

**BEFORE THE INDEPENDENT HEARINGS PANEL 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

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**STATEMENT OF SUPPLEMENTARY EVIDENCE OF KATE LOUISE  
PASCALL**

**ON BEHALF OF WELLINGTON REGIONAL COUNCIL**

**HEARING STREAM 5 – FRESHWATER AND TE MANA O TE WAI**

**13 NOVEMBER 2023**

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## INTRODUCTION

- 1 My full name is Kate Louise Pascall. I am a Senior Environmental Planner at GHD Limited.
- 2 I have reviewed the evidence of:
  - 2.1 Director General of Conservation – Murray Brass (Planning) [Submitter 32]
  - 2.2 The Fuel Companies – Georgina McPherson (Planning) [Submitter 157]
  - 2.3 Horticulture New Zealand – Jordyn Landers (Planning) and Emily Levenson (Industry Statement) [Submitter 128]
  - 2.4 Kāinga Ora – Matt Heale (Planning) [Submitter 158]
  - 2.5 Meridian Energy Ltd - Christine Foster (Planning) [Submitter 100]
  - 2.6 Peka Peka Farm Limited – Maciej Lewandowski (Planning) [Submitter 118]
  - 2.7 Porirua City Council – Torrey McDonnell (Planning) [Submitter 30]
  - 2.8 Rangitāne o Wairarapa Inc – Maggie Burns (Planning) [Submitter 168]
  - 2.9 Royal Forest and Bird Protection Society – M Downing (Legal) [Submitter 165]
  - 2.10 Upper Hutt City Council – Gabriela Jimenez Rojas (Planning) [Submitter 34]
  - 2.11 Wairarapa Federated Farmers – Natasha Berkett (Planning) [Submitter 163]
  - 2.12 Waka Kotahi New Zealand Transport Agency – Catherine Heppelthwaite (Planning) [Submitter 129]
  - 2.13 Wellington Fish and Game Council – Lily Campbell (Planning) [Submitter 147]
  - 2.14 Wellington City Council – Joe Jeffries and Maggie Cook (Planning) [Submitter 140]
  - 2.15 Wellington Water – Caroline Horrox (Planning) and Charlotte Lockyer (Hydrology) [Submitter 113]
  - 2.16 Winstone Aggregates – Catherine Clarke (Planning) [Submitter 162]

## QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

- 3 My qualifications and experience are set out in paragraphs 16 and 17 of my Section 42A Report. I repeat the confirmation given in that report that I have read and agree to comply with the Code of Conduct for Expert Witnesses.

## RESPONSES TO EXPERT EVIDENCE

- 4 This section responds to submitter evidence in relation to the provisions in this topic. Appendix 1 sets out all the amendments sought by submitters through their evidence. Appendix 2 sets out my recommended amendments in response to submitter evidence. Within Appendix 2, my Section 42A report recommended amendments are shown in red underlined or ~~strike-through~~ and further amendments recommended in this rebuttal evidence are shown in blue underline or ~~strike-through~~
- 5 This section is structured so I address the introduction, the Freshwater Visions, the relevant objectives and policies in numerical order. The exception is where there are 2 or more provisions relating to the same general topic (e.g urban development), in which case I have grouped these provisions together.

## CHAPTER 3.4 INTRODUCTION

### Rangitāne o Wairarapa [Submitter 168]

- 6 Ms Burns<sup>1</sup> seeks that reference to integrated management/ki uta ki tai is required for the introduction text to reflect how ki uta ki tai informs how to give effect to Te Mana o te Wai, and that reference to Freshwater Management Units are removed.

### Analysis and recommendations

- 7 I agree with Ms Burns' suggested addition to the introductory text to Chapter 3.4 to include 'integrated management/ki uta ki tai'. I consider this is an important and useful addition to the chapter introduction and recommend this be added.
- 8 In relation to Ms Burns's request to delete references to Freshwater Management Units from the chapter introduction, I note that there are no references to 'Freshwater Management Units in the introduction, and I have not recommended adding these references in my section 42A report. As such, no change is required in this regard.

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<sup>1</sup> HS5 S68, Rangitāne, Burns, paragraphs 87-94

## FRESHWATER VISIONS

### Wairarapa Federated Farmers [Submitter 163]

- 9 Ms Berkett<sup>2</sup> considers that the omission of clearly defined Freshwater Management Units and their associated long term visions results in a deficient RPS and a complicated process that does not clearly give effect to the NPS-FM.

### Rangitāne o Wairarapa [Submitter 168]

- 10 Ms Burns<sup>3</sup> considers that the freshwater vision objectives and the overarching vision put forward by Forest and Bird in their original submission should be considered in Change 1, because the scope of Variation 1 to Change 1 is limited to the freshwater visions for Te Awarua-o-Porirua Whaitua and Te Whanganui-a-Tara Whaitua.

### Analysis and recommendations

- 11 In response to the concerns raised by Ms Berkett, I disagree that the absence of freshwater visions and defined FMUs renders the RPS deficient. The Council is required to give effect to the NPS-FM and has started a process to do this via the RPS Change 1 and the recently notified Plan Change 1 to the Natural Resources Plan (NRP PC1). As set out in my section 42A report, the Council has taken an integrated approach to managing a range of issues that arise from implementing other national direction for urban development. In doing so, the Council is taking a staged approach to implementing the NPS-FM and in my opinion the absence of the freshwater vision objectives and defined FMUs does not undermine this approach. Long term visions are important for directing the lower-order regional plan and the steps in the NOF process, such as the setting of target attribute states, rather than specific provisions of the RPS. The visions are also specific to a catchment or specific area of the region. The freshwater provisions of RPS Change 1 apply generally, rather than to specific catchments. For this reason, I do not consider their absence from Change 1 undermines Change 1 itself.
- 12 In terms of process, I acknowledge the notification of a Variation that is closely linked to the freshwater provisions of Change 1 at this stage in the process may create some confusion for submitters. However, in terms of scale, Variation 1 is relatively small compared to Change 1 in its entirety and is very clear about what is being proposed and the process for

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<sup>2</sup> HS5 S163, WFF, Berkett, paragraphs 10-17

<sup>3</sup> HS5 S68, Rangitāne, Burns, paragraph 69

submissions. I do not agree that it results in a complicated process, particularly if the hearing of submissions on Variation 1 can occur as part of the wider Change 1 hearings process and decisions on Variation 1 are notified at the same time as decisions on Change 1.

- 13 I acknowledge Ms Burns' concern that, there remains a gap in Change 1 due to a lack of freshwater visions applying to whitua other than Te Awarua-o-Porirua and Te Whanganui-a-Tara, such as the Ruamāhanga. However, I consider that further engagement with mana whenua/tangata whenua and the wider community is required in the development of these freshwater visions, in line with Clause 3.3(3)(a) of the NPS-FM. Adding these via submissions on Change 1 does not provide sufficient opportunity for all parties to provide input into the drafting. The Council has not yet commenced its plan change process for implementing the NPS-FM in relation to the Ruamāhanga, Kāpiti and Wairarapa Coast Whitua. In my view, the absence of these long-term visions for that Whitua in the RPS does not present a significant gap. It will however be important that the long-term visions for Ruamāhanga and the remaining Whitua are inserted in the RPS prior to, or in parallel with, the Council's future NRP change for the remaining Whitua.

## OBJECTIVE 12

### Wairarapa Federated Farmers [Submitter 163]

- 14 Ms Berkett<sup>4</sup> does not consider that the Te Mana o Te Wai statements "underpin the regional response to Te Mana o Te Wai" on the basis that they have not been drafted with the engagement of the community as well as mana whenua/tangata whenua, and that an objective in the RPS that reflects how Te Mana o Te Wai will be given effect to should reflect the views of the whole community. Ms Berkett disagrees that Objective 12 provides a regional context to how the wider community would define Te Mana o Te Wai.

### Fish and Game [Submitter 147]

- 15 Ms Campbell<sup>5</sup> considers that Objective 12 does not adequately recognise wider community values and seeks that a new clause is included in Objective 12 to specifically recognise the well-being and safety of the community, including recreational activities in freshwater environments.

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<sup>4</sup> HS5 S163, WFF, Berkett, paragraphs 18 - 26

<sup>5</sup> HS5 S147, Fish & Game, Campbell, paragraphs 14-20

- 16 Ms Campbell<sup>6</sup> also seeks the inclusion of a new clause in Objective 12 that aligns with Policy 10 of the NPS-FM and an outcome where there is an abundance and diversity of freshwater habitats to support healthy trout populations where this is consistent with protecting indigenous species habitats.
- 17 Ms Campbell<sup>7</sup> also considers that a new clause is also required to reflect the importance of preserving natural character and form in Te Mana o te Wai.

Rangitāne o Wairarapa [Submitter 168]

- 18 Ms Burns<sup>8</sup> is seeking a number of amendments to Objective 12:
- 18.1 clause (a) is deleted and reworked into the chapeau of the objective as the wording is inconsistent with local expressions, and implies water has no intrinsic value or mana, and is therefore inconsistent with hierarchy of obligations in the NPS-FM.
- 18.2 clause (b) is amended as it conflicts with the chapeau text, on the basis that the chapeau seeks to return waterbodies to a healthy state whilst clause (b) is focused on preventing further degradation. Ms Burns considers this is inconsistent with Policy 5 and Clause 3.20(1) of the NPS-FM, and does not reflect the Rangitāne o Wairarapa expression of Te Mana o te Wai.
- 18.3 clause (d) is amended to include 'and provide for', noting that the RPS should direct management regimes which respond to the different characteristics of waterbodies, and that adding 'provide for' is more directive.
- 18.4 Ms Burns does not support the use of 're-establish' in clause (e) as the relationship of mana whenua/tangata whenua with freshwater already exists.
- 18.5 clause (g) is amended to better reflect the 'actively involve' directive of the NPS-FM in relation to mana whenua/tangata whenua.

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<sup>6</sup> HS5 S147, Fish & Game, Campbell, paragraphs 21-27

<sup>7</sup> HS5 S147, Fish & Game, Campbell, paragraph 32

<sup>8</sup> HS5 S68, Rangitāne, Burns, paragraphs 27-54

Winstone Aggregates [Submitter 162]

19 Ms Clarke<sup>9</sup> considers the direction of requiring ‘protecting and enhancing’, rather than ‘maintaining and improving’, of all waterbodies in the region is inconsistent with Policy 5 and Policy 8 of the NPS-FM and is not supported by evidence requiring this direction or sufficient section 32 analysis. Ms Clarke seeks that protect and enhance is replaced with ‘maintain and improve’ in Objective 12.

Analysis and recommendations

20 Ms Burns has sought a number of amendments to Objective 12 to better incorporate the NPS-FM direction that mana whenua/tangata whenua are ‘actively involved’ in freshwater management and the process of defining Te Mana o te Wai in the region and to better reflect the Te Mana o te Wai expressions of local mana whenua/tangata whenua in the objective. Ms Burns’ suggested amendments also seek to ensure that the objective more clearly articulates that the first priority within Te Mana o te Wai is restoring the mana of water in its own right rather than for the benefit of the community, which is the second priority.

21 I agree with all of Ms Burns suggested amendments to Objective 12 and I recommend these amendments are accepted. I consider these amendments provide drafting clarity and more certainty for mana whenua/tangata whenua and those implementing the RPS about the outcomes sought from freshwater management in the Region.

22 Ms Campbell has sought the addition of three new clauses to Objective 12 relating to community and recreational values, protecting the habitat of trout, and preserving the natural character and form of waterbodies.

23 I agree with Ms Campbell that there is currently a gap in the new Objective 12 I have recommended in my section 42A report, in relation to community and recreational values. I agree that the NPS-FM requires that the RPS objective defining Te Mana o te Wai be informed by engagement with mana whenua/tangata whenua and also with the community. The Whaitua Implementation Programmes (WIP) completed to date reflect this sentiment. As such, I agree with Ms Campbell’s suggested clause and recommend this is added to Objective 12.

24 I also agree with Ms Campbell that Objective 12 should include reference to protecting freshwater habitats, however I do not agree that the objective needs to be specific to

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<sup>9</sup> HS5 S162, Winstone, Clarke, section 6

protecting trout. I consider Objective 12 can provide a more general and overarching outcome of ‘supporting and protecting an abundance and diversity of freshwater habitats’, with subsequent policies providing more specificity about how this is achieved in relation to indigenous freshwater habitats and habitats for trout and salmon. I have recommended amendments to a number of policies through my Section 42A report which specifically give effect to Policies 9 and 10 of the NPS-FM<sup>10</sup>. These amendments were recommended based on Fish and Game’s original submission. I recommend including a new clause in Objective 12 that states ‘Supports and protects an abundance and diversity of freshwater habitats’ to provide the appropriate direction for these policy amendments.

25 I disagree with Ms Campbell’s suggested clause relating to natural form and character of waterbodies. In my opinion, this matter is sufficiently addressed by clause (d) of the objective which ‘recognises the individual natural characteristics and processes of waterbodies’. In addition, the suggested amendments by Ms Burns will provide even greater emphasis on the importance of these characteristics and processes.

