

**BEFORE INDEPENDENT HEARING COMMISSIONERS AT
WELLINGTON**

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER the hearing of submissions on Proposed
Change 1 to the Regional Policy
Statement for the Wellington Region

**STATEMENT OF EVIDENCE OF MACIEJ WIKTOR LEWANDOWSKI ON BEHALF
OF PEKA PEKA FARM LIMITED (SUBMITTER 118)**

HEARING STREAM 5 – FRESHWATER / TE MANA O TE WAI

3 NOVEMBER 2023

PLANNING

1. INTRODUCTION

1.1 My name is Maciej (Mitch) Wiktor Lewandowski. I am a Resource Management Consultant and Director of Building Block Planning Ltd, a Wellington based planning and resource management consultancy which I established in April 2022.

Qualifications and Experience

1.2 I hold a Bachelor of Resource Studies from Lincoln University, a Master of Resource and Environmental Planning from Massey University, and a Post Graduate Diploma in Management from Massey University. I am a Full

Member of the New Zealand Planning Institute and accredited resource management commissioner.

1.3 I have 21 years' professional experience. In my current role I assist a range of private and public sector clients, including Peka Peka Farm Ltd (“PPFL”) across a range of resource management matters. My recent experience also includes assisting the Wellington City Council in the development of the Proposed Wellington City District Plan.

1.4 Prior to my current role I was employed by Urban Perspectives Limited as a Resource Management Consultant for a period of 3 years. Prior to that role, I was employed by the Wellington City Council for a period of 5 years, as Principal Advisor Planning within the Council's District Plan team. I was formerly also the District Plan Manager at Upper Hutt City Council.

Involvement in Peka Peka Farm Ltd's submission to Proposed Change 1

1.5 I reviewed Proposed Change 1 (“PC1”) following its notification in order to provide PPFL with advice as to its contents, and subsequently prepared both PPFL's submission and further submission to PC1.

1.6 I presented evidence on behalf of PPFL for Hearing Stream 3 – Climate Change and Hearing Stream 4 – Urban Development.

Code of conduct

1.7 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023 and that I agree to comply with it. I confirm that I have considered all the material facts that I am aware of that might alter or detract from the opinions that I express, and that this evidence is within my area of expertise, except where I state that I am relying on the evidence of another person.

2. SCOPE OF EVIDENCE

2.1 PPFL's submission in respect of PC1 was concerned with ensuring that PC1 did not have the effect of unduly restricting the competitive operation of land and development markets by prohibitively or unduly restricting appropriate greenfield development. In respect of the freshwater provisions, the PPFL submission was focussed on the workability of the provisions and their drafting.

2.2 Of relevance to this hearing stream, the following provisions were addressed by PPFL's submission:

- (a) Policy 14
- (b) Policy FW.3
- (c) Policy 42

2.3 I address these submission points, and the response to them provided through the Council Section 42A ("**s42A**") report. I also address the following new provisions introduced through the s42A report that are of relevance to PPFL:

- (a) Definition of hydraulic neutrality;
- (b) Policy FW.X - Hydrological Control for urban development

2.4 In preparing this evidence I have read:

- (a) The s42A report and associated appendices; and
- (b) The section 32 evaluation prepared for PC1.

3. CONTEXT

Peka Peka Farm Limited

3.1 PPFL owns a 138.7 hectare landholding at Peka Peka. The land is zoned for rural purposes but it's utility for productive use is limited. The land is adjacent to the existing Peka Peka urban area. The existing urban area at Peka Peka is situated slightly to the north of the main urban area of Waikanae and is presently relatively poorly serviced by infrastructure and transport.



Figure 1. The Peka Peka Farm Ltd landholding.

- 3.2 PPFL is investigating future development opportunities for the site, including urban development. The site presents a range of development opportunities, as well as significant opportunities for ecological restoration including of large wetland areas and stream enhancement. There are also opportunities to enhance mana whenua values on the site, and PPFL has been actively engaging with Ātiawa ki Whakarongotai and Ngāti Raukawa about its future plans and how these plans could also assist to achieve some of the cultural aspirations of these entities.
- 3.3 Notwithstanding that it is a greenfields site, development of the PPFL land would assist to consolidate the urban area at Peka Peka, provide critical mass to enable local services and transport links to establish in order to service both the existing urban area at Peka Peka as well as the proposed development area, and act as a catalyst for additional infrastructure that could also enable densification of the existing urban area. It would also provide an elevated and

resilient area of urban zoned land that could be utilised to assist with managed retreat from natural hazards (such as inundation), should that be necessary in the future.

