

**IN THE MATTER** of the Resource Management Act 1991

AND

**IN THE MATTER** Proposed Change 1 to the Regional Policy Statement  
for the Wellington Region Hearing Stream 5  
Freshwater/Te Mana o te Wai

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*STATEMENT OF PLANNING EVIDENCE OF MAGGIE ROSE BURNS*

*3 November 2023*

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## **INTRODUCTION**

1. My name is Maggie Rose Burns.
2. I hold a Bachelor of Environmental Planning from the University of Waikato. I am an intermediate member of the New Zealand Planning Institute.
3. I have been a practicing planner since 2018 and I am currently employed as a Senior Planner at Kāhu Environmental.
4. I have prepared and presented expert planning evidence on regional policy statements, district plans and resource consents. I have experience in assessing draft and proposed regional policy statements and regional and district plans and assisting in preparing submissions on policy statements and plan content and resource consents.
5. I have been involved in this matter since July 2022 and was involved in the preparation of the Rangitāne o Wairarapa submission on Plan Change 1 to the Greater Wellington Regional Policy Statement. I have prepared and presented evidence at Hearing Stream 2 – Integrated Management and Hearing Stream 3 – Climate Change.

## **CODE OF CONDUCT**

6. I confirm that I have read the Expert Witness Code of Conduct set out in the Environment Court's Practice Note 2023. I have complied with the Code of Conduct in preparing this evidence and agree to comply with it while giving oral evidence. Except where I state that I am relying on the evidence of another person, this written 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 expressed in this evidence.

## **MATERIAL RELIED ON**

7. I have read and rely on the evidence of Amber Craig, also prepared on behalf of Rangitāne o Wairarapa.
- In preparing my evidence I have read the following:
    - The Regional Policy Statement for the Wellington Region
    - The material comprising Proposed Plan Change 1
    - The section 32 Report for Proposed Plan Change 1 where it relates to matters addressed in Hearing Stream 5
    - The submissions and further submissions on PC1 made by Rangitāne o Wairarapa.
    - The section 42A report prepared for Hearing Stream 5
    - The Guidance on the National Objectives Framework of the National Policy Statement for Freshwater Management (NPS-FM) prepared by the ministry for the Environment updated 2023.

## SCOPE OF EVIDENCE

8. For this hearing Rangitāne o Wairarapa have asked me to provide expert planning evidence in relation to the submission and further submission made by Rangitāne o Wairarapa on the Wellington Regional Policy Statement – Plan Change 1 (Change 1) in relation to those provisions being addressed in Hearing Stream 5.
9. Rangitāne o Wairarapa made submissions and/or further submissions on the following provisions that have been identified in the section 42A report as forming part of Hearing Stream 5.
  - Freshwater Chapter Introduction
  - Freshwater Visions
  - Objective 12
  - Policy 12
  - Policy 14
  - Policy FW.3
  - Policy 42
  - Policy 15
  - Policy 17
  - Policy 18
  - Policy 40
  - Policy 41
  - Policy 44
  - Policy FW.1
  - Policy FW.2
  - Policy FW.4
  - Policy FW.6
  - Method 48
  - Method FW.1

10. I have not individually addressed each of the submission points. Unless specifically addressed in my evidence, I generally agree with and support the recommendations in the section 42A report.
11. In this evidence I cover:
  - Objective 12 and the context of the Te Mana o te Wai expressions, including the active involvement directive in the NPS-FM.
  - Freshwater Management Units (FMUs) and Policy 12
  - The Freshwater Chapter Introduction
  - Policy 14 and 18
  - Method 48

## **STATUTORY CONTEXT**

12. I generally agree with and rely on the statutory assessment in the section 32 and section 42A reports. I only restate or expand on other higher order documents that are relevant to my evidence below.

## OBJECTIVE 12 AND TE MANA O TE WAI STATEMENTS

[Submission points S168.002, S168.003, S168.004, S168.005, S168.032, S168.033, S168.034, S168.035 - S42A report – paras 143-200]

### ***Statutory Context for Te Mana o te Wai Statements***

13. The NPS-FM sets out direction for how mana whenua/tangata whenua are to be actively involved in the process of defining Te Mana o te Wai in the region. Relevant policies and clauses include:
- Policy 1: *Freshwater is managed in a way that gives effect to Te Mana o te Wai*
  - Policy 2: *Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for*
  - Clause 3.2: Te mana o te Wai
  - Clause 3.4: Tangata Whenua Involvement
14. The NPS-FM is specific in its use of the phrase 'active involvement' for tangata whenua, compared to the 'engagement' directive for communities in determining how Te Mana o te Wai applies to waterbodies and freshwater ecosystems in the region<sup>1</sup>. This specific phraseology is consistent with giving effect to Te Mana o Te Wai<sup>2</sup>.

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<sup>1</sup> NPS-FM Clause 3.2

<sup>2</sup> Ministry for the Environment Guidance on the National Objectives Framework of the NPS-FM, page 12 (accessed October 2023), Policy 1 NPS-FM.