26 I note the concern of Ms Berkett, that Objective 12, as recommended in my section 42A report, does not reflect the view of the wider community. As noted above, I agree there is a gap in the Objective as drafted, and I am recommending an additional clause to recognise recreational and community values, as suggested by Ms Campbell. Ms Berkett has not suggested any specific community views or values for consideration. As such, I do not recommend any further amendments as a result of Ms Berkett’s evidence on this matter.

27 I agree with Ms Clarke that to be consistent with Policy 5 of the NPS-FM, Objective 12, clause (b) requires amendment. I generally concur with Ms Clarke’s suggested amendments, however I recommend some minor grammatical amendments and to align with the changes to the chapeau which I have recommended.

#### Section 32AA Evaluation

28 In accordance with section 32AA, I consider the amendments I am recommending to Objective 12 are the most appropriate for the following reasons:

- The amendments provide greater clarity of the outcomes sought by both mana whenua/tangata whenua and the community from freshwater management and the application of Te Mana o te Wai in the region.

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<sup>10</sup> Policy 44(bc), Policy 18(ga), Policy 40(r)

- The amendments address gaps in the section 42A recommended version in relation to community and recreational values, and therefore ensure Objective 12 gives full effect to clause 3.2(1) of the NPS-FM.
- The amendments will have social, environmental and cultural benefits because the Objective is clearer about the values that form part of Te Mana o te Wai for the region, and must be considered in the management of freshwater through the RPS and lower-order documents. I do not consider there are any costs associated with these amendments.

## NEW POLICIES FOR TE MANA O TE WAI STATEMENTS

### Porirua City Council [Submitter 30]

- 29 Mr McDonnell<sup>11</sup> seeks amendments to Objective 12 to clarify that the district plans can only give effect to Te Mana o Te Wai as far as their statutory functions allow for under Section 31.
- 30 Mr McDonnell references Objective 12 in the main body of his evidence in seeking an amendment to make it clear that Te Mana o te Wai can only be given effect to by local authorities insofar as it relates to their respective functions under s30 and 31 of the Act. However, on review of Appendix A of his evidence, it appears that Mr McDonnell is in fact referring to Policy FW.XXA and Policy FW.XXB rather than the objective.

### Rangitāne o Wairarapa [Submitter 168]

- 31 Ms Burns<sup>12</sup> suggests amendments to the chapeau of Policy FW.XX (Mana Whenua/Tangata Whenua – regional and district plans) to be more directive, and to provide clarity that regional authorities should consider the specific local expression to that territorial authority area, and that statements should be considered to the fullest extent.
- 32 Ms Burns<sup>13</sup> notes that in Policy FW.XX (Mana Whenua/Tangata Whenua - consideration) the chapeau wording of ‘have regard to’ differs from the regional and district plan policy that states ‘recognise and provide for’. Ms Burns considers both policies should use ‘recognise and provide for’.

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<sup>11</sup> HS5 S30, PCC, McDonnell, paragraph 20

<sup>12</sup> HS5 S68, Rangitāne, Burns, paragraphs 58-60

<sup>13</sup> HS5 S68, Rangitāne, Burns, paragraphs 61-64

Wairarapa Federated Farmers [Submitter 163]

33 Ms Berkett<sup>14</sup> considers the policy does not provide clarity on how territorial authorities will recognise and provide for Te Mana o Te Wai statements if multiple statements apply in their area and these are inconsistent with the territorial authority's articulation of Te Mana o Te Wai.

34 Ms Berkett<sup>15</sup> also does not support the relocation of the mana whenua/tangata whenua statements to an appendix, on the basis that an appendix is used for 'technical, explanatory or other supplementary information that supports plan provisions'.

Analysis and recommendations

35 I note that by recommending the addition of two new policies to Change 1, my section 42A report does not provide new policy numbers. As these two policies both address the mana whenua/tangata whenua statements of Te Mana o te Wai, to avoid confusion in my rebuttal evidence and the hearing, I have provided identifiers for these policies, as follows:

- New Policy FW.XXA – Mana whenua/tangata whenua and Te Mana o te Wai – regional and district plans (this is the new policy I am recommending for inclusion in Chapter 4.1 regulatory policies)
- New Policy FW.XXB – Mana whenua/tangata whenua and Te Mana o te Wai – consideration (this is the new policy I am recommending for inclusion in Chapter 4.2 regulatory policies)

36 Ms Burns has sought amendments to the new Policy FW.XXA to ensure the application of the policy is clear. I agree with the suggested amendment to make it clear that district and regional plans must include objectives, policies and rules, and that methods should be included 'where appropriate', and I recommend making this change. However, I do not consider the other amendments to the chapeau as suggested by Ms Burns are necessary and I consider it is correct to refer to 'territorial authorities' rather than 'local authorities' given how the supporting table has been set out. I also do not think the phrase 'to the fullest extent' is required, as 'recognise and provide for' is already a strong directive about how the statements must be applied. .

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<sup>14</sup> HS5 S163, WFF, Berkett, paragraph 28

<sup>15</sup> HS5 S163, WFF, Berkett, paragraph 27

37 In relation to the new consideration policy for the Mana Whenua/Tangata Whenua Te Mana o te Wai statements, I note Ms Burns' concern that the policy direction in Policy FW.XXB differs from that of the new regulatory policy I have recommended (Policy FW.XXA). Policy FW.XXA directs that regional and district plans 'recognise and provide for' the Mana Whenua/Tangata Whenua statements of Te Mana o te Wai. Policy FW.XXB requires those implementing the policy through plan reviews, plan variations, resource consents, and notices of requirement to 'have regard to' the Mana Whenua/Tangata Whenua statements of Te Mana o te Wai.

38 The intent of the different direction was to ensure alignment with the statutory direction provided in section 104(1) of the Act, primarily in relation to the consideration of resource consent applications:

*When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part 2 and section 77M, **have regard to:***

.....

*(b) any relevant provisions of a regional policy statement or proposed regional policy statement.*

....

39 However, on reviewing Policy FW.XXB, I note that it would apply to plan reviews, variations, and notices of requirement as well as resource consent applications. I consider that given the new policy I have recommended directing regional and district plans to 'recognise and provide for' the statements of Te Mana o te Wai, the inclusion of plan reviews and variations in this policy is superfluous because Policy FW.XXA will apply in those instances. As such, I recommend that these references be deleted. I also note that s171 of the Act requires that notices of requirement must 'have particular regard' to the provisions of a RPS. On this basis, I recommend that Policy FW.XXB is amended to reflect this different policy direction.

40 On this basis, I disagree with the relief sought by Ms Burns, and instead recommend further amendments to ensure consistency with the statutory direction of the Act. My recommended amendments are provided in Appendix 2 to this statement.

41 I agree with Mr McDonnell that clarity on the application of Policy FW.XXA and Policy FW.XXB in terms of sections 30 and 31 of the Act would be useful, however I consider that this clarity is more appropriately provided in an explanation to each policy, rather than in

the body of the policy itself. I note that explanations were not included in my recommended drafting in my Section 42A report but consider they would be useful. I therefore recommend adding explanations to both of these new policies, including the clarifying statements that Mr McDonnell has sought.

42 I note the concern of Ms Berkett that under Policy FW.XXA it is unclear how territorial authorities will recognise and provide for the Te Mana o te Wai statements of mana whenua/tangata whenua if more than one statement applies in their jurisdiction. I consider this situation is not dissimilar to the current state, where territorial authorities, and the regional council, must address and respond to the priorities and aspirations of more than one mana whenua/tangata whenua, including considering more than one iwi management plan. The inclusion of clause (b) in the recommended new policy requires local authorities to partner with mana whenua/tangata whenua in the development of their planning documents and in my opinion it is through this partnership approach that these multiple interests can be worked through.

43 Ms Berkett also raised concern about the relocation of the Mana Whenua/Tangata Whenua statements from the main body of the RPS to a new appendix. It is Ms Berkett's view that appendices are used for 'technical, explanatory or other supplementary information that supports plan provisions'<sup>16</sup>. I consider the Mana Whenua/Tangata Whenua statements meet the definition of all of these information types listed and it is entirely appropriate that the statements are included in an appendix, with supporting policy direction within the main body of the RPS. The statements give substance to the policy and the higher order Te Mana o te Wai framework contained within the NPS-FM. On this basis I do not recommend any amendments as a result of this part of Ms Berkett's evidence in relation to these new policies.

#### Section 32AA Evaluation

44 In accordance with section 32AA of the Act, I consider that my recommended amendments to Policy FW.XXA and Policy FW.XXB are the most appropriate means of achieving the objective, including my recommended new Objective 12, for the following reasons:

- The amendments to Policy FW.XXA make it clear that local authorities must include objectives, policies and rules and that other methods/non-regulatory methods may be

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<sup>16</sup> Evidence of N Berkett, para 27.

used where appropriate, but that only including methods other than rules is insufficient to effectively apply the Te Mana o te Wai statements.

- The addition of policy explanations provides clarity to those implementing these new policies about the purpose and importance of the statements, and the extent to which respective local authorities must apply the statements (i.e within the scope of their statutory functions). This ensures the policies can be applied efficiently and effectively by local authorities.
- The amendments to Policy FW.XX.B provide clarity about how resource consent applications and notices of requirement must consider the mana whenau/tangata whenua statements of Te Mana o te Wai.

## NEW POLICY FW.X HYDROLOGICAL CONTROL FOR URBAN DEVELOPMENT – REGIONAL PLANS

### Wellington City Council [Submitter 140]

45 Mr Jeffries and Ms Cook<sup>17</sup> do not support the proposed policy on the basis that it requires hydrological controls in Regional Plans that apply to greenfield, brownfield, and infill development but does not exclude development connected to existing stormwater networks. Mr Jeffries and Ms Cook consider that hydrological control should be managed by District Plans and under the functions of a territorial authority under s31 of the RMA, and that proposed hydrological controls in the regional plan duplicate regulatory functions and consenting requirements in a ‘complex, onerous, and cost prohibitive’ framework. They also note that the framework does not reflect building consent requirements associated with hydrological control. Mr Jeffries and Ms Cook therefore seek amendments to the policy to only be a requirement of the district plan.

### Upper Hutt City Council [Submitter 34]

46 Ms Rojas<sup>18</sup> considers that the policy does not address or manage the quality and contaminants in stormwater from impervious surface run off, and therefore questions if the policy is achieving its intent.

### Peka Peka Farms Limited [Submitter 118]

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<sup>17</sup> HS5 S140, WCC, Jeffries and Cook, paragraphs 16-26

<sup>18</sup> HS5 S34, UHCC, Rojas, paragraph 21

47 Mr Lewandowski<sup>19</sup> seeks amendments to the policy to remove reference to an undeveloped state and focus on stormwater flows and volumes prior to development, which he states reflects existing practice.

Wellington Water [Submitter 113]

48 Ms Lockyer<sup>20</sup> does not support the current wording of the policy and considers implementing the policy could require high cost without improving outcomes compared to other approaches for the following reasons:

48.1 Ms Lockyer does not support the need for continuous flow modelling as the cost could be prohibitive to much development and modelled results could be highly uncertain, and considers it is unclear if this modelling is the responsibility of Council or the developer.

48.2 Ms Lockyer does not support the reference to 'modelled mean annual runoff volume', with a median being more representative, although Ms Lockyer states this measure is uncommon in New Zealand and can be misinterpreted. Ms Lockyer also supports referring to an AEP instead of a 1 in 2-year ARI.

48.3 The reference to the channel forming flow and bankfull flow adds complication to the policy and this supporting information would be better placed in an explanation, which Ms Horrox agrees with.

48.4 The wording of clause (a)(ii) and (b)(ii) is unclear. Ms Lockyer seeks that clause (a)(ii) be amended to capture greenfield development discharges via a stormwater network to a stream, which Ms Horrox supports. Ms Horrox also states it is unclear what 'fully developed area' means in these clauses and therefore implementation of this policy is difficult.

49 Ms Horrox concurs with Ms Lockyer's evidence in relation to New Policy FW.XX Hydrological Control for Urban Development. Ms Horrox also raises the following concerns with the policy:

49.1 It is unclear what is meant by the term 'fully developed area' referred to in clauses FW.X(a)(i) and (ii) and FW.X(b) and (ii) as this is undefined. Ms Horrox

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<sup>19</sup> HS5 S118, Peka Peka Farms, Lewandowski, paragraph 4.21

<sup>20</sup> HS5 S113, Wellington Water, Lockyer, paragraphs 32-33.10

considers this is an important matter to clarify to ensure it is implemented as intended.

49.2 The policy is quite detailed for a RPS policy. Ms Horrox is not opposed to this in principle but considered that in this case the technical nature of the policy will make it difficult to interpret and implement, and may create unintended issues in the Regional Plan or in consent processes. Ms Horrox supports the recommendation in Ms Lockyer's evidence that a simpler, more pragmatic approach would be to revise Policy FW.X to require retention of rainfall to manage the effects of stormwater runoff (volume and quality) on freshwater ecosystem health.

#### Analysis and recommendations

50 I disagree with the evidence of Mr Jeffries and Ms Cook, that the new hydrological control policy I have recommended should apply to district plans rather than regional plans. As set out at paragraph 961 of my section 42A report, I consider the policy aligns with the functions of the regional council in managing the health and wellbeing of waterbodies and freshwater ecosystems.

