

Greater Wellington Regional Council

Transcription

Hearing Stream Five – Freshwater / Te Mana o te Wai

SUBMISSIONS

Proposed Change 1 to Regional Policy Statement for Wellington Region

Hearing Dates:	Monday 20 th to Wednesday 22 nd November 2023
Location:	Venue: Naumi Hotel, 213 Cuba Street, Te Aro, Wellington 6011
Hearing Panel:	Commissioner Dhilum Nightingale (Chair) Commissioner Glenice Paine Commissioner Gillian Wratt Commissioner Ina Kumeroa Kara-France
Hearing Advisors:	Jo Nixon Whitney Middendorf

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Hearing Stream Five Freshwater / Te Mana o te Wai – Submitter Record of Appearance

Submitter Organisation/Person	Names of people who appeared at the Hearing	Appearing
Ātiawa ki Whakarongotai Charitable Trust S131	Claire Gibb, Senior Consultant	Online
Director-General of Conservation S32	Katherine Anton, Legal Counsel Dr Nixie Boddy, Science Advisor Murray Brass, Senior RMA Planner	Online
Horticulture New Zealand S128	Emily Levenson, Environmental Policy Advisor Jordyn Landers, Senior Planner	In person / online
Kahungunu Ki Wairarapa S168	Ra Smith, Kaiwhakahaere Taiao - Environment Manager	Online
Ngā Hapu o Otaki FS29	Melanie McCormick, Taiao Coordinator Dr Aroha Spinks, Managing Director Denise Hapeta, Kaihautū	Online
Peka Peka Farm S118	Mitch Lewandowski - Resource Management Consultant	In person
Porirua City Council S30	Torrey McDonnell, Principal Planner	In person
Rangitāne o Wairarapa S168	Maggie Burns, Senior Planner Amber Craig, Pou Rautaki Whenua	In person
Royal Forest & Bird Protection Society Inc S165	May Downing, Lawyer	In person
Wairarapa Federated Farmers S163	Elizabeth McGruddy, Senior Policy Advisor Natasha Berkett, Senior Policy Adviser/Lead Planner	Online
Wellington City Council S140	Joe Jeffries, Principal Planning Advisor Maggie Cook, Senior Planning Advisor	In person
Wellington Fish and Game Council S147	Craig Malone, Counsel Ami Coughlan, Expert Witness - Freshwater / Ecology Lily Campbell, Expert Witness - Planning	Online
Wellington Water S113	Angela Penfold, Senior Planner Caroline Horrox, Planning Specialist Charlotte Lockyer, Principal Consultant Morgan Slyfield, Legal counsel for Wellington Water	In person
Winstone Aggregates S162	Pherne Tancock, Legal Counsel Phil Heffernan, Project Manager Catherine Clarke, Planner	In person

Greater Wellington Regional Council

Transcription
Hearing Stream Five – Freshwater / Te Mana o te Wai
Day One

SUBMISSIONS

Proposed Change 1 to Regional Policy Statement for Wellington Region

Date: Monday 20th November 2023

Location: Venue: Naumi Hotel, 213 Cuba Street, Te Aro, Wellington 6011

Hearing Panel: Commissioner Dhilum Nightingale (Chair)
Commissioner Glenice Paine
Commissioner Gillian Wratt
Commissioner Ina Kumeroa Kara-France

Hearing Advisors: Jo Nixon
Whitney Middendorf

1 Chair: Mōrena. Me karakia tātou.
2
3 Guest: Mōrena tatou. As this is a Freshwater Hearing I thought I would start with a
4 quick acknowledgement to water – it's important. Ka ora te wai, ka ora te
5 whenua, ka ora te tangata.
6
7 Kia hora te marino
8 Kia whakapapa pounamu te moana
9 Hei huarahi mā tātou i te rangi nei
10 Aroha atu, aroha mai
11 Tātou i ā tātou katoa
12 Hui e, haumi e, tāiki e!
13
14 Kia ora.
15
16 Chair: Kia ora Ms Guest. Tēnā koutou katoa. Nō Heraka aku tipuna, nō Poneke ahau,
17 kei Taputeranga au e noho ana, tokutoru aku tamariki, he rōia ahau, ko Dhilum
18 Nightingale tōku ingoa. Nō reira, tēnā koutou, tēnā koutou, tēnā koutou katoa.
19
20 Good morning everybody. My name is Dhilum Nightingale. I am a Barrister in
21 Kate Shepherd Chambers and Independent Hearings Commissioner and

22 Freshwater Commissioner. I live in Taputeranga, Island Bay and Te Whanganui-
23 a-Tara, Wellington.

24
25 It is a pleasure to welcome you all to the first day of submissions on the
26 Freshwater topic, Hearing Stream 5 for Proposed Change 1 to the Regional
27 Policy Statement for the Wellington Region.

28
29 We are the independent hearing panels that will be hearing submissions and
30 evidence and making recommendations to Council on Proposed Change 1. We
31 are sitting as two panels with overlapping membership and will hear and
32 consider both the freshwater and non-freshwater provisions of the change
33 document. I have been appointed as Chair of both panels.

34
35 I would like to invite the other panel members to introduce themselves. We are
36 a panel of four but due to travel disruptions with the fog yesterday two
37 commissioners are joining us remotely, but will hope to be with us physically
38 perhaps from tomorrow for this hearing stream.

39
40 Thank you Commissioners, if you would like to introduce yourselves.

41
42 Kara-France: Ka tangi te tīti, ka tangi te kākā, ka tangi hoki au. Tihei mauri ora. Te whare e tū
43 nei, te papa e takoto nei, tēnā kōrua. Te hau kāinga, e ngā mana whenua, e ngā
44 iwi o Te Whanganui-a-Tara, tēnā koutou. E te tēpu, e ngā rangatira, tēnā koutou.
45 E ngā rangatira i te ruma, tēnā koutou. Ngā hau e whā, ngā iwi e tau nei, tēnā
46 koutou, tēnā koutou, tēnā koutou katoa. Ngā mate, ngā aituā ō koutou aroha
47 mātou, ka tangihia e tātou i tēnei wā, haere, haere, haere. E tika ana me mihi ki
48 tō tātou kīngi Māori a Tūheitia, te pou herenga waka, te pou herenga iwi, te pou
49 herenga tangata Māori katoa. Paimārire.

50
51 Karanga mai ki a mātou e whai nei i ngā taonga o ngā tūpuna, nō reira, kāpiti
52 hono ki tātai hono, te hunga mate ki hunga mate, te hunga ora ki te hunga ora.
53 Tēnā koutou, tēnā koutou, tēnā koutou katoa.

54
55 Ko Ina Kumeroa Kara-France tōku ingoa. Ko Waikato Tainui, ko Ngāti Koroki
56 Kahoka rā [03.39]. Ko Ngāti Tipa, ko Ngāti Kōata kei Rangitoto ki te tonga. Ko
57 Rongomaiwahine, ko Kahungunu, ko Ngāti Parawera, ko Ngāti Popoia, Ko
58 Maungaharere [03.50]. Ko Ngāti Whakaari, ko Ngāti Ruruku. Ko Ngāti Popoia,
59 ko Ngāti Kahungunu. Ko Ngāti Tūwharetoa, ko Ngāti Te Rangi Ita. Ko Te Ati
60 Haunui-a-Paparangi, ko Tūmango, ko Tūpoho, ko Paerangi, ko Ngā Rauru, ko
61 Ngāti Hinewaiatarua. E ngā whānau, e ngā hapū, e ngā iwi i ngā takiwā. Nō reira,
62 tēnā tātou katoa.

63
64 I'm an Independent Hearing Commissioner on both panels. It's an honour to be
65 here. I also sit on the New Zealand Conservation Authority as a board member.
66 I am the liaison for Tāmaki-makaurau, Te Tai Tokerau and Te Hiku o Te Ika
67 Conservation Boards. Nō reira, tēnā koutou, tēnā koutou, tēnā tatou katoa. Kia
68 ora.

69
70 Paine: Tēnā koutou katoa. Ngā mihi nui ki a koutou i tēnei wā. Ko wai au, ko Piripiri
71 te maunga, ko Waitai te awa, ko Waikawa te marae, ko Te Ātiawa me Ngāi Tahu
72 ōku iwi. Nō Picton ahau. Ko Glenice Paine taku ingoa.

73 [00.05.15]

74 My name is Glenice Paine. I'm an Environment Court Commissioner and I have
75 been appointed to both panels. Kia ora.
76

77 Wratt: Kia ora koutou katoa. Ko Wharepapa te maunga, ko Motueka te awa, nō
78 Whakatū ahau. Ko Gillian Wratt taku ingoa.
79

80 Kia ora everybody I'm Gillian Wratt. I am based in Whakatū Nelson. I am an
81 Independent Environment and Freshwater Commissioner. I was originally
82 appointed just as a Freshwater Commissioner but with the changes in our
83 membership early on in the hearings I am now on both panels. Welcome
84 everybody to the hearing. Thank you.
85

86 Chair: Thank you. Could I please ask the members of the Council team who are in the
87 room to please introduce themselves?
88

89 Manohar: Tēnā koutou katoa. Ko Emma Manohar tōku ingoa. Good morning Chair
90 Nightingale and Commissioners. My name is Emma Manohar and I appear as
91 Counsel today for the Greater Wellington Regional Council.
92

93 Guest: Tēnā koutou ko Pam Guest tōku ingoa. I'm a Senior Policy Advisor working on
94 the RPS.
95

96 Pascall: Mōrena, Kate Pascall, Reporting Officer for this topic of Freshwater and Te
97 Mana o te Wai. I am contracted to the Regional Council for this role. I am
98 employed by GHD Limited.
99

100 Farrant: Kia ora koutou. Ko Stu Farrant tōku ingoa. I'm an Ecological Engineer with
101 Morphum Environmental. I am supporting the Council will provisions around
102 hydrological controls in freshwater matters.
103

104 Tomic: Kia ora. Ko Natasha Tomic tōku ingoa, Kaitiaki a Tima Team Leader Policy.
105 Kia ora.
106

107 Arnesen: Kia ora. Nicola Arnesen tōku ingoa. I am the Manager, Policy and just here
108 observing.
109

110 Chair: Just some very brief housekeeping points. Hearings are being livestreamed and
111 recorded for transcription purposes, so if you could please speak into the
112 microphones when you're talking and say your name to begin with. The
113 Commissioners will do this as well as that is helpful for the transcript.
114

115 We will start the Freshwater Hearing Stream today with presentations from Ms
116 Pascall. Mr Farrant will present his evidence and I understand Counsel for the
117 Council will be available on questions on the pre-circulated legal submissions.
118 Thank you.
119

120 We might have a short break at about 11 o'clock and then continue with any
121 further questions for the Council team. After lunch we have got three submitters
122 scheduled for today, Wellington Water, Royal Forest & Bird Protection Society
123 and Wairarapa Federated Farmers.
124

125 The hearing of submitters will continue tomorrow and Wednesday. That is our
126 programme for the week.
127

128 Before we begin, just to acknowledge the importance of this kaupapa and to the
129 Council officers and all staff and others who have worked on this hearing stream
130 preparing reports and information to assist us with our understanding of the
131 provisions, we thank you very much for your work. To all the submitters, thank
132 you for engaging with the Change Proposal and your considered views on it. We
133 have certainly been much better informed about the complexities relating to this
134 topic because of your very comprehensive submissions and evidence. Thank
135 you.
136

137 [00.10.00] We have read everything in advance, so we do invite you to share the key points
138 that you would like to make and we will of course listen with an open mind and
139 ask questions of clarification.
140

141 We are tasked with ensuring the hearing runs efficiently and that everyone who
142 wishes to present can be heard. In accordance with the hearing procedures that
143 we have set, we please ask submitters to keep to their allocated hearing time and
144 Ms Nixon our Hearing Advisor, you might hear a bell, and Ms Nixon will be
145 keeping an eye to make sure we keep to the schedule.
146

147 We have accepted all extension requests for this hearing stream.
148

149 Finally, if you could just check your cell phones are turned off or to silent.
150 Actually just also note, even if you're not presenting in this hearing stream we
151 do assure you that we have read your submission and will be considering it as
152 part of our deliberations. Are there any legal or procedural issues before we
153 begin?

154 Ms Manohar should we start with you, or would you prefer that we perhaps start
155 with Ms Pascall.
156

157 Manohar: I think the plan was to start with Ms Pascall given our submissions were
158 relatively confined and then we can answer anything else arising. She'll set the
159 context for you.
160

161 **S42A Report Freshwater/Te Mana o te Wai**

162
163 Chair: Ms Pascall, thank you.
164

165 Pascall: Tēnā koutou katoa Chair Nightingale and members of the Hearing Panel. My
166 name is Kate Pascall and I am the author of the Freshwater and Te Mana o te
167 Wai Section 42A Report for Hearing Stream 5. I am a Senior Environmental
168 Planner with GHD Limited and as I have said, I have contracted by the Council
169 as the Reporting Officer for this topic. I am also the Programme Lead for the
170 RPS Change 1 Process. My qualifications and experience are set out in my S42A
171 Report.
172

173 The scope of my report was the submission points relating to amendments to
174 Chapter 3.4 Freshwater, including public access of the RPS, Objective 12 and
175 associated policies, methods, definitions and anticipated environmental results.

176 These provisions were all notified under the Freshwater Planning Process of the
177 RMA.

178
179 Council received 633 submission points and 626 further submission points on
180 the provisions relating to this topic. I have recommended a number of
181 amendments to the provisions based on these submissions in my S42A Report
182 and further amendments through my rebuttal evidence in response to the
183 evidence of submitters.

184
185 I am joined this morning by Mr Stu Farrant, Ecological Engineer, who has
186 provided primary and rebuttal evidence of a technical nature for this hearing
187 stream in relation to hydrological control. Mr Farrant will provide a summary
188 statement shortly and is also available to answer questions that the panel may
189 have.

190
191 I understand that my S42A Report and all submissions in evidence are taken as
192 read and as such this opening statement is limited to providing a summary of the
193 key recommendations I have made.

194
195 One of the more significant amendments I am recommending is to Objective 12
196 which sets out how the concept of Te Mana o te Wai applies in the regional
197 context. As notified, Objective 12 repeated the NPS-FM content, that's the
198 National Policy Statement for Freshwater Management, and included two
199 statements of mana whenua, tangata whenua expressions of Te Mana o te Wai,
200 being Rangtāne o Wairarapa, and Kahungunu Ki Wairarapa. The statements are
201 included within the body of Chapter 3.4 as notified.

202
203 A number of submitters were concerned that proposed Objective 12 repeated the
204 content of the NSP-FM rather than providing regional context. I agree with these
205 submitters and I have recommended a replacement objective drawing in the
206 mana whenua/tangata whenua statements and the common themes from the
207 Whaitua Implementation Programmes or WIPs that have been completed to date.

208
209 I have recommended further amendments through my rebuttal evidence in
210 response to the evidence from Rangtāne and others, which I consider ensures the
211 objective better reflects the values and aspirations for freshwater in the region.

212
213 Submitters also raised concerns about the mana whenua/tangata whenua
214 statements of Te Mana o te Wai and how these should be implemented relevant
215 to the substantive RPS objectives and policies, because the statements use the
216 same types of provisions as the RPS such as objectives or policies.

217 [00.15.00]

218 Submitters were concerned that this created confusion and I have agreed with
219 these concerns. To resolve the issue I have recommended two new policies
220 specific to the statements which provide clearer direction about how the
221 statements should be applied. I have also recommended relocating the statements
222 to a new appendix of the RPS.

223
224 I note that Rangtāne have suggested further amendments to these policies
225 through their evidence, which I have responded to through rebuttal.

226

227 Moving on to Freshwater Visions, the absence of long term freshwater visions
228 in Change 1 was noted by a number of submitters, with the Council also
229 providing two visions in their own submission for Whaitua Te Whanganui-a-
230 Tara and Te Awarua-o-Porirua Whaitua.

231
232 Clause 3.3 of the NPS-FM requires the inclusion of long term freshwater visions
233 as objectives in the RPS for each freshwater management unit or part freshwater
234 management unit.

235
236 The freshwater visions are important for implementing the National Objectives
237 Framework, also known as the NOF, which requires the setting of environmental
238 outcomes for freshwater, freshwater values and target attribute states in Regional
239 Plans amongst other things.

240
241 The Council has recently notified Variation 1 to Proposed Change 1 to include
242 visions for Te Whanganui-a-Tara and Te Awarua-o-Porirua. The notification of
243 this variation provides a statutory line of site to the recently notified Plan Change
244 1 to the Natural Resources Plan where the Council has commenced its
245 implementation of the NPS-FM for these two Whaitua.

246
247 I have recommended not including visions that have been put forward through
248 submissions given the variation is now in train. I acknowledge that the visions
249 proposed in Variation 1 are limited to two Whaitua, however I consider further
250 work and engagement with mana whenua/tangata whenua and the community
251 on the remaining freshwater visions should be undertaken prior to including
252 them in the RPS. On this basis I recommend rejecting these submissions in my
253 S42A Report and I have provided further commentary in response to this matter
254 in my rebuttal evidence.

255
256 A large number of submissions or further submissions were received on policies
257 relating to urban development effects on freshwater, being Policy 14, Policy
258 FW.3 and Policy 42.

259
260 Policy 14 directs the content of regional plans in relation to urban development,
261 while Policy FW.3 directs district plans for the same.

262
263 Policy 42 is a consideration policy that applies to regional resource consents
264 relating to urban development that affects freshwater.

265
266 These policies were of particular interest to territorial authorities, the
267 development industry, mana whenua/tangata whenua and Wellington Water.

268
269 A key area of concern was the apparent duplication presented by the notified
270 versions of Policy 14 and Policy FW.3 with several territorial authorities
271 concerned that as notified Policy FW.3 would require them to undertake
272 functions of the Regional Council under s.30 of the RMA.

273
274 I agree with these concerns in part and have recommended amendments to some
275 clauses in both policies to address this. I have also provided further commentary
276 in my rebuttal evidence around the remaining areas of concern raised by some
277 submitters in their evidence.

278

279 However, generally I am comfortable with my S42A recommendations and I
280 have not recommended further amendments in relation to potential duplication,
281 with the exception of clause (h) of Policy 14.
282

283 Other concerns raised in submissions in relation to the Urban Development
284 policies included providing clarity about the intent of some clauses, providing
285 either stronger or less directive policy direction and the application of these
286 policies to the coastal marine area.
287

288 Through my rebuttal evidence I have recommended further amendments to
289 Policy 14 to provide clarity about the role of the Regional Council and managing
290 the design and location of urban development in relation to freshwater; clarifying
291 the policy direction in relation to the application of water sensitive design and
292 managing contaminants in stormwater run-off and providing a consenting
293 pathway for urban development in relation to natural inland wetlands to align
294 with clause 3.22(1)(c) of the NPS-FM.
295

296 I have also recommended additional minor amendments to Policy FW.3, such as
297 the reinstatement of “gully heads” to clause (k) and a new clause requiring
298 district
299 [00.20.00] plans to identify aquifers and drinking water sources and to provide information
300 about how urban development in these areas is managed through the Natural
301 Resources Plan.
302

303 Policy 15 manages the effects of earthworks and vegetation clearance,
304 specifically erosion and sediment run-off. This policy applies on a general basis
305 in the RPS and is not specific to freshwater. It also applies to both regional and
306 district plans.
307

308 Change 1 Proposed amendments to this policy to include reference to target
309 attribute states and deleting reference to minimising erosion, silt and sediment
310 run-off.
311

312 Concerns raised in submissions included the proposed amendments requiring
313 district plans to ensure target attribute states were achieved. The extent of the
314 amendment such as the deletion of reference to minimising erosion and the
315 potential gap created by the amendments in the intervening period between
316 Change 1 becoming operative and target attribute states being set.
317

318 In response to these submissions I have recommended significant amendments
319 to the notified version of Policy 15 to make it clear what regional and district
320 plans must manage respectively and to reinstate the requirement to minimise
321 erosion.
322

323 I have also included a clause which provides clarity about what is required,
324 where target attribute states have not been set.
325

326 Through rebuttal I have also recommended further amendments to make it clear
327 that both regional and district plans manage earthworks.

328 Policy 18 sets out the matters that must be addressed in regional plans to manage
329 the health and wellbeing of waterbodies and freshwater ecosystem health. The

330 policy is in the Operative RPS and Change 1 proposes amendments to give effect
331 to the NPS-FM.

332
333 Submitters concerns about the notified amendments to Policy 18 included
334 drafting clarity, giving effect to national direction and the strength of the policy
335 direction.

336
337 I recommended drafting amendments in my S42A Report to address the
338 concerns raised by submitters.

339
340 Further evidence was provided by submitters seeing further amendments to
341 Policy 18. This includes a request from Winstone Aggregates to include a
342 consenting pathway for aggregate and mineral extraction activities, along with
343 other activities in line with line with clauses 3.22 and 3.24 of the NPS-FM.

344
345 As noted in my rebuttal evidence, I consider the amendments suggested by
346 Winstone Aggregates are outside the scope of Change 1 and I have not
347 recommended inclusion of these consenting pathways in Policy 18 on this basis.

348
349 Change 1 has notified proposed the inclusion of requirements in Policy 14 and
350 Policy FW.3 for regional and district plans to include requirements for
351 hydrological controls in urban development. This is supported by a new
352 definition of hydrological controls which sets out in some detail what must be
353 achieved.

354
355 Submitters were not opposed to the concept of hydrological controls but
356 questioned the content of the definition and whether this should be a policy
357 rather than a definition. I agree with these submitters and I have recommended
358 a new policy that recasts the content in the definition as a policy. I have also
359 recommended a slight change in terminology from the plural 'hydrological
360 controls' to the singular 'hydrological control' to change the focus from the
361 methods and devices to the outcome that is sought from the management of
362 stormwater management in urban development.

363
364 In addition I recommended a revised definition of 'hydrological control' and
365 supporting definition of 'undeveloped state'.

366
367 I have also recommended that these requirements apply to the Regional Plan
368 only.

369
370 As noted, Mr Farrant has also provided primary and rebuttal evidence on this
371 matter which sets out some detail the technical aspects of hydrological control
372 and how it differs from hydraulic neutrality and the importance of this for
373 freshwater ecosystem health.

374
375 Through my rebuttal evidence I have recommended further amendments to this
376 policy and the associated definitions in response to concerns raised by some
377 submitters in their evidence and also on the advice of Mr Farrant.

378
379 The remaining submissions relating to the freshwater topic are largely of a
380 general nature or seek drafting clarity. In many cases I have agreed with the
381 relief sought in these submissions and I have recommended amendments

382 accordingly. I have also recommended the addition of several definitions to
383 either support terms that were included in the notified version but without
384 definitions, or terms that I am recommending for inclusion through my
385 amendments.

386
387 I am happy to answer any questions the panel has in relation to this statement or
388 my evidence.

389
390 [00.25.00] I will pass to Mr Farrant if that's okay.

391
392 Chair: Thank you Mr Farrant. I think while we do have questions for you Ms Pascall,
393 it probably makes sense for us to hear the technical evidence that is supporting
394 your report, and then perhaps our questions when we ask them you can let us
395 know who would be best placed to answer. Thank you.

396
397 Farrant: Kia ora. I am Stu Farrant. I'm an Ecological Engineer who has been working in
398 the area of urban stormwater and freshwater management for over 17 years. My
399 qualifications and experience is outlined in my primary evidence. As mentioned
400 earlier I have been supporting Greater Wellington with matter relating to
401 hydrological control and have provided both primary and rebuttal evidence in
402 response to submitters.

403
404 This morning I just thought it would be worthwhile to provide a high level
405 summary of some of the points raised in relation to hydrological control, which
406 were raised in both my primary and rebuttal evidence. I won't go into too much
407 technical detail but I will just include some points that relate to responses to
408 submissions and some of the subsequent deliberations on policy detail and
409 definitions. Following that, if there is any questions I would certainly welcome
410 those.

411
412 The first thing I would like to raise, which Ms Pascall has already mentioned, is
413 that it's fundamentally important to differentiate the proposed hydrological
414 control from the current hydraulic neutrality, as defined by Wellington Water
415 and now routinely required across the Wellington Region. Hydraulic neutrality
416 is focused solely on peak flow rates from infrequent large rainfall events and is
417 intended to provide resilience to flood events through detention; whereas
418 whereby stormwater is held back and released over an extended timeframe at a
419 throttled flowrate. Whilst I do not question the important of flood mitigation and
420 the intent of hydraulic neutrality it is important to recognise that it does not
421 provide environmental benefit and in many instances can worsen outcomes
422 through artificially extending the duration of these elevated flow-rates.

423
424 Detention to support hydraulic neutrality also has negligible influence on the
425 change flow rates and frequency in small rainfall events which are fundamental
426 to supporting the ecosystem health that we're seeking.

427
428 Freshwater streams across the Wellington region, as with elsewhere, are
429 particularly sensitive to flow regimes in these small frequent rainfall events. In
430 a natural stream – and when I say natural stream, I mean one without urban
431 development within its catchment, a significant volume of rainfall is intercepted
432 by vegetation and is rapid transpired or held in shallow surface soils, meaning
433 that flows during small events do not vary substantially. This enables the

434 establishment of robust riparian margins, stable bed substrates within the
435 streams and important transitions between permanent and intermittent reaches
436 to support indigenous fish species in particular.

