

**BEFORE THE HEARING PANEL**

**IN THE MATTER OF** the Resource Management Act 1991 (the Act)

**AND**

**IN THE MATTER OF** submissions on Proposed Change 1 to the  
Regional Policy Statement for the Wellington  
Region under Part 4 of Schedule 1 of the Act

**AND**

**IN THE MATTER OF** the report on the topic of *Freshwater/ Te Mana  
o te Wai* pursuant to Section 42A of the Act on  
behalf of Wellington Regional Council for RPS  
Proposed Change 1 Hearing Stream 5

**BETWEEN** **WELLINGTON REGIONAL COUNCIL**

**AND** **WAIRARAPA FEDERATED FARMERS**

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**STATEMENT OF EVIDENCE OF NATASHA BERKETT ON BEHALF OF WAIRARAPA  
FEDERATED FARMERS**

**(PLANNING)**

**3 November 2023**

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## INTRODUCTION

1. My full name is Natasha Maree Berkett. I am a Planner for Federated Farmers of New Zealand (Inc). Federated Farmers of New Zealand is an organisation funded from voluntary membership to represent rural and farming businesses throughout New Zealand.
2. I hold a Bachelor of Agricultural Science (Hons) from Lincoln University and a Master of Environmental Planning (Hons) from Massey University. I have 18 years' experience in resource management planning in New Zealand in a variety of public and private sector roles, including working on a range of rural and farming issues. I am a Member of the New Zealand Planning Institute.
3. I am presenting evidence on aspects of the Proposed Plan Change 1 to the Regional Policy Statement ('RPS') (Hearing Stream 5) as a Planner on behalf of Wairarapa Federated Farmers ('WFF'). Wairarapa Federated Farmers is a branch of Federated Farmers of New Zealand (Inc).

## CODE OF CONDUCT

4. I have read, and am familiar with, the Environment Court's Practice Note 2023 for expert witnesses. Other than where I state that I am relying on the evidence of another person or publication, my evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

## SCOPE OF EVIDENCE

5. I address aspects of the following reports prepared under Section 42A ('Section 42A report') of the Resource Management Act 1991 ('the Act') on behalf of Wellington Regional Council ('WRC' or 'the Council') for Hearing Stream 5:
  - Report by Kate Pascall subtitled *Topic: Freshwater and Te Mana o te Wai Process: Freshwater Planning Process* dated 20 October 2023.<sup>1</sup>

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<sup>1</sup> [RPS Change 1 - S42A Report Freshwater Te Mana o te Wai - Final.docx \(gw.govt.nz\)](#)  
(Accessed 24 October 2023)

- Appendix 1: Recommended Amendments to Provisions – Hearing Stream 5 – Freshwater and Te Mana o te Wai<sup>2</sup>

6. I focus solely on aspects of Ms Pascall's recommendations concerning:

- Issue 4 (Freshwater Visions),
- Issue 5 (objective 12 and Te Mana o te Wai Statements),
- Issue 6: Policy 12 - Management of water bodies – regional plans
- Issue 7: Policy 13 – Allocation of water
- Issue 9: Earthworks and vegetation disturbance (Policy 15<sup>3</sup>)
- Issue 10: Managing water takes and use (Policy 17, Policy 44<sup>4</sup>)
- Issue 20: Method 34: Preparing a regional water supply strategy

7. Any omission to specifically respond to matters contained in the 42A report should not be interpreted as agreement with such matters. My responses are set out below for some of the Issues identified in Ms Pascall's report.

8. I have read the following documents:

- The Hearing Report and Appendix pursuant to section 42A of the Act mentioned above
- The relevant sections of RPS PC1 and accompanying reports and memoranda submitted under Section 32 of the Act
- Legal submissions on behalf of Wellington Regional Council regarding Variation 1 to Change 1 of the RPS (date 27 October 2023)
- The National Planning Standards 2019
- The National Policy Statement Freshwater Management 2020 (NPS-FM) amended 2023
- Wairarapa Federated Farmers Submission on RPS PC1.<sup>5</sup>

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<sup>2</sup> [Recommended Amendments.docx \(gw.govt.nz\)](#) (Accessed 24 October 2023)

<sup>3</sup> I provide no comment on Policy 41

<sup>4</sup> I provide no comment in Method 48 under Issue 10

<sup>5</sup> [S163\\_Wairarapa-Federated-Farmers.pdf \(gw.govt.nz\)](#) (Accessed 24 October 2023)