51 In relation to Mr Jeffries' and Ms Cook's concern that the requirement for hydrological control via the regional plan, alongside the requirement for hydraulic neutrality in district plans creates potential duplication, I disagree. As outlined in paragraphs 15 and 20 of Mr Farrant's primary evidence, hydraulic neutrality in isolation does not achieve the ecological benefit that is sought from hydrological control. Mr Farrant also highlights that hydraulic neutrality can, in some cases, have an adverse effect on freshwater ecosystems. These impacts occur regardless of whether the development stormwater discharges directly to a waterway or a piped stormwater network which discharges to a waterway downstream<sup>21</sup>. On this basis, I consider the approach I have outlined in my Section 42A report is justified.

52 Mr Jeffries and Ms Cook have also raised a concern about the increased regulation and costs associated with applying hydrological control requirements in the regional plan, the hydraulic neutrality requirements of district plans, and building consent requirements for rain tanks. On this matter, I note the hydrological control policy does not specify what

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<sup>21</sup> Technical Evidence of Mr Stu Farrant for Hearing Stream 5, 30 October 2023, [HS5-GWRC-Technical-Evidence-Stu-Farrant-271023.pdf](#), paragraph 22.

devices must be used to achieve hydrological control. Rainwater tanks are one of many devices that could be utilised and a building consent may not always be required.

53 The policy also does not specify the consenting requirements for hydrological control. This is a matter that would need to be addressed at the time of those changes to the NRP based on the context. I note that the recently notified NRP PC1 sets out rules and associated conditions (standards) that must be met for stormwater management where new and redeveloped impervious surfaces are proposed. For example, for the Te Awarua-o-Porirua Whaitua, these rules and conditions differ depending on the scale of the impervious areas proposed, as follows<sup>22</sup>:

53.1 A permitted activity rule for new impervious areas, or redevelopment of existing impervious surfaces areas of less than 1000m<sup>2</sup> and where hydrological control measures are applied (amongst other conditions that must be met) (Rule P.R5).

53.2 A controlled activity for new impervious surfaces for greenfield development and associated discharge of stormwater, where (amongst other conditions) hydrological control is provided either on-site or off-site.

53.3 A controlled activity for new impervious areas, or redevelopment of existing impervious surfaces areas of between 1000m<sup>2</sup> – 3000m<sup>2</sup> (Rule P.R7).

54 On this basis, while I agree that there may be increased costs and regulation as a result of implementing the recommended new policy in regional plans, these requirements are not onerous and the additional costs are justified in order to give effect to the NPS-FM.

55 In response to the evidence of Ms Rojas, the purpose of hydrological control is primarily to manage stormwater runoff volume, rather than contaminants, because the increased volume of stormwater runoff into waterbodies can change the natural processes and characteristics of these waterbodies including the habitats the freshwater ecosystems rely on. As such, I disagree with Ms Rojas that the recommended policy will not achieve the outcome sought.

56 In response to Mr Lewandowski's request to remove reference to 'undeveloped state', I disagree. I consider that if the baseline is the existing state of the site, this would mean there is no opportunity to improve the outcomes for freshwater as a result of stormwater

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<sup>22</sup> [Proposed-Plan-Change-1-document-as-notified-on-30-October-2023.pdf \(gw.govt.nz\)](#)

management from that site. For example, in a situation where a site is already paved and the new development is adding to this, there is no room for a reduction in stormwater runoff from the site and thereby clause 3.5(4)<sup>23</sup> of the NPS-FM would not be met.

57 Ms Lockyer has suggested a number of amendments to the policy which are of a technical nature. Mr Stu Farrant has addressed these matters in some detail in his rebuttal evidence at paragraphs 9-18. I do not repeat those here, but I note that I rely on Mr Farrant's evidence and as a result I recommend amendments to the hydrological control policy to remove reference to 'channel forming' and 'bankfull' flows from the main body of the policy, and relocate these references to the policy explanation.

58 I also agree with Ms Horrox that the term 'fully developed area' is unclear. I recommend replacing 'area' with 'site' to provide more clarity in clauses (a)(i) and (b)(i).

59 In response to Ms Lockyer's concern about the use of the 1 in 2 year ARI and suggestion to replace this with AEP instead, Mr Farrant has suggested the policy is amended to adopt the same calculation method adopted in the NIWA High Intensity Rainfall Design System (HIRDS V4) which provides an AEP of 0.5 for the inferred 1 in 2 year ARI. Mr Farrant advises that this will enable the policy to align with the industry standard reference document for rainfall depths and intensities. On this basis, I recommend amending clauses (a)(ii) and (b)(ii) as suggested by Mr Farrant.

60 I acknowledge Ms Horrox's and Ms Lockyer's concern that the hydrological control policy I have recommended is very technical for a RPS. However, I consider the policy provides clarity of the outcome that is sought from hydrological control and the alternative approach suggested lacks clarity and certainty about what is required.

61 Section 32AA Evaluation

62 In accordance with section 32AA, I consider my recommended amendments to New Policy FW.XX Hydrological Control for Urban Development are appropriate because they support clearer interpretation and enhancing the effectiveness of the policy.

## POLICY 12

### Porirua City Council [Submitter 30]

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<sup>23</sup> Clause 3.5(4) of the NPS-FM requires territorial authorities to include provisions in their district plans to manage urban development in a way that promotes positive effects, and avoids, remedies, or mitigates adverse effects (including cumulative effects).

63 Mr McDonnell<sup>24</sup> considers that Policy 12 duplicates the NPS-FM, noting that clauses (d) to (i) do not provide any additional regionally specific policy direction beyond the National Objectives Framework. Mr McDonnell also disagrees that as per clause (c), each Whaitua is a Freshwater Management Unit, and considers that a Whaitua could be comprised of multiple Freshwater Management Units.

Upper Hutt City Council [Submitter 34]

64 Ms Rojas<sup>25</sup> considers there is duplication between provisions and identifies Policy 12, Policy 18, and Policy FW.3, but does not identify specific matters of duplication.

Wairarapa Federated Farmers [Submitter 163]

65 Ms Berkett<sup>26</sup> seeks that clause (a) and clause (ca) are amended to reflect wider community involvement is required in the preparation of objectives, policies rules and/or methods to give effect to Te Mana o Te Wai and to identify FMUs. Ms Berkett considers this reflects the requirements of the NPS-FM in relation to community engagement. Ms Berkett also seeks that a new clause is added (ab) that enables the application of mātauranga Māori.

Fish and Game [Submitter 147]

66 Ms Campbell<sup>27</sup> considers that Policy 12 does not adequately recognise and provide for community and stakeholder input in determining the local expression of Te Mana o te Wai, which is required by the NPS-FM.

Rangitāne o Wairarapa [Submitter 168]

67 Ms Burns<sup>28</sup> does not support the solidifying of Freshwater Management Units in Policy 12 as whaitua boundaries, stating that this approach does not allow for effective-management of freshwater given the 'super-catchment' level that whaitua boundaries have been set at. Ms Burns considers that the setting of Freshwater Management Unit at the right scales is important to provide for a more tailored management approach, and the approach of Policy 12 could lead to less effective monitoring at a 'super catchment' level. Ms Burns therefore seeks all reference to Freshwater Management Units is removed from Policy 12, and any

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<sup>24</sup> HS5 S30, PCC, McDonnell, paragraphs 27 - 28

<sup>25</sup> HS5 S34, UHCC, Rojas, paragraph 18

<sup>26</sup> HS5 S163, WFF, Berkett, paragraphs 29-35

<sup>27</sup> HS5 S147, Fish & Game, Campbell, paragraphs 34-40

<sup>28</sup> HS5 S68, Rangitāne, Burns, paragraphs 70-83

consequential amendments to policies which reference whitua as Freshwater Management Unit boundaries.

#### Analysis and recommendations

- 68 I agree with the concerns raised by Mr McDonnell and Ms Burns, spatial units smaller than a whitua should be considered in a FMU context. However, I consider the whitua are a useful starting point for the identification of smaller areas within the whitua that require specific management.
- 69 I agree with Mr McDonnell's suggestion to amend clause (c) of Policy 12 to remove reference to 'FMUs' and replace this with 'whaitua' and recommend this change be made. I also recommend an amendment to clause (ca) to make it clear that part FMUs within the whitua will be identified and that for each of these part FMUs, the steps set out in the clauses (d)-(g) will be undertaken.
- 70 I understand that the further subdivision of the whitua into part FMUs is something the Council will be undertaking as part of changes to the Natural Resources Plan, and has done so in NRP Change 1. I consider it is appropriate that the RPS retains more general reference to 'part FMUs' rather than specifically identifying these areas, as this provides flexibility should the boundaries of these part FMUs change through engagement with mana whenua/tangata whenua and the community prior to the NRP changes.
- 71 I also agree with Ms Berkett and Ms Campbell that Policy 12 should include reference to consultation with the wider community and stakeholders in clause (a). I prefer the wording suggested by Ms Campbell in this regard as it provides consistency with other provisions, as she has noted. As such I recommend amending clause (a) accordingly.
- 72 I acknowledge Mr McDonnell's concern that Policy 12 duplicates direction for the NPS-FM. In my opinion, the inclusion of the key steps in the National Objectives Framework (NOF) in Policy 12 is useful particularly in the context of my further recommended amendments in relation to part FMUs. Ideally more local context would be provided, however at the time of drafting more regionally specific direction was not available. In the absence of this, I consider it is appropriate to repeat the direction of the NPS-FM in the RPS to ensure the statutory requirement to give effect to the national direction is met.

## Section 32AA Evaluation

73 In accordance with section 32AA of the RMA, I consider that my recommended amendments to Policy 12 are the most appropriate means of achieving Objective 12, for the following reasons:

- The amendment to clause (a) to include engagement with communities, stakeholders, and territorial authorities in the development of regional plan provisions ensures the interests and values of these parties are considered in addition to those of mana whenua/tangata whenua, and more effectively applies Te Mana o te Wai for the region.
- The amendment to remove reference to the whitua as FMUs recognises that a finer grained approach to freshwater management will be required within these areas. The directive to identify part FMUs within these whitua recognises the varying characteristics and processes of different freshwater bodies across the whitua areas and that implementation at the whitua scale may not achieve the outcomes sought from Objective 12.
- The addition of engagement with communities, stakeholders and territorial authorities may add time and cost in the implementation of the policy for the regional council and those parties, however I consider this cost is justified as it will ensure all interests are considered in managing freshwater in the region.

## POLICY 14

### Porirua City Council [Submitter 30]

74 Mr McDonnell<sup>29</sup> seeks amendments to clause (h) to remove reference to lot boundaries and new roads as these do not have adverse effects on freshwater and subdivision is a territorial authority function. Mr McDonnell suggests clause (h) should focus on development design and location.

75 Mr McDonnell<sup>30</sup> further considers that clause (m) may not provide a pathway for urban development which is inconsistent with the NES-FW, and therefore seeks that the clause is amended to allow for works with a functional or operational need within a wetland and where the effects management hierarchy can be applied.

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<sup>29</sup> HS5 S30, PCC, McDonnell, paragraph 33

<sup>30</sup> HS5 S30, PCC, McDonnell, paragraph 36-42

Kāinga Ora [Submitter 128]

76 Mr Heale<sup>31</sup> considers that reference to lot boundaries within Policy 14 (clause h) is beyond the regional plan and regional council functions, as lot creation through subdivision is a control of the district councils.

Wellington City Council [Submitter 140]

77 Mr Jeffries and Ms Cook<sup>32</sup> consider that clause (f) and clause (k) duplicate matters in relation to water sensitive urban design and stormwater quality management, and that clause (f) is impractical in requiring the adverse effects of contaminants be avoided rather than minimised, as contaminants are present in most waterbodies. They therefore seek clause (f) is deleted.

BP Oil NZ Ltd, Mobil Oil Ltd and Z Energy Ltd [Submitter 157]

78 Ms McPherson<sup>33</sup> raises concern with the recommended amendments to clause (f) in my section 42A report as follows:

78.1 the requirement to avoid all effects is onerous and sets an unrealistic direction,

78.2 the amendments assume that water sensitive urban design can avoid all adverse effects of contaminants and no evidence has been provided to support this approach

78.3 clause (f) potentially conflicts with clause (k),

78.4 no party appears to have sought the introduction of an avoidance approach, and therefore the scope for this change is queried

79 Ms McPherson therefore seeks that the approach of absolute avoidance of adverse effects is removed from clause (f).

Peka Peka Farms Limited [Submitter 118]

80 Mr Lewandowski<sup>34</sup> raises concerns in relation to clauses (f) and (h) of the policy. Mr Lewandowski considers that clause (f) would apply to all urban development regardless of scale, and considers it should be moved to Policy FW.3 as urban development is

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<sup>31</sup> HS5 S128, Kāinga Ora, Heale, paragraphs 4.8-4.10

<sup>32</sup> HS5 S140, WCC, Jeffries and Cook, paragraphs 31-33

<sup>33</sup> HS5 S157, Fuel Companies, McPherson, paragraphs 2.3-2.7

<sup>34</sup> HS5 S118, Peka Peka Farms, Lewandowski, paragraphs 4.1-4.7

fundamentally managed by district plans whilst Policy 14 applies to regional plans. He further considers that clause (h) could be deleted as it is matter that is managed by district plans and is already addressed in Policy FW.3. Mr Lewandowski also identifies a minor grammatical error in the wording of clause (h). Mr Lewandowski<sup>35</sup> also states that matters (i) and (k) are more appropriately addressed through a district plan.