437
438 Unmitigated urban development results in extreme variability in stormwater
439 discharges to streams during these frequent small rainfall events, resulting in
440 flashy flows, causing down-cutting of stream beds, ongoing slumping and scar,
441 instability of riparian margins and loss of viable habitat. These impacts also
442 significantly reduce the resilience of these streams to large flood flows, which
443 results in further mass instability which does not occur in undeveloped natural
444 catchments.

445
446 These phenomena are clearly observed across the Wellington region in both
447 developed and undeveloped freshwater streams.

448
449 The proposed hydrologic control are therefore focused on the retention of a
450 portion of stormwater to replicate a more natural hydrology and protect
451 freshwater streams to align with the principles of Te Mana o te Wai and
452 community aspirations for improved environmental outcomes.

453
454 The proposed wording for hydrologic control is intentionally based on the
455 outcomes being sought – as Ms Pascall has mentioned; which is simplified to
456 align with the inferred pre-development water balance. Submitters in particular
457 on behalf of Wellington Water raised a preference for a more static definition of
458 retention depth to be specified in rules similar to how Auckland Council
459 approach it currently in their Unitary Plan.

460
461 It is noted that this defined retention depth is only really valid in instances where
462 you can reliably removed the retained water volume in the period between
463 consecutive rainfall events, such as through infiltration – which is often not
464 feasible in Wellington due to low infiltration rates and geotechnical concerns
465 with unstable ground.

466
467 It is also noted that the depth of rainfall that is assimilated within an undeveloped
468 catchment varies substantially over the year, in response to temperature, rainfall
469 and soil moisture levels. Therefore, adopting a single retention depth to be
470 applied at all rainfall events is considered to both misrepresent a natural
471 hydrological response, as well as being unenforceable due to the seasonal
472 variability.

[00.30.00]

473 It is therefore recommended that solutions which demonstrate that stormwater
474 management strategies adopted in development will align with an annual water
475 balance provide a better means of demonstrating appropriate protection to
476 waterways, and is easily supported through relatively straight forward
477 modelling.

478
479 Concerns were raised by submitters with the expectation of complex modelling
480 to demonstrate compliance with rules and I responded to this in my rebuttal
481 evidence.

482
483 Continuous simulation modelling is considered to be easily undertaken by
484 suitably experienced advisors and can be readily supported for small scale

485 developments through the provision of Technical Guidance similar to the current
486 approach to Hydraulic Neutrality in the Wellington region.

487
488 Less standard solutions or large integrated greenfield/brownfield developments
489 can then still use continuous simulation modelling to demonstrate compliance.
490 This is considered to be reasonably straight forward with inputs and assumptions
491 able to be refined as research provides improved calibration data.

492
493 In conclusion, it is considered that the proposed RPS policies relating to
494 freshwater protection and hydrologic control provide an efficient and effective
495 means to protect waterways from adverse impacts from development. The
496 proposed methodology is considered to best reflect the nuances of natural
497 hydrology and can be reliably supported by the development industry with
498 possible technical guidance to simplify compliance for small scale
499 developments.

500
501 Thank you.

502
503 Chair: Thank you very much for those summaries. Mr Farrant, the summary that you
504 just presented to us, would that be available to us as well?

505
506 Farrant: Yes.

507
508 Chair: Commissioner Paine or Commissioner Wratt, would you like to start with
509 questions?

510
511 Paine: I will start with good morning Mr Farrant, good morning Ms Pascall. I will start
512 with Mr Farrant since he was the last one in. I don't want to forget his description
513 around continuous modelling.

514
515 I still have concerns about a submitter saying about the cost of this modelling,
516 and in your opinion it's not prohibitive.

517
518 Farrant: That's correct. Cost is obviously always a concern that is raised with these sort
519 of change processes. If we are talking about a large complex greenfield
520 development then the sort of modelling that you would be doing here is no
521 different to what you would ordinarily expect for that level of development.
522 Really perhaps where there's a little bit of disagreement is with very small
523 developments; so where individual lots have been split into four lots, or
524 something like that, and there's a small number of houses and it's been done by
525 small scale developers. In those instances, there's a fairly standard practice to
526 develop technical guidance and there is a recommendation around the need for
527 technical guidance, which can develop what we in the industry refer to as
528 'deemed to comply solutions'. So, therefore for those smaller type
529 developments, a developer could essentially take a solution off the shelf which
530 has been determined and agreed between parties to provide the hydrologic
531 controls that we're after.

532
533 In those instances you wouldn't need to do specific modelling for that
534 development.

535

536 Paine: So, this is a normal practice for territorial authorities, that they will do that, they
537 will accept that?
538

539 Farrant: The example that I used in my evidence is around the current approach to
540 hydraulic neutrality, which is a similarly complex sort of matter. They produced
541 what is referred to as the deemed comply solutions there. Therefore, if somebody
542 is building a home of x square metres, they can refer to look-up tables and come
543 up with a solution. That's really a comparable example here. It's also no different
544 to other technical guidelines across the country, whereby there might be a rule
545 requiring a developer to achieve X and then there's a technical guideline
546 document that shows how in that jurisdiction one would demonstrate that
547 they've achieved that.
548

549 Paine: I just found it interesting that Wellington uses that 5mm and that in your opinion
550 [00.35.00] that misrepresents things – the rainfall. I thought if it does that why is it being
551 used?
552

553 Farrant: I will try and answer that. It does get a little bit complex. If you look at the way
554 the rules are written in the Auckland Unitary Plan, it purely says that you need
555 to achieve retention of 5mm of rain. It doesn't specify if that's for every rainfall
556 event, or what one might do if you have consecutive days of rainfall, or days
557 where there's more than that amount, followed by heavy rain subsequently. It
558 actually gets quite messy if you are not in the fortunate situation of just having
559 the ability to catch rainfall and soak it straight into the ground.
560

561 What you find in Auckland is that for large developments you still need to go
562 through a modelling process to demonstrate that you have somehow met or align
563 with that 5mm retention depth. The modelling is no different really than this, but
564 this is more focused on the outcome that we're seeking, which is to align with a
565 natural water balance; and then how that can be achieved is then a bit more
566 flexibility to enable the industry to explore different means of doing that across
567 a whole seasonal timeframe.
568

569 Paine; Thank you Mr Tarrant, that was helpful.
570

571 I have a couple of questions for Ms Pascall. One of them is about definitions. It
572 was about the health needs of people. There's been some submissions about the
573 health needs of people from the primary producers and how they don't feel they
574 are accommodated in this definition.
575

576 I just wanted to get your thoughts on that Ms Pascall, from the submissions that
577 the primary producers have put forward and how important horticulture
578 production is. By reading this definition, or from my eyes, that doesn't allow for
579 irrigation at all.
580

581 Pascall: Thank you Commissioner. First, just obviously want to acknowledge that of
582 course fruit and vegetable production is important. I think the point I was making
583 through my evidence and my S42A Report is that where the NPS-FM is
584 concerned, in my opinion the health needs of people is quite narrow in terms of
585 it relates to essentially the use of water for our everyday needs – meeting our
586 everyday needs; so sanitation, drinking water, water for animals to drink and

587 that kind of thing. Rather than that broader use of water, which I consider would
588 fall in the third layer of the Te Mana o te Wai hierarchy of obligations.
589
590 I consider that it still needs to be kept as I have recommended. It doesn't include
591 irrigation and those kinds of uses.
592
593 Hopefully that's answered your question.
594
595 Paine: I was just relating it back to the NPS. Has the NPS got a definition for health
596 needs of people?
597
598 Pascall: Not it doesn't. The definition I have recommended is based on a definition that
599 already sits within the natural resources plan. I felt that aligned well with the
600 NPS-FM but also the National Objectives Framework Guidance which actually
601 is quite clear around what is considered the health needs of people. That does
602 refer to quite specifically drinking water. It does say, "such as drinking water"
603 but I don't think it goes as far as implying that it applies to irrigation use.
604
605 Paine: I'm pleased you said that because I couldn't find a definition in the NPS either.
606
607 [00.40.00] The other thing I was wondering, in terms of industry, can you give me a
608 definition of what's 'cooling water'?
609
610 Pascall: I would need to come back to you on that. I don't know the answer. Mr Farrant
611 is indicating he does so I will let him answer.
612
613 Farrant: Not a process engineer, but my understanding of 'cooling water' is water that's
614 used in air conditioning units and refrigeration units for the cooling of either
615 spaces or produce and things.
616
617 Paine: Thank you for that. The last question on that – I'm just trying to tick off some
618 of these submission points – taking into account the natural resources plan and
619 what the NPS says and the definition that you have put forward in your rebuttal
620 - to change that definition, to include something like horticulture?
621
622 Pascall: The Panel certainly does have scope to do that. Submitters have asked for that.
623 I have obviously recommended not accepting those submissions. But, just
624 because it's a definition from the Natural Resources Plan doesn't mean it can't
625 be amended through this process.
626
627 Paine: The other question I had was around community involvement. I know there's
628 been talk about tangata whenua engagement in the development of all of these
629 provisions, and some of the submissions talk a lot about the community
630 involvement. In Policy 12 I think you have added that.
631
632 What about Objective 12? I couldn't see anything about community
633 involvement, or have I missed it?
634
635 Pascall: I think you're correct Commissioner. There isn't anything specific around
636 community involvement. I think that's possibly because the objective is more
637 about the outcome rather than being a policy which would be perhaps directive
638 that engagement was undertaken with tangata whenua/mana whenua

639 community. But, that isn't to say that there wasn't the opportunity to include
640 that should the Panel be of a mind that that should be in Objective 12.
641

642 Paine: One of the submissions talked about tank water. The way I read it was that
643 people were using potable water to put in their rainwater tanks to use. So, they
644 were raising concerns about I think FW.2. They thought there should be more
645 safeguards around that, if you were to allow people to have rainwater tanks, or
646 tanks to catch rainwater I should say.
647

648 Pascall: I do recall that submission point Commissioner, which I took to be a misreading
649 actually of the Policy. I think that particular submitter suggested that this policy
650 was requiring people to use water from tanks for potable use, which is actually
651 know what this policy is doing. This is actually directing a reducing and demand
652 for non-potable uses. If it was rainwater tanks, and that's one examples that's
653 listed in the policy, it would be for non-potable use.
654

655 Paine: This submitter did say that it was for non-potable use, but what they found in
656 their council, and I think it was Kāpiti, is that they were filling up their tanks
657 with potable water. There was no safeguards to stop that happening.
658

659 Farrant: If I could just jump in there, just drawing on some experience from around the
660 country, it's fairly easy to have design guidelines for the likes of tanks, which
661 clearly show how the tank can be configured, so that you don't top it up with
662 potable water. There is also safeguards around preventing backflow – is a big
663 [00.45.00] consideration, to make sure that we don't have rainwater getting into our main
664 piped water network that could go to other properties. These are all issues that
665 are dealt with routinely through typical design guidelines, but also through the
666 building consent process and things. There is no reason to be overly concerned
667 about that.

668 Paine: That's good. Thank you Mr Farrant. Is there a cost to that?
669

670 Farrant: A cost to what?
671

672 Paine: If people put in rainwater tanks the cost to that – apart from of course buying the
673 tank is there a compliance cost?
674

675 Farrant: That's a complex question that probably goes down the line to the likes of the
676 territorial authorities in Wellington Water. There's challenges I guess with long
677 term compliance. Certainly some councils around the country are developing
678 programmes to inspect and audit tanks and make sure that they are being used
679 appropriately, and are going through the process of looking at what the legal
680 ability to enforce non-compliance is.
681

682 In terms of the actual costs during construction to ensure that it's safe and
683 resilient and not going to cause backflow and things, those costs are reasonably
684 modest for a new build house. It is much harder to retrofit, to put a proper
685 rainwater tank system onto an existing house, but in a new build those costs are
686 moderate. If we consider them in the context of the deferred costs from
687 downstream erosion, loss of indigenous biodiversity, or other council owned
688 measures to manage stormwater, it's actually quite an efficient way to do things.
689

690 Paine: Thank you Mr Tarrant, that's really helpful. Thank you Madam Chair, that's all
691 I have at the minute.
692

693 Chair: Thank you Commissioner Paine. Anyone like to go next?
694

695 Kara-France: I don't have any questions. I just want to say thank you for the thorough reports,
696 both of you – in particular Kate, Ms Pascall, thank you. Kia ora.
697

698 Chair: Commissioner Wratt did you have any questions?
699

700 Wratt: Thank you Chair, I do have a few. Perhaps one just to start with Mr Farrant and
701 then I will have some for Ms Pascall as well. Again, thank you both for very
702 thorough reports and some interesting reading.
703

704 My question that I think for Mr Farrant is around the definition of 'undeveloped
705 state'. In the Wellington Water submission Ms Lockyer suggests differentiating
706 between greenfield and brownfield developments in that definition. Maybe it's a
707 question a little bit for both of you. I didn't see a response to that suggestion.
708 Any comment on that.
709

710 Farrant: My reading of that was partly due to the recognition that in a greenfield
711 development scenario the undeveloped catchment might include forest, grass, a
712 mixture of both, it could be indigenous forest, it could be native forest. There's
713 quite a bit of variability there.
714

715 I, from a professional sense, would agree that that variability in a greenfield
716 development case will have some implications. I guess the intent was to make
717 these changes, which are quite significant changes for the Wellington region, to
718 make them easier to enforce and less complex. So, if there was a requirement to
719 align outcomes with a very rigorous pre-development hydrological assessment,
720 that would be particularly onerous; and so our recommendation remained that
721 for greenfield development we align it with essentially a pastoral land use, which
722 does represent the majority the greenfield development areas that we see today
723 – particularly with things like streams and SNAs being more protected.
724

725 With a brownfield case, the question really comes around any existing use rights
726 to cause environmental degradation. I am not a lawyer or planner, so I will be
727 careful with what I say there. But, we don't want to see the situation where and
728 [00.50.00] existing urban site which might be heavily impervious, such as a carpark or
729 something, which is having adverse impacts on downstream environments, is
730 then developed and they're only needing to meet the same as existing.
731

732 For that case, we do need to see a trajectory back towards enhancing streams, as
733 well as protecting streams, and a fair and reasonable way to do that is to align it
734 with the greenfield assumption around pastoral land use and to not come up with
735 some sort of inferred natural forest type that might have been on that site
736 potentially 150 years or so ago.
737

738 Does that answer?
739

740 Wratt: Mostly I think. I found their recommended amendments to the decision. It was
741 that in greenfield development it is the existing land cover and soil infiltration

742 characteristics prior to clearance for development. In brownfield or infield
743 development it is the modelled grass, pastoral or urban open space.
744
745 I think they're accepting your modelled grass definition, but suggesting that the
746 greenfield development will actually be the existing land cover prior to the
747 development. Would that be a more complex and less clear approach for a
748 greenfield development?
749
750 It just seems that if the greenfield development – and it may be that most
751 greenfield developments are unlikely to be on land that is indigenous vegetation,
752 but they may be for example on scrub land which might have better water
753 retention and capacity than a pastured grass capacity.
754
755 Farrant: From a technical sense that would be more rigorous and more robust, but we did
756 initially recommend adopting the pastoral land use, really in consideration of the
757 complexity that the matching to a finer grain detail that pre-development
758 existing conditions would bring.
759
760 I think we could probably discuss it as a team, but essentially what Wellington
761 Water were suggesting there is next level of complexity, which would benefit
762 the environment, but would be more complex for the industry to align with.
763
764 Wratt: Your point, I think, about the grass model was that there are deemed ways of
765 assessing that. Presumably you wouldn't have that same opportunity if you were
766 looking at the [53.02] pre-state of an undeveloped greenfield development.
767
768 Farrant: Yes. I did make the note in my primary evidence that there is a lack of data, and
769 that's not New Zealand specific, that's across the world. A lot more focus has
770 traditionally been on the likes of flood modelling and less frequent large rainfall
771 events, rather than the influence of things like vegetation type, soil and slope on
772 these really small rainfall events that are very fundamental to freshwater stream
773 health.
774
775 I did also note that there is a big research project currently being done through
776 Scion, which is looking at really increasing the understanding around all of those
777 different components of a water balance in a forested catchment.
778
779 I think our intent, I guess, was to support the industry in these changes, which
780 are quite big changes and to reseek significant benefits without making it overly
781 cumbersome and complex on future applicants.
782
783 Wratt: Thank you for that. You did offer to have a bit more thought about that, so I
784 appreciate that. If you could do that.
785
786 Farrant: Yes.
787
788 Wratt: I think a few other questions for Ms Pascall please.
789
790 Going back to the beginning, or at least the beginning of my notes anyway, your
791 recommendations in terms of categorisation of the provisions to the Freshwater
792 Planning Instrument and P1S1, in your recommendations you recommend
793 [00.55.00] shifting Policy 15, Policy 41 and Freshwater Objective 12AR6 to P1S1.

794
795 In your rebuttal evidence I'm fairly sure it is, you talk about Method FW.2. It's
796 in Appendix 3 in fact, you say, "As notified Method FW.2 applies to any notified
797 resource consent and not just those relating to freshwater and I therefore disagree
798 that Method FW.2 is directly related to protection, enhancement of freshwater
799 quality." But, I don't think you've recommended that it actually be shifted to
800 P1S1.
801
802 Pascall: No I haven't.
803
804 Wratt: Your commentary was pretty much the same as what you had for those other
805 three provisions.
806
807 Pascall: Yes, I will need to go away and have a look at that. That might be potentially an
808 error in my report. I can certainly come back to the panel on that, if that's helpful.
809
810 Wratt: Moving on from that one, there's already been some discussion I guess around
811 the community involvement or acknowledgement of community engagement in
812 some of the provisions. Looking at Policy 12 your rebuttal amends clause (a) to
813 reflect wider community involvement. You have through engagement with
814 community stakeholders and territorial authorities. But, that amendment was not
815 made to clause (c)(a) and I wondered if there was a particular reason for that?
816
817 Pascall: I expect that has come down to the scope of what submitters asked for in
818 evidence. I don't see why that couldn't be added to clause (c)(a) as well. I think
819 that would be appropriate.
820
821 Wratt: It was raised in submissions – Federated Farmers I think.
822
823 Pascall: Might well have missed that one. As I've said, I don't see an issue with that
824 being added in there.
825
826 Wratt: Thank you. Policy FW.3(k) the terminology is, "to protect and enhance rivers,
827 gullies, lakes, wetlands," etc. There have been a number of submissions and you
828 have responded to them in terms of replacing protect and enhance, with maintain
829 and improve. But, in Policy FW.3 clause (k) there is still protect and enhance
830 rivers, gullies, lakes, wetlands, springs, riparian plantings and it also includes
831 estuaries.
832
833 Again is there a reason why 'protect and enhance' has been retained there, but
834 elsewhere you've generally replaced protect and enhance with maintain and
835 improve?
836
837 Pascall: No particular reason other than I think through rebuttal the evidence I was
838 responding to was focused I think on Policy 18. It may well be that they also
839 requested a review of other policies. Again, I can review that and come back to
840 the panel on that matter.
841
842 Wratt: The use of 'protect and enhance' to me there's a different meaning where it says,
843 'protect and enhance water bodies' or whether it says 'protect and enhance
844 water quality in water bodies'. The submissions were more focused on the use

845 of it around protect and enhance water bodies as such, rather than protect and
846 enhance the quality.
847
848 I can't find exactly where I have written my notes on that. Any comment from
849 you on that Ms Pascall.
850
851 Pascall: I think what it comes back to Commissioner is Policy 5 of the NPS-FM which
852 reads: "Freshwater is managed including through a National Objectives
853 [01.00.00] Framework to ensure that the health and wellbeing of degraded water bodies and
854 freshwater ecosystems is improved, and the health and wellbeing of all other
855 water bodies and freshwater ecosystems is maintained, and if communities
856 choose improved.
857
858 My reading of that Commissioner is that it is both water bodies and water
859 quality.
860
861 Wratt: And that 'maintain and improve' covers both those requirements in the NPS-
862 FM.
863
864 Pascall: Yes, that would be my interpretation.
865
866 Wratt: Policy 15 – Forest & Bird I think requested in (b)(3) setbacks to wetlands as well
867 as waterways. You've accepted waterways but not wetlands.
868
869 Pascall: I think this came down to the role of district plans relative to regional plans; the
870 relative responsibilities of the Regional Council and territorial authorities, i.e.
871 that the management of wetlands is generally a regional plan concern.
872
873 Wratt: The management of waterways, is that a district plan? It's not so much about the
874 managing the waterway itself is it, it's managing the impacts on those waterways
875 by activities around them. Are you saying that it's not appropriate for a District
876 Council to have responsibilities around?
877
878 Again I'm looking for the detailed policy.
879
880 Pascall: Perhaps I could assist. I think this also comes back to the National
881 Environmental Standard for Freshwater, which actually has some specific
882 criteria for what Regional Councils manage in relation to natural inland
883 wetlands, and that is activities within a hundred metre setback I believe it is, of
884 natural inland wetlands. I think that's where the line is drawn. That is the
885 generally the Regional Council responsibility.
886
887 Again I'm happy to come back to the Panel to clarify that point if that's of use.
888
889 Wratt: Thank you. I think I'm getting close to the end of my questions. My final
890 question really relates to the submissions from Winstones around whether or not
891 reference to enabling activities related to aggregate and clean fill – whether that
892 is or isn't out of scope. You comment that the [01.03.41] is not changing soils
893 and minerals chapter, which is out of scope; but what they're proposing is
894 actually a change in the provisions that we are considering, which relates to the
895 NPS-FM 2023, clauses 3.22.1 and 3.24.1.
896

897 I guess I'm just questioning whether it really is out of scope or not.
898
899 Pascall: I think Commissioner what it comes back to is what was anticipated in
900 developing and notifying Change 1. From memory the S32 Report doesn't
901 actually refer to mineral or aggregate extraction as an issue that the Change RPS
902 is dealing with. Its primary driver was the changes in the urban development
903 space that were directed through the National Policy Statement on urban
904 development and also changes to the RMA to bring in the medium density
905 residential standards. Subsequent to that, territorial authorities having to change
906 their district plans to give effect to those.
907 [01.05.00]
908 Whilst there are a wide-range of changes within Change 1, this particular issue
909 around minerals and aggregate was not anticipated within this change. It wasn't
910 a driver. It wasn't a resource management issue that Change 1 was dealing with.
911
912 These changes to the NPS-FM came in subsequent to the notification of Change
913 1.
914
915 Wratt: I should know this, but I'm not sure. This is maybe a question for your legal
916 counsel. Have we had advice in relation to taking account the February 2023
917 NPS-FM amendments?
918
919 Manohar: I'm not sure if we have yet, but that it something we can put in writing to the
920 Panel. We have covered off scope and what's within scope and what the tests
921 are for scope of the plan change, and then scope of submissions when you're
922 looking at the P1S1 changes in our Hearing Stream One submissions. I would
923 have to go back and look at those as to whether they expressly dealt with those
924 changes to the NPS-FM that came in in January this year or not. But, we can put
925 those in writing for the Panel.
926
927 Wratt: This is part of a Freshwater Provision and not P1S1, so the Panel scope is not as
928 restricted is it? Is that something we could still consider even if it was out of
929 scope, if it was a P1S1 provision?
930
931 Manohar: The question for the Freshwater Provision, the question of scope is the scope of
932 the plan change. You're able to make recommendations that are outside scope
933 of submissions, but you're still limited by the scope of the notified plan change,
934 which is different from the P1S1 where you're limited by the scope of the plan
935 change and also scope of relief sought in submissions.
936
937 Wratt: I think that deals with the questions I had. Thank you.
938
939 Chair: Thank you Commissioner Wratt.
940
941 Ms Manohar, just on that point, I went looking for these submissions as well. I
942 think your submissions for Hearing Stream 2 on Integrated Management, they
943 talk about the NPS highly productive land and the extent to which the
944 requirements in that NPS could be incorporated into Change 1. Just picking up
945 on the point that Commissioner Wratt made, I don't think the NPS-FM has been
946 looked at.
947

948 Counsel for Winstone Aggregates, Ms Tancock, has set out quite a few cases in
949 her submissions where she makes the argument that both the recent Supreme
950 Court Port Otago case and others say that any tensions between national
951 direction is best resolved at the RPS and it doesn't matter that a particular NPS
952 was gazetted after the change was notified. It would be really great if you were
953 able to come back to us specifically looking at those cases that Ms Tancock has
954 referred to.

955
956 Manohar: Yes Chair Nightingale, we can put that in writing. I will note that for Hearing
957 Stream 6. We're going to have the NPS Indigenous Biodiversity which has been
958 gazetted through this process as well. It might be best in submissions for that
959 hearing stream that we cover that issue off more comprehensively.