15. Active involvement signifies a proactive and meaningful role in planning and decision-making processes. It requires developing a respectful and trusting relationship and a focus on building knowledge and capacity within Councils<sup>3</sup>. This process should be mana enhancing. In my opinion, active involvement reflects a facet of partnership, a clearly identified principle of Te Tiriti o Waitangi (relevant to the application of Section 8, Resource Management Act 1991).
16. Clause 3.4 of the NPS-FM includes a requirement for tangata whenua to be actively involved in identifying the local approach to giving effect to Te Mana o te Wai. In the context of Change 1, the local expressions of Te Mana o te Wai, at this stage only expressed by Rangitāne o Wairarapa and Ngāti Kahungunu, contribute to that active involvement (I note that Taranaki Whānui have also submitted a statement through the submissions process which is recommended for inclusion).
17. The Regional Council must include an objective in the Regional Policy Statement (RPS) that describes how the management of freshwater in the region will give effect to Te Mana o te Wai. For the RPS this is Objective 12.
18. The specific 'active involvement' directive must be reflected in the role that mana whenua/tangata whenua play in the development of the RPS, including the development of Objective 12 and its associated policies. Accurate integration of the Te Mana o Te Wai Statements from mana whenua/tangata whenua into this objective and policy set is therefore an essential extension of active involvement.
19. The reporting officer at paragraph 183 notes that:

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<sup>3</sup> Ministry for the Environment Guidance on the National Objectives Framework of the NPS-FM, page 12 (accessed October 2023)

*In my view, to ensure the statements are given the consideration they require – that is to direct an action on behalf of those implementing the RPS – it is more appropriate to provide policy direction about the statements, rather than doing this through an objective.*

20. I agree in part with the above statement and support the two additional policies recommended by the reporting officer (subject to minor wording changes that I discuss below). Moving some of the implementation elements out of the objective and into policies helps keep the objective focussed on outcomes.
21. In my opinion, the active involvement directive, and the role of mana whenua/tangata whenua are to have in defining what Te Mana o Te Wai means in the local context, logically leads to the relevant RPS objective (which is an expression of resource management outcomes to be achieved) necessarily reflecting the local expressions of Te Mana o te Wai.
22. As currently drafted, I consider that Objective 12 needs to go further to reflect the Te Mana o te Wai expressions. I therefore recommend a number of changes to the language used in the redrafted version of Objective 12, and the additional policies, in order to ensure that the active involvement directive is met in the RPS. I discuss these specific recommendations below.
23. The original submission from Rangitāne o Wairarapa requested several amendments to Objective 12 to provide more effective guidance on how to give effect to Te Mana o te Wai in the region, including:
  - Remove the six principles of Te Mana o te Wai from the objective, as it is not necessary to repeat these here.

- Amend the plan change to ensure that the elements of Objective 12 as notified are moved into other provisions of the RPS (such as objectives, policies, and methods) which more appropriately reflect the function of those elements.
  - Rangitāne o Wairarapa seeks an opportunity to work with the Council to determine which elements of the Te Mana o Te Wai statement should be incorporated into Objective 12, and which elements would more appropriately be incorporated in other parts of the RPS or regional plan.
  - Rangitāne o Wairarapa seeks to amend part of their Te Mana o te Wai statement to remove a whakataukī and the supporting text.
  - Amend Objective 12 to provide that tangata whenua are actively involved in freshwater management and will lead decision making on strategy, management and implementation of operational initiatives related to fresh water, in order to give effect to Te Mana o te Wai.
24. The section 42A report recommends accepting in part the submission from Rangitāne o Wairarapa and suggests a replacement objective and two additional policies to address the concerns reflected in the Rangitāne o Wairarapa submission and the submissions of other parties<sup>4</sup>.
25. The reporting officer has recommended the following drafting to replace the notified version of Objective 12:

Objective 12 – Te Mana o te Wai in the Wellington Region

The Region's waterbodies and freshwater ecosystems are returned to a healthy state and the ongoing management of land and water:

- a) Restores the mana of water and its fundamental role in providing for the current and future health and wellbeing of the environment and the community.

- b) Protects waterbodies and freshwater ecosystems from further degradation.
- c) Incorporates and protects mātauranga Māori, in partnership with mana whenua/tangata whenua.
- d) Recognises the individual natural characteristics and processes of waterbodies.
- e) Re-establishes mana whenua/tangata whenua connections with freshwater.
- f) Provides for the ability of mana whenua/tangata whenua to safely undertake their cultural and spiritual practices associated with freshwater, including mahinga kai.
- g) Includes mana whenua/tangata whenua in decision-making in relation to the Region's waterbodies.
- h) Applies the Te Mana o te Wai hierarchy of obligations by prioritising:
  - i. First, the health and wellbeing of waterbodies and freshwater ecosystems
  - ii. Second, the health needs of people
  - iii. Third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

26. I agree in part with the recommended wording proposed by the reporting officer; however, I recommend several amendments are made to better incorporate local expressions, meet the active involvement directive in the NPS-FM and ultimately give effect tot Te Mana o te Wai. I discuss these below.

**Chapeau, subclauses (a) and (b)**

27. I support the intent of the chapeau and subclauses (a) and (b) of the redrafted Objective 12. However, I recommend that wording changes are required to ensure the objective is clear, effective and does not confuse outcomes and process.
28. The chapeau, and overall outcome expressed in Objective 12 is to 'return waterbodies to a healthy state.' This incorporates in part some of the local expressions, including the reference in the Rangitāne o Wairarapa expression of Te Mana o te Wai to returning waterbodies to tūhauora (good or full health). While 'good health' is a literal translation of tūhauora, I am concerned that it does not fully capture the meaning of tūhauora. Amber Craig in her evidence at paragraph 28 notes that:

*"Hauora of our wai is discussed in our Te Mana o te Wai statement and must be used as a method of which we can restore the health of our waterways. Anything less will continue to see the degradation of our waterways."*

29. 'Good health' is not defined in the NPS-FM, however, 'healthy freshwater ecosystems' is explained as '...all 5 biophysical components are suitable to sustain the indigenous aquatic life expected in the absence of human disturbance or alteration (before providing for other values).' This provides guidance for how to define healthy freshwater ecosystems but does not account for other values, including relationships and values mana whenua/tangata whenua have.