- 81 Mr Lewandowski<sup>36</sup> questions how matter (l) could be given effect to in practice as it would apply to all potential urban development and considers this matter could be clarified. Mr Lewandowski also seeks amendments to clause (m) to reflect exceptions in relation to the loss of extent and values of natural inland wetlands that aligns with the NPS-FM.

#### Royal Forest & Bird [Submitter 165]

- 82 Ms Downing<sup>37</sup> seeks that the notified version of clause (h) is reinstated as it better gives effect to the NPS-FM. The reasons for this include providing specific reference to urban development as per clause 3.5(4) of the NPS-FM, and that specific reference to 'gully heads' reflects Policy 1 of the NPS-FM.

- 83 Ms Downing supports the amendment to clause (n) as recommended in the evidence of Mr Brass to achieve consistency with clause 3.5(1) of the NPS-FM.

#### Director General of Conservation [Submitter 32]

- 84 Mr Brass<sup>38</sup> considers that amendment to clause (c) to include reference to receiving environments have changed the direction that applies and only restates the Act. Mr Brass considers that, to reflect the NPS-FM and include protect and enhance requirements for the coastal environments, clause (h) should be amended to reference receiving environments. Mr Brass does not support clause (h) being limited to lot boundaries and new roads, as other urban development could be relevant and not captured. Mr Brass also does not support the removal of reference to gully heads and notes that there may be water bodies within urban development, not just adjacent to. Overall Mr Brass suggests that the notified clause (h) should largely be retained with some amendments.

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<sup>35</sup> HS5 S118, Peka Peka Farms, Lewandowski, paragraph 4.8

<sup>36</sup> HS5 S118, Peka Peka Farms, Lewandowski, paragraphs 4.9-4.15

<sup>37</sup> HS5 S165, Royal Forest & Bird, Downing, paragraphs 4-10

<sup>38</sup> HS5 S32, DGC, Brass, paragraphs 18-23

## Wellington Water [Submitter 113]

85 Ms Horrox<sup>39</sup> considers Policy 14 is not sufficiently clear on the division or focus of responsibility between regional and district plans, and considers this clarification is important to ensure matters are managed efficiently and in an integrated fashion.

### Analysis and recommendations

86 I agree with the evidence of Mr McDonnell, Mr Heale, Mr Lewandowski and Ms Downing that the amendments I have recommended to clause (h) are inappropriate for a regional plan. I agree that similar wording to that of the notified version is more appropriate. As such I recommend deleting the reference to 'lot boundaries and new roads' and reinstating the reference to urban development location and design.

87 I disagree with Mr Lewandowski's opinion that clause (h) should be deleted and that Policy FW.3 is the more appropriate location for these requirements. While I acknowledge that this results in some overlap in regional council and territorial authority regulation, I consider this remains within the remit of regional council functions under section 30 of the Act, where the regional council does have a role in managing land use for the purposes of managing water quality.

88 I agree with Mr Brass that clause (h) would benefit from the inclusion of 'receiving environments' and I recommend that this reference be added to clause (h) accordingly. I also agree with Mr Brass' view that 'gully heads' be reinstated into the clause. I had recommended the deletion of this in my Section 42A report (paragraph 337), however I understand that gully heads have an important role in supporting freshwater ecosystems and should be referenced in Policy 14 analysis at paragraph 337. On this basis, I also recommend a consequential amendment to reinstate 'gully heads' in clause (k) of Policy FW.3.

89 Mr Jeffries and Ms Cook have identified some duplication between clauses (f) and (k) of Policy 14. I agree that these clauses are essentially requiring the same thing and amendments are required. I also agree with the concern raised by Mr Jeffries, Ms Cook and Ms McPherson that the requirement to 'avoid adverse effects of contaminants in waterbodies' is onerous and there is insufficient supporting evidence for this approach. As

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<sup>39</sup> HS5 S113, Wellington Water, Horrox, paragraph 18

such, I recommend combining clause (f) and clause (k) and removing the 'avoid' policy direction of clause (f). Clause (k) can then be deleted.

90 However, I disagree with the view of Mr Lewandowski who considers water sensitive urban design techniques are not within the remit of regional plans and that clause (f) should be deleted. Water sensitive urban design techniques can be applied to address matters that fall within the functions of both regional council and territorial authorities. The RPS policy direction provides for these situations by requiring these techniques to be applied through both regional and district plans. In a practical implementation sense, the respective local authorities will have to apply these techniques to urban development within their respective functions under the Act and to the relevant context.

91 I acknowledge Mr Lewandowski's concerns that clause (f) does not differentiate between different scales of development, and therefore could be applied to a single infill dwelling or a large-scale greenfield development. In my view, this is a level of detail that can be determined at the regional or district plan level, rather than in the RPS. On this basis I do not recommend any further amendment.

92 I also note that the approach in Policy 14 has been reflected in the recently notified NRP Plan Change 1. For example, Policy P.P10 of NRP PC1 is as follows:

*Policy P.P10: Managing adverse effects of stormwater discharges:*

*All stormwater discharges and associated land use activities shall be managed by:*

- (a) using source control to minimise contaminants in the stormwater discharge and maximise, to the extent practicable, the removal of contaminants from stormwater, including through the use of water sensitive urban design measures, and*
- (b) using hydrological control and water sensitive urban design measures to avoid, remedy or mitigate adverse effects of stormwater quantity and maintain, to the extent practicable, natural stream flows, and*
- (c) installing, where practicable, a stormwater treatment system for stormwater discharges from a property or properties taking into account:
  - (i) the treatment quality (load reduction factor), and**

*(ii) opportunities for the retention or detention of stormwater flows or volume, including any flood storage volume required, and*

*(iii) any potential adverse effects that may arise as a result of the stormwater treatment system or discharge, including erosion and scour, and localised adverse water quality effects, and*

*(iv) inspections, monitoring and ongoing maintenance, including costs, to maintain functionality in terms of treatment quality and capacity, and*

*(v) existing or proposed communal stormwater treatment systems in the stormwater catchment or sub-catchment, or part Freshwater Management Unit.*

*Note*

*If the installation of a stormwater treatment system includes infrastructure in the bed of a lake or river, resource consent may be required for the placement of the infrastructure under section 5.5 of this Plan.*

93 In relation to clause (i), Mr Lewandowski is concerned that the requirement to include riparian buffers adjacent to urban development is more appropriate for district plans to address. The management of riparian buffers can be undertaken by both regional Council and territorial authorities, within their respective functions under the RMA. I consider that Policy FW.3 allows for this in clause (k). However, I consider that to provide more clarity, clause (i) of Policy 14 could be amended to be clearer about the matters that the regional council will manage within the riparian buffer, being the protection and enhancement of these margins for the purpose of managing the health and wellbeing of waterbodies and freshwater ecosystem health.

94 Mr McDonnell and Mr Lewandowski seek further amendments to clause (m) of Policy 14 to be consistent with the NPS-FM and the NES-FW where urban development activities within natural inland wetlands are provided for subject to specific criteria. Clause 45C of the NES-FW sets out the parameters for urban development activities within natural inland wetlands, or within specified setbacks. Clause 45C(6) states that resource consent may not be granted unless the consenting authority is satisfied that:

- The urban development will contribute to a well-functioning urban environment; and

- Will provide significant national, regional, or district benefits
- There is no practicable alternative location for the activity within the area of the development; or
- Every other practicable alternative location in the area of the development would have equal or greater adverse effects on a natural inland wetland; and
- The effects management hierarchy has been applied.

95 Similarly, clause 3.22(c) of the NPS-FM sets out the following ‘qualifiers’:

- the activity is necessary for the purpose of urban development that contributes to a well-functioning urban environment (as defined in the National Policy Statement on Urban Development); and
- the urban development will provide significant national, regional or district benefits; and
- the activity occurs on land identified for urban development in operative provisions of a regional or district plan; and
- the activity does not occur on land that is zoned in a district plan as general rural, rural production, or rural lifestyle; and
- there is either no practicable alternative location for the activity within the area of the development, or every other practicable location in the area of the development would have equal or greater adverse effects on a natural inland wetland; and
- the effects of the activity will be managed through applying the effects management hierarchy.

96 I agree that clause (m) should be amended to reflect this recognition of urban development activity through national direction. However, I disagree with the specific amendments provided in Appendix A of Mr McDonnell’s evidence as I consider they do not accurately reflect the NES-FW or the NPS-FM. The ‘functional need’ test does not apply to urban development and I do not consider that urban development could prove a ‘functional need’ which is defined in the NPS-FM as ‘the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.’

97 I also agree with Mr Lewandowski that clause (l), which requires the mapping of rivers and wetlands within the area proposed for urban development, would be difficult to implement in practice. I recommend this clause be deleted from Policy 14.

#### Section 32AA Evaluation

98 In accordance with section 32AA of the Act, I consider my recommended amendments to Policy 14 are the most appropriate for the following reasons:

- The amendments are effective as they ensure the consenting pathways provided for urban development activities in the NPS-FM are sufficiently provided in the RPS. As this change implements national direction, I consider the costs and benefits of this approach have already been assessed through the development of that national direction and I do not repeat them here.
- The amendments to clause (f) are also effective as they remove a potentially high regulatory burden for urban development. This amendment will have social and economic benefits in terms of removing unnecessary barriers for urban development, while continuing to have moderate environmental benefits by requiring the minimisation of contaminants in stormwater (rather than requiring the avoidance of adverse effects).
- The amendments provide clarity about what the regional plan must manage in relation to urban development, relative to territorial authorities. This reduces the costs associated with duplicated effort and interpretation issues.

#### **POLICY FW.3**

##### Porirua City Council [Submitter 30]

99 Mr McDonnell<sup>40</sup> seeks that clauses (a), (g), (k) and (o) are deleted as these duplicate matters in Policy 14. Mr McDonnell also seeks amendments to the explanation text to clarify that the policy application is to the extent relevant under the territorial authority's functions.

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<sup>40</sup> HS5 S30, PCC, McDonnell, paragraph 46

Upper Hutt City Council [Submitter 34]

100 Ms Rojas<sup>41</sup> considers there is duplication between provisions and identifies Policy 12, Policy 18, and Policy FW.3. Ms Rojas specifically refers to clauses (a) and (b) [currently identified as (c)] in Policy FW.3

Peka Peka Farms Limited [Submitter 118]

101 Mr Lewandowski<sup>42</sup> seeks that matters (a) and (c) are combined to reduce the policy length.

Royal Forest & Bird [Submitter 165]

102 Ms Downing<sup>43</sup> seeks that equivalent clauses to (h), (m) and (n) of Policy 14 are included in Policy FW.3 to ensure consistency with the NPS-IB, and to reflect the effects that decisions in land use matters by territorial authorities can have on freshwater ecosystems, including on indigenous biodiversity in streams.

Director General of Conservation [Submitter 32]

103 Mr Brass<sup>44</sup> seeks amendments to clause (k) to recognise the natural form and flow of the waterbody, as he considers it is within the functions of territorial authorities to manage land use that can affect the natural movement of rivers and streams. Mr Brass considers that clause (k) should also retain reference to gully heads.

104 Mr Brass<sup>45</sup> disagrees that the matter of daylighting of streams is best addressed in Policy 14 as he considers this is part of the integrated management of the effects of land use and development function of the territorial authorities. He therefore seeks a new clause to address daylighting of streams in Policy FW.3. Mr Brass does not agree with the reference to 'support' in Policy 14, and suggests support is replaced with enabling in Policy 14 and reflected in Policy FW.3 through the new clause.

Wellington Water [Submitter 113]

105 Ms Horrox<sup>46</sup> considers Policy FW.3 is not sufficiently clear on the division or focus of responsibility between regional and district plans, and considers this clarification is

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<sup>41</sup> HS5 S34, UHCC, Ms Rojas, paragraph 18

<sup>42</sup> HS5 S118, Peka Peka Farms, Lewandowski, paragraph 4.18

<sup>43</sup> HS5 S165, Royal Forest & Bird, Downing, paragraph 9-11

<sup>44</sup> HS5 S32, DGC, Brass, paragraphs 29-32

<sup>45</sup> HS5 S32, DGC, Brass, paragraphs 35-38

<sup>46</sup> HS5 S113, Wellington Water, Horrox, paragraph 18

important to ensure matters are managed efficiently and in an integrated fashion.

106 Ms Horrox<sup>47</sup> also considers that an amendment to clause (k) is appropriate to protect aquifer and drinking water source areas from land development, with benefits in requiring district plans to include a water source protection policy and a cross reference to the regional plan. Ms Horrox considers this approach aligns with the integrated management principle of the NPS-FM. Ms Horrox does not consider the RPS needs be directive on how district plans address water source protection.