4. FRESHWATER PROVISIONS

Policy 14

4.1 Policy 14, as notified, read as follows:

Policy 14: Urban development effects on freshwater and the coastal marine area – regional plans

Regional plan objectives, policies, and methods including rules, must give effect to Te Mana o te Wai and in doing so must:

(a) Enable the active involvement of mana whenua / tangata whenua in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for;

(b) Adopt an integrated approach, ki uta ki tai, that recognises the interconnectedness of the whole environment to determine the location and form of urban development;

(c) Require the control of both land use and discharge effects from the use and development of land on freshwater and the coastal marine area;

(d) Achieve the target attribute states set for the catchment;

(e) Require the development, including stormwater discharges, earthworks and vegetation clearance meet any limits set in a regional plan;

(f) Require that urban development is designed and constructed using the principles of Water Sensitive Urban Design;

(g) Require that urban development located and designed to minimise the extent and volume of earthworks and to follow, to the extent practicable, existing land contours;

(h) Require that urban development is located and designed to protect and enhance gully heads, rivers, lakes, wetlands, springs, riparian margins and estuaries;

(i) Require riparian buffers for all waterbodies and avoid piping of rivers;

(j) Require hydrological controls to avoid adverse effects of runoff quantity (flows and volumes) and maintain, to the extent practicable, natural stream flows;

(k) Require stormwater quality management that will minimise the generation of contaminants, and maximise, to the extent practicable, the removal of contaminants from stormwater; and

(l) Identify and map rivers and wetlands.

Explanation

Policy 14 manages the effects of urban development, including the effects of contamination in stormwater, earthworks and vegetation clearance from new and existing subdivision and development to halt and reverse the degradation of freshwater and coastal water.

4.2 The PPFL highlighted matters (f), (g) and (h) and noted that without appropriate qualification, these matters may be outside of the scope of a regional plan. The submission also sought to remove unnecessary duplication from the policy.

4.3 As now proposed through the s42A report, Policy 14 reads as follows:

Policy 14: Urban development effects on freshwater and ~~the coastal marine area~~ receiving environments – regional plans

Regional plans shall give effect to Te Mana o te Wai and include objectives, policies, rules and methods for urban development including rules, must that give effect to Te Mana o te Wai and in doing so must:

(a) Enable the active involvement of mana whenua / tangata whenua in freshwater management (including decision-making processes); ~~and~~

(ab) Identify and provide for Māori freshwater values ~~are identified and provided for;~~

(b) Adopt an integrated approach, ki uta ki tai, that recognises the interconnectedness of the whole environment to determine the location and form of urban development;

(c) ~~Require the e~~Control of both land use and discharge effects from the ~~use and development of land~~ urban development on freshwater and ~~the coastal marine area~~ receiving environments;

(d) Identify how to Achieve the target attribute states and environmental flows and levels set for the catchment;

(e) Require ~~the~~ urban development, including stormwater discharges, ~~earthworks and vegetation clearance~~ to meet any limits set in a regional plan;

(f) Require ~~that~~ urban development to incorporate water sensitive urban design techniques to avoid adverse effects of contaminants on waterbodies from the use and development of the land is designed and constructed using the principles of Water Sensitive Urban Design;

~~(g) Require that urban development located and designed to minimise the extent and volume of earthworks and to follow, to the extent practicable, existing land contours;~~

(h) Require that ~~urban development~~ lot boundaries and new roads for are is appropriately located ~~and designed~~ to protect and enhance the health and wellbeing of adjacent gully heads, rivers, lakes, wetlands, springs, riparian margins and estuaries including the natural form and flow of the waterbody;

(i) Require urban development adjacent to natural waterbodies to include riparian buffers; ~~for all waterbodies and avoid piping of rivers;~~

(ia) avoid the piping of rivers for urban development unless:

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

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

~~(j) Require hydrological controls in urban development to avoid adverse effects of runoff quantity (flows and volumes) and maintain, to the extent practicable, natural stream flows;~~

(k) Require urban development to adopt stormwater quality management measures that will minimise the generation of contaminants, and maximise, to the extent practicable, the removal of contaminants from stormwater; ~~and~~

(l) Identify and map rivers and wetlands within the area proposed for urban development in partnership with mana whenua/tangata whenua and affected landowners;

(m) require that urban development avoids the loss of extent or values of natural inland wetlands; and

(n) promoting the daylighting of streams.