30. Objectives need specificity and clarity to be effective. There should be little room for ambiguity or misinterpretation so that all plan users have clear expectations, and the objective can be effectively translated into actionable, measurable, and accountable policies, rules, and other methods in lower order documents. As currently drafted, Objective 12 does not provide this certainty.
31. I also recommend that the focus of the chapeau is on management of human activities rather than management of the land and water itself.
32. As I discuss above, the local expressions, and their effective integration into Objective 12, are necessary to ensure the requirement to actively involve tangata whenua in freshwater management and decision-making is, and will continue to be, met to give effect to Te Mana o te Wai.
33. For subclause (a), I support the objective of restoring the mana of water. However, in my view the rest of this wording is inconsistent with the local expressions. The implication of the proposed wording is that water only has a role as being useful to people, not as having intrinsic value and mana. The vision provided in the Rangitāne o Wairarapa expression discusses the concern of this westernised mindset:

*"The way western society looks at our Wai, there is a mindset that Wai is a resource and requires management. Within Te Ao Māori Wai is a taonga to us and is something we need to awhina, not just for the Wai itself but for us as people and for our intrinsic link to our waters<sup>5</sup>."*

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<sup>5</sup> Rangitāne o Wairarapa Te Mana o te Wai Expression for GWRC Regional Policy Statement, page 3

34. I consider that the subclause as written does not reflect the hierarchy of obligations in Clause 2.1 of the NPS-FM. It places community at the same priority level as the waterbodies themselves. This may also create conflict within the objective itself where the Te Mana o te Wai hierarchy is expressed in subclause (h).
35. I therefore consider subclause (a) can be deleted and reworked into the chapeau of Objective 12.
36. I consider that subclause (b), as currently worded, is unclear and potentially contradictory to the chapeau of this objective.
37. The chapeau suggests that waterbodies and freshwater ecosystems are returned to a healthy state, however the objective in subclause (b) is to protect from further degradation. "Returning freshwater to a healthy state" is a higher test and is reflective of goals outlined in the local expressions of Te Mana o te Wai (notwithstanding further clarity on what 'good health' refers to). Restoration and rehabilitation efforts, and effective management of the over-use that has been causing degradation of freshwater resources, are needed to improve waterbodies.
38. Policy 5 of the NPS-FM is:
- Freshwater is managed (including through a National Objectives Framework) to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.'*
39. Clause 3.20(1) of the NPS-FM directs regional councils to 'take action to halt or reverse the degradation' where they detect that an FMU or part of an FMU is degraded or degrading.

40. Policy 5 and Clause 3.20(1) clearly direct the improvement of degraded waterbodies and freshwater ecosystems. In my view, the reference to halting degradation in Clause 3.20(1) applies to situations where degradation is occurring but where the FMU has not progressed below a state of good health. 'Or reverse' encompasses both halting and improving and therefore applies to degraded waterbodies. Subclause (b) of Objective 12 requires some refinement to be consistent with this policy direction in the NPS-FM. If this clause is intended to apply to waterbodies that are not currently degraded, the language needs to make this clear by removing 'further' from the subclause.
41. Additionally, the Rangitāne o Wairarapa expression of Te mana o te Wai suggest a return of wai to tūhauora, not just a maintenance objective. Accurate reflection of these expressions is necessary to give effect to Te Mana o te Wai.
42. I therefore recommend subclause (a) is deleted and replaced, and the chapeau and subclause (b) are amended as follows:

"The mana of the region's water bodies and freshwater ecosystems is restored and protected by ongoing management of the use of land and water that:"

"ab) As the first priority, returns water bodies and freshwater ecosystems to, and thereafter maintains them in, a state of tūhauora/good health".

"b) Protects waterbodies and freshwater ecosystems that are in good health from degradation."

**Subclause (c)**

43. I support subclause (c) and consider the addition of mātauranga Māori and the use of partnership is necessary and appropriate. Amber Craig discusses mātauranga Māori in more detail in her evidence for Hearing Stream 2 (paragraph 35)

44. Partnership is a facet of active involvement. Active involvement of mana whenua/tangata whenua is required in Policy 2 and Clause 3.2 (2) (a) of the NPS-FM. Section 8 of the RMA requires that the principles of the Treaty of Waitangi are taken into account when managing the use, development, and protection of natural and physical resources.
45. This subclause is also particularly reflective of Objective O6 of the Rangitāne o Wairarapa Te Mana o te Wai statement.

***Mana Mātauranga ā-hapū***

*Objective 06: Mana Mātauranga ā-hapū is upheld. Tangata whenua safely collate, share, protect their mātauranga and know the full whakapapa of their data, following tikanga.*

***Subclause (d)***

46. I support subclause (d) but recommend an amendment to include 'and provide for.'
47. Different waterbodies can have a variety of unique features. The RPS therefore needs to direct the development of management regimes that are specific to waterbodies and FMUs so that appropriate outcomes are provided for in each circumstance. This subclause is important for identifying that waterbodies have unique management requirements. I discuss the importance of identifying FMUs at the right scale in my evidence at paragraphs 62-80 below.
48. I recommend that the subclause is amended to include 'provide for'. 'Recognise' without the addition of 'and provide for' means that the matter is acknowledged but does not specify any actions or provisions to address the matter. 'Recognise and provide for' not only acknowledges the matter, but also commits to ensure the matter is acted on.

