NRP is not giving full effect

to the RPS. Moreover, users of the NRP should not have to look to the RPS for this type of detail.

81 On this basis, from a planning perspective I recommend deleting clauses (a) and (b) of Policy FW.X and retaining the chapeau, as suggested by Wellington Water and shown in Appendix 2. I consider that further discussion is needed between the Council, Mr Farrant and Wellington Water's experts about the appropriate metric for hydrological control and how this should be reflected in the NRP. Ideally this should be undertaken prior to the hearings for Plan Change 1 to the NRP, assuming that there is sufficient scope in submissions on that plan change to amend the relevant provisions.

v) Can Mr Farrant and the Reporting Officer please consider the relief by PCC and others suggesting that this refer to the state of the land prior to the development in question rather than 'undeveloped state' – or do you still consider that this 'locks in' flows from impervious areas or other 'prior to development' aspects that will prevent effective hydrological control.

82 My view on this matter has not changed as a result of evidence presented by Mr McDonnell and others in relation 'undeveloped state'. I refer the Panels to my analysis on this matter at paragraph 56 of my rebuttal evidence. Mr Farrant has provided a more comprehensive response to this question in his reply evidence.

w) There was some discussion at the hearing about a 'carve out' for the Wellington City Zone given the extent of impervious surfaces. Do you have any comments on this?

83 Based on the advice of Mr Farrant, I do not consider that a 'carve out' for the Wellington City Centre Zone is required. My understanding is that the central city includes several streams that have significant value culturally and ecologically and these streams are currently in poor condition from a water quality perspective. It is therefore important that urban development within the central city is required to contribute to the improvement of water quality in these waterbodies. On this basis, I do not recommend a carve out for the Wellington Central City Zone.

POLICY 12

x) Can Ms Pascall please consider the request from mana whenua/tangata whenua to delete the word 'whaitua' from Policy 12(c)(i)-(v) given the chapeau to Policy 12(c).

84 I agree with mana whenua/tangata whenua that this amendment should be made. The inclusion of the word 'whaitua' in clauses (i)-(v) is unnecessary.

85 I also recommend a minor amendment to clause (c)(ii) to include the macron in 'Ruamāhanga'.

POLICY 14

y) The reference to “Māori freshwater values” in Policy 14(ab) – are these intended to be the values in Appendices 1A and 1B of the NPS-FM eg ‘mahinga kai’ or can these also be other values eg those identified in mana whenua/tangata whenua Statements of Te Mana o te Wai? Other provisions in the suite refer to ‘mana whenua / tangata whenua freshwater values’ (eg Policy 42(a). Can you please review the references and consider whether consistent references are needed for clarity.

86 Policy 2 of the NPS-FM requires that ‘tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for’. Similarly, Clause 3.4 of the NPS-FM sets out the requirements for how local authorities must actively involve tangata whenua in freshwater management and provides a non-exclusive list of the matters that tangata whenua must be actively involved in. Sub-clause (2) requires:

In particular, and without limiting subclause (1), for the purposes of implementing the NOF, every regional council must work collaboratively with, and enable, tangata whenua to:

(a) identify any Māori freshwater values (in addition to mahinga kai) that apply to any FMU or part of an FMU in the region; and

(b) be actively involved (to the extent that they wish to be involved) in decision-making processes relating to Māori freshwater values at each subsequent step of the NOF process.

87 The NPS-FM also defines ‘Māori freshwater values’ as follows:

means the compulsory value of mahinga kai and any other value (whether or not identified in Appendix 1A or 1B) identified for a particular FMU or part of an FMU through collaboration between tangata whenua and the relevant regional council

88 Therefore, I do not consider that the reference to ‘Māori freshwater values’ in Change 1 is limited to the values set out in Appendix 1A and 1B. Rather, the intention is that engagement is undertaken with mana whenua/tangata whenua to understand what

freshwater values are held in addition to mahinga kai. Clause 3.4 does not reference Appendix 1A or 1B and on this basis I consider a wider range of values can be expressed by mana whenua/tangata whenua. The Te Mana o te Wai statements are a way of doing this.