960
961 My general understanding is that it does all come back to scope for the plan
962 change; so where there are directions in the NPS's or NPS-FM, NPS-IB, NPS-
963 HPL, for the Regional Council to do things using a Schedule 1 Process, you have
964 a Schedule 1 or a Freshwater Process here and it comes back to what can be
965 achieved in the bounds of that process, and what's reasonable to be achieved in
966 [01.10.00] the bounds of that process, which all comes back to that question of what was
967 the initial scope of the plan change and how does that change, or new national
968 direction fit into that. That's something that we can set out in writing, either in
969 reply for this hearing stream, or Hearing Stream 6 legal submission. I'm not sure
970 which will come first, but might be best to do it there.

971
972 Chair: Yes. I think one of the points that Ms Tancock makes is that the focus of this
973 change is about integrated management. While there is that urban development,
974 giving effect to the NPS-UD is one of the drivers; however the integrated
975 management of all natural physical resources which brings in obviously
976 freshwater and then you have these specific consenting pathways in the NPS-
977 FM, and if urban development can occur in a more permissive way without
978 having these consenting pathways properly recognised, then... it's a tricky one.

979
980 I would also be interested in your advice on your legal submissions addressing
981 the point of if Change 1 doesn't specifically provide for that consenting pathway,
982 say for aggregate extraction, the relevance of the NPS-FM anyway... while it
983 would be their preference to have the RPS address that and try to reconcile the
984 tensions, the NPS-FM obviously still has to have regard to consent application.

985
986 I think this also came up in our discussion probably in Hearing Stream 2
987 regarding the NPS-HPL. I can't remember. I think one of the territorial authority
988 submitters said, "It doesn't matter because you've still always got the NPS-HPL
989 there as a backup.

990
991 Manohar: I think we can put that in writing. From the policy perspective Ms Pascall has
992 covered off how the relief sought by Winstone fits within the scope of the policy
993 direction in Change 1. There is a question there as to whether there is a gap in
994 policy direction. That would need to be filled in the RPS. That's a big question
995 and the position is that that's a question outside the scope of this work.

996
997 The second point is that the NPS-FM itself in respect of the consenting pathways
998 that are often spoken about is an expressed direction to change the Regional
999 Plan. There's expressed direction in terms of changing the Regional Plan around

1000 those consenting pathways; so that's where that sort of consenting pathway
1001 changes. When you're looking at your consents under the Regional Plan you
1002 would look up to the RPS, and look at what direction is there in terms of
1003 minerals. If there is a gap, you would then need to look up.
1004
1005 I'm not clear on the analysis as to that gap or not, given when that change
1006 happened in terms of January this year and the scope of this plan change.
1007
1008 Chair: Thank you. If you could, and I'm sure you will, but the Port Otago Supreme
1009 Court case as well. Just whether that's changed anything and put more emphasis
1010 on the RPS being the document where those tensions are best reconciled.
1011
1012 Manohar: No problem. Again I don't think that the Supreme Court decision necessarily
1013 changed their approach to regional policy making; but we can put that in writing
1014 and related it back to this specific issue.
1015
1016 Chair: I do have some more questions. I am just wondering if you would like to have a
1017 short break now and then we come back and then I can finish the questions, or I
1018 could start now. Have you got any preference?
1019 [01.15.00]
1020 Maybe let's have a break. It might actually be that some of the things I wanted
1021 to ask have already been addressed. I will just get my notes in order. Shall we
1022 take ten minutes? We'll come back at 11.00am. Thank you very much.
1023
1024 [Break taken – 01.15.30]
1025
1026 Chair: Kia ora. Welcome back. I have some questions. I might start with you Ms
1027 Pascall.
1028
1029 I just want to be sure that I understand where we are at with the long-term
1030 visions. I understand that through Variation 1 in the Second Hearing Stream for
1031 next year we will be considering the freshwater visions for Te Awarua-o-Porirua
1032 Whaitua and Te Whanganui-a-Tara Whaitua, and visions for the other Whaitua,
1033 the remaining three Whaitua will be a subsequent process.
1034
1035 Those two particular Whaitua that's important to bring into Change 1 because
1036 there are provisions in the change to the Natural Resources Plan specifically for
1037 those Whaitua.
1038
1039 Pascall: Yes that's correct.
1040
1041 Chair: In terms of the NPS-FM requirements, clause 3.3 of the NPS-FM talks about the
1042 Regional Council developing long-term visions for freshwater and including
1043 those long-term visions as objectives in its RPS.
1044
1045 My question is, these two long term visions that we're going to be considering
1046 next year, which have been obviously developed by mana whenua, how does
1047 that fit then with objectives? Are the objectives still to come as part of a future
1048 RPS change?
1049

1050 Pascall: We're referring to them as visions, but I think they're more appropriately
1051 referred to as vision objectives. They're objectives that include the vision
1052 essentially. They're one in the same.
1053

1054 Chair: I'm with you now. I just wasn't sure if there was still another step to come, but
1055 that's going to be dealt with as part of Variation 1.
1056

1057 Pascall: Thank you.
1058

1059 Wratt: Could I just ask another question related to the question that was just asked? As
1060 part of the Variation 1 process, is it anticipated that there would be new
1061 objectives added into this RPS process?
1062

1063 Pascall: The scope of Variation 1 is limited to two objectives – one for Te Awarua-o-
1064 Porirua Whaitua and the other for Te Whanganui-a-Tara Whaitua. If we just
1065 forget the term 'visions' they're literally objectives. That's all it is in Variation
1066 1, being proposed to be added into Change 1.
1067

1068 Wratt: Thank you Chair. My apologies for butting in there.
1069

1070 Chair: No problem at all.
1071 [01.20.00]
1072 Ms Pascall, I am trying to ask these questions in a methodical way. I am sorry if
1073 I jump around a little bit.
1074

1075 With Objective 12, Fish & Game their relief or their submission they sought to
1076 add "preserving the natural character and form of water bodies," which of course
1077 comes from s.6.
1078

1079 I think in your evidence you say that Objective 12 para (d), which you have
1080 amended through your rebuttal to say, "recognise and provide for the individual
1081 characteristics and processes of water bodies and their associated ecosystems
1082 basically addresses that relief.
1083

1084 My question is whether that wording is aligned with s.6(a) which does talk about
1085 the preservation of the natural character of wetlands, lakes, rivers and their
1086 margins.
1087

1088 I guess it's just whether "recognise and provide for" is appropriate terminology
1089 in light of the s.6(a) requirement?
1090

1091 Pascall: I think it is in the context of Chapter 3.4 of the RPS which is freshwater including
1092 public access. My reading of s.6(a) is that it's focused on the natural character
1093 elements which I believe is a separate chapter within the RPS. There are separate
1094 provisions that address natural character.
1095

1096 In responding to Fish & Games relief sought, I considered that clause (d) of
1097 Objective 12 was appropriate in the context of freshwater management and the
1098 NPS-FM.
1099

1100 Chair: This might have been similar to a question that Commissioner Wratt asked, but
1101 I just want to be sure I understand. This comes back to the point we were talking

1102 about with Ms Manohar and this requirement and can it be a future requirement
1103 to the NPS's.
1104
1105 Policy 40(o) which talks about avoiding the loss of river extent, or values to the
1106 extent practicable, Fish & Game say that this needs to recognise the functional
1107 need for activities in this location and the need to manage effects in accordance
1108 with the effects management hierarchy.
1109
1110 This issue comes up in a few provisions. I guess I'm just not sure why in some
1111 places you've accepted that it's appropriate to recognise the functional need and
1112 the effects management in hierarchy – for example in Policy 18(n), but in other
1113 places, even where there is recognition in an NPS, your view is that it's okay to
1114 refer to the extent practicable.
1115
1116 I guess I just want to check whether there's an inconsistency there that can be
1117 justified.
1118
1119 Pascall: I wasn't sure if there was more to the question.
1120
1121 I think from memory the amendments you're referring to, Policy 18 and Policy
1122 [01.25.00] 40, are ones that I've recommended off the back of original submissions.
1123 Potentially I haven't looked across those policies in terms of consistency. Again
1124 that is something I'm happy to come back to through my reply, if that's of use,
1125 because obviously we do want to be consistent where we can be. I would need
1126 to think about whether there's a good reason to be inconsistent.
1127
1128 Chair: That would be appreciated. It's hard because I take Ms Manohar's point that a
1129 lot of these are requirements for the Regional Plan. Is it enough for the RPS to
1130 have that policy direction at that level, or does it need to go further and recognise
1131 those pathways in the NES Freshwater and the pathways in the NPS. I appreciate
1132 it's a really complex issue. If you start doing it, then do you need to do it for all
1133 of them? That also brings into account the scope issues we were talking about.
1134
1135 Staying with Policy 40, I think in para 213 of your rebuttal evidence you agree
1136 I think, if I understand what you're saying there; you agree that a consenting
1137 pathway should be provided regarding the removal or destruction of indigenous
1138 wetland plans in wetlands. But, I don't think any changes have come through in
1139 your rebuttal provisions. You refer to Mr McDonnell's evidence.
1140
1141 That's Policy 40(p).
1142
1143 Pascall: Apologies. Would you be able to repeat the paragraph reference in my rebuttal?
1144
1145 Chair: Sure – 213.
1146
1147 Pascall: I think that I have made an error there and I haven't carried the amendment
1148 through. I can respond to that through reply.
1149
1150 Chair: Thank you Ms Pascall.
1151 I know we were just looking at this provision about loss of river extent or values
1152 in Policy 40(o). I have just written here in my notes it's the same issue in Policy

1153 18(e); so when you come back to us about that, if you could address both of
1154 those.
1155
1156 Rangtāne in their submission and also in their evidence they have provided, they
1157 make the point that some of these policies in these Change 1 provisions are
1158 limited to urban development I think they're saying that they should be applying
1159 to broader use in development and not just urban development. Achieving
1160 integrated management requires that a broader approach is taken.
1161
1162 Does this come back to again the scope issue?
1163
1164 Pascall: Yes it is a scope issue. If you can imagine, post Change 1 was notified with this
1165 [01.30.00] new policies that are directive to urban development. I think if we were to then
1166 open that up to a much broader set of uses there would be a potential natural
1167 justice issue there.
1168
1169 Chair: Some do have broader reach, but that is for example the earthworks vegetation,
1170 but that is because they were notified as part of Change 1.
1171
1172 Pascall: That's correct. That Policy is in the operative RPS and already applies to all
1173 uses.
1174
1175 Chair: Rangtāne also make the point, Policy FW.1(b) – requiring the efficient end use
1176 of water for only new developments and not all developments. Is that also a
1177 scope point?
1178
1179 Pascall: It's a scope point but more generally. I would have some concerns about
1180 applying something like that retrospectively to existing development.
1181
1182 Chair: The question that I think the other Commissioners had raised about Policy 17,
1183 and the relief that Hort New Zealand are seeking to include here – reference to
1184 food production and bringing that in as part of Te Mana o te Wai second tier
1185 priority rather than third; can you see any unintended consequences of doing
1186 that? I think the wording they are proposing is “food production that contributes
1187 to domestic food supply”. I think they are trying to keep it as narrow as they can
1188 and not having it apply to all food that's exported.
1189
1190 Food production that contributes to domestic food supply that would obviously
1191 include more than horticulture as well. It could be that there's some further
1192 refinement of that wording that might be appropriate.
1193
1194 I appreciate there's a scope point we've talked about, but if we keep that aside
1195 for a moment, on the basis of giving effect to the NPS-HPL for instance, if a
1196 change like that we consider that is appropriate... I'm just keen to understand if
1197 you can identify any adverse consequences of expanding that second tier?
1198
1199 Pascall: My preference is still to keep it narrow. I still believe that that is in line with the
1200 hierarchy obligations of Te Mana o te Wai.
1201
1202 Policy 17 does not exclude that use. It is simply a way of prioritising use which
1203 is in line with the NPS-FM.
1204

1205 In terms of unintended consequences I think it's a little bit of a slippery slope. It
1206 could be interpreted quite broadly and you wouldn't be achieving the outcome
1207 that is sought by Change 1, but essentially the NPS-FM either.
1208

1209 I can't think off the top of my head of any specific examples, but I do have
1210 reservations with the wording that's been put forward; but generally opening it
1211 up more broadly than I have recommended.

1212 [01.35.00]
1213 Kara-France: Would you agree that the background to Te Mana o te Wai, in particular the
1214 hierarchy, came from the traumatic devastation of the impact of polluted water
1215 in Havelock North cases, where the drinking water quality was grossly impacted
1216 on.
1217

1218 Pascall: I can't comment on what the exact driver was for Te Mana o te Wai. I understand
1219 that was part of it. I think it's a much broader issue across New Zealand that Te
1220 Mana o te Wai is trying to... why that's part of the NPS-FM, is trying to resolve
1221 water quality issues generally.
1222

1223 Chair: This term "health needs of people" which also appears in Policy FW.7, and I
1224 think Ms Landers for Hort New Zealand queries what that means in this policy,
1225 and I think your rebuttal does cover it, but are you able to just explain that?
1226

1227 Pascall: This is the addition to clause (b) that I recommended?
1228

1229 Chair: Yes.
1230

1231 Pascall: That came from a submission I think from Wellington Water from memory. I
1232 think the intent there is along the lines of what Commissioner Kara-France just
1233 asked really; is to make sure that in putting in these built solutions that we're not
1234 in the process compromising water supply that the health needs of people is
1235 reliant on. That's all that addition is doing.
1236

1237 Chair: It's just that is a defined term in that particular policy. To me it makes sense if
1238 you just take the ordinary English meaning of that phrase, but when you actually
1239 use the defined term... maybe it's okay. For example, that reference to farm
1240 domestic rain tank scales, you don't see any issues? I guess we just get into some
1241 sort of double-negatives a bit, because of the definition.
1242

1243 Pascall: I can see your concern. I guess the intent of referring to the health needs of
1244 people is firstly because I had recommended defining it and I considered that
1245 reference was suitable there as providing a bit more certainty around what we
1246 are actually referring to, rather than having something more general.
1247

1248 I'm happy to have another look at that through reply and see if there's a way that
1249 we can make that clearer.
1250

1251 Chair: The consideration policy, 41, this is the same issue that we've had in, I think,
1252 every hearing stream.
1253 [01.40.05]
1254 Ms Landers puts, "Should Policy 41 continue to apply once Policy 15 has been
1255 given effect to in District and Regional Plans?"
1256

1257 In this particular one you have suggested deleting the reference to the Plan
1258 Change Variation or Review. We've heard previously that that's important in
1259 case something goes on at the plan level. It provides a check-back.
1260

1261 But, I can't recall now why you've suggested that is deleted. This applies to
1262 consenting. I think Ms Landers is simply saying once Policy 15 has been given
1263 effect to, do you still need to have Policy 14 applying to consenting?
1264

1265 Pascall: Just to be clear, we're referring to Policy 41?
1266

1267 Chair: Yes, 41.
1268

1269 Pascall: What I would say here is that strikethrough of notice of requirement or a change
1270 variational review was in the notified version – that's not my recommended
1271 change.
1272

1273 I am not sure why the Council deleted that, however I could hazard a guess that
1274 it might relate to some other texts that's been deleted in the notified version and
1275 the explanation, which does actually say that this policy shall cease to have effect
1276 once Method 31 and Policy 15 is given effect to in Regional District Plans.
1277

1278 This is something I'm happy again to take away and think about, but I'm
1279 wondering if that wording needs to be reinstated.
1280

1281 Chair: We were just seeing how this might play out. Say in time the Natural Resources
1282 Plan includes policies, rules and methods in accordance with Policy 15, and this
1283 is when the Whaitua have got their outcome, their values, their target attribute
1284 states have all been set, and then they're at the point where they're applying
1285 controls on earthworks and vegetation clearance to achieve those target attribute
1286 states. Then someone applies for consent for earthworks – so Policy 14 applies.
1287

1288 It's really just Policy 14(a) and what's written as (e) in your version there.
1289

1290 I guess I'm just testing Ms Lander's concern there with having Policy 41. I can't
1291 see any workability issues, but is there anything?
1292

1293 Pascall: I think Ms Landers may have asked for it to be deleted.
1294

1295 Chair: Yes, once Policy 15 has been given effect to then Policy 41 doesn't apply.
1296

1297 Pascall: Yes. The important bit to remember here is that the Whaitua are being
1298 implemented in stages; so they are not all happening at once. So, this policy
1299 would need to say in place until all of the Whaitua have been completed and
1300 implemented through the Natural Resources Plan.
1301

1302 Again I think there could be wording in the explanation to the effect, but I think
1303 it's still an important policy to have in place until such time as all the Whaitua
1304 have been implemented.
1305

1306 Chair: I am just not sure that even this stayed in, once Policy 15 has been given effect
1307 [01.45.00] in the Regional Plan, I can't really see a workability issue. I can't see an
1308 unnecessary consenting burden. Policy 41 is just saying that you need to show

1309 the extent to which your activity is minimising erosion and effects on aquatic
1310 ecosystem health.
1311

1312 Pascall: Correct. That’s my interpretation as well. In implementing the RPS and
1313 subsequent lower order documents, in theory it should be clear whether Policy
1314 15 has been given effect to or not, and whether you need to refer to Policy 41.
1315

1316 Chair: Thanks. If you could think about that. It's really just that workability. I don’t
1317 know if Ms Landers uses the term “unnecessary consenting burden” she might
1318 not, but it's just whether it needs to fall away or whether it can stay and not be
1319 an unreasonable provision.
1320

1321 Wairarapa Federated Farmers had a concern with Policy 17, saying that there
1322 was a complete omission of reference to social, economic and cultural wellbeing
1323 of people. I think just before you said that third priority doesn’t mean it doesn’t
1324 apply, it's just not prioritised.
1325

1326 Pascall: That’s correct. I think including reference to that here in this policy, I think it
1327 would potentially undermine the purpose of the policy which is to reiterate what
1328 the priorities are in allocating taken use of water.
1329

1330 I don’t think it would add value. It potentially adds confusion.
1331

1332 Chair: I think this point that comes through in some submissions, including Winstones,
1333 that the provisions don’t adequately recognise and provide for use in
1334 development. They’re very protectionist focused.
1335

1336 Where there are beneficial activities other than urban development, which I
1337 think there’s broad consensus that urban development is provided for, but other
1338 activities, obviously in the consenting process someone can talk about the
1339 positive effects that they claim their activity will have and that will be factored
1340 in under 104.
1341

1342 Do you think that the suite of provisions provides appropriate recognition of the
1343 circumstances when use and development of water bodies may be appropriate?
1344 It's just this balance issue.
1345

1346 Sorry, that’s quite a big question. I am happy for you to think about that and if
1347 you want to address that further in your reply.
1348

1349 Pascall: Yes, I think that would be helpful. I have provided a little bit of commentary in
1350 my rebuttal evidence specifically in response to Winstones’ evidence in that
1351 regard. It comes back to the scope question.
1352

1353 [01.50.00] I am happy to have a look. I am particularly looking at Policy 18 because that is
1354 the one that applies more broadly than to urban development.
1355

1356 One thing I would say is that the NPS-FM generally leans more towards the
1357 protection – the maintain, improve, protect side of things. I can reflect on that
1358 and come back to you in my reply.
1359

1360 Wratt: Winstones I think did suggest, and I think it was Policy 18(a) which would make
1361 reference to beneficial activities. Maybe in your consideration there you could
1362 have a look at that Ms Pascall.
1363

1364 Pascall: I am happy to Commissioner. I did consider that in preparing my rebuttal
1365 evidence. Probably my initial response, notwithstanding what I might come back
1366 in reply on, was that that could be interpreted very broadly. Again I thought that
1367 was closely tied to the additional clauses that have been added to the NPS-FM
1368 this year and my concerns around scope. But again happy to think about that
1369 more and to come back and reply.
1370

1371 Wratt: Thank you. Yes, appreciate that you did address it, but I guess it's just in the
1372 context of the question that our Chair has just asked. That seems to be relevant
1373 for referring to again. Thank you.
1374

1375 Chair: Thanks Commissioner Wratt. I think in terms of this document, providing the
1376 direction across the region for integrated management of use, development,
1377 natural and physical resources and the direction to the NRP changes which are
1378 coming up as well, use and development is provided in certain circumstances.
1379 Just wanted to check whether there's enough of that policy direction at this level
1380 to acknowledge and support that.
1381

1382 In your reply as well, in the next version of the provisions, could you include I
1383 think it's FW.X they have written. I think you propose some wording for that in
1384 your rebuttal evidence, but I don't think it's in the suite.
1385 Pascall: Apologies, which policy?
1386

1387 Chair: FW.XX.
1388

1389 Pascall: There's a couple with that reference.
1390

1391 Chair: It's not the hydrological control. It's not the two new ones that refer to the Te
1392 Mana o te Wai statements. It's a short one. I have written down the reference.
1393

1394 Pascall: Is it possibly a new method that I'm recommending? My rebuttal, the changes
1395 shown in the rebuttal weren't the whole set of changes. There are also the S42A
1396 amendments that weren't the subject of rebuttal evidence that aren't included.
1397

1398 Chair: Maybe it's in there. There's some methods as well. Anyway, if it's okay to have
1399 all of the provisions that are coded to this topic.
1400

1401 Pascall: Certainly. I was trying to reduce the number of pages but I can understand that
1402 might have been confusing.
1403

1404 Chair: Thank you. Same actually with the definition of "hydrological control" and
1405 "undeveloped state".
1406

1407 Pascall: Yes.
1408 [01.55.00]

1409 Chair: Ms Pascall, there are some differences in wording between Policy 14(h) and
1410 FW.3(k). One, I think the Regional Plan Policy refers to the health and

1411 wellbeing, and the other one doesn't. One refers to receiving environments and
1412 the other one doesn't.
1413
1414 When I was looking through the NPS-FM to see what the direction in their said
1415 about this, I got to 3.5(4) which talks about adverse effects of urban development
1416 on the health and wellbeing of water bodies, freshwater ecosystems and
1417 receiving environments. I guess I am just querying first of all is there a problem
1418 with having health and wellbeing and receiving environments included in the
1419 District Plan provision; and is in fact required by 3.5(4)?
1420
1421 Pascall: I think in the context of that clause of the NPS-FM I agree with you. That's
1422 directive to territorial authorities. It refers to health and wellbeing of water
1423 bodies and receiving environments. In that context I don't see there would be an
1424 issue in those same words being added to clause (k) of Policy FW.3.
1425
1426 Again I think this may have been a result of me looking at amendments in
1427 isolation. One thing I would note here is that obviously Policy 14 directs
1428 Regional Plans; FW.3 is District Plans and trying to get a little bit of nuance
1429 between the two in terms of what Regional Plans need to do versus what District
1430 Plans need to do. I think in the context of Freshwater management it's still a little
1431 bit uncertain.
1432
1433 I guess generally with my amendments it's a case of trying to get a little bit of
1434 certainty but acknowledging that some things will need to be addressed in lower
1435 order documents.
1436
1437 Chair: I was thinking the same thing. Then I was thinking District Plans are still
1438 managing land use, subdivision development – for what? It's to manage effects
1439 isn't it.
1440
1441 I couldn't see a problem with a health and wellbeing and receiving environments
1442 reference, but if you're able to think about that and come back in your reply.
1443
1444 Policy 14(h) the reference to “gully heads”, which has come back in your
1445 rebuttal, which is fine and I understand the reasoning you've given there and I
1446 think DoC support that, or the Director General I should say supports that; but
1447 the reference to “adjacent”.
1448
1449 My issue there – and I can't actually remember now who had relief on this, but
1450 does that word “adjacent” apply only to “gully heads”, or does it apply to rivers,
1451 lakes, wetlands, springs? It can't apply to receiving environments can it because
1452 they could be...
1453
1454 Pascall: So, the question is does “adjacent” include – are we talking about adjacent to
1455 “gully heads”? Is that what your question is?
1456
1457 Chair: Yes, does it just apply to “gully heads” or is it health and wellbeing of adjacent
1458 rivers, adjacent lakes, adjacent wetlands?
1459 [02.00.00]
1460 Pascall: It's the latter. It is intended to be urban development that is adjacent to any of
1461 those areas, or waterbodies that are in that list. It's potentially a grammar issue
1462 there in my drafting.