## RESPONSE TO SECTION 42A REPORT

9. Below I comment on specific issues (numbered in accordance with the 42A report at section 3.0.)

### Issue 4 – Freshwater Visions

10. Under clause 3.2(2)(b) of the NPS-FM, WRC must engage with communities and tangata whenua to identify long-term visions, environmental outcomes and other elements of the National Objectives Framework (NOF). The long-term visions must be included as objectives in the RPS (clause 3.3(1)). The proposed RPS, as notified, did not contain long-term visions. However, the Council is now seeking, through its own submission on PC1, the inclusion of two freshwater vision objectives, one for Whaitua Te Whanganui-a-Tara and one for Te Awarua-o-Porirua Whaitua. (at para. 129).
11. The Council has also prepared Variation 1 to Proposed Change 1 of the RPS which includes freshwater vision objectives for Te Awarua-o-Porirua Whaitua and Te Whanganui-a-Tara Whaitua. The submission period for Variation 1 closes 13 November 2023.
12. Given that one of the stated objectives of the proposed RPS is to give effect to the NPS-FM, it seems to be 'cart before horse' to notify the RPS without the vision statement objectives. Ms Pascall notes, at para. 136, that proposed changes to the Natural Resources Plan (NRP) are reliant on freshwater vision objectives in the RPS.
13. Ms Pascall's recommendation is to address the freshwater vision objectives through the Variation 1 submission and hearings process, rather than the PC1 hearings process (para. 139).
14. Further complicating the matter, is the lack of clarity around Freshwater Management Units (FMUs). At para. 217, Ms Pascall notes the whaitua 'super-catchments' represent FMUs. She then states that the RPS requires policy direction that sets out "what the FMUs are for the region" (para.218), which I take to mean that the FMUs have only been partially identified (at a whaitua level) and there is more work to be done to define them.
15. Returning to the stated objective of the proposed RPS, it is hard to see how the NPS-FM is given effect to when there is still further work to be done to identify the FMUs in the region, and to develop their associated long-term visions.

16. I agree with Rangitāne that the FMUs need to be identified in the RPS as a first step, before the development of long-term visions, and that this should occur before the NRP is changed and notified. There is a logical process to go through to develop both the RPS and the NRP, so that they give effect to the NPS-FM and are presented to the community in such a way that they can easily be read and understood for consultation purposes, and once adopted will stand the test of time.
17. The omission of key aspects of the RPS (clearly defined FMUs and their associated long-term visions) renders the proposed RPS seriously deficient and makes for a very confusing process.

## **Issue 5 – Objective 12 and Te Mana o te Wai Statements**

### Objective 12

18. I agree with Ms Pascall that the NPS-FM (clause 3.2(3)) requires the RPS to include an objective that describes how the management of freshwater in the region will give effect to Te Mana o te Wai (TMotW). I agree also that expressions or statements of what TMotW means to mana whenua/ tangata whenua can be included in the RPS, and I support the inclusion of these statements.
19. However, I disagree with Ms Pascall's view (at para. 199) that "these expressions underpin the regional response to TMotW". Whilst I acknowledge the importance of each statement for mana whenua/ tangata whenua, as I understand it the statements have been drafted without the involvement of the wider community, that is people who are not mana whenua/ tangata whenua. Therefore, I think it a considerable stretch to say the expressions justify or form the basis of a regional response to TMotW.<sup>6</sup>
20. The NPS-FM (clause 3.2(1)) is clear that the Council must engage with tangata whenua and communities to determine how TMotW applies to water bodies and freshwater ecosystems in the region<sup>7</sup>. Te Mana o te Wai is not a concept that is defined by mana whenua/ tangata whenua alone. It is about restoring and preserving the balance between the water, the wider environment and the community as a whole (clause 1.3(1)).

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<sup>6</sup> Defined as 'support, justify or form the basis for' [underpin - Google Search](#)

<sup>7</sup> I note that the NPS-FM uses the terms 'engage' and 'consult'. According to IAP2, there are five different levels of public participation that can be selected to engage with a community, one of which is consultation.

21. The NOF guidelines<sup>8</sup> advise that councils must actively involve tangata whenua in freshwater management to the extent that tangata whenua wish. However, the guidelines also clearly state – councils must engage with the wider community.
22. Thus, an objective in a RPS that describes how the management of freshwater in the region will give effect to TMotW should reflect the views of the whole community, including mana whenua/ tangata whenua.
23. Ms Pascall notes (at para 164) that some submitters raised concerns relating to the clarity of the notified Objective 12 drafting, the status of the content of the statements in relation to the objective, and the repetition of the NPS-FM description of TMotW.
24. To address the concerns of submitters, Ms Pascall proposes a new Objective 12 to replace the notified version of Objective 12. Ms Pascall's view is that the new version of Objective 12 is "regionally-specific", draws on the common themes of the mana whenua/tangata whenua expressions of TMotW and aligns with the outcomes sought in Implementation Plans from the relevant whitua processes.
25. I agree with Ms Pascall's recommendation to remove the repetition of text taken directly from the NPS-FM from the proposed Objective 12 – it is not necessary to include that verbatim.
26. However, I disagree with Ms Pascall's view that the replacement text provides a clearer articulation of what TMotW means when applied in a regional context (para 196). It may be that the objective provides some regional context in a spatial sense (as the mana whenua/ tangata whenua statements that underpin the objective apply to the some of the various rohe across the region); however, my concern is that Objective 12 does not provide a regional context in terms of how the broader community would define TMotW.
27. I also do not think that by simply relocating the mana whenua/ tangata whenua statements to the RPS Appendix and introducing two new policies to Chapter 4, the confusion around the status of the statements is resolved. Appendices in plans are typically used for technical, explanatory or other supplementary information that supports plan provisions<sup>9</sup>. Clause 30(1) of schedule 1 of the RMA (Clause 1 of schedule 12 of the NBEA) outlines the written material that may be incorporated by reference in a plan or proposed plan. This is limited to standards, requirements or recommended practices and any other material that deals with technical matters that