89 I have reviewed the suite of freshwater policies and Policy 42(b) is the only instance where there is reference to ‘mana whenua/tangata whenua values’ rather than ‘Māori freshwater values’. To be consistent with the wording in the NPS-FM, I consider this reference should be amended as follows:

(b) protecting and enhancing ~~mana whenua/tangata whenua~~ Māori freshwater values, in partnership with mana whenua/tangata whenua.

z) In draft Policy 14(m), should provision (ie protection) be provided for wetlands with outstanding values?

90 I have recommended at paragraph 64 of this Right of Reply that Policy 14(m) is deleted as a consequential change, following my recommendation to provide a standalone policy in relation to natural inland wetlands. However, should the Panel be of a mind to retain clause (m), I do not consider that it is necessary to include reference to the protection of wetlands with outstanding values. The wording in clause (m) is taken directly from Clause 3.22 of the NPS-FM where no such reference is included.

91 I consider the protection of wetlands with outstanding values would be provided for through Policy 18(f) which requires regional plans to include provisions to protect the significant values of outstanding water bodies, which includes wetlands.

POLICY FW.3

aa) Please consider whether the words “including the natural form and flow of the waterbody” are appropriate to include at the end of draft Policy FW.3(k). Compare with draft Policy 42(j). Also, should the words “health and wellbeing” be included in FW.3(k) in light of clause 3.5(4) of the NPS-FM; again compare the wording in Policy 42(j).

92 I remain of the view that protecting the ‘natural form and flow of the waterbody’ is not a function of territorial authorities and is best managed through the regional plan (see my commentary in my rebuttal evidence, paragraph 112). I note that Policy 42 relates to regional resource consents only and therefore it is appropriate that clause (j) of Policy 42 includes this direction.

93 I do agree that Policy FW.3(k) should include the words 'health and wellbeing' to be consistent with clause 3.5(4) of the NPS-FM. I have provided suggested amendments in Appendix 2.

bb) Should Policy FW.3(g) reference 'effects' on freshwater and receiving environments? It currently just requires rules in district plans to consider the location, layout and design of urban dev in relation to freshwater and receiving environments.

94 Taking into account clause 3.5(4) of the NPS-FM, I consider that Policy FW.3(g) should reference 'effects' on freshwater and receiving environments. Clause 3.5(4) states that district plan provisions should 'avoid, remedy/ or mitigate adverse effects (including cumulative effects) of urban development on the health and wellbeing of water bodies, freshwater ecosystems, and receiving environments' (my emphasis). On this basis, I recommend the following amendment:

(g) Consider the effects of the location, layout and design of urban development urban development in relation to effects on on freshwater and the coastal marine area receiving environments of subdivision, use and development of land;

cc) Can the Reporting Officer please comment on the relief described in paragraph 25 of Ms Horrox's evidence (for Wellington Water). We are not sure that this specific point was addressed in Rebuttal. If the Officer supports Wellington Water's relief, is a similar change needed in Policy 42(j)?

95 My rebuttal at paragraph 115 sets out my response to Ms Horrox's concerns in relation to water source protection areas. I agreed in part with Ms Horrox and recommended a new clause be added to Policy FW.3, as follows:

(ka) identify aquifers and drinking water source areas in the district and include information about how urban development in these areas is managed in the region

96 In terms of Policy 42(j), I do not consider that any amendment is required because the NRP already includes provisions to protect aquifers and drinking water sources. It is unnecessary to duplicate this consenting requirement in the RPS.

DEFINITION OF 'HYDRAULIC NEUTRALITY'

dd) Should 'undeveloped state' be in italics to refer to the defined term?

97 To be consistent with the approach in Change 1 to italicise defined terms, ‘undeveloped state’ should be italicised in the definition of ‘hydraulic neutrality’. I have included this amendment in Appendix 2.