1463
1464 Chair: I can't actually remember, it was possibly Forest & Bird, or the Director General,
1465 but I think someone wanted that deleted. I can't remember now who that was.
1466 They wanted "adjacent" deleted.
1467
1468 That doesn't come from the NPS-FM?
1469
1470 Pascall: No, that is wording that I have recommended, I guess to try and be specific
1471 around which gully heads, rivers, lakes etc. are to be managed by this clause
1472 rather than a broader interpretation.
1473
1474 Chair: So, just to be really clear, it's not a river in the receiving environment, in the
1475 catchment, in the receiving environment of that activity, of that urban
1476 development? It is only a river that would be adjacent, so have a touching
1477 boundary with.
1478
1479 Pascall: In terms of what we are referring to, in terms of adjacent that's correct, but I
1480 think the inclusion of other receiving environments you could also capture other
1481 rivers etc. yes.
1482
1483 Kara-France: Just in regards to "gully heads" it was the Department of Conservation Director
1484 General's comment in regards to the reference to "gully heads" as a feature that
1485 should be protected and enhanced as part of the urban development to prevent
1486 further degradation of fresh water. Section 25.
1487
1488 Chair: I think we looked at this before when you were responding to Commissioner
1489 Wratt in Policy 15(b)(3) about wetland. The reasons for not requiring setbacks
1490 from wetlands and their margins. Was this the policy Commission Wratt that
1491 you had asked a question about?
1492 My question is why are wetlands and their margins not referred to in Policy
1493 15(b)(3)? I think you said wetland management is a Regional Council function.
1494
1495 Pascall: Yes. To add to that policy, I think it's FW.6 which is the one that sets out the
1496 allocation of responsibilities. It's quite clear that the management of natural
1497 inland wetlands and activities within certain setbacks is a Regional Council's
1498 responsibility.
1499
1500 Chair: Coastal wetlands, which ended up coming out in those amendments from the
1501 National Direction. I think it was the Director General wanted a reference to
1502 coastal wetlands in Policy 40 and 18, but you are suggesting that be deleted
1503 because of the NPS-FM direction?
1504
1505 Pascall: That's correct. That's not to say they couldn't be part of a receiving environment
1506 which is within the scope of the NPS-FM, but I think to have that reference there
1507 with no qualification it's far too broad.
1508
1509 Chair: Actually, while we are just looking at that provision in Policy 18(c), this is the
1510 same point I think I had earlier on about how that reference to functional needs,
1511 managing effects in accordance with the effects management hierarchy, why
1512 [02.05.00] that's provided for in some provisions and not in others. I think that's something
1513 that you will have another look at. It comes up in a few places – 18(e) is another
1514 one.

1515
1516 I found this difficult because the NPS-FM in Policy 7 refers to the loss of river
1517 [02.05.37] avoided to the extent practicable. Then of course there's a very
1518 detailed policy which has to be included in the Regional Plan about that. But,
1519 actually at Policy 7, it doesn't go on to say "unless there's a functional need".
1520 It's that tension. One party's evidence talks about that.
1521
1522 Pascall: If I can respond to that – I don't think there was a specific question. I think
1523 Policy 5, including the words "to the extent practicable" essentially covers those
1524 more specific clauses later in the NPS that provide for those functional needs. I
1525 guess there is a question there around how specific do these RPS policies need
1526 to be, given the NPS-FM requires those clauses to be included directly in
1527 Regional Plans.
1528
1529 I guess that's also in the back of my mind. Again, happy to reflect on these for
1530 consistency, with a consistency perspective.
1531
1532 Chair: Thank you. Sorry, it was Policy 6 I meant to take you to, not Policy 7. We were
1533 just talking about wetlands. It's that same point. You've got the policy stated
1534 quite definitively and then you've got the implementation provision in the NPS,
1535 which has the pathway. Then of course the NES as well has the pathway.
1536
1537 Pascall: That's right.
1538
1539 Chair: While the NES will apply, until the natural resources plan includes that
1540 provision, I think the concern was that if you keep that very definitive no further
1541 loss of extent without recognising the pathway, until the NRP comes along
1542 you've got that direction which might mean that your consent application
1543 doesn't...
1544
1545 Pascall: Potentially, yes.
1546
1547 Chair: Struggles.
1548
1549 Pascall: Yes, potentially.
1550
1551 Chair: Should Policy 40 say "have regard to" rather than "particular regard to". I think
1552 is a consenting consideration policy.
1553
1554 Pascall: Yes, I would agree with that. I think this is probably something we'll need to
1555 work through in that final hearing stream. I think our reporting officers have
1556 potentially approached this slightly differently, but consistent with what I have
1557 said in my rebuttal evidence, it should be "have regard to" and not "have
1558 particular regard to."
1559
1560 Chair: Staying with that chapeau I understand the giving effect to Te Mana o te Wai
1561 and in doing so must have regard to. The giving effect to Te Mana o te Wai, I
1562 had a look and I suppose this comes from Policy 1 of the NPS-FM which says
1563 that freshwater is managed in a way that gives effect to Te Mana o te Wai. It's
1564 just that wording isn't it – the give effect, which is obviously planning; the
1565 requirement of the RMA for plans.
1566 [02.10.00]

1567 I think we'll ask this in our questions at the end of hearing, but it might be
1568 something that we ask counsel to look at as well – just whether there are any
1569 issues with that “give effect to Te Mana o te Wai” and “have regard to.”
1570
1571 The only thing I am just wondering is, if there's any issues; in the consenting
1572 context, any issues because of what “give effect to” means.
1573
1574 Actually, the same with Policy 44 I have written here – is that “have regard to”.
1575
1576 This one, if you could have a look at the wording there, because that doesn't say
1577 “have regard to”. That talks about Te Mana o te Wai be given effect to. It's
1578 possible that the s.104 requirements would apply – they would apply anyway.
1579
1580 Pascall: Some inconsistency in chapeau wording there I think. Something I can come
1581 back to in reply.
1582
1583 Chair: Ms Manohar, it's the same point there as well in Policy 42: “when considering
1584 an application must give effect to Te Mana o te Wai by having regard to.” It's
1585 the same point as before.
1586
1587 I've got some questions that I think also now might relate to Mr Farrant's
1588 evidence as well.
1589
1590 What are “sensitive urban design techniques”?
1591
1592 I'm trying to make sure I really understand the difference between hydrological
1593 controls, water sensitive urban design and nature-based solutions.
1594
1595 They are referred to in the suite of provisions and they are referred to in the
1596 climate Policy CC.4(a) which you might not have in front of you, and we might
1597 need to come back to this in the last hearing stream, integration, but I just want
1598 to make sure I really understand who is responsible for setting these in consent
1599 applications – district or regional? Who is responsible for providing for them in
1600 plans?
1601
1602 I sort of almost wonder if some kind of a chart might be helpful for us.
1603
1604 Sensitive urban design, as I understand it, can deal with both the peak flow issues
1605 you were talking about Mr Farrant as well as water quality. But, they are
1606 different from hydrological controls – or are hydrological controls a subset?
1607 [02.15.00]
1608 Farrant: It's most definitely the latter. Water sensitive urban design is really a philosophy
1609 or set of principles around developing in a way that considers all aspects of water
1610 – so that's water quality, water quantity in terms of hydrological controls, but
1611 also in terms of flooding and also in terms of community education and
1612 connection with waterways and things. It's quite an all-encompassing sort of
1613 philosophy around development. Hydrological controls is then just one small
1614 subset of that. I guess nature-based solutions is probably best described as a
1615 much bigger subset of that as well. That's where you're then either using nature
1616 or intentionally mimicking nature to achieve those outcomes.
1617

1618 Broadly that aligns with water sensitive urban design, but there probably some
1619 examples of water sensitive urban design like education, like reducing demand
1620 on water and things that don't also sit in the nature-based solutions suite I guess.
1621

1622 Kara-France: Kia ora Mr Farrant. In regards to the statement you made regarding education,
1623 is that in partnership with mana whenua in regards to mātauranga Māori for the
1624 care of water bodies?
1625

1626 Farrant: It's hard for me to say. I think it should be yes, but that typically comes down to
1627 individual engagements with mana whenua groups as to what they want to
1628 involve in that process. Ideally it should be encompassed within that.
1629

1630 Kara-France: In regards to Police 12 management of water bodies and Regional Plans, it's
1631 highlighted in here partnerships within the community, the Whaitua
1632 Implementation Plans and those values coming through and the application of
1633 mātauranga Māori, surely that's applicable to the control systems, the
1634 hydrological control systems.
1635

1636 Farrant: I guess hydrological control is sort of a technical way of describing an outcome
1637 that you're wanting, and that outcome that you're wanting is directly intended
1638 to protect the Freshwater values which then also feed into things like mahinga
1639 kai or the mauri of that waterway. I think they're all directly related. There's a
1640 bit of language I guess and technical jargon in there as well.
1641

1642 Chair: Mr Farrant, we can formulate the question properly and ask it in our follow-up,
1643 but I think just so we have confidence that these provisions are aligned and are
1644 not providing conflicting direction to developers or local authorities, I think a
1645 visual or something so we can understand how they fit together.
1646

1647 For example, the climate change provisions require Regional Plans to include
1648 provisions that prioritise the use of nature-based solutions. If hydrological
1649 controls are a sub-set of that, that might be work, that might be fine.
1650

1651 You see what I'm saying. We just need to make sure that there's not something
1652 over here that's saying, "No, you need to do it this way," and then there's
1653 something in this set of provisions that says, "No you need to do it a different
1654 way."
1655

1656 We can formulate our question and make sure that there's sufficient time to
1657 come back to us on that. Then we can perhaps pick it up again in that final
1658 hearing stream when we've got Ms Guest here as well.
1659

1660 Farrant: Just very quickly to clarify on that, because I did provide evidence on the nature-
1661 based solutions as well, obviously the intent to either use or mimic nature is
1662 really important; so hydrological controls were trying to come up with run-off
1663 from a catchment that more or less replicates what you would have in a natural
1664 catchment.
1665 [02.20.00]

1666 You're using non-nature things. It might be a large concrete tank with a pump,
1667 or something, but you're doing it intentionally to try and mimic what nature
1668 would doing if she was left to her own devices.
1669

1670 Chair: This issue of the undeveloped state and hydraulic neutrality, Peka Peka Farm
1671 have suggested that the definition of hydraulic neutrality should say “from the
1672 site prior to development”, rather than “from the site in an undeveloped state.”
1673
1674 I don’t know if that is specifically something you looked at in your rebuttal.
1675
1676 Farrant: As it relates to hydraulic neutrality?
1677
1678 Chair: Yes.
1679
1680 Farrant: No, it's not something that I did. I guess that’s really a question around flood
1681 resilience and whether we want to improve the resilience of future communities,
1682 or keep it the same as it currently is. But, that comes back to those situations
1683 where you might have a site that’s fully sealed. I’ll just use a carpark as an
1684 example, where it may be a hundred percent impervious at the moment. When a
1685 development starts that will be contributing to flooding, so is there an
1686 expectation for a developer to improve on those current conditions or not?
1687
1688 Obviously also on the back of that is climate change projections with changing
1689 rainfall intensity and things. That’s really a question for flood modelling really.
1690
1691 Chair: In that definition of hydraulic neutrality “undeveloped state” is referred to. It's
1692 not italicised but presumably it is the same definition.
1693
1694 Pascall: Yes that’s correct. It should be italicised.
1695
1696 Chair: Where someone refer to things like vegetation that might be on that undeveloped
1697 site, could the modelling actually factor that in? Could the modelling go, “Here’s
1698 there’s this strip of vegetation which would help with...” is ‘infiltration’ the
1699 right word? Can the modelling take that into account?
1700
1701 Farrant: Just the first thing I would say and I did mention it in, I think, both primary and
1702 rebuttal evidence, is that modelling for very, very small rain events is much more
1703 complicated than modelling for large flood events, because of those subtle
1704 differences between vegetation, soil and all of those sort of things.
1705
1706 That aside, certainly a model can represent things down to a very fine scale if
1707 you want to go down that path. Modelling certainly could reflect the existing
1708 vegetation, but I would just raise caveats around the reliability of that, because
1709 of that complexity with modelling. The benefit that that might have versus
1710 having something that’s slightly simpler and easier to be implemented.
1711
1712 I guess an example of that would be even just the different between rank grass,
1713 so long grass that hasn’t been grazed for six months, versus a grazed paddock.
1714 Even there the difference is quite significant. If you then throw in [02.24.02]
1715 gorse scrub versus mature [02.24.05] forest, there’s a lot of variability there.
1716
1717 Chair: Can these off the shelf solutions that you have talked about factor that in?
1718
1719 Farrant: They can. There’s a number of different modelling packages or you could self-
1720 build something. They can, but as I said, the level of uncertainty between those
1721 small little details is appreciable. Then the lack of data to calibrate against. That

1722 was raised in the evidence of Ms Lockyer. The challenges with calibration are
1723 more so for those small rainfall events again than they are for large flooding
1724 events. There would always be an element of uncertainty there.

1725
1726 Chair: I think I probably have about four more questions I will try to be really brief.

1727 [02.25.00]

1728 There was concern raised I think by Wellington City Council that these
1729 provisions are going to two consenting processes to manage the same
1730 discharges, where a development is connected to a stormwater network. We can
1731 ask them to explain that when they present.

1732
1733 I guess I just would like a bit more certainty about these consenting requirements
1734 and who is required to do what through these provisions in terms of territorials
1735 and the Regional Council. It is still not completely clear in my head. At the end
1736 of the hearing once we've heard everybody we'll come back with our specific
1737 question on that and ask you to reply in writing.

1738
1739 Hydrological controls again, that definition which I printed out. It's in para 963
1740 of I think the S42A Report – definition of hydrological control. This is where it
1741 talks about replicating natural processes for the purpose of reducing bank
1742 erosion, slumping, scour, and this reference here, to protect freshwater
1743 ecosystem health and wellbeing. That comes back to that water quality as well
1744 as quantity issue, which I think right at the beginning you explained hydrological
1745 controls. I understood that it's not just about managing the volume and flow, it's
1746 also about discharges and the quality of water.

1747
1748 I guess I just wanted to confirm with you whether the reference in this definition
1749 to hydrological controls you're having this purpose of reducing bank erosion,
1750 slumping and scour. That is their purpose?

1751
1752 Farrant: I guess it would be more correct to say that's one of their purposes. There is also
1753 just the frequency of disturbance for fish and fauna living within the stream.
1754 Then there are those ancillary benefits, that depending on the method that you
1755 use; so if you were using rainwater tanks for instance, there is a co-benefit of
1756 actually diverting contaminants away from the stormwater discharge to the
1757 wastewater network in that case, and also addressing some of those things
1758 around the temperature of water and things.

1759
1760 The impacts on the freshwater environment is not as simply as chemical
1761 contamination or flow. It's quite a mash-up of the lot. Then when we talk about
1762 instream scour and slumping that obviously then increases tepidity of the water,
1763 which may not have come from the stormwater discharge but comes from the
1764 instream processes. It's all inter-related and a little bit complex when we get into
1765 the stream itself.

1766
1767 Chair: If you don't mind just having another look at that definition of hydrological
1768 controls and letting us know if you think that it is clear and does everything that
1769 it needs to do, that would be great.

1770
1771 This difference between median and mean in Policy FW.X, the hydrological
1772 control. I think you addressed that in your rebuttal.

1773

1774 Farrant: Yes.
1775
1776 Chair: You're confident having heard Ms Lockyer that mean is the better term, or better
1777 statistic?
1778 [02.30.05]
1779 Farrant: Yes, I would suggest that it is in this regard. The way that the modelling is
1780 typically done is over multiple years and then we're looking at annual totals.
1781 The mean is more commonly used I guess than median in that instance.
1782
1783 Chair: I think you also talk about Porirua Council's concern about how far back in time
1784 you go when you're looking at undeveloped state. I think you do address that
1785 don't you.
1786
1787 Farrant: No. I don't recall that I have. I guess that's where that definition around
1788 undeveloped state – what that means.
1789
1790 Chair: So, it would just be about how that's applied in a particular scenario?
1791
1792 Farrant: Yes.
1793
1794 Chair: Miss Roha for Upper Hutt City Council said that she supports the intent of the
1795 hydrological control policy, but says that it doesn't address or manage quality
1796 and contaminants and stormwater from run-off. But, as I see it, the policy does
1797 refer to water quality. Then there's also a specific requirement in Policy 14(f)
1798 regarding minimising generation of contaminants.
1799
1800 I think maybe is it the combination of the both of those things would ensure that
1801 you're addressing contaminants?
1802
1803 Farrant: Yeah. I think maybe Ms Pascall might jump in here. I think specific reference
1804 to water quality is dealt with elsewhere. The hydrological control is about water
1805 quantity in those small rainfall events. As I have said, just previously, there are
1806 a whole raft of ancillary benefits directly related to water quality; that if you
1807 weren't to provide hydrological controls you would be needing to provide
1808 additional water quality measures somewhere else through your development.
1809
1810 By meeting this requirement around hydrological controls, you are in most
1811 instances going to be reducing your requirements to do water quality elsewhere
1812 because it's effectively killing two birds with one stone.
1813
1814 Chair: I think these other ones we'll have to provide in writing because we've gone
1815 quite a bit of time now. I think we'll just put them in writing to you.
1816
1817 I did have some other questions about nature-based solutions. There were a
1818 couple of places where I actually thought that it might be useful to have some
1819 reference to that in these provisions. I will ask you that in writing.
1820
1821 "Water sensitive urban design" in a few places is not italicised and I think it's a
1822 defined term. These are all things we can deal with in writing.
1823
1824 I think we'll probably leave it there, given we've gone over into the lunch break.
1825

1826 Thank you. We'll have a break and we'll come back at one o'clock. Thanks very
1827 much. I really appreciate all your evidence and presentations and answering
1828 those questions so comprehensively.

1829
1830 Pascall: Thank you.

1831
1832 Farrant: Thank you.

1833
1834 [Lunch Break taken – 02.34.15]

1835
1836 **Wellington Water**

1837
1838 Chair: Nau mai haere mai ki te kaupapa o te rā. Welcome back to Day One of the
1839 Freshwater Hearing.

1840
1841 Welcome Wellington Water. I know we've got a few familiar faces here, but
1842 maybe for Ms Lockyer shall we do some very brief introductions?

1843
1844 Kia ora. Ko Dhilum Nightingale tōku ingoa. I am chairing the P1S1 and the
1845 Freshwater Panel. I think you heard Ms Nixon say we've got a couple of our
1846 Commissioners online because of the trouble disruptions last night. If you would
1847 like to introduce yourselves Commissioners.

1848 [02.35.00]

1849 Paine: Kia ora, Glenice Paine speaking. I'm an Environment Court Commissioner on
1850 both panels. Kia ora.

1851
1852 Wratt: Gillian Wratt here. Again Environment Commissioner on both panels.
1853 Originally on the Freshwater Panel as a Freshwater Commissioner and now on
1854 both. I am calling in from Whakatū Nelson where I am still based today – not
1855 according to plan. Hopefully we'll be there face-to-face tomorrow Wellington
1856 Airport conditions allowing. Kia ora.

1857
1858 Kara-France: Kia ora. Commissioner Kara-France. I'm on both panels.

1859
1860 Chair: We have pre-read the material that you have filed. Thank you, you've handed
1861 out some supplementaries.

1862
1863 Slyfield: Some new materials.

1864
1865 Chair: Yes.

1866
1867 Slyfield: It's becoming a repeat 'offence' – I don't really want to use that term. The
1868 endeavour of this new material is to embrace the information coming out of the
1869 rebuttal evidence and progress things. Mostly you will hear from me talking to
1870 the three page of table that has been handed up. I will potentially take you to
1871 another single sheet that's just some extracts from the NPS and the Natural
1872 Resources Plan. Then following me you will hear from Ms Lockyer briefly and
1873 then Ms Horrox. As usual, Ms Penfold is here with us and able to answer any
1874 questions that arise.

1875
1876 With that introduction I will go straight to the table and just briefly orient you.
1877 There's two parts to the table. The first part that only has these three rows in

1878 substance is effectively an addendum to the table that's attached to my legal
1879 submissions. It confirms matters that Wellington Water is no longer pursuing as
1880 a result of the rebuttal evidence, and that includes, you may be interested to note,
1881 the definition of "undeveloped state" that was the subject of some conversation
1882 this morning; the definition of hydraulic neutrality; and the point that had been
1883 made about Policy FW.3(k) on the basis that there has been an amendment that
1884 picks up the point that Wellington Water wished made – albeit that's in
1885 paragraph (k)(a) rather than (k).

1886
1887 I am not going to dwell any further on those, but that gives you a written record
1888 that Wellington Water is not pursuing those matters.

1889
1890 Then in the second table we have the matters that are still outstanding between
1891 Wellington Water and the position taken by Ms Pascall and Mr Farrant. Starting
1892 with the group of Policy 14, FW.3 and FW.6 – and this is a point that is made in
1893 Wellington Water's evidence, that all of these policies in some fashion address
1894 the responsibilities of regional and district councils. Wellington Water's issue
1895 with the way that has been done is that while there may be an overlap between
1896 the way those responsibilities are described in the various provisions, that leaves
1897 the risk that councils may not act where they perceive that it fits better in the
1898 jurisdiction of another council; and effectively leaves this as a matter that might
1899 end up being litigated repeatedly at the regional plan and multiple district plan
1900 levels. It's really that whole exercise that can be very time consuming and effort
1901 intensive, that Wellington Water is seeking to avoid by getting real clarity at the
1902 RPS level. Wellington Water thinks that there is that real clarity in evidence in
1903 Policy 15, which I have referred to in that third or fourth row of the table. You
1904 will see in the box towards the bottom of page-1 there is a clear regional
1905 framework achievable. It is achieved in Policy 15.

1906
1907 The place where it seems most important for some change to occur is probably
1908 FW.6 where there is a statement made about regional and district responsibilities
1909 within the one policy, and it leaves this question of overlap that Ms Horrox can
1910 talk further about.

1911
1912 Perhaps the final thing to say there is, from Wellington Water's perspective it is
1913 less important whose shoulders the responsibilities land on than it is important
1914 that they land on one party or another's and not multiple parties.

1915 [02.40.05]

1916 That's all I am going to say on that topic. Ms Horrox can talk to you a bit more
1917 about that.

1918
1919 Turning to page-2 of the table, you will see that the next item is Policy 18(c) and
1920 this is a matter that I have covered in the legal submissions. I will actually take
1921 you to, if you have got a copy of the legal submissions as filed, it's on page-4 of
1922 those legal submissions.

1923
1924 The issue here, and I think it is one Commissioner Nightingale that you were
1925 referring to potentially indirectly this morning, is one of potential tension arising
1926 between provisions in the NPS-FM and provisions in the RPS and how those
1927 track through to the regional planning level.

1928

1929 The single page that I have handed up to you, which just has extracts on it from
1930 the National Policy Statement and the Natural Resources Plan, what I have done
1931 there is I've given you a copy of Policy.6 which you're presumably familiar
1932 with, which just states in very broad terms, "No further loss of extent of natural
1933 inland wetlands. Their values are protected and their restoration is promoted."

1934
1935 Then of course 3.22 deeper into the NPS-FM has a mandatory requirement for a
1936 very details and specific policy to be included in the Regional Plan, that includes
1937 specific exemptions effectively to the seemingly absolute requirement stated in
1938 Policy 6.

1939
1940 Then beneath that, I have just replicated Policy P.110 from the Natural
1941 Resources Plan. I won't take you through it but I will suggest to you that it is
1942 aligned entirely with the requirements of 3.22. This is something that the Natural
1943 Resources Plan is already doing – giving effect to as it's required to.

1944
1945 The issue here is really one that we have this scheme already working and the
1946 RPS as it presently stands proposes to insert another copy of the absolute
1947 requirement, without recognition of the nuances.

1948
1949 From Wellington Water's perspective, there's probably two ways to solve that.
1950 One is to do without Policy 18(c) altogether and to say it's not necessary in any
1951 event, because this is a matter that is stated in the NPS-FM and there is an
1952 obligation to give effect to that – whether it's restated in the RSP or not.

1953
1954 The other is to insert something that without replicating all the detail of 3.22 or
1955 P.110 inserts the idea that it's not an absolute requirement, and that's set out at
1956 paragraph 22 of the legal submissions where the option of inserting the words
1957 where appropriate, which I have underlined, is proffered as one way of
1958 potentially doing.

1959
1960 That's it for Policy 18(c). If I understood the exchanges this morning there is
1961 going to be some further information coming your way from Ms Pascall on that.

1962
1963 As far as we could see there wasn't a position adopted in the rebuttal in relation
1964 to that. I haven't been able to progress that one beyond the position that was in
1965 the legal submissions.

1966
1967 Then the last topic, and in some ways the chunkiest of the topics, is the
1968 hydrological controls policy. Don't be alarmed that this runs over two pages,
1969 because I am not proposing to take you through anything other than really the
1970 first row of what is said in relation to hydrological controls; and that's because
1971 essentially Wellington Water has now seen what the rebuttal position is from Mr
1972 Farrant and has had further advice from Ms Lockyer, and is left in a position
1973 from where, from Wellington Water's perspective, there remains a substantial
1974 disagreement on the technical detail and the foundations for the hydrological
1975 controls policy. That's not a debate about whether there should or shouldn't be
1976 a hydrological control policy. Wellington Water says there should be and
1977 supports that – and that's based on Ms Lockyer's advice. But, the way in which
1978 the Policy states the requirement for hydrological controls and then proceeds to
1979 prescribe a methodology around that, is where Wellington Water says there is a
1980 real problem.

1981 [02.45.10]

1982
1983 That's where there remain differences between Ms Lockyer and Mr Farrant.
1984 Wellington Water says, fundamentally having looked at that again, it's perhaps
1985 best not to try to resolve those technical differences in this forum; and rather
1986 have a simplified version of the policy that requires the hydrological controls to
1987 be the product of regional planning as the policies presently draft; but not go on
1988 to prescribe the methodology for that in the way that the policy presently does.

1989
1990 You will see there in that largest box on page-2 of the table at the bottom, there
1991 is an example of the policy that effectively replicates the first sentence in its
1992 entirety and then the start of the second sentence, but simply stops after saying
1993 "greenfield, brownfield and infield development" and doesn't go on to say what
1994 method should be used to do any of that.