#### Analysis and recommendations

107 I agree with the suggested amendments from Mr McDonnell and Mr Lewandowski in relation to clauses (a) and (c) as these clauses both require partnering with mana whenua/tangata whenua. This is duplication, and I recommend deleting clause (a) accordingly.

108 I disagree with Mr McDonnell's request to delete clauses (g), (k), and (o) because, in his view, these are regional council functions. In relation to clauses (g) and (o), I have set out my reasons for retaining these clauses in Policy FW.3 in paragraph 364 of my section 42A report. My position has not changed and I recommend retaining these clauses in Policy FW.3.

109 In relation to clause (k), in my experience , territorial authorities are well placed to ensure urban development is located and designed to protect and enhance the waterbodies listed in the clause. District plans manage the location and design of urban development and implementation of this clause could involve the inclusion of buffers or setbacks from these waterbodies (as one example) in their zone rules or through natural environment provisions of their district plans. On this basis, I recommend retaining clause (k) in Policy FW.3.

110 I disagree with Ms Downing that clauses (h), (m) and (n) of Policy 14 should be duplicated in Policy FW.3. Clause (h) of Policy 14 is already very similar to clause (k) of Policy FW.3. The key difference is that clause (h) refers to 'the health and wellbeing' of the listed water bodies. In my view this is a function of regional plans, rather than district plans, consistent with the respective functions of regional councils and territorial authorities under sections 30 and 31 of the Act. I remain comfortable with this approach.

111 In terms of clauses (m) and (n) of Policy 14, again I consider these matters (relating to natural inland wetlands and daylighting of streams) are squarely within the functions of the regional

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<sup>47</sup> HS5 S113, Wellington Water, Horrox, paragraphs 24-25

council under section 30 of the Act and I do not consider there is a need to duplicate these requirements in district plans.

112 I disagree with Mr Brass' suggested amendment to recognise the natural form and flow of the waterbody in clause (k) of Policy FW.3 as I do not consider that this is a responsibility of territorial authorities under section 31 of the Act. This is consistent with my analysis and recommendations in my section 42A report.

113 I disagree with Mr Brass' request to include requirements in district plans relating to the daylighting of streams as I consider this is the role of the regional council under section 30 of the RMA I do however agree with Mr Brass' suggested amendment to clause (n) of Policy 14 to include 'enabling' as well as 'promoting' daylighting, as I consider this provides a stronger policy direction and will assist in resolving the conflicts that may arise with other provisions as Mr Brass has identified in his evidence..

114 In response to Ms Horrox's concern that Policy FW.3 is not sufficiently clear about the division or focus of responsibilities between regional and district plans, I note that Policy FW.3 is specific to district plans. I acknowledge that in some instances there may be overlap in the requirements of the regional and district plans, however I consider that this remains appropriate insofar as these matters relate to the respective functions of regional councils and territorial authorities. At the implementation stage, it will require coordination between the councils and I consider this is part and parcel of integrated management.

115 I agree with Ms Horrox that there is merit in Policy FW.3 including direction to require district plans to include information relating to water source protection areas. My understanding of Ms Horrox's evidence is that the issue is primarily that developers do not realise that these water source protection areas and associated NRP provisions exist, rather than a policy gap at the district plan level. As such, I recommend a new clause is included in Policy FW.3 requiring district plans to identify aquifers and drinking water source areas and include information about how urban development in these areas is managed. The intent of this is that district plans will include maps and an advice note (or similar content) that directs the plan user to the NRP for the provisions that relate to the management of these areas.

#### Section 32AA Evaluation

116 In accordance with section 32AA I consider my recommended amendments to Policy FW.3 are the most appropriate means of achieving the objectives for the following reasons:

- The deletion of clause (a) removes duplication within the policy and improves drafting clarity.
- The amendment to clause (k) and the addition of clause (ka) improve the effectiveness of Policy FW.3 in giving effect to Clause 3.5(4) of the NPS-FM as they will contribute to managing the adverse effects of urban development on the health and wellbeing of waterbodies and freshwater ecosystems in the region.
- The additional costs associated with these amendments are considered to be low as they provide clarity and, in the case of new clause (ka), the information is readily available from Wellington Water and/or the Council so territorial authorities will not have to spend additional time and resource gathering the necessary information to implement it.

## POLICY 42

### Royal Forest & Bird [Submitter 165]

117 Ms Downing<sup>48</sup> seeks amendments to clause (j) to refer to 'urban development', consistent with his recommended amendments to Policy 14(h).

### Kāinga Ora [Submitter 128]

118 Mr Heale<sup>49</sup> considers that reference to legal lot boundaries within Policy 42 is beyond the regional plan and regional council functions, as lot creation through subdivision is a control of the district councils.

### BP Oil NZ Ltd, Mobil Oil Ltd and Z Energy Ltd [Submitter 157]

119 Ms McPherson<sup>50</sup> raises concern with the recommended amendments to clause (h) in my section 42A report, as follows:

- 119.1 the requirement to avoid all effects is onerous and sets an unrealistic direction,
- 119.2 the amendments assume that water sensitive urban design can avoid all adverse effects of contaminants and no evidence has been provided to support this approach.

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<sup>48</sup> HS5 S165, Royal Forest & Bird, Downing, paragraph 18

<sup>49</sup> HS5 S128, Kāinga Ora, Heale, paragraphs 4.8-4.10

<sup>50</sup> HS5 S157, Fuel Companies, McPherson, paragraphs 2.5-2.7

119.3 clause (h) potentially conflicts with clause (l),

119.4 no party appears to have sought the introduction of an avoidance approach, and therefore the scope for this change is queried.

120 Ms McPherson therefore seeks that the approach of absolute avoidance of adverse effects is removed from clause (h).

#### Peka Peka Farms Limited [Submitter 118]

121 Mr Lewandowski<sup>51</sup> seeks amendment to clause (j) to remove reference to lot boundaries and new roads and include a general reference to urban development. Mr Lewandowski also seeks that clause (o) is deleted as Policy 14 also requires the mapping of rivers and wetlands, and its purpose in a consideration policy is unclear.

#### Analysis and recommendations

122 I agree with Ms Downing, Mr Heale and Mr Lewandowski in relation to their requests to amend clause (j) to remove the reference to lot boundaries. This amendment provides consistency with the amendments I have recommended to Policy 14(h). Consistent with my analysis at paragraph 86, I recommend amending clause (j) accordingly.

123 I agree with Ms McPherson's requested amendments to clause (h) of Policy 42. This is consistent with my recommended amendments to Policy 14 (f). For the reasons outlined in paragraph 89, I recommend amending clause (h) accordingly.

124 Again, I agree with Mr Lewandowski that clause (o), which requires the mapping of rivers and wetlands within the area proposed for urban development will be difficult to implement. I recommend deleting clause (o). This is consistent with my analysis and recommendations in relation to Policy 14, as set out in paragraph 97.

#### Section 32AA Evaluation

125 In accordance with section 32AA, I consider my recommended amendments to Policy 42 are appropriate for the following reasons:

- The amendments to clause (h) are also effective as they remove a potentially high regulatory burden for urban development. This amendment will have moderate social and economic benefits in terms of removing unnecessary barriers for urban

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<sup>51</sup> HS5 S118, Peka Peka Farms, Lewandowski, paragraph 4.26-4.27

development, while continuing to have moderate environmental benefits by requiring the minimisation of contaminants in stormwater (rather than requiring the avoidance of adverse effects).

- The amendments provide certainty around what the regional council will manage and assess in relation to urban development which will have moderate social and economic benefits.

## POLICY FW.1

### Upper Hutt City Council [Submitter 34]

126 Ms Rojas<sup>52</sup> considers that there is an issue in implementing Policy FW.1, and she is concerned about monitoring and enforcing Policy FW.1, including the cost of compliance. Ms Rojas also states that Policy FW.1 may be inefficient at achieving the sought outcomes.

### Analysis and recommendations

127 I note Ms Rojas' concern in regard to Policy FW.1. However, I do not consider that this policy will place additional costs or requirements on territorial authorities because it only applies to regional plans. I do not recommend any amendments in response.

## POLICY FW.2

### Porirua City Council [Submitter 30]

128 Mr McDonnell seeks that clause (b) is amended to remove the word 'provisions' on the basis that this is redundant.

### Wellington City Council [Submitter 140]

129 Mr Jeffries and Ms Cook<sup>53</sup> seek that Policy FW.2 is deleted. They consider the policy duplicates matters addressed through the hydrological control policy, and that the management of water demand is better addressed through methods outside of the district plan.

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<sup>52</sup> HS5 S34, UHCC, Ms Rojas, paragraph 20

<sup>53</sup> HS5 S140, WCC, Jeffries and Cook, paragraphs 42-44

### Analysis and recommendations

130 I agree with Mr McDonnell's request to delete 'provisions' from clause (b) and recommend that this amendment is made. The term is unnecessary as the chapeau already states that policies, rules and/or methods are required – these are all 'provisions'.

131 I disagree with Mr Jeffries and Ms Cook that Policy FW.2 duplicates the hydrological control policy. The two policies are required for a different purpose, although I acknowledge that one possible method for achieving hydrological control is the use of rainwater tanks for retention, and this could also be used to meet Policy FW.2. I also do not agree with Mr Jeffries' and Ms Cook's suggestion that clause (b) is better addressed through other avenues outside of the district plan. While those tools can and should be used, there is still a role for the district plan in promoting alternate supplies to support resilience and climate change adaptation. I note that my recommended amendments in the section 42A report replaced the word 'requiring' with 'promoting' in this clause, for this reason.

### Section 32AA Evaluation

132 In accordance with section 32AA I consider my recommended amendment to Policy FW.2 is appropriate to achieve the objective as it provides drafting clarity and supports the efficient and effective application of the policy.

### POLICY FW.5

#### Porirua City Council [Submitter 30]

133 Mr McDonnell<sup>54</sup> does not consider that the policy would be able to be given effect to through a district plan as the matters within the policy, including the supply of water and protection of sources of water supply are addressed through other regulatory and funding mechanisms. Mr McDonnell therefore seeks that 'district' is removed from the chapeau.

#### HortNZ [Submitter 128]

134 Ms Landers<sup>55</sup> considers that an amendment to the chapeau text to specifically identify the policies relation to urban development would make the policy scope clearer.

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<sup>54</sup> HS5 S30, PCC, McDonnell, paragraph 86

<sup>55</sup> HS5 S128, HortNZ, Lander, paragraph 54

### Analysis and recommendations

135 I agree with the amendments suggested by both Mr McDonnell and Ms Landers as I consider this provides drafting clarity and certainty for users of the RPS. I recommend Policy FW.5 is amended accordingly.

### Section 32AA Evaluation

136 In accordance with section 32AA I consider my recommended amendment to Policy FW.5 is appropriate to achieve the objective as it provides drafting clarity and supports the efficient and effective application of the policy.

### POLICY FW.6

#### Wellington City Council [Submitter 140]

137 Mr Jeffries and Ms Cook<sup>56</sup> consider the policy should be amended to clarify the roles and responsibilities of territorial authorities and the regional council, and that the policy does not promote integrated management as there is an overlap between GWRC and territorial authorities with regards to responsibility. The amendments clarify that regional council is responsible for discharge to land and water and to maintain and enhance water quality, and territorial authorities are responsible for land use and stormwater network management.

#### Wellington Water [Submitter 113]

138 Ms Horrox<sup>57</sup> considers that the policy should more accurately differentiate the roles of territorial authorities and GWRC in relation to managing land development and water quality effects and is unclear on the difference between clauses (a) and (c) in relation to responsibilities.

### Analysis and recommendations

139 I disagree with the relief sought by Mr Jeffries, Ms Cook, and Ms Horrox to amend Policy FW.6 to differentiate between the roles of local authorities in the region in relation to managing land development and water quality effects. Policy FW.6 essentially repeats the statutory functions set out in sections 30 and 31 of the Act and on this basis I consider the policy is accurate and no amendments are required.

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<sup>56</sup> HS5 S140, WCC, Jeffries and Cook, paragraphs 37-39

<sup>57</sup> HS5 S113, Wellington Water, Horrox, paragraph 15

## POLICY FW.7

### HortNZ [Submitter 128]

140 Whilst Ms Landers<sup>58</sup> generally supports the proposed amendments, she considers that water attenuation and retention is relevant for rural areas outside of the Wairarapa and there is no rationale for limiting the policy's application to only the Wairarapa. She considers that clause (b) should be amended to remove reference to the health needs of people as the policies application is broader than this.

### Analysis and recommendations

141 I agree with Ms Landers that Policy FW.7 should apply more broadly to rural areas, rather than being restricted to the Wairarapa. I recommend that the policy is amended to remove reference to the Wairarapa so that it applies to rural areas generally.

142 However, I disagree with Ms Landers in relation to the reference to the health needs of people. The intention of including this in clause (b) was to ensure that in undertaking the built solutions listed in clause (b), the health needs of people are considered. In my opinion this is an appropriate consideration in this context, and its inclusion does not unduly limit the establishment of those built solutions.