49. I also recommend the addition of “and their associated ecosystems” to ensure individual characteristics of ecosystems is also acknowledged.

**Subclause (e)**

50. I am supportive of the intent of subclause (e), however, the use of term ‘re-establishes’ is inappropriate.
51. The relationship that mana whenua/tangata whenua have with freshwater does not need to be ‘re-established’ – this relationship already exists and continues to be strong. However, the ability for mana whenua/tangata whenua to undertake and uphold whakapapa and kaitiaki responsibilities has been interrupted by westernised approaches and historic exclusion of mana whenua/tangata whenua. Amber Craig describes the relationship Rangitāne o Wairarapa have to wai in her evidence: *“We have an established relationship with wai through our practises of our Ātua and Tīpuna. We are maintaining and in some cases reconnecting our connection to our wai rather than connecting for the first time. Therefore Greater Wellington Regional Council are not to connect us, but to support and awhina us to enact our full kaitiaki responsibilities.”* (Paragraph 29).
52. I therefore recommend that the sub-clause is amended to:

*Acknowledges and provides for the connections and relationships of*  
*Re-establishes* mana whenua/tangata whenua ~~connections~~ with freshwater.

**Subclause (g)**

53. I support the intent of subclause (g); however, I recommend amended wording to better reflect the ‘actively involve’ directive from the NPS-FM in relation to involvement of mana whenua/tangata whenua in freshwater management.

54. I discuss in paragraph 58 of my evidence from Hearing Stream 2 that active involvement is a facet of partnership. The partnership directive is used throughout the RPS, including in subclause (c) of the same objective. Active involvement is also the language used in the NPS-FM. The use of active involvement compared to the engagement directive for communities is specific.

***Amended drafting of Objective 12***

55. Based on my above analysis, I recommend amended wording for Objective 12 as follows:

**Objective 12 – Te Mana o te Wai in the Wellington Region**

~~The Region's waterbodies and freshwater ecosystems are returned to a healthy state and the ongoing management of land and water:~~

The mana of the region's water bodies, and freshwater ecosystems is restored and protected by ongoing management of land and water that:

~~a) Restores the mana of water and its fundamental role in providing for the current and future health and wellbeing of the environment and the community.~~

ab) As the first priority, returns water bodies and freshwater ecosystems to, and thereafter maintains them in, a state of tūhauora/good health".

b) Protects waterbodies and freshwater ecosystems that are in good health from further degradation.

c) Incorporates and protects mātauranga Māori, in partnership with mana whenua/tangata whenua.

- d) Recognises and provides for the individual natural characteristics and processes of waterbodies and their associated ecosystems.
- e) Acknowledges and provides for the connections and relationships of ~~Re-establishes~~ mana whenua/tangata whenua connections with freshwater.
- f) Provides for the ability of mana whenua/tangata whenua to safely undertake their cultural and spiritual practices associated with freshwater, including mahinga kai.
- g) ~~Includes~~ Actively involves mana whenua/tangata whenua in decision-making in relation to the Region's waterbodies.
- h) Applies the Te Mana o te Wai hierarchy of obligations by prioritising:
  - i. First, the health and wellbeing of waterbodies and freshwater ecosystems,
  - ii. Second, the health needs of people
  - iii. Third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

***Recommended new policies – Mana Whenua/Tangata Whenua and Te mana o te Wai***

- 56. The reporting officer has recommended two additional policies to give effect to Te Mana o te Wai and direct recognition and provision of the mana whenua/tangata whenua statements.
- 57. I generally agree with these additional policies but suggest amendments to ensure their application is clear.

***New Policy FWXX – Mana Whenua/Tangata Whenua and Te mana o te Wai – regional and district plans***

58. The chapeau of this policy requires that district and regional plans include 'objectives, policies, rules or other methods to give effect to Te Mana o te Wai.' As currently worded, this suggests that authorities can choose between objectives, policies, rules, or other methods, rather than outright requiring objectives, policies, and rules, with the option of other methods as well.
59. I also consider that it should be clear when the statements apply for both district and regional authorities and recommend an amendment to recognise that the regional authorities should consider the specific local expression that relates to that territorial authority area. These statements should be considered to the fullest extent relevant to the scope and content of that process.
60. I therefore recommend that the policy is amended to:

***New Policy FWXX – Mana Whenua/Tangata Whenua and Te mana o te Wai – regional and district plans***

District and regional plans shall include objectives, policies, rules, or and, where appropriate, other methods to give effect to Te Mana o te Wai, which, and in doing so:

- a) Recognise and provide for the mana whenua/tangata whenua Statements of Te Mana o te Wai in Appendix 5, as applicable to the territorial local authority area shown in Table X and to the fullest extent Regional plans shall apply the mana whenua/tangata whenua statements as relevant to the scope and content of the plan change or review process.
- b) Partner with mana whenua/tangata whenua in the development of district and regional plan objectives, policies, rules, or other methods to give effect to Te Mana o te Wai.
- c) Table X: Mana whenua/tangata whenua statements and applicable territorial authority areas