1995
1996 That's a change in position really, from where Wellington Water was at, at the
1997 time it drafted evidence. It was hopeful that the technical matters could be closed
1998 out, but effectively Wellington Water now is concerned that an attempt to resolve
1999 all the technical points of difference between Ms Lockyer and Mr Farrant is
2000 unlikely to be able to be done in this forum in a way that does justice to the
2001 science behind their respective positions. In particular, Wellington Water is
2002 concerned that the process that we're currently in of course doesn't provide for
2003 appeals on other than points of law, assuming that the Council accepts your
2004 recommendations on these matters; and so there really isn't an opportunity to get
2005 the same robustness through two-stage testing of technical differences that could
2006 exist if this was resolved at the Regional Plan level.

2007
2008 I won't go on any further. I will invite you to read the text that's written into the
2009 table in relation to that point, but I think I have articulated the essence of
2010 Wellington Water's position.

2011
2012 The rows that follow in the table are really effectively a back-up to the position
2013 I've just articulated. It says if the Panel is concerned to resolve all these technical
2014 differences and doesn't wish to take up what Wellington Water says should
2015 happen and simplify the policy, then I've given you statements here about
2016 various refinements to the Policy and what Wellington Water's position to those
2017 refinements presently is, and that includes some things that could be improved
2018 in the policy; but effectively Wellington Water says all of that become
2019 unnecessary for the panel to think about if the fundamental submission that I'm
2020 advancing for Wellington Water is accepted.

2021
2022 That's all I was really going to say by way of giving you the overview of
2023 Wellington Water's position. I am happy to take questions at this stage on any
2024 of that. Also happy if the Panel would prefer to hear from Ms Lockyer and Ms
2025 Horrox and take questions at the end. We're in your hands.

2026
2027 Chair: We have quite a bit of time with you, which is great. I might see if any of the
2028 Commissioners have questions for you Ms Slyfield. Commissioner Wratt or
2029 Commissioner Paine?

2030
2031 Paine: Thank you Madam Chair. I was just wanting to clarify some issues around Policy
2032 18(c) but Mr Slyfield has done that for me already, so no thank you.

2033
2034 Wratt: Nothing at this stage, other than it would be good to hear just a little of the
2035 background as to what those issues, those technical issues. I hear comment that
2036 they're probably not resolvable in this forum, but it would still be good to
2037 understand just a summary of what those are. I would be keen to hear that.
2038
2039 Slyfield: We can certainly do that.
2040
2041 Chair: Mr Slyfield, thanks for setting out the cascade from Policy 6.
2042 [02.50.00]
2043 Your suggestion to delete Policy 18(c), is there a scope issue there? I know we're
2044 not confined by scope for fresh water provisions.
2045
2046 Slyfield: I don't believe there is any scope issue there. It was raised squarely in Wellington
2047 Water's original submission document. In the table there is a paragraph asking
2048 for deletion of clause (c) on the basis of this inconsistency with 3.22 of the NPS-
2049 FM.
2050
2051 Chair: If I understand correctly, you're saying in order to align with 3.22 the options
2052 are either be silent or provide for the nuance that is already captured in the natural
2053 resources plan?
2054
2055 Slyfield: Yes, that's essentially it.
2056
2057 Chair: Do you think there would be a problem in keeping the wording as it is? Could
2058 you always have the NPS-FM as a backstop?
2059
2060 Slyfield: The way I think the problem still is there is, I concede that the NPS-FM is still
2061 operating, but inescapably this process is running post-NPS-FM and is intended
2062 to provide greater specificity effectively than the NPS-FM does. If it reverts to a
2063 simplified version of what is in the NPS-FM then I think that begs a question
2064 whether that is intended not to somehow carry through what's in 3.22 of the
2065 NPS-FM.
2066
2067 I don't know how that would play out in practice, but I do think it creates an
2068 unnecessary tension there that just simply doesn't need to exist.
2069
2070 Chair: Does the same reasoning apply to the other similar provisions – so the loss of
2071 river extent and values; or is that not such an issue because here that is caveated
2072 by the words "to the extent practicable"?
2073
2074 Slyfield: That's not an issue that Wellington Water has pursued in its submissions. I don't
2075 know that in fairness I can advance that.
2076 Chair: We have asked Ms Pascall to run a consistency check. I think it's the same point,
2077 3.22 and 3.24 I think it is of the NPS.
2078
2079 Slyfield: Yes it is.
2080
2081 Chair: Ensuring that they are dealt with in a consistent way.
2082
2083 I do have some questions about the allocation of functions and responsibilities.
2084 I wonder, given that we were talking about hydrological controls, if we deal with

2085 that point and maybe Commissioner Wratt's question and then we can come
2086 back to the allocation. Or, actually maybe we'll hear from your experts.
2087

2088 Slyfield: Fine. I will hand over to Ms Lockyer to talk to you about her position on
2089 hydrological controls. I will preface that with a statement that effectively when
2090 I said that the foundations of the policy aren't agreed between her and Mr
2091 Farrant.

2092 [02.55.00]

2093 She can correct me if I have misunderstood this - effectively you've seen in her
2094 statement of evidence that she advocates for a rainfall depth retention approach
2095 – ala Auckland. Mr Farrant is opposed to that and supports a continuous flow
2096 modelling approach. That remains her position as I understand it.
2097

2098 So, you do end up with effectively two different competing models and one
2099 would simply not resemble the other. I will leave you in Ms Lockyer's hands to
2100 give an overview on those matters.
2101

2102 Lockyer: Thank you. As stated in my written evidence I support hydrological controls, but
2103 I have a number of concerns with the details and the hydrological control
2104 provision.
2105

2106 I have read and considered Mr Farrant's rebuttal evidence. It has not resolved
2107 my concerns or changed my point of view on any of these matters. However, as
2108 My Slyfield has outlined, Wellington Water is not asking the Panel to resolve
2109 these differences between my position and Mr Farrant's. I don't propose to go
2110 into any matters of detail, unless there are specific questions that you would like
2111 me to address.
2112

2113 As stated in the final paragraph of my evidence, I support the provision being
2114 redrafted with matters of detailed methodology left to the Regional Plan. I am
2115 happy to answer specific questions that you might have about the differences Mr
2116 Farrant and I have.
2117

2118 Chair: If this issue was to be left to the Regional Plan to address – the modelling, the
2119 rainfall depth issue or something else – Mr Slyfield, that would still be part of a
2120 Freshwater Planning Instrument? There won't be the two-stage process? It's just
2121 basically deferring it for the Regional Plan to address? It wouldn't be captured
2122 in the next round that's been notified. It would have to come up for a future plan
2123 change to the Natural Resources Plan and I don't know when that might be.
2124

2125 I guess the question is, is it important that the policy be set sooner rather than
2126 later?
2127

2128 Slyfield: That may be more of a planning question than a technical question. I concede
2129 the point you make that the Regional Plan is also a Freshwater Planning Process,
2130 so again no rights of appeal.
2131

2132 I would perhaps just offer one point before Ms Horrox offers a planning view
2133 on this, which is I think what you have in front of you has not been the result of
2134 a very robust testing – is how I would describe it. That's not meaning to be
2135 critical at all of the process that's been followed, but it has really only been in

2136 the latter stages of this process that the differences that have now been put on
2137 the table have come to light.
2138
2139 Even if it was deferred to a regional planning procedure, I think we have the
2140 advantage that we've teased out some fundamental differences here and that
2141 would be the starting point for a conversation that would then play out with the
2142 Regional Council in due course.
2143
2144 Chair: Ms Lockyer, excuse me if this question is ignorant. I don't have a lot of
2145 experience with stormwater management type provisions. In the Auckland
2146 Unitary Plan, the provision that I think you've referred to in your evidence and
2147 Mr Farrant also mentioned this morning, with the really big rainfall events that
2148 Auckland experienced earlier this year, and we all saw pictures of the system
2149 being completely overwhelmed, were they using that 5mm rain depth method?
2150 [03.00.00] Or, has that come into the AEP and they're still implementing those
2151 requirements? Do you know?
2152
2153 Lockyer: I am not aware of how long the policy has been in place for. In an event like
2154 what happened in Auckland this year, hydrological control makes absolutely no
2155 difference. The rainfall intensity is so great that you're still going to get
2156 significant run-off that you would have. These hydrological controls are more
2157 around those frequent small rainfall events. Stormwater management cannot
2158 deal with those severe floods.
2159
2160 Chair: Even the provisions that are in Ms Pascall's rebuttal evidence, which picks up...
2161 it was your relief wasn't it, that you suggested the change from the two year
2162 average recurrence interval to the fifty percent annual exceedance probability?
2163 Even with that change, that's meant to model the smaller rainfall events?
2164
2165 Lockyer: Yeah. That was just a terminology change. It was effectively the same magnitude
2166 event. It was just making it clearer because there is different ways of referring
2167 to the same event.
2168
2169 Chair: If we were to recommend that the Council does adopt this wording, is the change
2170 to "fully developed site" as opposed to "fully developed area" an improvement
2171 in your perspective?
2172
2173 Lockyer: Wellington Water's position on this one was just about consistency, because
2174 both words are used. I support that change, as long as it's clear around what it is
2175 that they're referring to. Using site and area I think just opened up that concern.
2176 You might have been referring to different land parcels.
2177
2178 Chair: I understand Mr Farrant saying that the method that he supports allows for more
2179 of a site specific approach, maybe even more innovation in the method that's
2180 used – depending on what's going in that area. Whereas the rainwater gauge
2181 method, is that just one method? Can you explain to me if that still allows for
2182 innovation and taking into account particular things that are going on at that site?
2183
2184 Lockyer: I believe there is still a lot of work that can be done on actually developing a
2185 more effective rule for this implementation; and one that would allow innovation
2186 and flexibility would be important. I don't believe that just be requiring a 5mm

2187 retention you are limiting yourself to how that needs to be enforced. You should
2188 still be able to have that flexibility.

2189
2190 One of the other concerns that Mr Farrant raised this morning was around not
2191 having the available retention for when the next rainfall burst was to come
2192 through, because there was no requirement for how quickly that 5mm drained
2193 from that retention. I also feel there's innovation there. There's options. The rule
2194 could be around perhaps requiring 5mm of retention depth to be available every
2195 24 hours – so actually putting controls in place and allowing that innovation to
2196 come through.

2197
2198 There is some areas of Wellington that do have good drainage. Over in
2199 Wairarapa there is a lot of soakage. A policy like that would be very easy to
2200 implement out there. Same with Upper Hutt. Whereas in other places,
2201 particularly around the CBD you might need more innovation to actually
2202 implement such a policy, and that's where Mr Farrant is suggesting that
2203 stormwater reuse maybe needed.

2204 [03.05.00]

2205 Chair: I'm still sort of struggling. When I read this policy FW.X the different approach
2206 proposed for brownfield and greenfield, it seems to me outcome focused. It's
2207 saying you can apply whatever methods but this is the outcome. But, that
2208 outcome is based on you need to do that modelling first. Mr Farrant seems to be
2209 saying that the modelling can be something that's not necessarily very costly
2210 and there are in fact models that developers can buy and the words "off the shelf"
2211 might have been used.

2212
2213 I'm still struggling to see or really understand what the issues are. This is saying,
2214 "This is the outcome and you can apply the methods are needed to achieve that
2215 outcome," but if I understand right, you're saying, "No, it should be based on
2216 how much..." I'm probably not explaining this well, but the 5mm rainwater
2217 retention depth. Is it the site needs to be able to retain 5mm of rainwater depth
2218 for that exceedance?

2219
2220 Lockyer: As stated in my evidence, I don't support the approach that's currently been
2221 drafted. I believe the outcome is to focus on the freshwater ecosystem health and
2222 scale prevention. I think the way that the policy is currently worded it is detailing
2223 a methodology that you need to employ, rather than outcome that's trying to be
2224 achieved.

2225
2226 Mr Farrant has said that he thinks it isn't overly costly to develop. We both agree
2227 in terms of those larger scale developments. We will be employing engineers
2228 and consultants to do the analysis and design. It won't be a significant cost. But
2229 for medium scale and for small scale development, yes we do take a bit of a
2230 different position on this one.

2231
2232 Mr Farrant has referred to "deemed to comply solutions". It's not something that
2233 you're just going to buy off the shelf. A practitioner would develop various
2234 solutions and it might be for say a hundred metre squared house or a five hundred
2235 metre squared house and these are options that you might be able to employ.
2236 Might have a, b or c. B works best for my property so that's the one that I'm
2237 going to do. It's almost a preapproved solution that they can select, but somebody
2238 still has to actually pay to develop these preapproved solutions.

2239
2240 I think the big differences are going to come in those medium scale
2241 developments where a cookie cutter off the shelf approach isn't going to work;
2242 but you don't still have the expertise in the design team to develop a customised
2243 approach, then you're going to need to go to an experienced practitioner to
2244 develop this. It's not something that a developer will necessarily have the skills
2245 in doing themselves. They're going to need to employ a consultant.
2246
2247 That draws back to Auckland Council's approach and that they're requiring
2248 5mm retention. They have a website set up where you can go through and put in
2249 your catchment area, the percentage impervious, so how much sealed surface
2250 are you going to have on your site? You can pluck these numbers straight into a
2251 website and get your answer.
2252
2253 It's not requiring technical expertise to get there. And, that's where I'm
2254 supporting a more simplistic approach, because it makes it more user friendly
2255 without the costs to the developer, as well as to the regulator, because they're
2256 going to need to develop the approved solutions and then the compliance cost
2257 for them.
2258 [03.10.00]
2259 Chair: That Auckland Council approach still does allow for innovation then, based on
2260 what you have said. You can apply the method that will achieve that 5mm
2261 retention?
2262
2263 Lockyer: Yes.
2264
2265 Chair: So, you're not confined to a specific?
2266
2267 Lockyer: That's my understanding of it. It's 5mm retention. You're working out how much
2268 run-off. That's a rainfall depth. You convert that to a volume based on the
2269 impervious surface that you're changing on a property; so that's the volume that
2270 you need to be retaining, and then it's up to you how you actually retain that.
2271 Chair: I will just see if any of the Commissioners have any questioning following on
2272 from that.
2273
2274 Kara-France: No thank you.
2275
2276 Wratt: I'm afraid the video dropped out for a few minutes there. I didn't some of that
2277 unfortunately for Ms Lockyer.
2278
2279 You may have covered this, but you have a lot of soil variability so if you have
2280 this simplistic approach, how do you take account of soil variability? And,
2281 perhaps I will just pose the second question as well, and again you may have
2282 covered it. Mr Farrant did comment, as I understand it, that the modelling that
2283 would be required for his approach is in fact not complicated and is consistent
2284 with what is currently done around hydraulic neutrality, and that you should be
2285 able to use what he called "deemed information".
2286
2287 His presentation this morning was that his approach in fact is not that
2288 complicated.
2289
2290 Two questions there thank you.

2291
2292 Chair: Commissioner Wratt, can I just check that you can hear us okay?
2293
2294 Wratt: I can now hear okay.
2295
2296 Chair: Thank you. We have lost you from the screen but as long as you can hear that's
2297 the main thing.
2298
2299 Wratt: I can still see Glenice and myself on the screen. I think we both dropped out for
2300 a while there. I've got you on the screen as well.
2301
2302 Chair: Sorry about that.
2303
2304 Lockyer: I think the soil variability question applies to either approach. As I mentioned,
2305 which might have happened while you were cut out, there are some parts of the
2306 Wellington Region that have very good soil drainage, for example Wairarapa,
2307 where a retention approach is to retain 5mm and [03.13.10] soakage is entirely
2308 plausible in Upper Hutt.
2309
2310 I don't see that there's actually a difference here between where Mr Farrant and
2311 I are coming from. You're still needing to retain a volume of water and you can
2312 either reuse it, stormwater reuse, or discharge it via soakage.
2313
2314 The second part of your question was Mr Farrant's comments around how he
2315 doesn't deem this solution to be overly complicated. My response there was, in
2316 large scale development you're going to have the resources available to develop
2317 a bespoke solution. In the small scale hopefully you might have a deemed to
2318 comply solution that somebody still needs to create. It's not necessarily going to
2319 fit all scenarios. In those medium sized developments, I think that's when there
2320 is going to be a significant cost. In a lot of those smaller scale scenarios there
2321 may be that cost as well, because if you've got some anomaly on your side that
2322 doesn't fit the cookie cutter approach, then you are going to need to develop your
2323 own solution. So the need to employ an experienced practitioner or consultant to
2324 do this analysis and then the cost to Council as the regulator and compliance is
2325 still going to be present.
2326 [03.15.00]
2327 Wratt: Thank you for that. Thank you for your comments. In essence I guess we are in
2328 the situation of having to decide whether we try to resolve what's a technical
2329 issue which is obviously beyond, or certainly beyond my expertise; unless we
2330 had a panel member who was a hydrologist in essence.
2331
2332 I guess our situation is we either have to take an approach as you've suggested
2333 which is reducing back the provision, or come up with a way that we can get a
2334 resolution – which is not something that I feel the Commissioners can do. That's
2335 my personal view. Thank you for your explanation. Thanks.
2336
2337 Chair: I have a better understanding of what Mr Farrant's approach requires. I'm trying
2338 to understand this issue about the continuous simulation modelling. How does
2339 the continuous simulation modelling fit with the deemed to comply solutions?
2340 Sorry, that might actually be a question for Mr Farrant more. I don't know if you
2341 can comment. I am still trying to make sure I really understand what the concerns
2342 are with the approach that the Council is proposing.

2343
2344 Lockyer: Continuous flow simulation requires various inputs. You're going to take say
2345 ten years of rainfall record, which is what Mr Farrant referred to. You're going
2346 to have a look at what the site is. You need to look at a predevelopment scenario,
2347 so an undeveloped state, and then a post-development scenario. If you're
2348 proposing to put in ten properties, then you're going to need to look at the new
2349 run-off that's going to be generated from the additional impervious areas and a
2350 retention device, or however it is that you're going to manage that stormwater
2351 run-off.
2352
2353 In a continuous simulation model you're going to run that ten years through your
2354 retention device to optimally size that device, and then to try and mimic the
2355 undeveloped state hydrology as much as possible.
2356
2357 My perspective on this is, given we've got rainfall records around the region,
2358 but there is a lot of areas where you don't have a reliable ten year rainfall record.
2359 If you go out to places like Martinborough, you don't have a rainfall record. The
2360 nearest one is in farmland some distance away. When I say rainfall record I'm
2361 talking about Greater Wellington's hydrometric record that's readily available
2362 and is of reliable source. There might be other records, farm stations etc. but the
2363 ones that are available to us as practitioners; and you don't have the flow data
2364 on a stream.
2365
2366 To actually create this continuous flow model, where you're saying, "I've got
2367 this much rainfall and this is the flow you're getting to the stream," you might
2368 be orders of magnitude out, because you don't actually know that streamflow.
2369 You don't have the data.
2370
2371 The inputs you're putting in might be incorrect. So, my perspective on this is,
2372 why waste a lot of resources to develop something that you're pretending that
2373 it's going to give you the right solution; but you don't have the input to actually
2374 give you the outcome that you're hoping for.
2375
2376 So, let's take it back to a simplified approach where we're not kidding ourselves
2377 around the outcome, which may produce the same benefit.
2378
2379 Kara-France: I have a question just in regards to your simplified solutions. Does that include
2380 a mātauranga Māori approach, such as a Māori compass?
2381
2382 [03.20.00]
2383 Lockyer: I can't comment specifically on that unfortunately. It's not my area of expertise.
2384 From a Te Mana o te Wai perspective, if you are retaining that first 5mm of
2385 rainfall, whatever the number is that you choose to go with, it is that first burst
2386 of rain that is the most contaminant loaded. If you can retain that onsite and
2387 prevent it going into the streams then that is going to have a significant benefit
2388 to the freshwater ecosystem health.
2389
2390 Kara-France: Therefore do you see benefits of mātauranga Māori approach to stormwater
2391 solutions and simplifying solutions approach?
2392
2393 Lockyer: Yes I do. There's definitely going to be an improvement to the water quality.
2394

2395 Chair: Ms Lockyer, if we were to recommend the wording that Mr Slyfield has now
2396 put up in his table, it doesn't talk about the methodology, it talks about what
2397 regional plans need to provide for. Would you agree that is specifying the
2398 outcome that's needed, it's not specifying how.
2399

2400 Lockyer: Yes I do agree.
2401

2402 Chair: And, I know that was a concern that Mr Farrant had with what you were
2403 proposing; he was saying it's, I think he called it "the static retention depth is
2404 just one way of achieving that outcome." Whereas, if you take away that
2405 methodology you've got the outcome. I think you both agree on the outcome.
2406 But, then we're leaving the how to the Regional Plan to work through.
2407

2408 Lockyer: Yes that's correct.
2409

2410 As the wording is currently written, I find it incredibly complicated and
2411 confusing. I have run it past colleagues of mine, just to check that we were both
2412 on the same page in our interpretation of it.
2413

2414 I have now got confirmation through Mr Farrant's evidence that we are both
2415 talking about the same thing. My interpretation of (ii) the second part there, I'm
2416 still not quite sure if we're on the same page. I haven't seen anything in Mr
2417 Farrant's rebuttal evidence that might have confirmed or denied my alternative
2418 wording to it. I think there's a real risk that it could be misinterpreted because it
2419 is confusing.
2420

2421 Chair: Unless anyone has any follow-up questions, or if there is anything you like to
2422 add, we might move onto Ms Horrox.
2423

2424 Slyfield: Before we do that, there's just one point I would like to take up Commissioner
2425 Nightingale. It was to make sure you're aware. You put the point to Ms Lockyer
2426 that Ms Pascall's amended version had changed one of the references from area
2427 to site and asked whether that was a material change from her perspective, in
2428 terms of support for the policy wording. I would just draw your attention that
2429 while that has been proposed by Ms Pascall, the remaining parts of the policy
2430 still use interchangeably the term "area" and "site".
2431

2432 From my perspective and it's not a technical perspective or a planning
2433 perspective, but from the legal perspective, it seems to be intention that it's
2434 referring to the same concept throughout. Probably either term, "site" or "area"
2435 have their own problems, but if the wording was to be retained it should be a
2436 consistent term through the whole policy – one or the other.
2437

2438 That's all I was going to add to that.
2439

2440 Chair: Thank you. Ms Pascall might want to comment on that in her reply, if she
2441 continues to support the technical evidence of Mr Farrant.
2442

2443 Ms Horrox.
2444 [03.25.00]

2445 Horrox: Afternoon. I really just wanted to talk, briefly hopefully, about firstly I think
2446 we'll just tidy up on some of the planning points regarding FW.X since we have

2447 been talking about that – the hydrological controls. Then I've just got a couple
2448 of points I would like to talk about in terms of role clarity between TAs and the
2449 Regional Council.

2450
2451 I think we have really probably canvassed the whole issue fairly thoroughly, but
2452 just a couple of points from a planning perspective.

2453
2454 In my evidence I noted on FW.X the hydrological control policy that I wasn't
2455 necessarily in principle opposed to the level of detail being in the RPS. That was
2456 on the basis of it being able to be interpreted consistently and implemented as
2457 intended by the author.

2458
2459 I think from my perspective, in terms of the planning element, the lack of
2460 agreement between the experts and the elements of uncertainty regarding its
2461 interpretation, raises alarm bells for me; because I wonder how effective it's
2462 going to be, and user friendly as a policy, given it's this higher order document
2463 and everything is going to filter down from there. That to me is a concern in the
2464 planning context.

2465
2466 I think obviously that clarity of intent and interpretation is particularly important
2467 in the RPS given that it's establishing this framework, and that everything else
2468 has to shuffle around underneath.

2469
2470 On that basis, I think a more effective approach really would be to focus on the
2471 desired outcomes of the ecosystem, health and scour protection. We've got those
2472 suggested wordings and basically just some shortening but keeping what we've
2473 got there at the moment, minus points (a) and (b). So, just focus on those
2474 outcomes and leave the specifics for the Regional Plan.

2475
2476 I guess the other option would be to go down the rabbit hole as part of this
2477 process and actually sort that out now.

2478
2479 That's really all I wanted to say on that.

2480
2481 In terms of the role clarity, really I've canvassed all the points I want to make in
2482 my evidence. This is regarding Policies 14, FW.3 and FW.6 and just re-noting,
2483 as per my evidence, that some of the roles at the moment are essentially word
2484 for word the same between TAs and Regional Councils.

2485
2486 I don't have an opinion from a planning perspective where it sits. Obviously
2487 both TAs and Regional Councils have a role in this space. But, my concern is
2488 that where we haven't got clearly assigned accountability we're going to have,
2489 as Mr Slyfield said before in his opening, issues that might fall through the gaps,
2490 or there will be poor alignment between the District and Regional Plans in
2491 relation to land use, development effects and water quality. That's not going to
2492 lead to some good quality planning outcomes.

2493
2494 Ms Pascall's rebuttal had a couple of argument about not further role
2495 clarifications and tweaks were needed. Firstly, just acknowledging that there
2496 were overlaps and that this could be sorted out with Council coordination at the
2497 implementation stage, and that was sort of part of integrated management.