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<sup>8</sup> Ministry for the Environment (2022), He Ārahitanga mō Te Anga Whāinga ā-Motu o te NPS-FM Guidance on the National Objectives Framework of the NPS-FM, pg. 8.

<sup>9</sup> [External Documents and Appendices | Quality Planning](#)

is too large to include in the plan. An appendix is subsidiary to the provisions of the plan and should not be a substitute for provisions in the main text of the plan.

New Policy FWXX (for Chapter 4.1) – Mana whenua/ tangata whenua and Te Mana o te Wai – regional and district plans

28. It's not clear to me how territorial authorities will recognise and provide for the Statements of TMoTW if more than one statement applies in their authority area and the statements are not well aligned in their articulation of TMoTW. This point doesn't seem to be addressed in the proposed policy.

**Issue 6 – Management of water bodies – regional plans (Policy 12)**

29. The Council must prepare its RPS in accordance with the principles of consultation set out in s82 of the Local Government Act (2002). Specifically, that persons who will or may be affected by, or have an interest in the decision or matter should be encouraged by the local authority to present their views to the local authority (s82(1)(b)).
30. Whilst acknowledging the importance of the Council's partnership with mana whenua/ tangata whenua, there is ample evidence that the engagement of the community (as a whole) confers legitimacy upon planning and decision-making processes<sup>10</sup>. The NPS-FM also recognises the importance of community engagement within the fundamental concept of TMoTW (clause 1.3(1)), within the hierarchy of obligations of TMoTW (clause 1.3(5)), within the Part 2 objective of the NPS, and elsewhere (e.g., Policy 5 and Policy 15 of clause 2.2).
31. Taking the development of long-term visions as an example, the NPS-FM (at clause 3.3) directs councils to develop long-term vision through engagement with communities and tangata whenua, and to express what communities and tangata whenua want FMU's or part FMUs or catchments to be like in the future.
32. As it is currently worded, draft Policy 12(a) reflects the involvement of mana whenua/ tangata whenua to partner with the Council to prepare the objectives, policies, rules and/or methods that give effect to TMoTW and to identify part FMUs that require specific management (ca). However, Policy 12 omits mention of wider community involvement in the process of preparing objectives, rules and/or methods

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<sup>10</sup> Rijal, S. (2023). The importance of community involvement in public management planning and decision-making processes. *Journal of Contemporary Administration and Management* Vol1 Issue 2 August 2023 pp 84-92.

and the identification of FMUs (or part FMUs). I believe this omission is significant because the RPS is a statement for the whole community and should be reflected as such in its language.

33. To address this omission, I recommend that Policy 12 (a) be amended as follows:

- (a) are prepared in partnership with mana whenua/ tangata whenua and engagement with the wider community ~~and enable the application of mātauranga Māori;~~

The addition of a requirement to engage with the community would align with similar recommendations Ms Pascall makes elsewhere in her 42A report (e.g., in relation to the preparation of Freshwater Action Plans at para. 856 and 857).

34. And that a new line (ab) be added as follows:

- (ab) enable the application of matauranga Māori

35. And that (ca) be amended as follows:

- (ca) identify part FMUs that require specific management within the FMUs identified in clause (c), in partnership with mana whenua / tangata whenua and engagement with the wider community.

### **Issue 7: Policy 13 – Allocation of water**

36. I agree with Ms Pascall that the provisions of Policy 13 regarding the allocation of water are provided for in the proposed Policy 12, at (f) 'set environmental flows and levels that will achieve environmental outcomes and long-term visions for freshwater' and (g) 'identify limits on resource use, including take limits that will achieve the target attribute states, flows and levels.' In my view proposed Policy 12 is better aligned to the NPS-FM and the NOF, and as such Policy 13 should be deleted.

### **Issue 9: Earthworks and vegetation disturbance (Policy 15)**

#### Policy 15: Managing the effects of earthworks and vegetation clearance – district and regional plans

37. At para. 510 of the 42A report there is an error in the policy title (Managing Minimising). I believe Ms Pascall intends that the title of the policy should refer to managing the effects of earthworks and vegetation clearance (see para. 494).