<u>Mana whenua/tangata whenua statement</u>	<u>Territorial authority area(s)</u>
<u>Rangitāne o Wairarapa</u>	<u>Masterton District</u> <u>Carterton District</u> <u>South Wairarapa District</u>
<u>Kahungunu ki Wairarapa</u>	<u>Masterton District</u> <u>Carterton District</u> <u>South Wairarapa District</u>
<u>Taranaki Whānui</u>	<u>Wellington City</u> <u>Hutt City</u> <u>Upper Hutt City</u>

***New Policy FWXX: mana whenua/tangata whenua Te mana o te Wai – consideration***

61. The reporting officer has also recommended an additional consideration policy.
62. I support the inclusion of this additional policy, however, consider that the directive 'to have regard to' the mana whenua/tangata whenua Te Mana o te Wai statements is not strong enough. There is no explanation in the section 42A report why a different directive is used here from 'recognise and provide for' (which is used in the above policy).
63. The reporting officer notes at paragraph 197:

*'Recognise and provide for' is directive and I acknowledge this is a significant change from the notified provision (where there was no such direction provided). However, I consider this direction is appropriate within the context of the Te Mana o te Wai framework set out in clause 1.3 of the NPS-FM, particularly the six principles of freshwater management, and Policy 2 of the NPS-FM which requires that tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for. In my opinion, the content of the statements provides substance to the high-order direction of the NPS-FM and is consistent with the partnership approach the Council has taken with mana whenua/tangata whenua since the early drafting stages of Change 1.*

64. I agree with the above and consider that this sentiment should also be reflected in this policy. I therefore recommend amended wording as follows:

When considering an application for resource consent, notice of requirement, or a change, variation, or review of a regional or district plan that relates to freshwater, recognise and provide for have regard to the mana whenua/tangata whenua Te Mana o te Wai statements contained in Appendix 5, as applicable to the territorial/local authority area shown in Table X.

65. I agree with the section 42A report's recommendation of moving the Te Mana o te Wai visions to an appendix, as long as the objectives and policies adequately reflect the expressions.

## **FRESHWATER VISIONS AND FRESHWATER MANAGEMENT UNITS AND POLICY 12**

[Submission point S168.003, S168.004, S168.006, S168.036 and S168.037 - S42A report – paras 128-142 and 201-238]

### ***Freshwater Visions Objectives***

66. The Rangitāne o Wairarapa original submission requested that Change 1 include additional provisions that clearly set out the timing and process for co-designing and incorporating FMUs into the RPS, and from there, the inclusion of mana whenua voices (as outlined in Recommendation 1 of the Ruamāhanga WIP in the freshwater visions for each FMU).
67. Rangitāne o Wairarapa also further submitted:
- FS2.104, FS2.105 and FS2.122 supporting in part the GWRC submission.
  - FS2.78 supporting in part the submission from Forest and Bird
  - FS2.137 supporting Taranaki Whanui
68. The section 42A report notes that Variation 1 to Proposed Change 1 has now been publicly notified and that, on this basis, it would be confusing and inefficient to further pursue freshwater vision objectives through the Change 1 hearings process and instead these should be addressed through the Variation 1 submission and hearings process<sup>6</sup>.

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<sup>6</sup> Paragraphs 137-149 of the section 42A report

69. I also acknowledge the point made by the reporting officer that addressing the freshwater vision objective in Variation 1 allows them to have some statutory weight (as proposed provisions), facilitating the further development of the Greater Wellington Natural Resources Plan. I note however, that the scope of Variation 1 is narrow, and only applies to Te Awarua-o-Porirua and Te Whanganui-a-Tara. My concern is that the scope of Variation 1 may not allow for consideration of freshwater vision objectives that apply to the balance of the Region, including Wairarapa. Considering the freshwater vision objectives, including the overarching vision as submitted by Forest and Bird should be considered in the Change 1 process unless there is clear scope to address it in the Variation 1 process.

***Policy 12 and Identification of Freshwater Management Units***

70. The original submission from Rangitāne o Wairarapa opposed Policy 12 in part, requesting relief as follows.
- Amend the policy:
    - to correctly reference the sequence of steps in the NOF process in the NPS FM (clause e). The sequence should be to firstly identify attributes, then record the baseline state, and then set target attributes that achieve the environmental outcome and long-term visions. Amend clause (e) so that this order of events is clear and reflects the NPS FM.
    - Amend the RPS to provide a policy or method which explains how the FMUs will be identified and defined in partnership with tangata whenua, along with the associated long-term visions; and how these matters will be incorporated in the RPS (for example through a future plan change). It is not appropriate to rely on the section 32 report to explain this.