### Section 32AA Evaluation

143 In accordance with section 32AA, I consider my recommended amendments to Policy FW.7 are appropriate because the policy will support the uptake of water attenuation and retention on a broader scale across the Region's rural areas. These changes will have social and environmental benefits in supporting water resilience in rural areas and the health and wellbeing of the region's waterbodies and freshwater ecosystem health. While there may be low to moderate costs associated with implementing the policy, I do not consider this outweighs the benefits. The policy is a non-regulatory policy and the direction is to 'promote and support', rather than 'require' the uptake of these methods.

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<sup>58</sup> HS5 S128, HortNZ, Lander, paragraph 57

## POLICY 15

### Porirua City Council [Submitter 30]

144 Mr McDonnell<sup>59</sup> seeks that clauses (b)(iii) and (iv) are reallocated to clause (a) as they are regional council functions and inconsistent with the recommended amendments to Policy 15 which identify that Wellington Regional Council is responsible for earthworks and vegetation clearance in riparian margins.

### Kāinga Ora [Submitter 128]

145 Mr Heale<sup>60</sup> considers that the language of Policy 15 is too directive and seeks that clause b(i), which requires urban development to follow existing land contours is deleted, noting that clause (b)(ii) already requires the extent and volume of earthworks to be minimised. Mr Heale also notes that the steep topography in some regional areas could make it difficult for urban development to follow existing land contours.

### Wairarapa Federated Farmers [Submitter 163]

146 Ms Berkett<sup>61</sup> identifies an error in the policy title within the Section 42A report (paragraph 510), and seeks an amendment to clause (b) to clarify that this is specific to urban development.

### Royal Forest & Bird [Submitter 165]

147 Ms Downing<sup>62</sup> considers that clause (b) (iii) requires amendment to specifically reference wetlands and the margins of wetland and waterbodies to ensure these environs are not excluded from the policy, and that this will ensure consistency with Section 6 of the RMA and policies 3, 7 and 9 of the NPS-FM, and Policy 18(c).

### Analysis and recommendations

148 Mr McDonnell has sought amendments to Policy 15(b) to relocate sub-clauses (iii) and (iv) into clause (a). Clause (iii) requires district plans to include provisions to require setbacks from waterbodies for vegetation clearance and earthworks activities. Clause (iv) requires district plans to manage sediment associated with earthworks. Mr McDonnell considers

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<sup>59</sup> HS5 S30, PCC, McDonnell, paragraph 56

<sup>60</sup> HS5 S128, Kāinga Ora, Heale, paragraphs 4.3-4.7

<sup>61</sup> HS5 S163, WFF, Berkett, paragraphs 37-39

<sup>62</sup> HS5 S165, Royal Forest & Bird, Downing, paragraphs 21-29

these are functions of regional councils and therefore should be relocated to clause (a) of Policy 15.

149 I disagree with Mr McDonnell and consider that requiring setbacks from riparian margins for earthworks and vegetation clearance is within the remit of district plans, given their role in managing land use and subdivision. I also consider that the management of sediment from earthworks is within the remit of district plans, and I note that some district plans already do this, such as the Wellington City Council Operative and Proposed District Plans. However, I also note that there is an overlap of functions between the regional council and territorial authorities in terms of managing earthworks. The NRP includes rules to manage earthworks, including a permitted activity rule for earthworks up to 3000m<sup>2</sup> (subject to conditions) and earthworks required for the construction of farm tracks. District plans also manage the effects of earthworks of less than 3000m<sup>2</sup>. As such, I consider an additional sub-clause is required in clause (a) of Policy 15 which makes it clear that the regional plan must manage sediment associated with earthworks. I also recommend an amendment to clause (b)(iv) to clarify that district plans manage the effects of earthworks on sites less than 3000m<sup>2</sup>.

150 I disagree with the amendment sought by Mr Heale. I do not consider there is duplication between the requirement for urban development to follow existing land contours and the requirement to minimise the extent and volume of earthworks. These matters are different. The requirement to follow existing land contours relates to the location of urban development and subsequent required earthworks, it does not address the quantity of earthworks that are required. I also consider that the inclusion of 'where practicable' in clause (b)(i) provides for those situations where following existing land contours may not be possible. As such I do not recommend amendments to this clause.

151 I disagree with the suggested amendment by Ms Berkett. It is incorrect that clause (b) only relates to urban development. Policy 15 is part of the Operative RPS and applies on a general basis – it is not specific to urban development. The amendment sought by Ms Berkett would have the effect of narrowing all the sub-clauses in clause (b) to only apply to urban development when this is not the intent of the policy. The policy explanation also highlights that the policy applies to rural areas stating 'Large scale earthworks and vegetation clearance disturbance on erosion prone land in rural areas and many small scale earthworks in urban areas – such as driveways and retaining walls – can cumulatively contribute large amounts of silt and sediment to stormwater and water bodies. This policy is intended to minimise erosion and silt and sedimentation effects associated with these activities.'

152 I disagree with the amendments sought by Ms Downing. These matters are the role of the regional council to manage and as such it would be inappropriate to require district plans to manage wetlands.

#### Section 32AA Evaluation

153 In accordance with section 32AA of the Act, I consider my recommended amendments to Policy 15 are appropriate as they provide clarity and certainty to users of the RPS about what regional and district plans will manage in relation to earthworks. I do not consider there are any costs associated with these amendments as this reflects current practice.

#### **POLICY 41**

##### Royal Forest & Bird [Submitter 165]

154 Ms Downing<sup>63</sup> seeks the addition of a new clause to Policy 41 to address habitat removal associated with vegetation clearance, and to give effect to relevant NPS-FM policies.

##### HortNZ [Submitter 128]

155 Ms Landers<sup>64</sup> considers that if Policy 41 is retained then clauses (b) and (c) are deleted to refine the policy until target attribute states have been set in a regional plan, and that an explanation statement is included to clarify the policy only applies until Policy 15 is implemented. Alternatively, Ms Lander considers if Policy 41 was deleted there would be no gap in resource management direction.

##### Director General of Conservation [Submitter 32]

156 Mr Brass<sup>65</sup> does not agree with the amendments to Policy 41 to restrict this policy to regional consents as territorial authority land use consents manage erosion and siltation risk. Mr Brass seeks that this policy applies to both regional and district consents.

##### Winstone Aggregates [Submitter 162]

157 Ms Clarke<sup>66</sup> considers that clause (c) is inconsistent with the s 107 of the RMA as it relates to an action (discharge) rather than an effect and could prohibit any discharge even where

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<sup>63</sup> HS5 S165, Royal Forest & Bird, Downing, paragraph 30

<sup>64</sup> HS5 S128, HortNZ, Lander, paragraph 18

<sup>65</sup> HS5 S32, DGC, Brass, paragraphs 43-45

<sup>66</sup> HS5 S162, Winstone, Clarke, section 10

adverse effects are able to be avoided. Ms Clarke therefore suggests amendments to clause (c).

#### Analysis and recommendations

158 I agree in part with the amendments sought by Ms Downing and consider Policy 41 should include the ability to consider the effects earthworks and vegetation clearance on aquatic ecosystem health, indigenous biodiversity and water bodies. However, I do not agree that this should apply to coastal water in its entirety. Instead, I recommend including 'receiving environments' in this clause. I also consider that Ms Downing's drafting is inconsistent with how the remainder of the policy has been drafted, in the context of a resource consent application which requires consideration of the effects of the activity, rather than setting requirements to be met.

159 I agree with Ms Landers that clauses (b) and (c) of Policy 41 are unnecessary and that Policy 41 should focus on situations where the regional plan has not yet set environmental outcomes, target attribute states, or limits. On this basis, I recommend deleting clause (b) and (c) of Policy 41.

160 As I am recommending the deletion of clause (c), I consider the concerns raised by Ms Clarke in relation to this clause are addressed.

161 I disagree with Mr Brass that Policy 41 should apply to regional and district consents. In my opinion, the primary purpose of Policy 41 is to manage the effects of earthworks and vegetation clearance on waterbodies until the regional plan has set target attribute states and other requirements of the NOF. As such, I do not recommend amending Policy 41 to apply to district consents.

#### Section 32AA Evaluation

162 In accordance with Section 32AA, I consider the amendments I am recommending to Policy 41 are appropriate because they remove unnecessary duplication between Policy 15 and Policy 41 and therefore will support the efficiency of implementing these policies. I do not consider there are any costs associated with these amendments.

## POLICY 17

### Wairarapa Federated Farmers [Submitter 163]

163 Ms Berkett<sup>67</sup> seeks that Policy 17 is amended to recognise and elevate social, economic and cultural well-being in relationship to the management of freshwater to apply all priorities as provided for in clause 1.3(5) of the NPS-FM. She also seeks a grammatical correction to the definition of the 'health needs of people' between the chapeau and clause (a) to clarify the status of water consumed by animals.

### Royal Forest & Bird [Submitter 165]

164 Ms Downing<sup>68</sup> considers clause (c) requires amendment to specifically identify 'drinking water' and avoid potentially inappropriate water uses as per the priorities under the NPS-FM.

### HortNZ [Submitter 128]

165 Ms Landers<sup>69</sup> considers that Policy 17 does not sufficiently reflect the second priority of the Te Mana o te Wai hierarchy (health needs of people). Ms Landers also suggests that in the amendments to the policy to define the relevant 'health needs of people', it is not clear if the listed matters (a-d) are inclusive and how they relate to the definition of 'health needs of people'. Ms Landers therefore states her preference for the operative phrasing, and that a clarification statement is added to Policy 17 to address the takes listed in (a) to (d).

### Director General of Conservation [Submitter 32]

166 Mr Brass<sup>70</sup> identifies that the takes identified in Policy 17, as per his interpretation, are not included in the definition of 'health needs of people'. Mr Brass considers there could be interpretation issues with this approach, and therefore recommends amendments to Policy 17 to provide clarity.

### Analysis and recommendations

167 Ms Berkett has sought amendments to Policy 17 to include all the priorities from the Te Mana o te Wai hierarchy of obligations. I disagree with this approach. The purpose of Policy 17 is to direct that regional plan provisions for the take and use of water prioritise the health

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<sup>67</sup> HS5 S163, WFF, Berkett, paragraphs 41-46

<sup>68</sup> HS5 S165, Royal Forest & Bird, Downing, paragraph 35

<sup>69</sup> HS5 S128, HortNZ, Lander, paragraphs 24-34

<sup>70</sup> HS5 S32, DGC, Brass, paragraph 48

and wellbeing of the waterbody and freshwater ecosystems first, and then the take and use of water for the health needs of people. This does not mean that other takes cannot be considered. I disagree with the relief sought by Ms Berkett in this regard and do not recommend any amendments to Policy 17.

168 I do agree with Ms Berkett that a grammatical fix is necessary in the definition of the health needs of people. I recommend an amendment to clause (a) so that it reads ‘water used outside, (e.g. for irrigation, vehicle or house washing or hosing) other than water consumed by animals...’.

169 I do not agree with Ms Downing’s suggested amendment to restrict clause (c) to drinking water only. My section 42A report at paragraphs 560-561 set out my analysis and reasons for this position and they are not repeated here.

170 I agree with Ms Landers and Mr Brass that the chapeau of Policy 17 requires amendment to provide a clearer connection between the chapeau and clauses (a) to (d) and to ensure the ‘health needs of people’ is not defined differently in two different places. I agree with the suggested amendments provided by Ms Landers as I consider this amendment provides drafting clarity. However, I consider Ms Lander’s suggested additional wording following clauses (a) to (d) is unnecessary because this repeats the definition of the ‘health needs of people’ which is already referenced in the chapeau.

171 I also disagree with Ms Landers’ suggested amendments to include ‘food production that contributes to domestic food supply’ in Policy 17. Ms Lander references the industry statement filed by Ms Levenson, which sets out in some detail Hort NZ’s reasons for this position. Of note, both Ms Landers and Ms Levenson rely on Clause 3.33 of the NPS-FM which sets out specific provisions for two identified Specified Vegetable Growing areas, being Pukekohe and Horowhenua. This clause requires regional councils to have regard to the importance of these areas to the domestic supply of fruit and vegetables and maintaining food security to New Zealanders. In summary, the clause provides a more enabling framework than the rest of the NPS-FM for these activities in these areas.

172 Clause 3.3 of the NPS-FM does not apply to the Wellington Region. In my view, Central Government has very deliberately identified only two areas where different, and more enabling, policy direction will apply. As such, I have not changed my view on this matter, and I refer the Panel to my analysis in paragraph 565 of my Section 42A report as the basis for this position.

### Section 32AA Evaluation

173 In accordance with section 32AA of the RMA, I consider that my recommended amendments to Policy 17 are the most appropriate means of achieving Objective 12 because the amendments improve the effectiveness and efficiency of the policy by providing drafting clarity and reducing interpretation issues.

### POLICY 44

#### Wairarapa Federated Farmers [Submitter 163]

174 Ms Berkett<sup>71</sup> seeks an amendment to the policy chapeau to clarify that it applies only to changes, variations or reviews of regional plans ‘that relate to’ take and use of water, or to alternatively remove the reference to changes, variations and reviews of regional plans entirely from the chapeau. Ms Berkett also suggests an amendment to clause (d) to specify that take limits are not exceeded.