POLICY 42

ee) Can you please consider the language in the chapeau and whether “giving effect to Te Mana o te Wai” by “having regard to” [the matters listed] is appropriate for a consideration policy. In other words, is the legal direction to ‘have regard to’ Te Mana o te Wai when assessing a consent application?

98 As set out at paragraph 33 of this Right of Reply, I consider the reference to ‘giving effect to’ Te Mana o te Wai in the chapeau is unnecessary in Policy 42, on the basis that the policy itself already gives effect to Te Mana o te Wai, and therefore in implementing the policy this is implicit. Policy 42 also gives effect to Objective 12 which is focused on Te Mana o te Wai.

99 On this basis, I recommend the deletion of the reference in the chapeau of Policy 42 to ‘give effect to Te Mana o te Wai’.

ff) How are draft Policies 42(h) and (l) different?

100 The key difference between clause (h) and clause (l) is that the former provides explicit reference to the use of water sensitive design techniques to minimise the generation of contaminants and to maximise the removal of contaminants from stormwater. I recommend deleting clause (l) on the basis that clause (h) is clearer about the techniques that should be used to achieve the outcome, and this is consistent with Policy 14(f).

POLICY FW.6

gg) Some submitters commented that local authorities’ functions and jurisdiction is clear in Policy 15 but could be clearer in Policy FW.6 which largely repeats provisions in the RMA or NES-F. Do you have any views and further amendments to Policy FW.6 to suggest in light of submitter comments regarding clarity of local authority functions?

101 As set out in paragraph 47, I consider amendments are necessary to Policy FW.6 to provide clarity about the split of responsibilities between the Council and territorial authorities, and where there is overlapping responsibility.

102 In reviewing this policy and the evidence provided by Mr McDonnell in relation to the management of earthworks within riparian margins, I consider my recommendation in my section 42A report¹³ to include additional clause (ba) to Policy FW.6 is misleading. As set out in my rebuttal evidence at paragraph 149, the management of earthworks within riparian margins is not solely the responsibility of the regional council, and district plans in the region also manage these activities, including via the Proposed Wellington City District Plan and Kāpiti Coast District Plan. There are also rules in the NRP to manage these activities within specified setbacks from waterbodies. I therefore recommend deleting clause (ba) from Policy FW.6.

POLICY FW.7

hh) Ms McGruddy (WFF) talked about how water storage is a critical element of a climate resilient future yet it is problematic currently to get storage consented. Can you please consider whether a more enabling policy framework is appropriate e.g. in Policy FW.7 – ‘promote and support’ – should this be ‘enable’? What limitations may be appropriate e.g. so a ‘large water storage dam’ isn’t necessarily captured.

103 I acknowledge the concerns raised by Ms McGruddy in relation to water storage and the need to provide for this in some way as part of climate resilience. Ms McGruddy correctly pointed out that clause 3.22 of the NPS-FM provides a consenting pathway for activities within wetlands. This includes ‘specified infrastructure’ which includes any water storage activity. I note that at paragraph 63, I have recommended the inclusion of new Policy 18A which gives effect to Cluae 3.22 of the NPS-FM, and would provide the same consenting pathway for specified infrastructure. In my opinion, this would resolve Ms McGruddy’s concerns about consenting water storage activities.

104 If the Panel disagrees with my recommended Policy 18A, then the alternative amendment I have suggested at paragraph 114 could apply instead.

POLICY 15

ii) Which district plans in the region currently manage earthworks less than 3000m2 ? (draft Policy

¹³ Paragraph 812

15(b)(v)).

105 All the district plans in the region¹⁴ include rules to manage earthworks of less than 3000m². The metric applied varies between these plans, however they all apply a threshold over which earthworks requires resource consent (along with other measures such as the height of cut or fill).