- Rangitāne o Wairarapa seek that the FMUs are identified in the RPS and take into account tangata whenua mātauranga when defining them. The Whaitua are too large to be defined as FMUs.
  - In addition, the new policy or method must explain how items within each FMU listed in clause 3.8 of the NPS FM will be identified (monitoring sites, primary contact sites, the location of habitats of threatened species, outstanding water bodies and natural inland wetlands). Rangitāne o Wairarapa must be involved in this process of identification.
  - As whānau, hapū and Iwi - Rangitāne o Wairarapa, our wai is our top priority and we want to be the leading authority for this policy.
71. The section 42A Report has accepted in part the relief sought by Rangitāne o Wairarapa, recommending a new clause relating to the identification of attributes and baseline states and amending clause (e) to provide clarity that target attribute states must be set for each of those attributes. The reporting officer also recommends amending clause (c) to list the whaitua in Policy 12 and include a new clause that directs the identification of parts FMUs in partnership with mana whenua.
72. I support the amendment to subclause (e). However, I have concerns about solidifying the FMU boundaries in Policy 12 as the whaitua boundaries.
73. The submission from Rangitāne o Wairarapa explains why defining FMUs by way of the whaitua boundaries is inappropriate. In brief terms, such an approach is not sufficiently fine-grained to allow for effective management of freshwater.
74. The NPS-FM defines FMUs as:

**freshwater management unit**, or *FMU*, means all or any part of a water body or water bodies, and their related catchments, that a regional council determines under clause 3.8 is an appropriate unit for freshwater management and accounting purposes; and **part of an FMU** means any part of an FMU including, but not limited to, a specific site, river reach, water body, or part of a water body.

75. The NPS-FM does not mandate a single correct or preferred way to identify FMUs. However, as above, these must be an appropriate unit for freshwater management and accounting purposes. Each FMU should reflect the unique circumstances for each region<sup>7</sup>. The FMUs are used in the freshwater management process as the geographical units to set attributes, objectives, limits and flows, being the central elements for managing freshwater.
76. As acknowledged in the section 42A Report, the *whaitua* boundaries are set at a “super catchment” level. The amended policy then offers the ability to split the FMUs further into sub-FMUs or part FMUs. I don’t necessarily disagree with the approach of having overarching FMUs, then smaller part-FMUs. Such an approach could provide for an integrated way to managing multiple FMUs across a catchment, while providing opportunities for delineation of smaller areas to recognise the different environments and pressures in these areas. However, these super catchments, at least for the Ruamāhanga, are not an appropriate management scale. It would be much clearer conceptually to have multiple FMUs and then group them where there are management commonalities (accepting that there will be aspects of FMUs that will need to be managed individually rather than in a common way).
77. I also note an FMU may be all or part of a waterbody. An FMU does not need to incorporate an entire waterbody or be a whole catchment if doing so would be inappropriate from a management or accounting perspective.

78. Setting FMUs at the right scales is critical to responding to the unique management needs of each FMU. As per the NOF guidance (Page 52):

*“When setting FMU boundaries, councils should work with tangata whenua and the community to consider:*

- 1. the hydrological, geographical, social, political and cultural characteristics of the region, including the cultural connections of tangata whenua and communities to place*
- 2. practical issues with managing freshwater to give effect to the NPS-FM, which may result in sub-dividing or grouping the units further, after considering these characteristics*

*Factors to consider when determining FMU boundaries may include:*

- intensive pastoral development*
- prominent geophysical features, such as being prone to erosion*
- location of aquifers and connection to groundwater and surface water*
- urban issues affecting water quality*
- a current or historic mahinga kai site or other cultural areas of significance*
- degraded freshwater bodies that may need specific management methods*
- hapū or iwi rohe boundaries, which reflect relationships between tangata whenua and place, and may aid discussions about the transfer of powers or other mechanisms under clause 3.4(3).*

- *This approach allows councils to tailor the limits and management methods to the values and outcomes for each FMU.”*
79. The NPS-FM directs that the Regional Council must monitor freshwater for an FMU (clause 3.8 (4) and (5)) to enable informed decision-making. These clauses direct that monitoring must happen at an FMU scale (it does not mention sub or part FMUs or direct any requirements for these). If monitoring is only required at an FMU scale, data collection, water quality assessment and other monitoring efforts can occur at the ‘super catchment’ level. This will be less effective and may miss crucial trends that dictate a change in a management approach to meet associated long-term visions or other objectives.
80. Work to define FMUs was completed through the Ruamāhanga Whaitua Implementation Programme in August 2018. The Ruamāhanga Whaitua Implementation Programme identified 21 river FMUs and 2 lake FMUs which reflected:
- Recognition of how the Ruamāhanga community values are reflected in freshwater bodies across the whaitua.
  - The Committee’s own knowledge of the similarities and differences of major river systems in the whaitua.
  - A technical analysis undertaken to group rivers and streams based on their similar biophysical (topography, climate and geology) characteristics.
  - A consideration of the existing delineations of groundwater and surface water zones in the PNRP for managing water allocation.
  - Bringing this information together into groupings of similar biophysical characteristics, Ruamāhanga values, groundwater and surface water connectivity, surrounding land and its use, and fresh water and social environments<sup>8</sup>

81. The FMUs in this process were defined as similar groups to simplify explanation and management, as well as having similar geology and hydrology. This process clearly identified that the Ruamāhanga whitua necessitates a finer-grained approach to defining FMU boundaries than applying the overarching whitua boundary (as currently proposed by the Council for Change 1).
82. I acknowledge that the process of giving full effect to the NPS-FM has been disjointed for Greater Wellington, which has introduced additional layers of complexity. This is not an excuse to solidify the FMUs into something that is not sufficiently fine-grained and not developed in partnership with mana whenua/tangata whenua.
83. Based on this analysis, I recommend that the reference to the FMUs is deleted from Policy 12 and that the Council complete further work in partnership with mana whenua/tangata whenua to define an appropriate set of FMUs for the Ruamāhanga and Wairarapa Coast whitua. I recommend the same for any other provisions that recommend reference to the whitua as FMU boundaries.