#### Analysis and recommendations

175 I agree with Ms Berkett that the chapeau for Policy 44 requires amendment to be clearer in relation to the reference to a change, variation or review of a regional plan. I recommend the addition of the words ‘that relates to the take and use of water...’. I consider it is important to retain the reference to change, variation and review processes because this policy will assist in addressing any time lag between RPS Change 1 becoming operative and the Council giving full effect to Policy 12, which is the policy that directs the setting of limits on resource use, including take limits.

176 I also agree with Ms Berkett’s suggested amendment to clause (d) to make it clear that take limits must not be exceeded.

### Section 32AA Evaluation

177 In accordance with section 32AA of the RMA, I consider that my recommended amendments to Policy 44 are the most appropriate means of achieving Objective 12 because the amendments improve the effectiveness and efficiency of the policy by providing drafting clarity and reducing interpretation issues.

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<sup>71</sup> HS5 S163, WFF, Berkett, paragraphs 51-54

## METHOD 48

### HortNZ [Submitter 128]

178 Ms Landers<sup>72</sup> does not agree that land use change to lower emissions is unrelated to water allocation, and Ms Levenson identifies that water allocation can be a barrier to land use change. Ms Landers therefore seeks an amendment to clause (i) of Method 48 to include reference to lower emissions, which Ms Landers states is consistent with Policy 4 of the NPS-FM regarding integrated management. Ms Levenson<sup>73</sup> also seeks clarification on the difference between ‘climate resilient uses’ in clause (i) and ‘climate change adaptation’ in clause (j) and suggests using the phrase ‘Lower emissions or more climate resilient uses’ to provide clarification.

### Rangitāne o Wairarapa [Submitter 168]

179 Ms Burns<sup>74</sup> raises a number of concerns about Method 48, as follows:

- The use of ‘consider’ in clause (f) is not strong enough to ensure alternative allocation approaches are adopted and prioritised.
- Clause (g) conflicts with the first-in-first served approach and should be combined with clause (f)
- Clause (c) repeats direction of clause (b) and should be deleted
- The wording of clause (h) provides an opportunity for inefficient water use and should be amended.

### Analysis and recommendations

180 In relation to clause (i) of Method 48, I agree with Ms Landers and Ms Levenson that this clause would benefit from the addition of reference to lower emission land uses. I recommend including this reference in clause (i) as suggested by Ms Landers.

181 In response to Ms Levenson’s request for clarification about the difference between ‘climate change adaptation’ and ‘climate resilient uses’, I draw the Panel’s attention to the Reporting Officer’s recommended amendments for the Nature Based Solutions topic in

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<sup>72</sup> HS5 S128, HortNZ, Landers, paragraphs 42-47

<sup>73</sup> HS5 S128, HortNZ, Levenson, paragraph 50

<sup>74</sup> HS5 S68, Rangitāne, Burns, paragraphs 107-111

Hearing Stream 3. In the Section 42A report, the reporting officer recommended the addition of a new definition of ‘climate-resilience/resilient’, as follows:

*The capacity and ability of natural and physical resources, including people, communities, businesses, infrastructure, and ecosystems, to withstand the impacts and recover from the effects of climate change, including natural hazard events.*<sup>75</sup>

182 The National Adaptation Plan defines ‘adaptation’ as follows:

*In human systems, the process of adjusting to actual or expected climate and its effects, to moderate harm or take advantage of beneficial opportunities. In natural systems, the process of adjusting to actual climate and its effects. Human intervention may help these systems to adjust to expected climate and its effects*<sup>76</sup>.

183 As such I consider the term ‘climate change adaptation’ is a broader term that refers to society’s ability change systems, processes and lifestyles to prepare for the effects of a changing climate. ‘Climate-resilient’ is a narrower term referring to the capacity for systems and processes to change..

184 On this basis, I agree with Ms Levenson’s suggested amendment to clause (i) and recommend amending clause (i) accordingly.

185 I acknowledge the concerns raised by Ms Burns however I do not consider that the suggested amendments are necessary or appropriate in advance of any water allocation policy review taking place. There may be instances, such as in areas of low demand, where a first-in-first serve approach remains appropriate. The suggested amendments pre-determine the outcome of any such review. I also disagree that clause (c) duplicates clause (b). Clause (b) applies to existing allocation, whereas clause (c) relates to future allocations which must not exceed limits which have not yet been set. I consider the deletion of clause (c) would leave a gap in relation to the latter. On this basis I do not recommend any amendments to Method 48 as a result of Ms Burns’ evidence.

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<sup>75</sup> Section 42A Report, Climate Change: Climate Resilience and Nature-Based Solutions, paragraph 184, [s42A \(govt.nz\)](https://www.govt.nz/s42A), 31 July 2023.

<sup>76</sup> Ministry for the Environment, [Urutau, ka taurikura: Kia tū pakari a Aotearoa i ngā huringa āhuarangi | Adapt and thrive: Building a climate-resilient New Zealand \(environment.govt.nz\)](https://www.mfe.govt.nz/urutau-ka-taurikura), page 180

## Section 32AA Evaluation

186 In accordance with section 32AA of the RMA, I consider that my recommended amendment to clause (j) of Method 48 is the most appropriate means of achieving the objectives because it supports a reduction in the Region’s carbon emissions and will have positive environment, social and economic effects.

### **POLICY 18**

#### Porirua City Council [Submitter 30]

187 Mr McDonnell<sup>77</sup> seeks amendments to clause (c) to align with the NES-FW and allow a pathway for urban development that demonstrates a functional or operational need and applies the effects management hierarchy.

#### Waka Kotahi [Submitter 129]

188 Ms Heppelthwaite is not clear why coastal wetlands have been included in clause (c) and does not support their inclusion.

#### Upper Hutt City Council [Submitter 34]

189 Ms Rojas<sup>78</sup> considers there is duplication between provisions and identifies Policy 12, Policy 18, and Policy FW.3, but does not identify specific matters of duplication.

#### Royal Forest & Bird [Submitter 165]

190 Ms Downing<sup>79</sup> considers that clause (r) requires further clarification to reflect NPS-FM clause 3.26(1) in relation to fish passage and to better implement Policy 9 of the NPS-FM, whereas the current wording is open to wider interpretation with potential perverse outcomes.

#### Fish and Game [Submitter 147]

191 Ms Campbell<sup>80</sup> considers the use of the language ‘to the extent practicable’ in clause (e) is not appropriate and that clause (e) should be amended to provide exclusion for avoiding the loss of river extent unless there is a functional need, and the effects management hierarchy is applied.

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<sup>77</sup> HS5 S30, PCC, McDonnell, paragraph 72

<sup>78</sup> HS5 S34, UHCC, Ms Rojas, paragraph 18

<sup>79</sup> HS5 S165, Royal Forest & Bird, Downing, paragraphs 37-43

<sup>80</sup> HS5 S147, Fish & Game, Campbell, paragraphs 54-58

#### Rangitāne o Wairarapa [Submitter 168]

192 Ms Burns<sup>81</sup> notes that there is discrepancy between Policy 14 and policy 18. This includes difference in terminology on policy weighting, and the broader application of Policy 14 beyond urban environments. Ms Burns suggests amending Policy 18 to align with the directive language of Policy 14 and introducing matters from Policy 14 which are missing from Policy 18. Alternatively, Ms Burns suggests these two policies could be merged.

#### Winstone Aggregates [Submitter 162]

193 Ms Clarke<sup>82</sup> considers that the direction of protecting and enhancing, rather than maintaining and improving, of all waterbodies in the region is inconsistent with Policy 5 and Policy 8 of the NPS-FM and is not supported by evidence requiring this direction or sufficient section 32 analysis. Ms Clarke seeks that 'protect and enhance' is replaced with 'maintain and improve' in Policy 18.

194 Ms Clarke<sup>83</sup> has some concerns over the amendments to clause (n), and considers Change 1 does not provide policy direction for use and development of water and waterbodies with beneficial activities beyond urban development. This includes significant quarrying benefits where it is not functionally or operationally practicable to avoid waterbodies and wetlands. Ms Clarke states that the RPS needs to include policies that recognise clauses 3.22(1) and 3.24(1) of the NPS-FM. Ms Clarke recommends a number of options for amendments to Policy 18 to address this.

#### Analysis and recommendations

195 While I agree with Mr McDonnell that the RPS should be consistent with the NPS-FM and NES-FW in providing a consenting pathway for urban development, I do not consider Policy 18 requires amendments specific to urban development because Policy 14 already sets out the requirements for regional plans in managing urban development. At paragraph 96 of this statement I set out my analysis and recommendations for amending Policy 14 in line with the consenting pathways in the NPS-FM and NES-FW. As such, I do not agree that an amendment is required to clause (c) of Policy 18 to specifically recognise urban development.

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<sup>81</sup> HS5 S68, Rangitāne, Burns, paragraphs 99-103

<sup>82</sup> HS5 S162, Winstone, Clarke, section 6

<sup>83</sup> HS5 S162, Winstone, Clarke, section 8

196 I acknowledge the concerns raised by Ms Clarke in relation to the lack of recognition of the consenting pathways for quarrying activities in natural inland wetlands and rivers in Clauses 3.22 and 3.24(1) of the NPS-FM. This matter was raised through Hearing Stream 1 in response to Winstone Aggregate’s general submission point seeking amendments to the RPS to give effect to the relevant provisions in the NPS-FM and other national direction that provide a consenting pathway for aggregate and mineral extraction. The Reporting Officer recommended rejecting the relief sought on the basis that the request is out of scope of Proposed Change 1 because:

*‘...the Council did not consider access to mineral or aggregate resources as an issue to be addressed in Change 1. The operative RPS already includes explicit recognition of minerals, including Objective 31 – “Demand for mineral resources is met from resources located in close proximity to the areas of demand”, and policies seeking to minimise reverse sensitivity effects on existing quarries and consider how the region’s mineral resources are utilised. As Change 1 proposed no changes to these provisions amending the existing Soils and Minerals chapter in the RPS is out of scope in my view.’<sup>84</sup>*

197 On this basis I do not agree with the suggested amendments put forward by Ms Clarke.

198 However, I do note that while I recommended amendments to clause (n), to include reference to ‘functional need’, I did not recommend a definition of this term. The NPS-FM provides a definition of functional need, as follows:

***‘Functional need** means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment’<sup>85</sup>*

199 I recommend including the NPS-FM definition in the RPS to support the reference in clause (n).

200 In relation to Ms Heppelthwaite’s concern about the inclusion of coastal wetlands in clause (c), I consider that this text should be deleted. This is consistent with my recommended amendments to other provisions in my section 42A report, where I consider the notified

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<sup>84</sup> Section 42A Report, Hearing Stream 1 – General Submissions, 26 May 2023, [RPS Change 1 HS1 - Section 42A Report - General Submissions - Final.docx \(gw.govt.nz\)](#) paragraph 140,

<sup>85</sup> National Policy Statement for Freshwater Management, clause 3.21 Definitions relating to wetlands and rivers, [National-Policy-Statement-for-Freshwater-Management-2020.pdf \(environment.govt.nz\)](#)

provisions have strayed beyond freshwater and apply freshwater policies to coastal waters. Clause (c) gives effect to Policy 6 of the NPS-FM which does not include this reference.

201 I agree in part with Ms Downing's request to amend clause (r) to more accurately give effect to the NPS-FM. While I agree that the term 'where appropriate' is open to broad interpretation, I do not agree with the clause should be restricted to indigenous fish passage. While Policy 9 of the NPS-FM relates to the habitats of indigenous fish species, Policy 10 also requires the protection of the habitats of trout and salmon, insofar as this is consistent with Policy 9. In addition, clause 3.26 of the NPS-FM, which Ms Downing has referenced in his evidence, does not only apply to indigenous fish species. As such, I disagree with this aspect of Ms Downing's evidence and recommend an amendment to clause (r) that is generally consistent with that sought by Forest and Bird, but is not restricted to indigenous fish passage.

202 I note that Mr Brass supported my recommended amendment to clause (r) in my section 42A report but notes that should the amendments sought by Ms Downing be accepted, this would achieve the same effect and potentially provide greater certainty and clarity.

203 I disagree with the concern raised by Ms Burns that Policy 14 and Policy 18 should be aligned, or in the alternative, combined into one policy.

204 I agree with Ms Clarke in relation to the use of 'protecting and enhancing' in Policy 18, and that this should be replaced with 'maintaining and improving'. I recommend that Policy 18 is amended accordingly.

#### Section 32AA Evaluation

205 In accordance with Section 32AA I consider the amendments I am recommending to Policy 18 are appropriate for achieving the objective for the following reasons:

205.1 The amendment to clause (r) provides a clearer and more certain application of the NPS-FM and reduces the potential for interpretation or implementation issues. This amendment will have moderate benefits for the environment by making it clear that there are some circumstances where preventing the passage of certain fish species is appropriate where this protects indigenous species. I do not consider there are any costs associated with this amendment.

205.2 The amendments to replace 'protecting and enhancing' with 'maintaining or improving' provide certainty to users of the RPS about the extent of improvement

that is required and the outcome that is sought to be achieved. I consider these amendments will have moderate social and economic benefits as it ensures the regulatory approach does not unduly prevent activities from occurring or require activities to do more than is required to improve freshwater quality. The change in policy direction will have a low to moderate cultural and environmental cost, as degree of improvement of water quality is less than that currently proposed. However, overall I consider these costs are justified.