2498

2499 The other element in regard to FW.6 in Ms Pascall's rebuttal noted that the
2500 policy wording repeated the statutory functions set out in s.30 and s.31 of the
2501 RMA, and was therefore correct. I don't doubt that. I'm not really compelled by
2502 either of those arguments in terms of FW.6; so re-iterating what's in the Act.

2503
2504 I think it would be more helpful if the RPS could provide some additional
2505 direction rather than just reiterating what's already there. That's the whole
2506 purpose of the RPS surely, to translate RMA requirements into policy direction
2507 for the region. I think that will be ideal.

2508
2509 The RPS is the mechanism that we can use for that purpose. If you don't do that,
2510 that's an opportunity missed as far as I am concerned.

2511
2512 In terms of the integrated management and sorting things out, things shaking
2513 [03.30.00] down at that next stage, I think yes Council should be able to work a lot of that
2514 stuff through. But, surely it would be more useful if they could focus on
2515 implementing policy that was clearly understood in terms of roles and
2516 responsibilities and they didn't have to focus on at the implementation stage
2517 actually working out who did what.

2518
2519 I think that would be beneficial, particularly with Policy FW.6 – if there could
2520 be some further work just to go down the next level of detail to sort some of that
2521 stuff out.

2522
2523 That's really all I have to say.

2524
2525 Chair: Ms Horrox, in your evidence I don't think you have provided any suggested
2526 wording for FW.6?

2527
2528 Horrox: No I didn't. I was deliberate in that because I thought that would be assuming
2529 that I would have to have an opinion about where those responsibilities sat. I
2530 thought that was beyond what I should be commenting on.

2531
2532 Penfold: Just to step in there: our clients are all the Councils. We've made a conscious
2533 decision not to step into that space of who should be doing what. I have asked
2534 the experts to stay out of that space.

2535
2536 Chair: Thanks Ms Penfold. Understand that. Actually, that reminds me about
2537 something. Sorry, I know we're trying to get away from the hydrological control
2538 provision because we've spent a lot of time already on it, but I just wanted to
2539 check.

2540
2541 Obviously Wellington Water wants all of these provisions to be workable, but
2542 are there any impacts on your assets? If Mr Farrant's wording is accepted. I
2543 understand this about setting requirements at a site and now this does factor in
2544 discharges through the stormwater network. That's in Ms Pascall's rebuttal.

2545
2546 I guess I'm just trying to understand, does this provision actually impact on your
2547 assets? Fair enough you're concerned about it being workable and people
2548 knowing what it means but...

2549

2550 Penfold: Wellington Water is in the process of seeking a global resource consent for
2551 discharge of stormwater from all of our stormwater discharge points. One of the
2552 things that we have to address there is stream bank erosion that may result from
2553 our discharges. It is much effective if it's done at source control which is onsite.
2554 If we have to go back and retrofit a whole lot of devices at the bottom of our
2555 pipes that will get very expensive for us and is less likely to be effective, as well
2556 as doing more fiddling around in streams – which I think we are all keen for
2557 Wellington Water to avoid.
2558
2559 I'm really just keen that it's workable and that it's user friendly and effective.
2560 We want something that's effective.
2561
2562 Chair: Thank you. That's really clear.
2563
2564 I just have something on the allocation of responsibilities. I know we're at time.
2565
2566 Ms Horrox, you mention the wording – I think one provision uses “use and
2567 development of land”. I think that's the Regional Plan provision policy. The
2568 other, the TA one, currently used “land use and subdivision”.
2569
2570 There have been some changes to the division of responsibilities between Policy
2571 3 and 14.
2572
2573 Are there still problems do you think with the division of responsibilities there,
2574 or is it particularly Policy 6 that you think still needs work?
2575
2576 Horrox: I think the changes that were proposed as part of the rebuttal, Ms Pascall's
2577 suggestions, have improved things in relation to everything really, except FW.6.
2578 I think that's the key one there, given that that expressly deals with who does
2579 what.
2580 [03.35.00]
2581 There are still some issues with 14 and 3, for example 14(h) and FW.3(k) pretty
2582 much word for word are exactly the same.
2583
2584 I'm presuming that there will be different elements of that, that need to gel
2585 together; but the District City Councils and the Regional Council will not be
2586 managing the exact same thing.
2587
2588 Chair: That was FW.3(k) and...
2589
2590 Horrox: P.14(h).
2591
2592 Chair: Do you think that leaving it to an interpretation of ss.30 and 31 we could do
2593 better than that?
2594
2595 Horrox: I think we can do better than that.
2596
2597 Chair: We'll see if Ms Pascall can address that in her written reply. Thank you.
2598
2599 There was one other thing, and this might be a question for Ms Penfold. You
2600 might have a view. I'm sorry, I don't actually know if this is part... this change
2601 came in through the S42A.

2602
2603 It's Policy FW.3(i)(a) – this is District Plans including provisions requiring urban
2604 development to be designed, constructed and maintained to achieve hydraulic
2605 neutrality.
2606
2607 While I understand I think the concepts of the differences between hydraulic
2608 neutrality and hydrological control, I guess I'm just wondering if you had any
2609 views about that in a practical sort of on the ground sense.
2610
2611 Can urban development be designed, constructed and maintained to achieve
2612 hydraulic neutrality, or actually basically can district plans include provisions to
2613 require houses achieve hydraulic neutrality.
2614
2615 Penfold: Ko Angela Penfold tōku ingoa.
2616
2617 There are provisions in place in district plans that do require it now. It's a bit like
2618 hydrological controls in that it's related to a particular storm event; so it doesn't
2619 require hydrological neutrality in a one in (I don't know how big) 500 year
2620 storm. We are not trying to design for that. We pick a design storm event and
2621 work to that. That's set out in the district plans what that storm event is.
2622
2623 Chair: Those are methods at the site as opposed to things that are happening as part of
2624 your network?
2625
2626 Penfold: The stormwater network is primarily at the moment there to manage flooding,
2627 which has caused problems with contamination, but that's a separate topic. It's
2628 there to manage flooding.
2629
2630 We can't keep upgrading our network and making the pipes bigger and bigger
2631 to absorb all the water flowing off as a result of increased impermeable surfaces,
2632 so we've been working with the councils so that we have source control in place
2633 to manage the amount of stormwater coming off the sites in the design events,
2634 so that we can continue to manage flooding through our piped network as best
2635 as we can.
2636
2637 Horrox: And, that's the focus of the current rule that we've got in the district plan for
2638 hydraulic neutrality. It's managing the site.
2639
2640 Chair: Thank you, that's really clear. Thanks. I will just see if anyone has any final
2641 questions. I hope we still have Commissioner Wratt and Commissioner Paine.
2642 Yes.
2643
2644 No further questions?
2645
2646 Commissioner Wratt, did you have a question?
2647
2648 Wratt: No thank you Chair. I'm fine. We are still both here. Well, I am. I am both
2649 hearing and seeing you, thank you.
2650 [03.40.00]
2651 Chair: Thanks once again for coming and presenting to us. As with every hearing
2652 stream the information you've given us really helped us understand the
2653 provisions better. Thanks very much.

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Royal Forest & Bird Protection Society

- Chair: We've heard from Mr Anderson before in these hearings. Would you like us to do a quick introduction, or are you happy that you know who we are?
- Downing: I've had a quick stalk on line. I would really grateful for introductions.
- Chair: Ko Dhilum Nightingale tōku ingoa. I am a Barrister chairing the P1S1 and the Freshwater Panel. Maybe just to note: when you speak if you could just use the microphone, and say your name for the transcript.
- I will ask the other Commissioners to introduce themselves.
- Kara-France: Kia ora. Ko Ina Kumeroa Kara-France tōku ingoa. Independent Hearing Commissioner on both panels. Ko Waikato Tainui, ko Ngāti Kahungunu, ko Ngāti Tūwharetoa, ko Te Ati Haunui-a-Paparangi, ko Ngā Rauru ngā iwi i ngā takiwā. Welcome. Honoured to see you. I will hand it over to Gillian and Glenice.
- Wratt: Tēnā koe. My apologies that I am not with you today. As you may have picked up, the weather at Wellington Airport last night determined that I wasn't going to make it. Ko Gillian Wratt ahau. I am based in Whakatū, Nelson which is where I am today courtesy of the weather. I'm hoping to join the hearing in person tomorrow. I am an Independent Freshwater Commissioner initially appointed to the Freshwater Panel but now on both panels. Thank you. Welcome.
- Paine: Atamārie Ms Downing. Ko Glenice Paine tōku ingoa. I am an Environment Court Commissioner and I have been appointed to both panels.
- Wratt: Gillian Wratt here. Again Environment Commissioner on both panels. Originally on the Freshwater Panel as a Freshwater Commissioner and now on both. I am calling in from Whakatū Nelson where I am still based today – not according to plan. Hopefully we'll be there face-to-face tomorrow Wellington Airport conditions allowing. Kia ora.
- Downing: Tēnā koutou. Ko Ms Downing ahau. Kei konei ahau mō Forest & Bird.
- I've prepared speaking notes which attempt to distil some of the legal rationale behind some further relief sought by Forest & Bird. The Forest & Bird concerns have narrowed since receiving or considering the supplementary evidence on behalf of Ms Pascall. However, some outstanding issues remain and these just relate to six provisions.
- Firstly, we still have outstanding concerns with FW.3, urban development effects on freshwater and receiving environment, and still seek additional clauses that recognise natural inland wetlands or the protection of natural inland wetlands and the daylighting of streams is warranted.
- The rationale for that I guess is four fold: land use matters often do come within territorial authority oversight. The NPS-FM clause 3.5(4) explicitly tasks territorial authorities with managing the effects of urban development on

2706 freshwater. In the written submissions I have set out some provisions from the
2707 NPS-IB and the upshot of those is that the inter-relationship between the NPS-
2708 IB and NPS-FM would drive better integration.

2709
2710 We also acknowledge that FW.3(k) which has been included, which makes a
2711 reference to “gully heads” and the like, is there, and so the same logic would
2712 extend for the inclusion of that clause – would extend to the inclusion of the
2713 additional clauses around natural inland wetlands and the daylighting of streams.

2714
2715 Moving onto earthworks and vegetation clearance: with respect to Policy 15,
2716 Forest & Bird still seek that there is a reference to wetlands and not just
2717 waterbodies. The rationale behind this is that the definition of waterbody in the
2718 [03.45.00] RMA only refers to freshwater and geothermal water within the various
2719 ‘holding’ features of water, and what will slip through the gaps are those
2720 wetlands that are subject to saline and estuarine influence.

2721
2722 Similarly with Policy 41, our concern here is – we are grateful that the policy
2723 has been included but we’re seeking that more directive language that requires
2724 avoiding adverse effects on aquatic ecosystem health, indigenous biodiversity
2725 and waterbodies and receiving environments. We also consider the deletion of
2726 regional is necessary. In the speaking notes I have set out some further NZCPS
2727 provisions which would support that relief.

2728
2729 Essentially the NZCPS pre-amble, though not directive, already signals the issue
2730 around activities inland which can have major impact on coastal water quality.

2731
2732 Then NZCPS Objective 1 is to safeguard the integrity, form, functioning and
2733 resilience of the coastal environment and sustain it's ecosystem, including
2734 marine and tidal estuary areas, estuaries, dunes and land by maintaining coastal
2735 water quality and enhancing it where it has deteriorated from what would
2736 otherwise be its natural condition with significant adverse effects on ecology
2737 and habitat, because of discharges associated with human activity. Also note:
2738 NZCPS Policy 22(3) which directs controlling the impacts of vegetation
2739 removal on sedimentation including the impacts of harvesting plantation
2740 forestry”.

2741
2742 We also note that there are other existing RPS directives that contain directive
2743 language, and therefore it wouldn't be a novelty to continue with that approach.

2744
2745 The next point we have identified is Policy 17 which refers to the take and use
2746 of water for the health needs of people. Forest & Bird's original submission
2747 sought that the policy be clear that only includes domestic use for human
2748 consumption, rather than for example washing your car outside. It has since been
2749 clarified in the reply evidence that there is support for including a definition.
2750 Forest & Bird is happy with that definition, however we note that it extends to
2751 water consumed by animals, and there is a risk that could include livestock
2752 which is already addressed by s.14(3)(b)(ii) of the RMA, and doesn't sit nicely
2753 within the second order priority under the NPS-FM, which is specifically
2754 targeting the human health needs of people.

2755
2756 The last two provisions under Issue 11 concern the protection and restoration of
2757 ecological health of water bodies. The thrust of the Forest & Bird concern with

2758 respect to these two policies is the lack of recognition of coastal wetlands. Then
2759 another matter that has come to light, particularly with respect to Policy 40, is
2760 that the notified amendments may have gone a bit too broad in their sweeping,
2761 in that there's no longer any provision directing the protection or the
2762 maintenance and enhancement of coastal water.

2763
2764 It deals with coastal water still, but only as a receiving environment which
2765 overlooks the fact that there may be instances of direct discharge of
2766 contaminants into coastal water itself. In my submission, the Panel has the power
2767 to reinstate that wording - Policy 40(b) in particularly refers to managing water
2768 rather than freshwater, and to reinstate reference to aquatic ecosystem health or
2769 otherwise waterbodies and the health and wellbeing of marine ecosystems, so
2770 that this policy gap doesn't remain.

2771 [03.50.05]

2772
2773 That's my summary. I feel like I've gone too quickly through it. Happy to field
2774 questions.

2775
2776 Chair: Thank you. It's really helpful having the summary. I'm sure we do have
2777 questions.

2778
2779 I was just trying to remind myself. Ms Pascall, I'm sorry, I know your S42A
2780 Report is very comprehensive, but I think you do somewhere in here, but I can't
2781 quite find it on a word search, recall what you said – there was a concern about
2782 giving effect to these provisions in the NZCPS. Do you know where in your
2783 evidence you refer to that?

2784
2785 Pascall: I think it's in a few different locations. I can probably try and summarise.

2786
2787 Chair: Yes please.

2788
2789 Pascall: In my view the NPS-FM and the NES-FW only apply to the coastal environment
2790 in so far as it is a receiving environment. The example that Ms Downing has
2791 given of discharges directly into coastal water in my opinion is not covered by
2792 the NPS and there are other provisions within the RPS I believe that deal with
2793 discharges to the coast. I have recommended in my amendments in a number of
2794 places to remove reference to the coast and replace that with "receiving
2795 environments".

2796
2797 Chair: Ms Downing, any comment on that?

2798
2799 Downing: I wasn't unfortunately able to locate those provisions under the operative RPS
2800 that deal with direct discharges to coastal water; so that's why Forest & Bird is
2801 concerned with that gap.

2802
2803 In my submission, notwithstanding that this is a Freshwater Planning
2804 Instrument, it still is required to give effect to other higher order documents.

2805
2806 Chair: Thank you. I guess it will be useful for us to satisfy ourselves about whether
2807 there is a gap or not in the RPS. There's been quite a lot to take on for this
2808 hearing stream, so I'm sorry for me not having done that work. We might, if it's

2809 okay Ms Pascall, ask for your help with identifying those provisions in the RPS
2810 that manage discharges.
2811
2812 Are you saying managing direct discharges to the coast, which that is addressed
2813 in the NZCPS; but if I understand, you're saying if it discharges to the receiving
2814 environment, which can include the coast, then it could come under PC1, but
2815 you think there are other provisions in the RPS that deal with discharges to the
2816 coast?
2817
2818 Pascall: I would need to check what the specific provisions say, but generally if it's a
2819 provision that's apply directly to the coast, it should be in the coastal chapter of
2820 the RPS and not in the freshwater chapter.
2821
2822 If I can just add to that for clarity, I note that chapter is not part of Plan Change
2823 1.
2824
2825 Chair: This is this issue that Ms Manohar I think is going to come back to us about. In
2826 case you didn't hear this morning's discussion, the question came up not in
2827 relation to the NZCPS but it would apply as well I think, about the extent to
2828 which other NPS's are required to be implemented through Proposed Change 1,
2829 and how that relates to scope issues.
2830 [03.55.00]
2831 It's a requirement under the Act obviously that PC1 gives effect to NPS's, but to
2832 what extent are we limited in our ability to do that by the scope of what was
2833 notified?
2834
2835 We have asked for some legal advice from counsel about that.
2836
2837 Downing: I can only add on that. I have noted the provision in Footnote 3. My reading of
2838 clause 49.2 part 4, Schedule 1, is that you do have quite broad scope that would
2839 give you the ability to make changes beyond scope of submissions. I guess the
2840 difficult factor might be that I understand the actual provisions that fall under
2841 the veil of the Freshwater Planning Instrument won't be determined until after
2842 the process has run its course – the dual process for the Schedule 1 change and
2843 then this freshwater planning change. If it is in the Schedule 1 change then I
2844 guess you don't have the benefit of this clause.
2845
2846 Chair: Ms Manohar in response I think to a question about that said that while we're
2847 not limited by the scope of submissions we're still limited by the scope of
2848 Proposed Change 1.
2849
2850 There is still that requirement in the Act that a change to and RPS gives effect
2851 to NPS's. I think that's the specific advice that I think we would find really
2852 helpful.
2853
2854 Downing: I see Commissioner Wratt has her hand up.
2855
2856 Chair: Commissioner Wratt?
2857 Wratt: Ms Downing, it's not so much a question for you, but it's a comment really from
2858 this conversation. It's more targeted at Ms Pascall I think.
2859

2860 In some places in the provisions in the rebuttal reference to coastal environments
2861 of whatever has been replaced by receiving environments, but in other places it
2862 been removed and her rebuttal is that it's not appropriate.
2863
2864 I think it would be useful just to review that treatment of coastal environments
2865 as receiving environments, or not as receiving environments.
2866
2867 Just to repeat: in some cases a coastal environment has been replaced by a
2868 receiving environment, and in some places it just been removed. It's just clarity.
2869
2870 I know I asked a question earlier on about coastal wetlands. It's just a matter of
2871 clarifying the rationale around those changes.
2872
2873 I hope that's clear.
2874
2875 Chair: Ms Downing, in your summary the points in paras 2 and 3, first urban
2876 development effects Policy 3, and then earthworks vegetation clearance Policy
2877 15, I think the reporting officer's response on those two points is that these are
2878 issues that are more appropriately dealt with by the Regional Council and not a
2879 territorial authority.
2880
2881 If we look at Policy 15 for example, you're seeking wetlands as well as
2882 waterbodies in (b)(iv) but requiring setbacks from wetlands is the responsibility
2883 of the Regional Council in the NES Freshwater.
2884
2885 Do you still think that there is a role for a territorial authority to require a setback
2886 from a wetland for vegetation clearance and earthwork activities?
2887 [04.00.00]
2888 Downing: Is this with respect to Policy 15?
2889
2890 Chair: Yes.
2891
2892 Downing: I think there's no harm in including it as a 'signalling harbinger type policy' at
2893 that level, at that territorial authority level, so that it's sort of not a surprise down
2894 the track.
2895
2896 Just by virtue of the definition of waterbodies already including freshwater
2897 within a wetland outside of the coastal marine area, it's sort of hallway there with
2898 requiring a setback from wetlands. It just doesn't deal with those wetlands in the
2899 coastal marine area.
2900
2901 Chair: We heard earlier, and you might have been here, when Mr Slyfield was
2902 presenting his legal submissions. He said that there is this real risk in having
2903 overlapping responsibilities because things can fall through the gaps; so that a
2904 TA could think, "The Regional Council is going to be doing that, and the
2905 Regional Council could say each of the Territorial Authorities are going to be
2906 doing that," and then the issue just doesn't get addressed in either planning
2907 instrument. I don't think he was talking about this particular policy, he was
2908 talking about something else, but just as a general sort of principle. Certainly
2909 Wellington Water was saying these provisions need to be very clear as to where
2910 the responsibilities sit.
2911

2912 Are you saying that a belts and braces approach is actually okay?
2913
2914 Downing: Yes, belts and braces. I can see their point but I think that risk can be managed
2915 more so than the risk to lack of integration with these things - a block between
2916 the two agencies, ensuring that these things don't get forgotten, if that makes
2917 sense. Funnily, the wording of the NPS-FM itself sends some specific direction
2918 directly to Territorial Authorities in that respect, which I believe is an attempt to
2919 support better integration between the two authorities.
2920
2921 Chair: Just at a practical level, and I know this particular policy isn't limited to urban
2922 development, it's broader than that, but let's say it was a housing development
2923 and there happened to be a natural inland wetland. My question is around how
2924 this would play out in practice.
2925
2926 Downing: I guess because it's that RPS level, if it's directing the District Plan to cover it
2927 then your hypothetical scenario, I guess that would kick in at that stage. I guess
2928 the regional plan would then have to reflect this direction in the RPS. I'm front-
2929 footing your question. I'll let you continue.
2930
2931 Chair: I'm only just trying to understand how these would work on the ground. I think
2932 at the consenting stage it would probably work out. At this plan making stage I
2933 [04.05.00] guess a territorial authority, if wetlands was included in (b)(iv)... I guess what
2934 I'm trying to work out is, is there a chance that if a territorial authority in
2935 including that provision in their plan might end up doing something that then
2936 conflicts with what the Regional Council had?
2937
2938 Downing: I guess you cannot discount that risk. Like I tried to convey earlier, if they are
2939 talking to one another and going back to the allocation of responsibilities under
2940 the RPS and going back to the Act in terms of functions and responsibilities then
2941 it should work out in a way that there isn't that conflict.
2942
2943 Chair: Did any other Commissioners have any questions?
2944
2945 Wratt: No, I think those issues have been well explored. Thank you. Nothing more from
2946 me.
2947
2948 Paine: I tautoko those remarks. Thank you.
2949
2950 Chair: Ms Downing, are you still seeking deletion of the word adjacent in Policy 14(h)
2951 before "gully heads"?
2952
2953 Downing: Yes I believe we are. Apologies, I missed that. Has it been deleted or
2954 recommended to be deleted.
2955 Chair: We asked Ms Pascall this question earlier. I think the response was because the
2956 policy also talks about other receiving environments, you're not limited to
2957 looking only at what's happening, a river or lake that's immediately next to the
2958 urban development?
2959
2960 Downing: So, the other receiving environments is almost like a proxy to any adjacent
2961 features?
2962
2963 Chair: Yes.