## **FRESHWATER CHAPTER INTRODUCTION**

[\[Submission point S168.031 - S42A report – paras 102-127\]](#)

84. The original submission from Rangitāne o Wairarapa requested that the introductory text:
- Is amended to clarify the hierarchy of obligations in Objective 2.1 of the NPS-FM and to remove implication that Māori are acting within a religious realm, and;
  - Added lack of integrated management of freshwater ecosystems to the list of regionally significant issues.
85. Rangitāne o Wairarapa also made further submissions on the Freshwater Chapter Introduction:

- FS2.127 in support of Forest and Bird to add margins of rivers, lakes, and wetlands to the definition.
  - FS2.119 supporting in part Taranaki Whānui
  - FS2.117, FS2.114, FS2.115, FS2.109 in opposition to Wairarapa Water Users Society, Wairarapa Federated Farmers and Dairy NZ to delete the proposed amendments and Table 4.
86. The section 42A Report recommends accepting the Rangitāne o Wairarapa submission in part and has suggested further amendments to include reference to the hierarchy of obligations in the NPS-FM and remove reference to spiritual and secular realms in relation to the Māori relationship to freshwater. The reporting officer does not accept the recommended link to integrated management, citing that this has been covered in Overarching Issue 1<sup>9</sup>.
87. I generally support the amendments proposed by the reporting officer. However, my view is that reference to integrated management/ki uta ki tai is a necessary addition to the introductory text.
88. While I acknowledge that integrated management is addressed in the overarching resource management issues in Chapter 3 and more explicitly in Objective A and Policy IM.1, these are overarching and not specific to freshwater management.
89. Additionally, Overarching Issue 1, which is cited by the reporting officer as covering the issue of lack of integrated management, does not specifically refer to integrated management or ki uta ki tai<sup>10</sup>.
90. The NPS-FM 2020 includes several requirements to consider integrated management, ki uta ki tai, including:
- Policy 3

- Section 3.2 (2) (e), and;
  - Section 3.5
91. Ki uta ki tai informs how to give effect to Te Mana o Te Wai and is particularly relevant to the management of freshwater. It requires that local authorities recognise the interconnectedness of the whole environment, mountains to sea and the interactions between freshwater, land, waterbodies, ecosystems and receiving environments in Clause 3.5 of the NPS-FM.
92. While it may not seem essential to reference integrated management in the introductory text, particularly given there is no statutory weight to this section, introductions in planning documents are important because they contextualise and highlight key issues relating to the topic of that chapter. They help link the specific topic addressed in that chapter with the other elements of the planning document. They assist with reading the planning document as a whole.
93. I therefore recommend additional text is added to the introduction to include reference to integrated management, ki uta ki tai, as follows:
- [The management of freshwater requires an integrated approach, ki uta ki tai, that recognises the interconnectedness of the whole environment.](#)
94. The section 42A report also recommends adding the FMUs to the introduction of the freshwater chapter. As per my discussion above, I consider that the whaitua boundaries for the Ruamāhanga are not sufficiently fine-grained for effective management. I also recommend these are removed.

## **POLICY 14 and 18**

[Submission point S168.038, S168.003, S168.004 and S168.052 - S42A report – paras 316-363]

95. The original submission from Rangitāne o Wairarapa requested the following amendments to Policy 14:

- Amend the policy:
  - to improve the grammatical structure, and provide greater clarity and consistency, including in particular clauses (a) and (b);
  - to extend clause (d) to refer to environmental flows, not just target attribute states
  - so that it applies to all use and development, not just 'urban development', in order to efficiently and effectively achieve integrated management.
- Add a definition of 'urban development'.

96. The section 42A report accepts in part the relief sought by Rangitāne. The reporting officer has recommended amendments to clause (d) to refer to environmental flows as well as target attribute states and clarifies in Policy 14 that the policy applies to urban development and not more broadly. The reporting officer disagrees that Policy 14 should apply to all development.

*"Change 1 has been drafted on the basis that urban development generates a large proportion of effects on water quality in the Wellington Region. As such, I consider that it would be a step too far to apply this policy to all use and development and it would not meet the statutory tests for an efficient and effective policy. I also acknowledge the further submission by Hort NZ in this regard, who seek that this aspect of Rangitāne's submission point be disallowed on the basis that there could be unintended consequences of applying policy developed for the urban context to rural development. I agree with Hort NZ and recommend accepting the relief sought in their further submission."*

97. I acknowledge the reporting officer's amendment insofar as it is now clear that this policy applies to urban development. I also acknowledge the concerns of Hort NZ that there may be unintended consequences to expanding Policy 14 to the rural development context.

98. The introduction to the plan change includes the following paragraph 'The focus of RPS Change 1 is to implement and support the National Policy Statement on Urban Development 2020 (NPS-UD), and to start the implementation of the National Policy Statement for Freshwater Management 2020 (NPS-FM). Change 1 also addresses issues related to climate change, indigenous biodiversity, and high natural character.' For example, Policy 18, which is proposed to be significantly amended by Change 1, applies to all water bodies, not just those in urban settings. While urban development may be a significant contributor to impacts on freshwater in the urban environments in the western catchments of the Region, rural activities are significant contributors to impacts on freshwater bodies in the eastern catchments (as reflected in the Ruamāhanga WIP and the Greater Wellington Natural Resources Plan). In my view, the RPS should deal effectively with activities affecting freshwater across the entire region.
99. The submission from Rangitāne o Wairarapa supported Policy 18, subject to some amendments that have been largely recommended to be accepted by the section 42A Report. When considering Policy 14 and Policy 18 together, there are some obvious discrepancies in both content and the degree of directiveness of the terms used. Policy 14 uses more directive terms such as 'require that' and 'avoid' whereas Policy 18 uses terms such as 'promoting' and 'restricting'. In terms of content, Policy 14 includes additional requirements such as (b), (h), and (l) which have logical application more broadly than urban environments.