#### POLICY 40

##### Meridian Energy Limited [Submitter 100]

206 Ms Foster<sup>86</sup> does not support clause (n) of the policy being an ‘avoidance’ policy, and considers the policy goes beyond the NPS-FM in requiring avoidance of all effects, including on constructed or artificial wetlands. Ms Foster seeks that the avoidance approach of the policy is subject to consistency with the effects management hierarchy of the NPS-FM.

##### Porirua City Council [Submitter 30]

207 Mr McDonnell<sup>87</sup> seeks amendments to clauses (n) and (p) to align with the NES-FW and allow a pathway for urban development that demonstrates a functional or operational need and which applies the effects management hierarchy.

##### Royal Forest & Bird [Submitter 165]

208 Ms Downing<sup>88</sup> considers that Policy 40 needs to be consistent with Policy 18(c) in relation to obligations to coastal wetlands, on the basis that coastal wetlands are encompassed by the NPS-FM application to all freshwater and the receiving environment, and that the NPS-FM directs integrated management in giving effect to Te Mana o te Wai. Ms Downing also identifies that reference to coastal wetlands gives effect to the NZCPS.

##### Fish and Game [Submitter 147]

209 Ms Campbell<sup>89</sup> does not support the use of the phrase ‘to the extent practicable’ in clause (o) and whilst she notes this is used in Policy 7 of the NPS-FM, she considers this phrasing is not supported by constraints on the interpretation in clause (o) and could lead to

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<sup>86</sup> HS5 S100, Meridian, Foster, paragraphs 3.7 – 3.10

<sup>87</sup> HS5 S30, PCC, McDonnell, paragraph 75

<sup>88</sup> HS5 S165, Royal Forest & Bird, Downing, paragraphs 45-49

<sup>89</sup> HS5 S147, Fish & Game, Campbell, paragraphs 43-50

inappropriate outcomes. Ms Campbell therefore seeks clause (o) is amended to relate to an activity's functional need and application of the effects management hierarchy which is consistent with other language used in the RPS.

#### Winstone Aggregates [Submitter 162]

- 210 Ms Clarke<sup>90</sup> considers that the direction of protecting and enhancing, rather than maintaining and improving, of all waterbodies in the region is inconsistent with Policy 5 and Policy 8 of the NPS-FM and is not supported by evidence requiring this direction or sufficient section 32 analysis. Ms Clarke seeks that protect and enhance is replaced with maintain and improve in Objective 12.
- 211 Ms Clarke<sup>91</sup> disagrees with the proposed change to clause (f) as it identifies specific activities where it is assumed effects from those activities will occur and changes the direction of the policy clause which was previously focused on managing effects on unconfined aquifers and recharge areas. Ms Clarke considers providing clarification should be situated in the explanation text. Ms Clarke also seeks that additional clauses are included in Policy 40 to appropriately link to Sections 3.22(1) and 3.24(1) of the NPS-FM.
- 212 Ms Clarke<sup>92</sup> also seeks that Policy 40 and any other freshwater provisions removes reference to maintain/maintained/maintenance due to impracticalities of applying the defined term of 'maintaining' in the RPS.

#### Analysis and recommendations

- 213 I agree with Ms Foster and Mr McDonnell that clause (n) of Policy 40 as notified goes beyond what is anticipated in the NPS-FM and the National Policy Statement for Indigenous Biodiversity (NPS-IB) in terms of requiring the avoidance of all effects, and that a consenting pathway should be provided. I concur with Ms Foster that the clause requires further qualification, however I consider Ms Foster's suggested amendment to only include reference to the effects management hierarchy is too broad in my opinion. I prefer the suggested amendments put forward by Mr McDonnell which includes reference to there being a functional need for the activity in that particular location, in addition to the application of the effects management hierarchy.

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<sup>90</sup> HS5 S162, Winstone, Clarke, section 6

<sup>91</sup> HS5 S162, Winstone, Clarke, section 9

<sup>92</sup> HS5 S162, Winstone, Clarke, section 7

- 214 I disagree with the amendments sought by Ms Downing, that Policy 40 should include obligations in relation to coastal wetlands. While I agree that the NPS-FM applies to receiving environments, I do not agree that the NPS-FM applies to the coastal environment in its entirety. I refer to paragraph 200 of this statement, where I respond to Ms Heppelthwaite's evidence in relation to Policy 18(c), and my recommended deletion of reference to 'coastal wetlands'.
- 215 I agree with Ms Campbell that clause (o) requires further amendment to provide a consenting pathway for activities within natural inland wetlands, as anticipated by national direction. I disagree with Mr McDonnell's suggested amendments for the same reasons I have set out in paragraph 195 and I do not consider an amendment to Policy 40 is required for urban development.
- 216 As set out in paragraphs, 196 and 197 I disagree with Ms Clarke that Policy 40 should be amended to be consistent with clauses 3.22(1) and 3.24(1) of the NPS-FM.
- 217 I agree with Ms Clarke that there is confusion created in Policy 40 because the term 'maintain' has been italicised, suggesting that this term is defined. Proposed Change 1 does define this term, but only as it relates to the indigenous biodiversity provisions. As such, I recommend amendments so that the term is not italicised, and that where this term is used in Policy 40, the term has its ordinary meaning.

#### Section 32AA Evaluation

- 218 In accordance with Section 32AA, I consider the amendments I have recommended to Policy 40 are appropriate as they more appropriately give effect to the NPS-FM and support the efficient and effective implementation of the policy. I note there is a low to moderate environmental and cultural cost associated with the lesser policy direction to 'maintain or improve' rather than 'protect and enhance'. However, I consider there will still be environmental benefits as a result, as there is still a requirement to improve the health and wellbeing of waterbodies and freshwater ecosystem health for waterbodies that are degraded and to ensure that waterbodies that are not currently degraded are retained as such.

## OBJECTIVE 13 FRESHWATER ANTICIPATED ENVIRONMENTAL RESULTS

### Fish and Game [Submitter 147]

219 Ms Campbell<sup>93</sup> does not consider that the proposed amendments to AER1 reflect the reasoning in the s42a report, and that it is not clear if the direction relates to maintaining or improving macro-invertebrate diversity and sensitivity macroinvertebrate taxa abundance. Ms Campbell considers the wording should align with Policy 5 of the NPS-FM and therefore recommends amendments to this effect.

220 Ms Campbell<sup>94</sup> also recommends amendments to AER2 to align with higher order policy by reflecting the direction of the NPS-FM to protect the habitat of indigenous species and trout and salmon.

### Analysis and recommendations

221 I agree with Ms Campbell that there is a discrepancy between the analysis in my section 42A report and subsequent recommendations in relation to Objective 13 AER1. I note that the notified version of the AER replaced 'maintaining' with 'improving' and through my section 42A analysis I suggested reinstating 'maintaining' and including reference to 'improving' where possible. I agree with Ms Campbell's assessment of Policy 5 of the NPS-FM, that the direction is to improve the health and wellbeing of degraded waterbodies and freshwater ecosystems and to maintain the health and wellbeing of all other waterbodies and freshwater ecosystems. While I generally agree with the drafting provided by Ms Campbell, I consider a minor grammatical change is required so that the new text reads 'improved where degraded, or otherwise maintained'. On this basis I recommend Objective 13 AER 1 is amended accordingly.

222 I also agree with Ms Campbell's suggested amendments to Objective 13 AER4. I consider these amendments provide greater consistency with the NPS-FM in relation to protecting fish *habitat* rather than *populations*, as Ms Campbell points out.

### Section 32AA Evaluation

223 In accordance with section 32AA, I consider my recommended amendments to the Objective 13 Freshwater Anticipated Environmental Results are appropriate because the amendments provide drafting clarity which will support effective implementation. I

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<sup>93</sup> HS5 S147, Fish & Game, Campbell, paragraphs 62-66

<sup>94</sup> HS5 S147, Fish & Game, Campbell, paragraphs 67-69

consider these amendments will have moderate environmental benefits by ensuring that fish habitats are appropriately protected. I do not consider there are any costs associated with these amendments.

## DEFINITIONS

### Porirua City Council [Submitter 30]

224 Mr McDonnell<sup>95</sup> does not support the definition of 'hydraulic neutrality' requiring a comparison of run-off to the undeveloped state, on the basis that it would be complicated to apply this approach for brownfield sites to establish the undeveloped state, and suggests the definition should refer to the land prior to development in question. Mr McDonnell suggests that the definition of 'hydraulic neutrality' in the Porirua Proposed District Plan is preferable.

### Wellington City Council [Submitter 140]

225 Mr Jeffries and Ms Cook<sup>96</sup> agree that 'hydrological control' should be defined, but consider the proposed definition does not demonstrate how stormwater runoff can be managed by hydrological controls, but instead describes discharges, and therefore seek the definition is amended.

### Peka Peka Farms Limited [Submitter 118]

226 Mr Lewandowski seeks amendments to the definition of hydraulic neutrality to remove reference to an undeveloped state and focus on stormwater flows and volumes prior to development, which he states reflects existing practice.

### Wellington Water [Submitter 113]

227 Ms Lockyer<sup>97</sup> seeks refinements to the proposed definition of 'hydraulic neutrality'. She considers that as the definition does not include a reference to a magnitude storm event, then there is no limit to the required storage definition. Ms Lockyer also does not support the inclusion of stormwater volumes within the definition, on the basis that this requires all runoff to be retained on site which could be prohibitive to development and reduces the ability to develop areas and meet growth demand.

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<sup>95</sup> HS5 S30, PCC, McDonnell, paragraph 41 -42

<sup>96</sup> HS5 S140, WCC, Jeffries and Cook, paragraph 27

<sup>97</sup> HS5 S113, Wellington Water, Lockyer, paragraphs 14-25

228 Ms Lockyer<sup>98</sup> seeks amendments to the definition of ‘undeveloped state’ to improve the hydrological outcomes and freshwater ecosystem health.

HortNZ [Submitter 128]

229 Ms Levenson<sup>99</sup> seeks amendments to the definition of ‘health needs of people’ to include water used to enable the supply of fresh fruit and vegetables within the second priority obligation of Te Mana o te Wai.

Winstone Aggregates [Submitter 162]

230 Ms Clarke<sup>100</sup> considers that the definitions of ‘aquatic compensation’ and ‘aquatic offset’ from the NPS-FM should be included in the RPS. Ms Clarke also highlights an error in the wording of the definition for vegetation clearance, and recommends corrections.

Analysis and recommendations

*Hydraulic neutrality*

231 In relation to the definition of hydraulic neutrality, I disagree with Mr McDonnell and Mr Lewandowski regarding the reference to ‘undeveloped state’ for the same reasons I have outlined at paragraph 56.

232 In relation to Ms Lockyer’s suggested amendments to the definition of ‘hydraulic neutrality’, I rely on the rebuttal evidence of Mr Stu Farrant who agrees with Ms Lockyer’s suggested deletion of reference to ‘volumes’ and the inclusion of ‘...in the 10% AEP and 1% AEP modelled design rainfall events including the predicted impacts of climate change as a minimum’<sup>101</sup>. I recommend that these amendments are made to the definition.

*Hydrological control*

233 In relation to the definition of ‘hydrological control’, I disagree with Mr Jeffries and Ms Cook that the definition requires amendment to include reference to on-site management of stormwater. In this regard, I rely on the rebuttal evidence of Mr Stu Farrant where he explains that these amendments would remove certainty about what is expected from the

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<sup>98</sup> HS5 S113, Wellington Water, Lockyer, paragraph 31

<sup>99</sup> HS5 S128, HortNZ, Levenson, paragraph 24

<sup>100</sup> HS5 S162, Winstone, Clarke, section 7

<sup>101</sup> Rebuttal evidence of Mr Stu Farrant, 13 November 2023.

application of hydrological control and also create uncertainty for regulators and applicants<sup>102</sup>.

*Health needs of people*

234 I disagree with the relief sought by Ms Levenson to amend the definition of 'health needs of people' to include water used for fresh fruit and vegetables. My reasons for this are outlined in paragraphs 171-172.

*Effects management hierarchy*

235 I agree with Ms Clarke that the definitions of 'aquatic compensation' and 'aquatic offset' should be included in the RPS to support the definition of 'effects management hierarchy'. I recommend that these definitions are added to Change 1.

*Vegetation clearance*

236 I agree with Ms Clarke that the definition of 'vegetation clearance' requires amendment to change the 'and' at the end of each clause to 'or'. For consistency with other provisions in the RPS, I consider that this is not required at the end of every clause, but can instead be included at the end of clause (c), to the same effect as that proposed by Ms Clarke.

Section 32AA Evaluation

237 In accordance with Section 32AA, I consider the amendments I am recommending to the definitions are appropriate as they improve the interpretation and implementation of the RPS, and in doing so will enhance the effectiveness and efficiency of the provisions they relate to. I do not consider there are any costs associated with these amendments.

**DATE:**

**13 NOVEMBER 2023**

**KATE LOUISE PASCALL**

**SENIOR PLANNER, GHD**

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<sup>102</sup> Rebuttal Evidence of Mr Stu Farrant, 13 November 2023.