

BEFORE THE GREATER WELLINGTON REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND of proposed Change 1 to the Wellington Regional Policy Statement.

Legal Submissions on behalf of

the Director-General of Conservation / *Tumuaki Ahurei*

Hearing Stream 5 Freshwater / Te Mana o te Wai

dated 3 November 2023

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May it please the Panel

INTRODUCTION

1. These legal submissions relate to Hearing Stream 5 Freshwater and Te Mana o te Wai for the proposed Wellington Regional Policy Statement Change 1.
2. The Director-General's case is supported by evidence from Mr Murray Brass, Senior RMA Planner employed by the Department of Conservation and Dr Nixie Boddy, Freshwater Science Advisor also employed with the Department of Conservation.
3. The Department of Conservation has functions which include;
 - a. Preserving as far as practicable all indigenous freshwater fisheries and protecting recreational freshwater fisheries and freshwater fish habitats; and
 - b. Advocating for the conservation of natural and historic resources generally.¹

STATUTORY CONSIDERATIONS

4. I concur with Ms Pascall's assessment of statutory considerations in the s 42A report which rightly focus on the NPS-FM.
5. I would add that the National Policy Statement for Indigenous Biodiversity (NPS-IB) is also a relevant statutory consideration for this hearing stream.

NATIONAL POLICY STATEMENT FOR INDIGENOUS BIODIVERSITY

6. The NPS-IB specifies time limits by which certain aspects need to be implemented, but also has a generic requirement that local authorities should give effect to it as soon as reasonably practicable.² Where there is scope to implement the NPS-IB through this process, I submit that opportunity should be taken.
7. The objective of the NPSIB is to maintain indigenous biodiversity across Aotearoa New Zealand so that there is no overall loss in indigenous biodiversity after the commencement date of the NPSIB.³ In order to achieve this, indigenous biodiversity should be protected and restored as necessary to achieve the overall maintenance of indigenous biodiversity.⁴
8. The NPSIB provides that a precautionary approach is adopted when considering adverse effects on indigenous biodiversity.⁵ It also requires that the importance of maintaining indigenous

¹ Conservation Act 1987 section 6(ab) and (b).

² NPSIB 4.1(1).

³ NPSIB 2.1(1)(a) – commencement date was 4 August 2023.

⁴ NPSIB 2.1(b)(iii).

⁵ NPSIB Policy 3.

biodiversity outside significant natural areas is recognised and provided for.⁶ It provides that indigenous biodiversity is managed in an integrated way, within and across administrative boundaries.⁷ Local authorities must promote the resilience of indigenous biodiversity to climate change, including by maintaining and promoting the enhancement of connectivity between ecosystems, to enable migrations so that species can continue to find viable niches as the climate changes.⁸

TERRITORIAL AUTHORITY FUNCTIONS

9. There are several provisions where Mr Brass supports the RPS giving direction to territorial authorities for the purpose of implementing the NPS-FM. District Council functions relate to integrated management of the effects of land and resource use⁹ and the maintenance of indigenous biodiversity.¹⁰ The NPS-FM requires territorial authorities to address effects of urban development on the health and well-being of water bodies, freshwater ecosystems and receiving environments.¹¹ These matters are well traversed in submissions and the s 42A report.
10. Mr Brass supports retaining the requirement for district plans to:
 - 10.1. Encourage and support stream daylighting (Policy FW3(p)).
 - 10.2. Manage effects of urban development on the ability of streams and rivers to move and meander naturally (or retain 'natural form and flow') (Policy FW3(k)).
 - 10.3. Consider the effects of earthworks and vegetation clearance in district land use consents as well as regional consents (Policy 41).
11. The s 42A report, however, recommends each of these matters be applied only to regional council functions.¹²

Stream daylighting and natural form and flow of rivers and streams

12. I submit that the encouraging and supporting daylighting of streams and providing for streams and rivers to move and meander naturally is clearly relevant at the urban development design stage.
13. The implementation of any stream daylighting project will be primarily (but not solely) through regional consents. However, planning for it starts with district planning – for example spatial

⁶ NPSIB Policy 8.

⁷ NPSIB Policy 9.

⁸ NPSIB 3.6(1)(c).

⁹ RMA s 31(1)(a).

¹⁰ RMA s 31(1)(b)(iii).

¹¹ NPSFM 3.5(4).

¹² [RPS Change 1 - S42A Report Freshwater Te Mana o te Wai - Final.docx \(gw.govt.nz\)](#), page 68.

plans, open space zoning and general policy support to acknowledge the benefits of stream daylighting¹³ in urban design.