POLICY 41

jj) Policy 41(e) - Can you please clarify the intent of this provision and respond to the example Ms McGruddy gave of the potential for this consideration policy to cause interpretation issues eg in an application for earthworks, a consent applicant will look at the Natural Resource Plan, but if there is a 'minimise' consideration in the RPS, does this cause workability / interpretation issues? Policy 15(a)(iii) directs the regional plan to include provisions to 'minimise erosion' so is Policy 41(e) intended to apply before Policy 15(a)(iii) is implemented in the plan? Ms McGruddy's view is that for efficiency, effectiveness and clarity, the consideration policy in the RPS can be deleted. Ms McGruddy also noted that Proposed Change 1 to the Natural Resources Plan has comprehensive coverage of requirements for earthworks. What are your views on this?

106 I disagree that there will be workability issues as a result of the direction to 'minimise' erosion and other effects associated with earthworks and vegetation clearance in Policy 15 and Policy 41 of the RPS. I note that the operative version of both of these policies requires these effects to be minimised so in my opinion the direction has not changed.

107 Policy 41 will apply to resource consents until such time as Policy 15 has been implemented in full.

108 While I agree with Ms McGruddy that the NRP includes a number of provisions to manage the effects of earthworks, it has not yet been updated to give full effect to the NPS-FM. As such, I consider it is necessary to retain Policy 41 in the RPS. I consider Policy 41 remains relevant until such time as the NRP is updated to include environmental outcomes, target attribute states, and limits for suspended sediment for all FMUs in the region as indicated in clause (d) of my recommended amendments. Plan Change 1 to the NRP only includes environmental outcomes, target attribute states and suspended sediment limits for Te Awarua-o-Porirua Whaitua and Te Whanganui-a-Tara Whaitua.

¹⁴ Wellington City Operative and Proposed District Plans, Porirua Proposed District Plan (Decisions Version), Hutt City District Plan, Upper Hutt District Plan, Kāpiti Coast District Plan, and the Wairarapa Combined District Plan.

109 However, I do consider that there should be wording in the explanation to Policy 41 that indicates that the policy will no longer have effect once the NRP is updated to give full effect to Policy 15. That is, when environmental outcomes, target attribute states, and limits for suspended sediment have been set for all FMUs, noting that this will happen in stages given the staged approach to the whitua process. As such, I recommend including the following wording in the explanation to Policy 41:

Policy 41 shall cease to have effect once Policy 15(a) has been given effect in the Regional Plan for all FMUs in the region.

kk) Can you please comment on the impact of having Policy 41 apply on a continuing basis even when Policy 15 is implemented in lower order plans? This relates to the question above but please see the evidence of Ms Landers on this point for Horticulture NZ.

110 As noted above in paragraph 109, I consider an amendment is required to the explanation for Policy 41 that states that the policy will no longer have effect once Policy 15(a) has been given effect in the Regional Plan for all FMUs.

POLICY 17

ll) Having heard the evidence of Horticulture NZ at the hearing, is Ms Pascall still of the view that it is not appropriate to recognise the domestic supply of fruit and vegetables as a 'priority 2' Te Mana o te Wai issue.

111 My view has not changed with regard to where in the Te Mana o te Wai hierarchy of obligations the domestic supply of fruit and vegetables should sit. I refer the Panel to my commentary on this matter at paragraphs 171-172 in my rebuttal evidence.

POLICY 40

mm) Should Policy 40 say 'have regard to' rather than 'particular regard'?

112 As set out in paragraphs 30 to 35 of this Right of Reply, I consider Policy 40 requires amendment to state 'have regard to' instead of 'have particular regard to'.

nn) Policy 40(n) – Ms Pascall, you support some amendments in para 213 of your rebuttal but these are not reflected in the provisions. Please review and update as you consider appropriate.

113 I agree that there is a disconnect between my analysis in my rebuttal evidence and the subsequent recommended amendments to Policy 40(n). I consider that this issue will be resolved if the Panel agrees with my recommended Policy 40A which aligns with clause

3.22 of the NPS-FM and provides for certain activities within natural inland wetlands following the effects management hierarchy.