38. Ms Pascall states at para 471 that the district plan requirements in Policy 15 relate to managing the effects of land use and subdivision, which is consistent with clause 3.5(4) of the NPS-FM (objectives, policies and methods pertaining to urban development). As worded, it is not clear that Policy 15(b)(iii) 'require setbacks from waterbodies for vegetation clearance and earthworks activities' is specific to urban development.

39. I recommend Policy 15(b) be amended as follows:

15(b) District Plans shall include policies, rules and/or methods for urban development that:

And then remove the words 'urban development' from i) and ii).

40. The clarification on the responsibilities of the regional council and district councils in relation to the content of their plans and the management of earthworks and vegetation clearance is supported.

### **Issue 10: Managing water takes and use (Policy 17, Policy 44)**

#### Policy 17: Take and use of water for the health needs of people – regional plans

41. Policy 17 of both the current and proposed RPS has a specific focus on the health needs of people. However, to update the RPS to give effect to the NPS-FM, this policy could be broadened to reference all three of the priorities as set out in clause 1.3(5) of the NPS-FM. I note that there is a complete omission of reference to the social, economic and cultural wellbeing of people in the policy as drafted.

42. The TMoTW hierarchy has as its third priority, 'the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future'. The social, economic and cultural well-being of people was considered important enough to be included in the hierarchy of TMoTW, i.e., these components of TMoTW are not inconsequential and cannot be ignored. Further, the 'health' of an individual or community cannot be isolated from social, economic and cultural well-being.

43. The NPS-FM directs regional councils to apply the hierarchy of obligations (clause 3.2(2)(c)) when developing the long-term visions for the RPS, when implementing the NOF and when developing objectives and policies relating to a number of purposes, one of which is the allocation of water. In my view, that means all of the hierarchy should be applied to Policy 17, not just part of the hierarchy.

44. My recommendation is that Policy 17 should be amended to recognise and elevate the importance of social, economic and cultural well-being in relationship to the management of freshwater. Doing so would give effect to Part 2 s5 (Purpose) of the RMA and the Objective (Part 2 clause 2.1) of the NPS-FM.
45. Ms Pascall's explanation (at para. 602) that Policy 17 gives effect to the Objective of the NPS-FM is, in my opinion, only partially correct as the policy is completely silent on the third priority of the TMoTW hierarchy.
46. If the proposed definition of the 'health needs of people' remains in the policy, then I recommend a grammatical fix to clarify the status of water consumed by animals (currently there is a double negative in the drafting between the chapeau and clause a).

Policy 44 Managing water take and use to give effect to Te Mana o te Wai - consideration

47. The operative RPS sets out clearly that Policy 44 'Managing water takes to ensure efficient use-consideration' is about the matters to have particular regard to when considering a resource consent application.
48. The policy's chapeau in Proposed RPS Change 1 is muddled with the introduction of considerations for notices of requirement or changes, variations and reviews of regional plans 'to take and use water' as follows:

When considering an application for a resource consent, notice of requirement, or a change, variation or review of a regional plan to take and use water, Te Mana o te Wai must be given effect to so that: ~~particular regard shall be given to:~~

49. Ms Pascall's recommendation is to amend the chapeau as follows:

When considering an application for a regional resource consent to take or use water, notice of requirement, or a change, variation or review of a regional plan to take and use water, Te Mana o te Wai must be given effect to so that: ~~particular regard shall be given to:~~

50. I support Ms Pascall's recommendation to clarify that Policy 44 applies only to regional consents and does not apply to Notices of Requirement.
51. As worded in both the PC1 version and Ms Pascall's recommendation, the chapeau suggests that the policy applies to applications for resource consents to take and use water and 'changes, variations or reviews of regional plans to take and use

water'. The latter part of the chapeau would benefit from clarification as follows: 'changes, variations or reviews of regional plans that relate to the take and use water'.

52. Alternatively, reference to changes, variations or reviews of regional plans could be removed from the chapeau completely, to return the focus of the policy to matters that must be considered for a resource consent application (as per Policy 40 and Policy 41 as a comparison).

53. At Policy 44(d), I suggest an amendment as follows:

Where take limits have been set, ~~take limits are achieved~~ take limits are not exceeded.

54. The difference is subtle but reflects an emphasis on allocation under a defined limit, rather than on 'achieving' maximum allocation. My suggested amendment also aligns better with the wording used at Method 48(c) 'water allocation limits are not exceeded.'

#### **Issue 20: Method 34: Preparing a regional water supply strategy**

55. I support the inclusion of the words 'and consultation with communities' into the chapeau of Method 34, for the reasons already discussed in my Statement.

END