14. As Dr Boddy says, daylighting streams can lead to habitat, biodiversity and water quality improvements and flood risk reduction. Mr Brass considers that encouraging and supporting stream daylighting through district planning will implement the NPSFM and the NPSIB.
15. The benefits of letting rivers and streams move and meander naturally are compellingly set out in Dr Boddy's evidence – slowing down sediment movement, reducing flooding, increasing climate change resilience and improving biodiversity.¹⁴
16. Dr Boddy illustrates how urban development leads to rivers and streams being constrained, requiring a high degree of engineering with consequential adverse effects from enhanced erosion, increase in river flow, change in stream morphology and loss of habitat.¹⁵
17. It is imperative that district plans, in providing for urban development encourage and support daylighting of streams and managing streams and rivers so they can meander and flow naturally. I note Mr Brass is comfortable with referring to the latter as "natural form and flow". This is within the functions of territorial authorities. It may be part of an objective, policy and method framework (for example through open space zoning, a spatial plan approach, setbacks and general policy support) for integrated management of the effects of urban development.
18. Put simply, if this up-front planning for the interaction between urban development and waterbodies, their margins and receiving environments is not done, it can seriously narrow a regional council's ability to protect, restore or even manage water quality as is evidenced by the photos in Dr Boddy's evidence. The consequences would be repeating the mistakes of the past and lead to further degradation of freshwater and receiving environments.

Considering sediment when managing the effects of earthworks and vegetation clearance

19. Policy 41 sets out considerations for managing the effects of earthworks and vegetation clearance for resource consent decision makers. The s 42A report recommends applying this policy to regional consents only. However, Mr Brass recommends district council consents for urban development should also be considering these matters. For the reasons above, it is appropriate for decision makers on urban development consents to consider the extent to which the activity minimises erosion and silt and sediment runoff, for example.

¹³ Evidence of Dr Nixie Boddy paragraphs 34 – 40.

¹⁴ Dr Boddy, paragraph 19.

¹⁵ Dr Boddy, paragraphs 17 – 25.

20. As Mr Brass notes, the Environment Court’s decision on the Otago Regional Council’s “Urban Provisions” supports the appropriateness of regional and district plans both having measures to minimise sediment and erosion.¹⁶

Conclusion – territorial authorities’ responsibilities

21. MfE’s “District plans and territorial authorities factsheet” encapsulates this issue well (my emphasis):¹⁷

*Territorial authorities are **uniquely placed** and have an important role to play in the integrated management of the effects of land use and urban development on freshwater, particularly in urban areas.*

22. That factsheet gives helpful background context by articulating the problem to be addressed by assigning responsibilities to territorial authorities:

Why these policies?

The NPS-FM 2017 included policies that required regional councils to manage freshwater and the development and use of land in an integrated way to avoid, remedy or mitigate adverse effects, Essential Freshwater: District plans and territorial authorities factsheet 3 including cumulative effects on freshwater. However, the NPS-FM 2017 gave no explicit direction on the role of territorial authorities in supporting integrated catchment management.

This ambiguity contributed to a lack of integration between the functions of regional councils and territorial authorities with some territorial authorities viewing their role in freshwater management as limited to complying with water and discharge permits issued to them by regional councils. This left regional councils with the bulk of responsibility to plan for, and manage effects of land use and development on freshwater.

23. As such, I submit Mr Brass’ recommended provisions can legally be adopted, and are required to be adopted to give best effect to the NPS-FM and NPSIB.

GULLY HEADS

24. Ms Pascall recommends removing reference to ‘gully heads’ from policy 14(h) – regional plan requirements relating to location of lot boundaries and new roads; and FW.3 (k) – district plan requirements and policy 42(j) – consideration of regional resource consents. This is on the basis that ‘gully heads’ are not ‘water bodies’, like other elements of those clauses.¹⁸

¹⁶ [2022] NZEnvC 101 <https://www.environmentcourt.govt.nz/assets/2022-NZEnvC-101-Otago-Regional-Council-Urban-Provisions.pdf> - see [161-175], in particular [171].

¹⁷ [FS25-territorial-authorities-fact-sheet-final.pdf \(environment.govt.nz\)](#).

¹⁸ S 42A report page 62.

25. However, these clauses are for the purposes of maintaining water quality. As such, there is no need to limit the clauses to water bodies. Indeed, the clauses also refer to riparian margins, which are not water bodies. As such, I submit the panel should re-instate reference to gully heads as a feature that should be protected and enhanced as part of urban development to prevent further degradation of freshwater. This would implement policy 3 of the NPS-FM which requires freshwater to be managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis.

EVIDENCE

26. Other than the issues above, the plan change together with the s 42A report recommendations are largely aligned with the Director-General's submission for this part of the plan change.
27. Mr Brass suggests some further changes to provisions to better implement the requirements of the Act which I support.¹⁹
28. In particular, Mr Brass is of the view that provisions in regional plans around location and design for urban development should require that water bodies, riparian areas and receiving environments are "protected and enhanced" (Policy 14(c) and (h)). I submit this is required at the policy level to implement Te Mana o Te Wai and the NPSFM.
29. As such, I submit the panel should adopt Mr Brass' recommendations.
30. I would like to thank the panel for the opportunity to be heard, and the reporting officers from the council for their valuable contributions to this process.

DATED 3 November 2023



Katherine Anton
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¹⁹ Mr Brass evidence, Appendix 1.