Explanation

Policy 14 manages the effects of urban development, including the effects of contamination in stormwater, earthworks and

vegetation clearance from new and existing subdivision and development to halt and reverse the degradation of freshwater and ~~coastal water~~ in receiving environments.

- 4.4 Policy 14 is directive to regional plans and therefore the matters specified by the policy must be read in that context. I am comfortable with matters (a) to (e) as now proposed. However, matter (f) is problematic in its ability to be given effect to by a regional plan. As drafted, and with reference to the definition of urban development, the matter would apply to all urban development regardless of whether it was a large greenfield development or a solitary infill house.
- 4.5 The purpose of matter (f) is appropriate in its wording, but it is not appropriate as part of Policy 14. Urban development is fundamentally controlled through district plans. It could therefore be moved into Policy FW.3 for instance which is directive to district plans (noting that policy FW.3 contains a similar matter) but it is not appropriate in Policy 14 as presently worded and should therefore be deleted.
- 4.6 I support the deletion of matter (g) as now proposed through the s42A report.
- 4.7 Matter (h) raises similar issues as matter (f). A regional plan has no control over lot boundaries or the location of new roads for example. Again, I do not have concerns over the content of this matter, but it is a matter more appropriately directed to a district plan, and not a regional plan. I note that Policy FW.3 again contains similar wording and that Policy FW.3 is directed at district plans. I therefore consider that matter (h) as proposed should be deleted. I also note a minor typographical error in the recommended version of matter (h) being the inclusion of the word 'for' after "Require that lot boundaries and new roads for are appropriately..."
- 4.8 A similar matter arises for matters (i) and (k) which I consider would be more appropriately addressed through a district plan.
- 4.9 Matter (l) requires the mapping of rivers and wetlands within "the area proposed for urban development." The s42A report confirms that the intention of this matter is to apply to the specific urban development area, however I am unsure how this will be given effect to in practice. It would by necessity be required to apply to all potential urban development. The drafting of this matter could be better clarified.

- 4.10 In respect of matter (m), I note that the proposed wording – require that urban development avoids the loss of extent or values of natural inland wetlands – is similar to the wording of Policy 6 of the NPS-FM:

Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.

- 4.11 Clause 3.22 of the NPS-FM requires that every regional council include specific policy wording in its regional plan, that seeks to avoid the loss of natural inland wetlands unless a range of exceptions are met. Greater Wellington Regional Council has yet to give effect to that aspect of the NPS-FM.

- 4.12 While that direction is to a regional plan, and not a regional policy statement, in my view a change to matter (m) could be made that mirrors the wording proposed by the s42A author to matter (ia). My suggested wording is as follows:

(m) require that urban development avoids the loss of extent or values of natural inland wetlands, unless:

(i) there is a functional need for the activity in that location, or the activity is otherwise identified in the National Policy Statement for Freshwater Management; and

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

- 4.13 In my view this change is important. The NES-FW provides for certain activities related to urban development within and around wetlands as a restricted discretionary activity. However, the NES-FW also allows for a more restrictive activity status to be applied. Presently, such activities are provided for in the Natural Resources Plan as a non-complying activity. This may or may not change when the regional council gives effect to Clause 3.22 of the NPS-FM.

- 4.14 In section 104D terms, the policy gateway will be informed through the change required by the NPS-FM to the regional plan. However, if the higher order RPS contains matter (m) as presently drafted, this creates an inconsistency. I therefore consider that it is appropriate for the RPS to reference the direction of the NPS-FM. An equivalent change to Policy 40(n) and (p) would also be required.

- 4.15 I also note that the definition of the effects management hierarchy, as proposed through the s42A report, includes reference to natural inland wetlands, notwithstanding the avoid policy position of matter (m).