2964
2965 Downing: My initial thinking is that could be okay, but I understand the Department of
2966 Conservation has also got evidence on this point. I don't want to steal their
2967 thunder.
2968
2969 Chair: They're presenting tomorrow I think. We can raise that with them then.
2970
2971 The daylighting of streams point – Policy 3. I understand the Council very much
2972 supports this idea of daylighting streams, but again I think it's saying that this
2973 sits more appropriately as a Regional Council responsibility. I see it's included
2974 in Policy 42.
2975 [04.10.05]
2976 Are you saying that in terms of a land use subdivision development application
2977 it still is appropriate for a territorial authority to be considering this, because it
2978 might come up through earthworks?
2979
2980 Downing: Absolutely. You've articulated it for me. I don't know if I was clear enough
2981 earlier, but again there's the counterpart to clause (h) which is concerning the
2982 gully heads, rivers etc. which has been included in FW.3 as clause (k). Forest &
2983 Bird's position is that it is then rational to include those equivalents with respect
2984 to natural inland wetlands.
2985
2986 The other thing, daylighting of streams, and then just by virtue of the fact that
2987 their language – and I think it's set out in the legal submissions of NPS-FM
2988 clause 3.5(4) are just dates. Every territorial authority must include objectives,
2989 policies and methods in its District Plan to promote positive effects and avoid
2990 remedy or mitigate adverse effects and cumulative effects, even by virtue of that
2991 reference to promoting positive effects in my submission promoting the
2992 daylighting of streams comes well within the ambit of that.
2993
2994 Chair: I was wondering about this. Ms Pascall, it seems that sometimes these provisions
2995 pick up what Ms Downing mentioned, Policy 3(k), it picks up those protecting,
2996 enhancing rivers, lakes, wetlands etc. which might sort of seem like a Regional
2997 Council function. The provision accepts that as being appropriate to require in a
2998 District Plan but not other things like the daylighting of streams.
2999
3000 Are you able to explain whether there's an inconsistency there, or if that's
3001 justifiable and appropriate?
3002
3003 Pascall: I don't think there is an inconsistency. I think where there is an area of overlap
3004 is in the management of urban development in terms of how it's located, how it's
3005 designed, does it incorporate things like water sensitive design? Those kinds of
3006 things. However, I think it's a lot clearer in the space of natural inland wetlands
3007 and daylighting of streams, that that's within the ambit of the Regional Council.
3008
3009 I can't see why you would have the same provision in the Regional Plan as in
3010 the District Plan in relation to the daylighting of streams. That is a particular
3011 activity in the stream that is about the freshwater ecosystem health water quality,
3012 those kinds of things, which I think is very clearly within the Regional Council's
3013 role.
3014

3015 Chair: Thank you Ms Pascall, but is there a chance that in a consent process, say
3016 earthworks or land use application, and there aren't any regional... does it
3017 trigger any regional consenting requirements that an opportunity to daylight a
3018 stream that had been maybe covered up by the previous development, that
3019 something might be lost if it isn't something that's relevant to a Territorial
3020 Authorities assessment?
3021

3022 Pascall: I think that becomes a situation of then where do you draw the line? There could
3023 be a number of things that you put into that camp.
3024

3025 Downing: I still go back to what's set out in the speaking notes – those points around why
3026 it should be there, by virtue of giving effect to the NPS-FM itself and that
3027 specific clause targeting the Territorial Authorities. Acknowledging that risk of
3028 [04.15.00] duplication, but like you've acknowledged earlier, a belts and braces approach
3029 can often be preferable.
3030

3031 Chair: It's complex.
3032

3033 Downing: I wish I had a planner. I might put the question to a planner.
3034

3035 Chair: It's complex because that direction in the NPS is quite broad. This is something
3036 that's come up this morning and will probably come up again tomorrow and
3037 Wednesday. We'll continue to look for insights from submitters on this
3038 allocation of responsibilities and then unfortunately pass it over to Ms Pascall to
3039 see if there's any changes she would like to recommend to the provisions.
3040

3041 I think we are at time. Thank you very, very much for the speaking notes and
3042 your submissions. Thank you.
3043

3044 Downing: Thank you Chair.
3045

3046 Chair: I'm sure we'll see you at the biodiversity hearing.
3047

3048 Downing: Thank you Commissioners. Thank you for accommodating me.
3049

3050 Chair: We're just running a little bit behind. We'll just take a ten minute break and then
3051 come back for our last submitter, Wairarapa Federated Farmers.
3052 [Break taken 04.16.40]
3053

3054 **Wairarapa Federated Farmers**

3055

3056 Chair: Kia ora. Welcome back to the hearing and the afternoon session. Kia ora. I think
3057 we have Ms Burkett online, Wairarapa Federated Farmers and Ms McGruddy.
3058

3059 Can you hear us okay?
3060

3061 McGruddy: Yes I can Commissioner.
3062

3063 Chair: Hi Ms McGruddy. Do we have your colleague Ms Berkett with us as well?
3064

3065 Berkett: Kia ora, yes you do, but I'm getting a lot of feedback and voice talking over each
3066 other and delay.

3067
3068 McGruddy: My reception is fine.
3069
3070 Chair: Sorry Ms Berkett, we'll just see if that's something we can fix at our end.
3071
3072 [Fix connectivity issues]
3073
3074 Ms Berkett, are you still getting feedback?
3075
3076 Berkett: Hopefully it's resolved itself.
3077
3078 Chair: We can hear you fine. There's a mismatch between the video and the audio but
3079 we can hear you well. We'll keep going but feel free to pop your Zoom hand up
3080 if you need us to stop at any point and have another go at the tech.
3081
3082 Welcome. Ms McGruddy you've presented to us before. Ms Berkett, should we
3083 do some quick introductions for you, as I think is the first time you're presenting.
3084
3085 McGruddy: That whole conversation we had at the start of this session, about not being able
3086 to hear each other is all replaying to me as we speak.
3087
3088 [Attempt to resolve connectivity issues – 04.19.30].
3089 [04.20.00]
3090 Chair: We don't have your videos but we can hear you.
3091
3092 McGruddy: Commissioner, we don't need introductions thank you so much. Natasha and I
3093 have been watching.
3094
3095 Commissioner I'm so sorry, everything I just said has just come back to me on
3096 replay.
3097
3098 Chair: We do have a technician in the room. We're just trying to see if we can get it
3099 sorted.
3100
3101 [Further attempt to resolve connectivity issues - 04.21.45]
3102
3103 Chair: We'll press on. Ms Berkett and Ms McGruddy. Over to you. Sorry about the
3104 technical difficulties, but hopefully we're sorted now. Over to you for your
3105 presentation, thank you.
3106
3107 McGruddy: Thank you so much Commissioner. My apologies that there might have been
3108 aspect of operator error.
3109
3110 I'm Liz McGruddy, Senior Policy Advisor with Federated Farmers. With me
3111 today is Natasha Berkett and I am hoping she is still there. Natasha has lodged
3112 planning evidence. Natasha will speak first to her planning evidence and then I
3113 will briefly highlight a couple of matters from the hearing statement. Over to
3114 you Natasha.
3115
3116 Berkett: I have just come back so I just missed what you said.
3117

3118 McGruddy: Natasha, I just introduced myself, introduced you and let the Panel know that
3119 you're about to highlight the key points from your planning evidence.
3120

3121 Berkett: Great. Kia ora. Ko Natasha Berkett ahau. I'm a Planner for Federated Farmers.
3122 Thank you for the opportunity to speak. I understand my statement will be taken
3123 as read and I am very happy to answer any questions you may have.
3124

3125 I do wish to comment on three points following on from the rebuttal evidence of
3126 Kate Pascall.
3127

3128 The first of these is in relation to Issue 5, Objective 12 and Te Mana o te Wai
3129 statements. Ms Pascall at para 26 of her rebuttal evidence notes my concern that
3130 Objective 12 as drafted does not reflect the view of the wider community. She
3131 [04.25.00] also notes that I did not suggest any specific community views or values for
3132 consideration.
3133

3134 I would like to take this opportunity to highlight three values that the
3135 Commissioners might consider for addition into Objective 12, Te Mana o te Wai
3136 in the Wellington Region. Clause 3.9(2) of the NPS-FM states that a regional
3137 council 'must in every case consider whether the values listed in Appendix 1B
3138 apply'. The three values I highlight for consideration are listed in the NPS-FM
3139 Appendix 1B and are as follows:
3140

- 3141 1. Animal drinking water (The FMU or part of the FMU meets the needs of
3142 farmed animals);
- 3143 2. Irrigation, cultivation, and production of food and beverages; and
- 3144 3. Commercial and industrial use. The FMU or part of the FMU provides
3145 economic opportunities for people, businesses and industries.
3146

3147 As currently drafted, Objective 12 does not provide for these values directly, and
3148 provides no specific clause relating to any aspect of economic use of water other
3149 than in reference to the hierarchy at (h). I have searched the document and as far
3150 as I can tell these values (in relation to the take and use of freshwater) are not
3151 provided for anywhere in the proposed RPS, except for animal drinking water
3152 which is mentioned as an exclusion in the definition of 'health needs of people'
3153 in Policy 17.
3154

3155 The addition of these values into the Objective would provide for more balance
3156 between the water, the wider environment and the community, as anticipated in
3157 the fundamental concept of Te Mana o te Wai at clause 1.3 of the NPS-FM.
3158 The Guidance on the National Objectives Framework of the NPS-FM provides
3159 useful commentary on what is meant by restoring the balance in clause 1.3.
3160

3161 Specifically: the reference to 'balance' isn't intended to signal a trade-off
3162 between Te Mana o te Wai and other goals. It emphasises that healthy freshwater
3163 is a prerequisite for a healthy wider environment and community, and that it is
3164 vital to keep those elements in balance.
3165

3166 The Guidelines also state that no single reference or clause in the NPS-FM
3167 referring to Te Mana o te Wai should be read in isolation from the overall
3168 framework of the NPS-FM or the RMA that governs it. Policy 15 in the NPS-
3169 FM requires an enabling approach, within the constraints of the higher priorities.

3170
3171 This requires conversations about:
3172 • what is needed to provide for well-being
3173 • how to reach multiple goals
3174 • allocating resources, particularly where water bodies are over-allocated or
3175 degraded.
3176
3177 The second comment I wish to make is in relation to Policy 12.
3178
3179 On the matter of consultation with the wider community in clause (a), I am
3180 happy with Ms Pascall’s suggested amendments to add the words ‘engagement
3181 with communities, stakeholders and territorial authorities’.
3182
3183 I suggest that this wording could also be included in clause (ca) of Policy 12, in
3184 reference to the identification of part FMUs. Such engagement is a statutory
3185 requirement and will ensure the RPS has greater legitimacy with the wider
3186 Wellington community.
3187
3188 The third comment is in relation to Policy 15 and Method 31.
3189
3190 Ironically, in an attempt to provide greater clarity over the responsibilities of the
3191 Regional Council and TAs in relation to earthworks and vegetation, and to
3192 manage the effects of those activities, Policy 15 has now become very muddled,
3193 and a great deal more prescriptive than it needs to be, given that the NRP
3194 comprehensively manages the effects of earthworks and vegetation clearance.
3195
3196 I think it is important to remember that RPS’s are high level documents that do
3197 not have to be prescriptive. Under s59 of the RMA, the purpose of a regional
3198 policy statement is to provide ‘overview’ (that’s my emphasis added) of the
3199 resource management issues of the region and policies and methods to achieve
3200 integrated management of the natural and physical resources of the whole
3201 region.
3202
3203 Given where the proposed Policy 15 has now got to, I recommend that the
3204 Commissioners consider setting aside the proposed amendments and that the
3205 Operative Policy 15 be retained. Operative Policy 15 is very simple, non-
3206 prescriptive, and states that:
3207 [04.30.00]
3208 “Regional and district plans shall include policies, rules and/or methods that
3209 control earthworks and vegetation disturbance to minimise:
3210 (a) erosion; and
3211 (b) silt and sediment runoff into water, or onto land that may enter water, so
3212 that aquatic ecosystem health is safeguarded.
3213
3214 In the policy explanation, Method 31 directs Wellington Regional Council and
3215 the TAs to develop a protocol ‘to guide changes to district and regional plans to
3216 avoid gaps, uncertainty and unnecessary overlaps in the regulation of earthworks
3217 and erosion from vegetation disturbance and air quality.
3218
3219 Ms Pascall considered Method 31 in her 42A report. In her view the
3220 recommended amendments to Policy 15 and Policy 41 will have greater impact
3221 on managing effects than Method 31.

3222
3223 Proposed changes to Method 31 have removed reference to earthworks and
3224 vegetation disturbance, but I suggest that this could be reinstated, and that the
3225 Protocol, developed between the councils, would be a better way to address who
3226 does what in relation to earthworks and vegetation clearance than Policy 15 as
3227 proposed.
3228
3229 The effects of those activities are better managed through the regional plan, after
3230 a careful s32 analysis, than through a Policy in the RPS.
3231
3232 Thank you for the opportunity to make these points. That concludes my
3233 comments.
3234
3235 Chair: Thank you very much Ms Berkett. Would it be possible to have a copy of those
3236 speaking notes? Would you be able to send those to the Hearing Advisors?
3237
3238 Berkett: Certainly.
3239
3240 Chair: Can I just check, what you have just discussed, do we read that in conjunction
3241 with the evidence that you have filed? Or, is the relief that you've just talked
3242 about does that supersede what is in your planning evidence?
3243
3244 Berkett: The former, it's in addition to.
3245
3246 Chair: Thank you for clarifying that.
3247
3248 I wasn't sure if I picked up the specific relief you were seeking on Objective 12.
3249 Have you got some amendments that you are proposing?
3250
3251 Berkett: In my original submission I talk about the balance. NPS-FM talks about a
3252 balance between the water, the wider environment and the community, and that
3253 there is a lack of values associated with taking in use of water for economic
3254 purposes and for the likes of food production and commercial and industrial use.
3255
3256 I didn't provide any specific values for consideration at that point. However, I
3257 have provided three that the Commissioners could consider for addition today. I
3258 have drawn those specifically from Appendix 1(b) of the NPS-FM. They are
3259 values that are listed in the Appendix as values that the Council must in every
3260 case consider. When I send these notes through to you, you will be able to see
3261 those listed there.
3262
3263 I can go over them again if you wish now.
3264
3265 Chair: Thank you, I think I understand the relief that you're seeking. We'll read that
3266 carefully when you send the written notes. Thank you very much.
3267
3268 Does anyone have any questions?
3269
3270 Ms McGruddy, did you want to also present? I think you have a hearing
3271 statement?
3272

3273 McGruddy: Yes just briefly. The hearing statement was just lodged late last week. May I just
3274 briefly check if the Panel might have had a chance to look through it?
3275

3276 Chair: We do have it. I think we have time. If you are able to take us to the key points
3277 and the relief that you're continuing to seek that would be useful, thanks.
3278

3279 McGruddy: Thanks Commissioner. In which case I will step through it a little more slowly
3280 than I had intended.
3281

3282 My first point is a context matter. From my perspective, having worked pretty
3283 closely with Greater Wellington over quite a number of years, I almost have a
3284 sense that there's a bit of a Chinese wall has gone up around RPS Change 1, and
3285 [04.35.00] that we're almost pretending that there wasn't an enormous body of work that
3286 went into the Natural Resources Plan, which of course is now operative; and that
3287 there are going to be the changes to the NRP – one change is in the arena and
3288 the other one is scheduled for next year.
3289

3290 That context of a huge body of work that is currently operative is relevant to a
3291 couple of points that I'm about to mention.
3292

3293 Again, just a second context point, very briefly: we have reiterated our primary
3294 relief on that first page. I won't dwell again on that Commissioners, but to the
3295 extent that this chapter is on the table and that changes are being contemplated
3296 to it.
3297 Two key areas for Federated Farmers, and you have heard this from us before,
3298 is we are seeking the RPS as that integrated frame for the region, to have a strong
3299 enabling framework for those action on the ground catchment partnerships, and
3300 a strong enabling framework for water resilience and water storage.
3301

3302 I will just step relatively quickly through the specific matters. We have
3303 suggested there three or four amendments to the introduction. I won't go through
3304 them in detail, but just to bring those to your attention.
3305

3306 Definitions: again I have been very, very closely involved with the NRP for
3307 about a decade, so I am acutely aware that there's a lot of definitions that got
3308 thrashed out through that process. The reporting officer has recommended a
3309 number of new definitions. Most of them are the same as the NRP. That
3310 absolutely makes sense to me.
3311

3312 There is one, and I think it's probably just an oversight. It's the definition for
3313 earthworks. There is a definition of earthworks in the NRP and we're
3314 recommending that the definition in the RPS should be the same as the one in
3315 the NRP.
3316

3317 Consideration policies - and this is specifically the consideration policies that
3318 apply to resource consents – there's several there. We have listed them. It's
3319 earthworks, veg, water takes and use and a couple of others. The context again
3320 absolutely is that we have a full-blown fully-fledged objectives, policies and
3321 rules framework in the NRP.
3322

3323 Commissioner Nightingale this morning posted a question about consideration
3324 policies, as to whether did it matter if we had consideration policies over and
3325 above the rules in the NRP.

3326
3327 Commissioner, from my perspective, it definitely is a workability issue. It's
3328 definitely an efficiency and effectiveness issue.

3329
3330 One tiny example is an application for earthworks, a resource consent
3331 application for earthworks. Currently the applicant will look at the NRP. There's
3332 a whole set of rules there. There's a whole set of conditions. There's a whole set
3333 of things that you step-through in your application. If in addition to that we've
3334 got this consideration policy for earthworks and veg that says, "in advance of
3335 the target attributes dates being determined thou shalt minimise" does that mean
3336 the same as the suite of rules that are currently in the NRP; and if it does, why
3337 are we repeating it? But, if it doesn't mean the same thing as keeping faith with
3338 all those operative rules, then be it the consent applicant, or be it the consent
3339 officer, it immediately becomes a vexed question as to what is this additional
3340 requirement?

3341
3342 The same comment applies in respect of applications for renewing water take
3343 consents. Exactly the same questions.

3344
3345 We are making a strong recommendation there that for efficiency and
3346 effectiveness, and just clarity of planned use for everybody, that those
3347 consideration policies in respect of resource consents be deleted.

3348
3349 Links to target attributes states we've got Policy 12 is probably the principle
3350 overarching policy there. Absolutely appropriately it directs that the regional
3351 plan shall set target attribute states and identify how to achieve them. Absolutely
3352 [04.40.00] fine with that.

3353
3354 But, then we've got a couple of other policies that kind of repeat the same point
3355 in slightly different ways. Again, I won't dwell on that, but in particular Policy
3356 15, as Natasha has just outlined, we don't see a practical gap. We don't see a
3357 need for Policy 15. So, the recommendation is that it be deleted.

3358
3359 Supporting ecosystem health, this is very much in vain of I think the Panel
3360 perhaps appreciate, that Feds is very staunchly supportive of action on the
3361 ground, catchment partnerships. So, there's just a couple of suggestions in
3362 relation to those policies there.

3363
3364 The final big issue is water resilience, water supply and demand. We've got
3365 several provisions here, non-reg provisions and various methods. We are
3366 recommending that this issue is of sufficient scale and urgency that it should be
3367 elevated to an objective, and further to that, we acutely aware from experience
3368 that there are regulatory barriers to doing the water resilience – be it the nature-
3369 based or constructed storage solutions, in particular around wetlands.

3370
3371 At the national level, consenting pathways are provided for. We're
3372 recommending that the RPS recognises that consenting pathways should be
3373 available for water storage and makes that explicit.

3374

3375 I will leave it at that Commissioner, but both Natasha and I would be very happy
3376 for questions.
3377

3378 Chair: Thanks very much. Thank you Ms McGruddy. I am just trying to make sure I
3379 understand the amendments that you are seeking regarding ecosystem health –
3380 paras 28 to 30 of your hearing statement. I have read Wairarapa Federated
3381 Farmers submission, but are you able to point me to where the specific
3382 amendments are that you're recommending there?
3383

3384 McGruddy: I'm really looking at paragraph 30 in the hearing statement. We're in the same
3385 place?
3386

3387 Chair: Yes.
3388

3389 McGruddy: Paragraph 29 and 30. There's three provisions that are all broadly pitched at
3390 restoration. That bold ambitious challenge of restoring back Porirua Harbour or
3391 more widely. Method FW.1 the reporting officer is recommending that it be
3392 amended to provide for engagement with community stakeholders and TAs.
3393

3394 That's very similar to our interest in those integrated catchment management
3395 projects. We're recommending that same phrase be added to the other two
3396 provisions.
3397

3398 Chair: To Policy 18 and Method 30. Thank you.
3399

3400 Wratt: I have a few questions for Ms Berkett if that's good timing Madam Chair.
3401

3402 Chair: Yes please.
3403

3404 Wratt: Kia ora Ms Berkett. Nice to see you.
3405

3406 Berkett: Kia ora.
3407

3408 Wratt: Just to clarify some of your points and I guess some points that were in your
3409 planning submission that I don't think you addressed in your presentation.
3410

3411 [04.45.00] In relation to the freshwater provisions you commented that there is an omission
3412 of clearly define FMUs and their associated long-term visions. In the S42A
3413 rebuttal comment was made around the stated approach in Variation 1 to PC1.
3414

3415 I just wanted to check with you, in terms of have you got any further concern or
3416 comment there?
3417

3418 Berkett: I guess the point I'm making here is, I was just wanting to draw attention to the
3419 fact that at the time of notification the proposed RPS didn't contain those part
3420 FMU's. I understand it contained the FMUs as they relate to Whaitua, but not
3421 the part FMUs. Therefore those long-term visions haven't been presented to the
3422 public.
3423

3424 In my view, and it's certainly in the way that things cascade through the NOF
3425 process that those FMUs surely are the starting blocks and that everything comes
3426 thereafter.

3427
3428 In my view that means it quite confusing process, and then to introduce a
3429 variation on top of that.
3430
3431 I think in terms of public engagement it's created confusion for people that don't
3432 dwell in planning matters on a day-to-day basis.
3433
3434 In my view a more logical sequence would have been to identify the FMUs down
3435 to the part FMU level, and to pull those long-term provisions through into the
3436 RPS and then everything cascades down from underneath that.
3437
3438 The concern I have is for example the Whaitua, where those long term visions
3439 have not been developed or are not there yet, and then what that means in terms
3440 of primarily Objective 12.
3441
3442 If I take for example my understanding the Ruamāhanga Whaitua, the
3443 implementation plan for that does have mention of some of those values that
3444 we're not seeing that RPS yet around water storage, irrigation and use of water
3445 for production purposes.
3446
3447 That is in a Whaitua Implementation Plan, which therefore might be pulled
3448 through into a vision statement and that vision statement would be used as part
3449 of forming what that Objective 12 looks like, that overarching Te Mana o te Wai
3450 Objective looks like. That's really what I'm drawing attention to there.
3451
3452 Wratt: Thank you for that. That's essentially the message in your submission. I think
3453 that's a fair comment. As I interpret it, what the Council are saying is that their
3454 pragmatic approach right at the moment is that these processes are all in-train
3455 and they're trying to do their best to bring them into the RPS process as they
3456 progress.
3457
3458 Berkett: I appreciate that point. That's why I didn't really dwell on it in my speaking
3459 notes today. It is the situation and it can't be avoided now.
3460
3461 Wratt: Through into Objective 12 and your comment around not reflecting community
3462 values, that's where I'm understanding your comment about those three extra
3463 values that you would like to see brought in, where that would come into
3464 Objective 12. Is that correct interpretation?
3465
3466 Berkett: I guess the point is that there may be the opportunity for the Commissioners to
3467 consider those values that are not there at this point, but will possibly need to be
3468 there to give effect to those Whaitua Implementation Plans down the track.
3469
3470 Wratt: Your point was also that they should be there in terms of the NPS-FM?
3471
3472 Berkett: One of the reasons why I didn't provide any specific commentary about what
3473 values should be there in my initial submission, was because I don't feel that I
3474 am the community, and that really it is the role of the Council to go and engage
3475 with the community. It's the community's voice that will bring those values
3476 forward. However, obviously this is a consultation process and an opportunity
3477 for those values to be put forward. So, that's what I have done today.
3478 [04.50.00]

3479 Wratt: In terms of community input, I guess you've dealt with that around the clause
3480 certainly in Policy 12(c)(a) which did come up earlier, it came up this morning.
3481 I think Ms Pascall acknowledged that perhaps she hadn't picked up that both
3482 clause (a) and clause (c)(a) of Policy 12 were mentioned in your submission.
3483

3484 Berkett: Correct.
3485

3486 Wratt: Then you have pointed out or requested they be considered. I'm not sure whether
3487 it was you or Ms McGruddy in Policy...
3488

3489 Berkett: It was me that suggested that.
3490

3491 Wratt: Policy 15 and Method 31. I'm sure we've got that recorded. I think those were
3492 the key ones really. Thank you for that. That clarifies it for me. Thank you.
3493

3494 Chair: Ms McGruddy in Policy 12, the version in the rebuttal evidence of the reporting
3495 officer...
3496

3497 McGruddy: Yes, I have it in front of me.
3498

3499 Chair: Policy 12(a) I think the text there is Ms Pascall recommends, the amendment
3500 she recommends there, I think that picks up on the relief you sought in your
3501 submission with the words "and through engagement with community
3502 stakeholders".
3503

3504 Is it those words that you would like to also see brought into Policy 18 – and I
3505 think there was a method, Method 30?
3506

3507 McGruddy: Yes. In previous hearing streams Federated Farmers have recommended
3508 different variations on the same theme. That wording doesn't actually quite
3509 capture the catchment as a unit of management, and the very strong body of
3510 operational catchment groups that we've got up and running across the region.
3511 While it doesn't quite capture that, nevertheless, to the extent that the reporting
3512 officer has recommended some words that are similar to what we are trying to
3513 achieve, then yes.
3514

3515 What's an issue here, I think Commissioner, is the extent to which we do take a
3516 consistent approach across the provisions. This topic has come up in other
3517 context today. It makes sense to adopt the similar language and apply it across
3518 the family of provisions.
3519

3520 That was a long way of answering your question. The answer is yes.
3521

3522 Chair: Thank you. While there are various provisions that refer to the active
3523 involvement of mana whenua/tangata whenua and in freshwater management,
3524 there are only some that refer to other community stakeholder involvement.
3525

3526 Do I understand correctly that you would like to see a consistent approach taken
3527 in all of the provisions?
3528

3529 McGruddy: Yes.
3530

3531 Wratt: Can I just ask for a clarification there. I think it's actually in a previous hearing,
3532 but there has been some conversation as to whether engagement with
3533 communities encompasses stakeholders or not, or whether there needs to be the
3534 wording of communities and stakeholders. Do either of you have a view on that?
3535

3536 McGruddy: Yes Commissioner I do recall that came up. It was one of the hearing streams.
3537 [04.55.00] It was submission point from Fish & Game who wanted something. They got
3538 stakeholders and did that – sufficiently addressed the thing about community.
3539

3540 I do remember that conversation Commissioner. The way it's worded here at the
3541 moment, “engagement with communities and stakeholders, NTAs” I think that
3542 probably covers it.
3543

3544 Wratt: So, you do think there is a need for it to say “community and stakeholders?”
3545 You think that “stakeholders” word isn’t redundant?
3546

3547 McGruddy: I’m comfortable with it Commissioner. If I think of a catchment setting, within
3548 the broad community of everybody who lives there, there kind of are circles of
3549 attachment, importance and status. Fish & Game, I would accept that they’re a
3550 stakeholder and not just community.
3551

3552 I’m thinking of some of the catchment groups we have here in the Wairarapa.
3553 We’ve talked about this before. Some of them are very mixed. There’s urban,
3554 rural, lifestylers, industry and this one and that one. Some of them are very
3555 farming based, some of the ones out in the hill country.
3556

3557 I think of those farmers in that catchment as being stakeholders. They’ve got a
3558 longstanding stake in the ground, a longstanding attachment to that place.
3559

3560 Again a long answer to your question Commissioner, but yes, I’m comfortable
3561 with communities and stakeholders.
3562

3563 Chair: Ms McGruddy, Policy 18(l)...

3564

3565 McGruddy: Is this in the rebuttal or the other one?
3566

3567 Chair: It hasn’t changed actually, so either version is okay. It's just a question about
3568 promoting the installation of offline water storage. I’m clearly a townie, but can
3569 you explain to me what that is?
3570

3571 McGruddy: To be sure Commissioner. In fact, Natasha might jump in here as well because
3572 she’s had a lot of experience with storage systems online and offline. Actually
3573 Natasha, could I pass that one to you?
3574

3575 Berkett: Sure. Online would be a system where you’ve got a dam for example in a river.
3576 There’s a good example down here, in the Waimea Dam in Tasman. Offline
3577 would be water storage where you’re taking water either from a ground water
3578 source or surface water source, or potentially from across land, run-off from
3579 land, and storing it into some sort of reservoir. It might be something like a
3580 turkey’s nest, which is a large pond in-ground; or it might be some other sort of
3581 reservoir, but it's not in the run of the river so to speak.
3582

3583 Chair: How does that relate to what's in Policy FW.7? I think you are seeking that
3584 instead of promote and support water attenuation and retention in rural areas,
3585 that should read "enable" I think. Certainly you're seeking enable nature-based
3586 solutions and enable built solutions.