114 If the Panel disagrees with this recommended approach, then I consider Policy 40(n) should be amended as follows:

(n) ~~discouraging~~ avoiding the removal or destruction of indigenous wetland plants in wetlands unless:

(i) there is a functional need for the activity in that location; and

(ii) the effects of the activity are managed by applying the effects management hierarchy;

oo) Policy 40(o) – Ms Pascall, you say in your rebuttal in para 215 that this should include a consenting pathway for natural inland wetlands. We are not sure that is reflected in the provisions, or do you think this is adequately recognised by the words ‘to the extent practicable’?

115 I have reviewed Paragraph 215 of my rebuttal evidence and note a typographical error. This should refer to rivers rather than natural inland wetlands as clause (o) relates to river extent and values, not natural inland wetlands.

116 I consider that the matter of a consenting pathway will be resolved if the Panel agrees with my recommended new Policy 40B which sets out the circumstances under which activities that affect river extent and values will be considered, following the effects management hierarchy, and consequential deletion of clause (o) of Policy 40.

117 If the Panel disagrees with this approach, I consider the following amendment would be an appropriate alternative:

(o) ~~avoiding the loss of river extent or values, to the extent practicable~~ unless:

(i) There is a functional need for the activity in that location; and

(ii) The effects of the activity are managed by applying the effects management hierarchy.

POLICY 18

pp) Does Policy 18(c) give appropriate effect to clause 3.22 of the NPS-FM? There were some submitters who recommended that Policy 18(c) be deleted on the basis that it restates Policy 6 of the NPS-FM. Do you have any comments on this?

118 As set out in paragraphs 59 to 64 in this Right of Reply, I am recommending new Policy 18A which relates specifically to natural inland wetlands and includes the consenting pathways provided in clause 3.22. As a consequential change, I am also recommending deletion of clause (c) of Policy 18. If these changes are made, in my view Policy 18(c) would give appropriate effect to clause 3.22 of the NPS-FM.

119 If the Panel disagrees with this approach, I still consider that clause (c) is necessary, despite it duplicating Policy 6 of the NPS-FM. I refer the Panel to paragraph 662 of my section 42A report¹⁵, where I note that in the absence of any locally specific direction, I consider duplication with the wording of the NPS-FM is appropriate.

METHOD FW.2

qq) In the s 42A report the Reporting Officer noted in Appendix 3 that “As notified, Method FW.2 applies to any notified resource consent, not just to those relating to freshwater. I therefore disagree that Method FW.2 is directly related to the protection and enhancement of freshwater quality and quantity.” We understand that this rationale was used to recommend that Policy 15, Policy 41 and AER 6 be considered under P1S1 but the Officer did not make this recommendation for Method FW.2. Can you please confirm whether Method FW.2 should be considered a P1S1 provision or FW provision?

120 I have reviewed Method FW.2 as notified, and the amendments I recommended to that method in my section 42A report. My section 42A report omitted reference to Method FW.2 at paragraph 53. It is my view that Method FW.2 as notified should be recategorized from the Freshwater Planning Process (FPP) to the Part 1, Schedule 1 (P1S1) process of Change 1.

121 While I have recommended amendments to Method FW.2 to make it clear that it applies to resource consents relating to freshwater (rather than all resource consents), the method relates to operational processes of the respective councils. Therefore, in my opinion regardless of the outcome of the Panel’s deliberations on this method, I consider Method FW.2 should be recategorized as a P1S1 provision.

DATE:

20 DECEMBER 2023

KATE LOUISE PASCALL

¹⁵ [RPS Change 1 - S42A Report Freshwater Te Mana o te Wai - Final.docx \(gw.govt.nz\)](#)

SENIOR ENVIRONMENTAL PLANNER

GHD LIMITED