Policy FW.3

- 4.16 The PPFL submission was not concerned with the intent of Policy FW.3 but considered that the policy was cumbersome and that its drafting could be improved including through the removal of duplication.
- 4.17 As now proposed through the s42A report, Policy FW.3 is worded as follows:

Policy FW.3 Urban development effects on freshwater and ~~the coastal marine area~~ receiving environments – district plans

District plans shall include objectives, policies, and methods including rules for urban development, that give effect to Te Mana o te Wai and section 3.5(4) of the NPS-FM, and in doing so must:

(a) Partner with mana whenua / tangata whenua in the preparation of district plans;

~~(b) Protect and enhance Māori freshwater values, including mahinga kai;~~

(c) Partner with ~~Provide for~~ mana whenua / tangata whenua and recognise and provide for their relationship with their culture, land, water, wāhi tapu and other taonga;

(d) Incorporate the use of mātauranga Māori to ensure the effects of urban development are considered appropriately;

(e) Adopt an integrated approach, ki uta ki tai, that recognises the interconnectedness of the whole environment to determine the location and form of urban development;

(f) Integrate planning and design of stormwater management to achieve multiple improved outcomes – amenity values, recreational, cultural, ecological, climate, vegetation retention;

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

~~(h) Consider the use and development of land in relation to target attribute states and any limits set in a regional plan;~~

(i) Require that Water Sensitive Urban Design principles and methods are applied during consideration of subdivision,

~~including the extent of impervious surfaces and in the control of stormwater infrastructure;~~

~~(ia) Require urban development to be designed, constructed and maintained to achieve hydraulic neutrality.~~

~~(j) Require that urban development is located and designed to minimise the extent and volume of earthworks and to follow, to the extent practicable, existing land contours;~~

(k) Require that urban development is located and designed to protect and enhance ~~gully heads~~, rivers, lakes, wetlands, springs, riparian margins and estuaries;

~~(l) Require riparian buffers for all waterbodies and avoid piping of rivers;~~

~~(m) Require hydrological controls to avoid adverse effects of runoff quantity (flows and volumes) and maintain, to the extent practicable, natural stream flows;~~

~~(n) Require efficient use of water;~~

(o) Manage land use and development in a way that will minimise the generation of contaminants, including in relation to the choice of building materials, ~~and the extent of impervious surfaces;~~

~~(p) Consider daylighting of streams, where practicable; and~~

~~(q) Consider the effects of land use and development on drinking water sources.~~

Explanation

Policy FW.3 requires district plans to manage the effects of urban development on freshwater and ~~the coastal marine area~~ receiving environments.

4.18 Having considered the policy as now proposed, I support the overall reduction in the length of the policy. The number of matters could in my view be further reduced by combining matters (a) and (c) as follows:

(a) Partner with mana whenua / tangata whenua in the preparation of district plans and in recognising and providing for their relationship with their culture, land, water, wāhi tapu and other taonga;

4.19 The s42A now recommends the addition of matter (ia) that requires hydraulic neutrality to be achieved. A new definition of hydraulic neutrality is also proposed. This definition states (my emphasis):

Hydraulic neutrality: managing stormwater runoff from subdivision, use and development through either on-site disposal or storage, so that peak stormwater flows and volumes are released from the site at a rate that does not exceed the modelled peak flows and volumes from the site in an undeveloped state.

- 4.20 While hydraulic neutrality is not a new concept, it is currently applied as a concept based on the pre-development state of the site. For greenfield, this is clearly undeveloped, and for brownfield, this accounts for existing development. The proposed definition, at the RPS level, could have significant implications, especially in more dense areas. I am concerned that this change is being made through a s42A report and without due consideration of the potential effects of that change. I suggest the definition be amended to reflect existing practice by making the following amendment:

Hydraulic neutrality: managing stormwater runoff from subdivision, use and development through either on-site disposal or storage, so that peak stormwater flows and volumes are released from the site at a rate that does not exceed the modelled peak flows and volumes from the site prior to development~~in an undeveloped state.~~

- 4.21 An equivalent change should also be made to proposed 'Policy FW.X Hydrological controls for urban development'.
- 4.22 Subject to my comments in relation to the matters contained in Policy 14 that may more appropriately be located within Policy FW.3, I am comfortable with the balance of Policy FW.3 as now proposed.