100. The submission from Rangitāne o Wairarapa highlights these inconsistencies. In my view, there is an opportunity to meet the relief Rangitāne has sought for Policy 14 by better aligning the drafting of Policy 18 with that of Policy 14. This would include adding the elements from Policy 14 that are missing from Policy 18 and aligning the directiveness of the wording of Policy 18 with that in Policy 14. To do so would improve effectiveness of the provisions in achieving consistent outcomes across the Region, as well as improving efficiency so that all activities having impacts on freshwater are required to make an equal contribution to improvements.
101. An alternative to retaining the two policies would be to combine them into a single policy that, where necessary, targets specific elements at the appropriate environmental element (i.e clauses that apply exclusively to urban environments could specifically refer to urban development).
102. Regarding the concern highlighted by Hort NZ that there could be unintended consequences of broadening the policy to all development, I note that this is unlikely to occur where the urban-specific policy elements retain wording that explicitly focusses them on the urban environment (e.g requiring the use of Water Sensitive Urban Design in urban environments only).
103. I have not provided re-drafting of Policy 14, Policy 18 or a possible combined policy. If the Panel is minded to achieve better alignment between the policies, I would be happy to provide some draft amendments.

## METHOD 48

[Submission point S168.063 - S42A report – paras 245]

104. The original submission from Rangitāne o Wairarapa requested the method was:

- Amend the provision:
  - so that it is grammatically correct and consistent, as currently not all clauses flow appropriately from the introduction.to reference alternative allocation principles as alternatives to the 'first in first served' allocation method;
  - so that the 'first in first served' allocation method is rejected outright;
  - to clarify what is meant by 'equitable allocation' in this context.

105. The reporting officer has accepted this relief in part noting at paragraph 594:

*"I consider that it would be premature for the RPS to include reference to alternative allocation principles, as sought by Rangitāne, because this detail is best placed in the NRP review process."*

106. I agree that it may be premature for the RPS to dictate what alternative allocation methods should be used, however, as a higher order document, the RPS is a key document in determining what the NRP will prioritise, including establishing principles that should be applied to determining an appropriate and equitable method. These principles could include but are not limited to: rights for mana whenua/tangata whenua recognised and provided for, equitable resolution of over-allocation and that allocation takes into account climate change.

107. The use of language is too important to consider. Clause (f) suggests that alternatives to first-in-first served approaches to water allocation are considered. 'Consider' is not strong enough language in this context.
108. Enabling policy wording can be just as directive, or non-directive, as protection policies and methods. 'Consider' does not ensure that alternatives are adopted and prioritised.
109. Policy 11 of the NPS-FM requires that freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided. This is reflected in subclause (b) of the same method. As currently drafted, considering that first-in-first served has not been effective in achieving allocation targets, alternative methods must be ensured through the NRP review, which is directed by the RPS.
110. Additionally, Method 48 includes subclause (g) which requires that equitable allocation of water is provided for. This conflicts with the inherent nature of a first-in-first served allocation scheme. Those who secure water rights earlier have a significant advantage and may have established large water allocations based on historical use which disadvantages newer or under-resourced users or those with evolving water needs. The first-in-first-served method may also create incentives for overuse, as those who are locked in have guaranteed access and little incentive to conserve water or use it efficiently.
111. I recommend a number of other changes to this method so that:
- The method prompts urgency in phasing out overallocation.
  - Subclause (c) is deleted since it essentially repeats the direction on subclause (b).
  - Subclause (f) and (g) are combined.

- Subclause (h) takes into account climate change adaptation, rather than supporting it. As currently worded this subclause may create an opening to allow inefficient water use and existing climate-impacted activities to survive.

112. I therefore recommend the method is amended as follows:

**Method 48: Water allocation policy review ~~Investigate the use of transferable water permits~~**

Review water allocation policy in the regional plan so that:

- a) Freshwater is allocated and used efficiently;
- b) All existing over-allocation is phased out in the shortest practicable timeframe and future over-allocation is avoided;
- ~~c) Avoid allocating w~~ Water allocation limits set in the regional plan are not exceeded beyond a limit;
- d) ~~improve~~ water allocation efficiency is improved, - including consideration of transferable permits;
- e) ~~provide for~~ iwi and hapū rights, ~~and~~ interests and responsibilities are provided for;
- f) ~~alternatives to the~~ first in first served approach is not used to allocate water to water allocation are considered and equitable allocation of water is provided for;
- ~~g) provide for equitable allocation of water is provided for;~~
- h) water allocation policy takes into account ~~adapt to~~ climate change adaptation;
- i) land use change to more climate resilient uses is promoted;
- ~~j) government direction on water allocation is considered; and~~
- ~~k) all matters regarding giving effect to the NPS FM are considered~~

## CONCLUSION

113. My evidence has addressed the submission and further submission from Rangitāne o Wairarapa relating to the freshwater and Te Mana o te Wai topic, Hearing Stream 5 for Plan Change 1.

Signature of Maggie Rose Burns

Dated 3<sup>rd</sup> November 2023



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Maggie Rose Burns