Policy 42

- 4.23 Policy 42 is a consideration policy relevant to regional consents. Similar to Policy FW.3, the PPFL submission in respect of Policy 42 was concerned with improving the clarity of the policy including through the removal of unnecessary duplication.
- 4.24 As now proposed through the s42A report, Policy 42 is worded as follows:

Policy 42 – Effects on freshwater and the coastal marine area receiving environments from urban development ~~Minimising contamination in stormwater from development~~ – consideration

When considering an application for a regional resource consent that relates to urban development the regional council must give effect to Te Mana o te Wai and in doing so must have ~~particular~~ regard to:

(a) Adopting an integrated approach, ki uta ki tai, that recognises the interconnectedness of the whole environment to determine the location and form of urban development;

(b) Protecting and enhancing mana whenua /tangata whenua freshwater values, including mahinga kai, in partnership with mana whenua/tangata whenua;

(c) Providing for mana whenua/tangata whenua and their relationship with their culture, land, water, wāhi tapu and other taonga;

(d) Incorporating the use of mātauranga Māori to ensure the effects of urban development are considered appropriately;

(e) The effects of use and development of land on water, including the effects on receiving environments (both freshwater and the coastal marine area);

(f) The target attribute states set for the catchment;

(g) The extent to which ~~Require that~~ the urban development, including stormwater discharges, ~~earthworks and vegetation clearance~~ meets any limits set in a regional plan and the effect of any exceedances;

(h) The extent to which ~~Requiring that~~ urban development is ~~located and designed and constructed using the principles~~ incorporates Water Sensitive Urban Design techniques to avoid adverse effects of contaminants on water bodies from the use and development of the land;

(i) ~~Require that urban development located and designed to~~ minimise the extent and volume of earthworks and to follow, to the extent practicable, existing land contours;

(j) ~~Require that urban development is located and designed to~~ protect and enhance gully heads, rivers, lakes, wetlands, springs, riparian margins and estuaries; The extent to which the location of lot boundaries and new roads protects and enhances the health and wellbeing of adjacent rivers, lakes, wetlands, springs, riparian margins, and receiving environments, including the natural form and flow of the waterbody.

(k) The extent to which ~~Require~~ hydrological controls ~~to avoid~~ minimises adverse effects of runoff quantity (flows and volumes) ~~and maintain, to the extent practicable,~~ on natural stream flows;

(l) The extent to which ~~Requiring~~ urban development incorporates stormwater quality management that will minimise the generation of contaminants, and maximises, to the extent practicable, the removal of contaminants from stormwater;

(m) ~~Requiring~~ The provision of riparian buffers for urban development adjacent to natural waterbodies ~~for all waterbodies and avoid piping of rivers;~~

(ma) The extent to which the development avoids piping of rivers and whether there is a functional need for the activity in that location;

(n) The practicability of ~~D~~daylighting rivers within the area proposed for urban development area, where practicable;

(o) The extent to which rivers and wetlands within the area proposed for urban development have been mapped, and whether the scale of the urban development necessitates such mapping ~~Mapping of rivers and wetlands;~~

(p) Efficient end use of water and alternate water supplies for non-potable use;

(q) ~~P~~rotecting drinking water sources from inappropriate use and development; and

(r) ~~A~~pplying a catchment an integrated management approach to wastewater networks including partnering with mana whenua as kaitiaki and allowance for appropriately designed overflow points where necessary to support growth and consideration of different approaches to wastewater management to resolve overflow.

4.25 I am broadly comfortable with the proposed wording of Policy 42. I support the changes proposed to a number of the listed matters that remove reference to 'require' or 'requiring'.

4.26 In respect of matter (j), and accepting that this is a consideration policy, I consider that reference to the "location of lot boundaries and and new roads" should be amended to a more general reference to 'urban development'. This is consistent with the concern I have outlined above in respect of Policy 14. My suggested wording is as follows:

(j) The extent to which the urban development ~~location of lot boundaries and new roads~~ protects and enhances the health and wellbeing of adjacent rivers, lakes, wetlands, springs, riparian margins, and receiving environments, including the natural form and flow of the waterbody.

4.27 I am also unclear on the purpose of matter (o), and what purpose this matter lends to the consideration of a resource consent application. The mapping of rivers and wetlands is required by Policy 14 and I do not see the purpose of matter (o) in this consideration policy. Resultingly, I consider that it should be deleted.

5. CONCLUSION

- 5.1 In my opinion the amendments recommended in my evidence will improve the workability of the proposed provisions, and will appropriately recognise the direction of the NPS-FM in respect of wetlands. As a result, the amendments proposed will serve to achieve the purpose of the Resource Management Act 1991.

A handwritten signature in blue ink, appearing to read 'ML', with a horizontal line extending to the right.

Mitch Lewandowski

3 November 2023