3587
3588 Can you talk a little bit about why you think that policy needs to provide more
3589 support for attenuation and retention, and why 'promote' is not enough?

3590
3591 [05.00.00]

3592
3593 McGruddy: Commissioner I am going to rely on our recent experience in the Wairarapa to
3594 help me answer this question. At one level, I think there's widespread agreement
3595 including within the Regional Council – certainly across the farming community
3596 and the wider industry and other communities within the Wairarapa and across
3597 the region; I think there's widespread acknowledgement in the context of two
3598 things – climate change where the East Coast is predicted to be increasingly dry;
3599 and regulatory changes including for Te Mana o te Wai with the new hierarchy
3600 and prioritising the river, that the effect of both those things is that yes there
3601 might be increased storm events, but specifically in this area of water reliability
3602 the real implication (and I will set aside the storm event thing) it's the dry. It's
3603 the increasing dry.

3604
3605 Accepting that perhaps broadly people recognise the National Adaptation Plan
3606 or MPI with their water resilience and availability report, broadly I think people
3607 recognise that water storage is a critical element of a water secure future across
3608 the range of farming and primary production and industrial and urban uses;
3609 alongside absolutely providing for the mana of the waterways.

3610
3611 Storage is a key element.

3612
3613 The problem: It has been a hugely vexed, expensive and problematic process to
3614 actually get storage off the ground. That has been playing out both farm level
3615 and at community level.

3616
3617 I will speak to the farm one that I am familiar with. A dry hill country farm
3618 wanted to futureproof the farming operation. Wanted to put a big dam basically
3619 in a damp gully. The damp gully almost inevitably, of course, had some rushes
3620 and buttercups in it. The definition of what is a wetland and what is a significant
3621 wetland has moved fairly significantly over recent years and so the rushes and
3622 buttercups were deemed to be a wetland, because the wetland is then deemed to
3623 be a significant wetland. Because it's a significant wetland then the resource
3624 consent application for a farm storage dam was fully notified, publicly notified.
3625 Because it was notified as being destruction of a significant wetland of course it
3626 attracted opposition.

3627
3628 A hugely expensive difficult process. It's in that context that I am really
3629 highlighting that it is good that the RPS, the words that have in front of us, it's
3630 good that we've got some provisions in there, some non-regulatory policies and
3631 some methods which acknowledge and support water storage, including that line
3632 in P18 about promote.

3633

3634 I'm just absolutely highlighting two things. First of all, and for Federated
3635 Farmers and I think across the community more broadly, this is sufficiently
3636 important of an issue that it merits and objective in and of itself.
3637 The second thing I'm highlighting is that as it's currently written the RPS has
3638 got regulatory hurdles. Just saying they're fine words is not sufficient if we don't
3639 acknowledge and address the regulatory hurdles which are in front of us right
3640 now.

3641
3642 Chair: Thank you Ms McGruddy. We certainly saw in the climate change hearing
3643 stream nature-based solutions; we saw there some strong policies very enabling
3644 [05.05.00] of nature-based solutions.

3645
3646 I'm wondering if "promote and support" in Policy 7 is actually aligned as well
3647 as it could be with the provisions that we saw there. But, you're saying as well
3648 that the built solutions in relation to water storage also needs to be more enabled?
3649

3650 McGreedy: A hundred percent Commissioner. As one of my irrigators said to me at one
3651 stage, "Liz, I can't put a tap in a swamp." Yes the nature-based solutions are
3652 unquestionably part of the portfolio of nature-based and constructive storage
3653 solutions that we need at a range of scales (and I'm quoting there from the Orakei
3654 Water Resilience Strategy) but there is no question whatsoever that built storage
3655 is part of the portfolio.
3656

3657 Wratt: Again just for clarification: you've referred to the current situation which I hear
3658 what you're saying, but we do have more permissive drafting here which talks
3659 about promoting and supporting. But your position, your relief would be that
3660 that is still not sufficient, is that correct?
3661

3662 I guess my question is why is that not... I mean, that to me does make a step
3663 change in acknowledging the importance of water storage.
3664

3665 McGreedy: I certainly welcome the additions. That "promote offline storage" comes from
3666 the operative RPS. That bit is not new. That new rural policy, that bit is new and
3667 I welcome that.
3668

3669 I will just briefly go back to Commissioner Nightingale referencing the climate
3670 change. Water storage did come up in that Climate Change 1. It was all about
3671 urban. It was all municipal. I will just briefly make that point.
3672

3673 Here in this hearing stream we have got a rural provision and I welcome it. It's
3674 good words. Those words come pretty much straight from the Wairarapa Water
3675 Resilience Strategy. Hundred percent support it applying across the whole
3676 region.
3677

3678 I'm just emphasising the critical important. The critical importance was actually
3679 set out very, very well in the MPI Report that we reference. The MPI report set
3680 out the context partly in terms of the interest across New Zealand and across the
3681 agricultural sector in diversification. The primary sector is very tuned to
3682 diversification and value-add – advancing forward in terms of the sustainable
3683 diversified land-based sector. Hundred percent on-board with that.
3684

3685 The point that the MPI Report makes very, very well is that we can't without
3686 reliable water. We can't. When I say we can't, there's a couple of aspects to that
3687 Commissioner. Hort New Zealand might perhaps speak to this a little bit as well.

3688
3689 One is that if you want to diversify your farm business, let's say out of dairy or
3690 finishing into some exciting new horticultural ancient grains, or something like
3691 this, you don't get the contracts for those higher value crops without the reliable
3692 water to grow them. You are almost inevitably going to need to go to your bank
3693 [05.10.00] to get a loan and the banks are going to want to know that you can grow that
3694 crop in order to repay your massive big mortgage. You can give them that
3695 confidence if you've got the reliable water.

3696
3697 I'll put that another way. In a drought situation, and the Panel I am sure with
3698 what are the priorities in the event of a drought, and one of them the Court
3699 regularly bring up, and I understand and support them in this, is root stock death.
3700 In a drought situation when the taps get turned off, on a pastoral grazing system
3701 if push comes to shove you can destock and send stock to the works; if push
3702 comes to shove you can bring in supplementary feed; if push comes to shove
3703 you can probably hunker down, ride it out, you'll take a hit for a few years but
3704 you'll get back. In those mores specialised copping options, if you lose your root
3705 stock and lose your contracts that's a whole other ball game.

3706
3707 As long as we have unreliable water willy-nilly the options and ability for farms
3708 to diversify –and I'm not going to say out of livestock, because I think it's really,
3709 really important that we retain a portfolio, but diversify from livestock to
3710 incorporate elements across the region of those other crops, if we haven't got
3711 reliable water it's not going to happen.

3712
3713 Chair: Thanks very much. I think we have run out of time. We really appreciate having
3714 your hearing statement Ms McGruddy and your evidence Ms Berkett. We will
3715 continue to think about those in our deliberations. You've certainly given us a
3716 lot to think about. Thank you very much for your time.

3717
3718 McGruddy: Thank you Panel.

3719
3720 Chair: We are back tomorrow but there is a slight change to the schedule. We have
3721 been advised by Dairy New Zealand that they will no longer be presenting, so
3722 we will be starting at 10.25 with Wellington Fish & Game. That was it in terms
3723 of procedural things. Thank you very much everyone. Hope you all have a good
3724 rest of the afternoon and we will see you tomorrow.

3725
3726 Karakia.

3727
3728 Admin: Kia tau ki whakatehai [05.13.36], haumi e, hui e, tāiki e.

3729
3730 Chair: Kia ora.

3731
3732

3733 [End of recording 05.13.43]

Greater Wellington Regional Council

Transcription
Hearing Stream Five – Freshwater / Te Mana o te Wai
Day Two

SUBMISSIONS

Proposed Change 1 to Regional Policy Statement for Wellington Region

Date: Tuesday 21st November 2023

Location: Venue: Naumi Hotel, 213 Cuba Street, Te Aro, Wellington 6011

Hearing Panel: Commissioner Dhilum Nightingale (Chair)
Commissioner Glenice Paine
Commissioner Gillian Wratt
Commissioner Ina Kumeroa Kara-France

Hearing Advisors: Jo Nixon
Whitney Middendorf

1 Chair: Mōrena. Karakia tātou.
2
3 Watts: Kia tau ngā manaakitanga a te mea ngaro
4 Ki runga ki tēnā, ki tēnā o tātou
5 Kia mahea te hua mākihikhi
6 Kia toi te kupu, toi te mana
7 Toi te aroha, toi te reo Māori
8 Kia tūturu ka whakamaua kia tīna
9 Tīna, hui e, tāiki e
10
11 Chair: Kia ora. Nau mai haere mai ki te kaupapa o te rā.
12

Wellington Fish and Game Council

13
14
15 Welcome to Day 2 of the hearing the Freshwater Te Mana o te Wai hearings.
16 We welcome representatives from Wellington Fish and Game Council. I know
17 we've had submissions from Mr Malone before but I think Ms Coughlan and Ms
18 Campbell it might be your first time presenting to us, is that right?
19
20 We'll start with some panel introductions so you know who we are.
21
22 We are the Independent Hearing Panel hearing submissions on proposed Change
23 1. Ko Dhilum Nightingale tōku ingoa. I'm a Freshwater Commissioner, also

24 appointed as the Chair of the P1S1 Panel and chairing the Freshwater Panel. I
25 am a Barrister at Kate Shepherd Chambers and I live in Taputeranga in Te
26 Whanganui-a-Tara, Wellington. Kia ora, welcome.

27
28 Paine: Tēnā koutou katoa. Ngā mihi ki a koutou. Ko wai au, ko Piriripiri te maunga, ko
29 Waiotoi te awa, ko Waikawa te marae, ko Te Ātiawa me Ngāi Tahu ōku iwi. Ko
30 Glenice Paine tōku ingoa.

31
32 My name is Glenice Paine. I am an Environment Court Commissioner. I am
33 sitting on both panels. Kia ora.

34
35 Kara-France: Kia ora. Ko Ina Kumeroa Kara-France tōku ingoa. Ko Waikato Tainui, ko Ngāti
36 Kahungunu, ko Ngāti Tūwharetoa, ko Te Atihaunui-a-Pāpārangī, ko Ngā Rauru
37 ngā iwi i ngā takiwā. Nō reira, tēnā tātou katoa.

38
39 Independent Hearing Commissioner. I am on both panels. I come from Tāmaki-
40 makaurau. I have a background in the mana whenua environment space, a very
41 strong one, and former WSP Senior Advisor. I sit on the New Zealand
42 Conservation Authority Board and I am the liaison for Auckland, Far North and
43 Northland Conservation Boards. Nō reira. Tēnā koutou, tēnā koutou katoa.

44
45 Wratt: Kia ora koutou. Ko Gillian Wratt tōku ingoa. I'm Gillian Wratt. I have twice
46 tried to come and join you in person for the hearing in Wellington – most recently
47 early this morning when Wellington Airport was still closed with fog. I am
48 joining you from Whakatū Nelson which is where I am based. My background
49 is in the science sector. I was initially appointed onto the Freshwater Panel but
50 with the changes we had early in the process I am now on both panels. Welcome
51 and kia ora.

52
53 Chair: Thank you. If the Council team that are in the room could introduce themselves,
54 thank you.

55
56 Pascall: Mōrena, Kate Pascall. I am the S42A Reporting Officer for this Freshwater Te
57 Mana o te Wai topic. I am a Senior Environmental Planner at GHD Ltd and I
58 have been contracted by the Council for this topic.

59
60 Watts: Mōrena, I'm Mike Watts. I'm a Policy Team Leader at Greater Wellington.

61
62 Chair: We have our hearing advisors here as well. If there are any technical issues we
63 do have an AVL specialist who will be able to help. Hopefully you can hear us
64 clearly and there's no issues at your end.

65
66 We'll get underway. Hearings are being livestreamed and recorded for
67 transcription purposes, so before you speak if you could please say your name
68 for the transcript. We will try to remember to do that as well.

69 [00.05.00]
70 We have pre-read your legal submissions Mr Malone and also your evidence
71 statements. Thank you for the speaking notes which we have as well. I haven't
72 had a lot of time to go through that, so if you're able to take us through that and
73 highlight the key points where your views differ from those of Ms Pascall's that
74 would be great.

75

76 Unless there are any questions or procedural points we'll hand over to you.
77
78 Malone: Thank you. This morning I am here with Amy Coughlin Lily Campbell – both
79 of who have presented evidence.
80
81 We have all read Ms Pascall's rebuttal evidence, so I don't propose to read the
82 legal submissions. What I do I propose to do is just step you through parts of
83 them to highlight exactly what you just said – where there's agreement and
84 where there's disagreement, and then pass over to you to see if you have any
85 questions for Ms Coughlin. There was no rebuttal evidence in relation to hers,
86 but she's here to answer any questions if you have any.
87
88 With that, if I can just refer you to paragraph 2.1 of the legal submissions. You
89 will see that I set out three amendments that were sought by Fish & Game to
90 Objective 12. That first one there, that has been accepted so there is no issue in
91 relation to that.
92
93 The second one, some of the wording from that second one has been included
94 and recommended by Ms Pascall, but there is still some issues with that, and Ms
95 Campbell's speaking notes address that.
96
97 The third one that is set out there, that was not accepted by Ms Pascall, and again
98 Fish & Game are still [07.20] and Ms Campbell can address that in her speaking
99 notes.
100
101 If I can then refer you to paragraph 3.1 of the legal submissions, there's
102 amendment set out there in relation to Policy 12. That has been accepted. There
103 is no issue in relation to that, however, I understand Ms Campbell was actually
104 watching the start of the hearing I understand and there were some questions
105 from the Hearing Panel to Ms Pascall in relation to whether words similar to that
106 should be included in other provisions. Ms Campbell's speaking notes address
107 that too, so I'll let her speak to that.
108
109 Then if we move along in the legal submissions the next one is at paragraph 4.1
110 – set out there some amendments in relation to both Policy 40 and Policy 18.
111 Those as far as I can tell haven't really been addressed in Ms Pascall's rebuttal
112 evidence. I suspect that may be because she had a great many things to have to
113 address in her rebuttal evidence; but Ms Campbell again addresses those in her
114 speaking notes so I won't dwell on them.
115
116 We then move along to paragraph 5.1 and paragraph 5.5 in the legal submissions.
117 They set out some amendment that were sought by Fish & Game that were also
118 addressed in Ms Campbell's evidence. Ms Pascall has made amendments to
119 address those and Fish & Game is happy with those amendments.
120
121 Hopefully that helps to highlight where the issues are. I'm happy to answer any
122 questions if you have any for me, or just move onto Ms Coughlin and Ms
123 Campbell.
124
125 Chair: Thanks Mr Malone. Just one I think from me.
126

127 In para 5.5 of your submissions, anticipated environmental result 4, Fish & Game
128 would like that say, “the protection of existing fish habitat”. Does anything turn
129 on deleting Ms Pascall’s advice as to delete “existing”?
130

131 Malone: In terms of that, not that I’m aware of.
132 [00.10.00]
133 Ms Coughlin and Ms Campbell have discussed that and neither of them raised
134 any issue with it. I don’t see any particular issue with it at all.
135

136 Chair: Over to your experts, unless anyone else had any questions for Mr Malone.
137

138 Malone: We’ll start with Ms Coughlin if anybody has any questions for her?
139

140 Coughlin: I’ll just pop in really quickly and say hi. I’m afraid I don’t have my headphones.
141 There’s a lot of background noise here and I can barely hear the panel speak at
142 all. If there is anything for me please project.
143

144 Chair: Hopefully you can hear.
145

146 Wratt: I’m having trouble hearing the panel as well. I heard Mr Malone and I could hear
147 Ms Coughlin quite clearly as well, but the panel is coming through really quietly.
148

149 Chair: Thanks Commissioner Wratt. We’ll see what we can do here.
150

151 [unknown]: I can hear you clearly but you’re quite quiet in comparison to Ms Coughlin and
152 Commissioner Wratt.
153

154 Chair: I am seldom called quiet. I think it's probably just the microphone coming a bit
155 closer thank you.
156

157 Ms Coughlin, Policy 44(b)(c), I just have a question, and I really acknowledge
158 your expertise on habitat and your knowledge in this area. How does this work
159 in practice – ensuring the habitat of indigenous species are protected, as are the
160 habitat and salmon, in so far as that’s consistent with protecting the habitat of
161 indigenous species. You talk in your evidence about how trout and indigenous
162 species can co-exist in many habitats. Is it about identifying what those particular
163 habitats are and where they can co-exist?
164

165 Coughlin: Absolutely. My research and the research of great many people before me, it's
166 really clear that they co-exist in a vast majority of places, but we do have some
167 incredibly special unique treasure species that we would need to make sure aren’t
168 being impacted by gradation of trout or salmon [13.23] or birds. Protection of
169 the habitat in those spaces would require some sort of nuance look at species
170 interaction; but that’s probably with my research maybe 10 percent of the
171 waterways we’d be looking at that. The rest of it would come down to restoration
172 of habitat. So, where you’re looking at, where the species are so threatened, or
173 we really, really need to... obviously we’re just limited to the [13.49] ones, but
174 the ones we really want to increase the abundance and distribution of, we might
175 look there at whether or not those things are consistent.
176

177 In my research and my experience most of the places you’ve been absolutely
178 looking at that habitat and restoring that habitat to the best of our ability, and

179 would actually provide for much better cohabitation of everything that we have,
180 that we want to keep.
181

182 Chair: At the Regional Plan making stage, is that where that direction will come?
183 Because if it's about identifying habitats where co-existence works and the
184 species are all protected, then habitats where that isn't possible, and so protecting
185 indigenous species we need to prioritise that.

186 [00.15.00]

187 Sorry, I'm probably simplifying it. If that needs to be identified at the Regional
188 Plan stage, do these provisions provide for that? I guess it's Policy 18 isn't it –
189 Policy 18(g) and (g)(a) where that direction comes in for the Regional Plan.
190

191 Sorry, I don't know if Ms Campbell wants to jump in on that point.
192

193 Coughlin: I would love to know more about that, unfortunately I'm not a planner per se.
194 I'm learning as I go. My experience is more along the lines at this point of the
195 species interaction habitat needs for all of them.
196

197 Chair: I guess I just want to get Fish & Games' views on whether the direction for the
198 Natural Resources Plan is sufficient to ensure that the habitats of indigenous
199 freshwater species can be protected where co-existence isn't possible in a
200 particular habitat.
201

202 Campbell: Kia ora. I could make a brief comment on that. Obviously you've referred to
203 Policy 44 which is looking at the management of water takes and giving effect
204 to Te Mana o te Wai. That's a matter to be considered. But, as you mention,
205 Policy 18 would definitely benefit from that reference as well as it does direct
206 Regional Plans. We've got clause (g)(a) that was recommended to be accepted
207 by the S42A officer – protection and habitat of trout and salmon, in so far as this
208 is consistent with clause (g). That was the same wording. Very supportive of that
209 recognition in Policy 18.
210

211 Chair: In your view that wording there is sufficient to provide for what we have been
212 talking about – co-existence and instances where co-existence is not appropriate
213 or not possible?
214

215 Campbell: Yes, based on evidence of Ms Coughlin I believe that is appropriate. Just note
216 that Policy 18 clause (r) is also a clause referring to fish passage, except where
217 it's desirable to prevent the passage of some species to protect indigenous
218 species. That's some additional protection there. Quite comfortable with that.
219

220 Chair: I just have one more question Ms Coughlin. Para 6.2 of your evidence, can I just
221 check that I understand the sentence properly. At 6.2 you say in the last line,
222 "The habitat requirements of the river are greater than if trout were not present."
223 Is that right?
224

225 Coughlin: I'd hope to be a bit more clear in there. Obviously I have lost something in the
226 translation – my apologies. When you have trout who actually need a little bit
227 more water, particularly quantity as well as quality, often if the water is taken
228 out the trout can't survive due to extra heating or the other things that go along
229 and degrade the water along with everything else. Often our indigenous species
230 are a lot better at adapting to that and sometimes that can be to their ongoing

231 population detriment, but it's a slower one. When you have trout and you're
232 protecting the habitat of trout with the higher water quality and quantity, you
233 have these indigenous species who are much more likely to be able to thrive, as
234 well as because with the extra height of the water you have the extension of
235 length if you like, the breadth of the river, and that creating more habitat space
236 – more mesohabitats, more pools, more ripples, more edge water habitat.

237 [00.20.00]

238 We're not just talking about what they need in the main scheme, the adults need
239 in order to survive, but what the whole species needs in order to thrive
240 throughout the life stages of them – it can be really, really important to the health
241 of the river for obviously the trout or valued introduced species, but really, really
242 important to native species as well. Sometimes that gets lost when looking
243 strictly at a species interaction – which is why a lot of my evidence is coming
244 back to while these things are important and it's vital we look at them, it's also
245 really important that we look at the wider habitat as well for everything in our
246 waterway.

247
248 Chair: Thank you. I think that's clear. Because the needs of trout are great, if the habitat
249 is working well for the trout then it will be working really, really well for the
250 indigenous species. Sorry for simplifying it but have I understood that?

251
252 Coughlin: Yes, you've got it.

253
254 Chair: Thank you. Did anyone have any questions for Ms Coughlin?

255
256 Wratt: Thank you Ms Coughlin. That was a good piece of evidence. I enjoyed reading
257 it, thank you. No specific questions thank you.

258
259 Chair: Ms Campbell, I'll hand over to you.

260
261 Campbell: Tēnā koutou katoa. Ko Lily tōku ingoa. I whānau mai au i Otepoti. Kei te noho
262 au ki Taupō. Ngā mihi nui ki a koutou katoa.

263
264 My name is Lily Campbell on behalf of Fish & Game. Just briefly to summarise,
265 I am generally supportive of the recommendations made by the S42A author and
266 will only address now provisions where outstanding relief is sought.

267
268 I will start with Objective 12.

269
270 In her rebuttal evidence, Ms Pascall made a number of amendments to give
271 better effect to Te Mana o te Wai and the NPS-FM. I would like to strongly
272 acknowledge my support for these changes.

273
274 With respect to recognition of the community, I was listening to the opening of
275 the hearing yesterday and I note that the Panel questioned why some of the
276 wording to that recommended in Policy 12(a) has not been included in Objective
277 12. I do see considerable merit in including such wording, and Fish & Game's
278 submission does actually provide scope for this.

279
280 In my speaking notes I've considered [22.50] could read exactly the same as the
281 wording in Policy 12, so I won't repeat that.

282

283 I consider this is best placed below sub-clause (g) which requires active
284 involvement of mana whenua.

285
286 In regards to Fish & Game’s relief sought in my evidence, I propose the addition
287 of three new clauses to Objective 12 as Craig mentioned. The first was in relation
288 to community recreational values, and I support the recommendation of Ms
289 Pascall to accept that and don’t seek any further changes.

290
291 With regards to the outstanding relief that is sought, first in relation to protecting
292 the habitat of trout. In paragraph 24, Ms Pascall agreed that Objective 12 should
293 include reference to the protection of freshwater habitats. However, she did not
294 consider it should include specific reference to trout habitat.

295
296 I disagree that reference to trout habitat should be excluded from Objective 12.
297 An objective must clearly articulate how it will achieve a desired outcome. By
298 simplifying the wording to generally refer to ‘freshwater habitats’, the objective
299 is less specific and it is unclear how this outcome will be achieved.

300
301 The proposed wording widens the scope to include all freshwater habitats. This
302 in practice could have unintended consequences.

303
304 To avoid protection being unintentionally afforded to potentially undesirable
305 species, Objective 12 should be specific in the habitat that it applies to.

306
307 I have recommended that sub-clause (gb) of Objective 12 as per Ms Pascall’s
308 rebuttal evidence is amended to include specific reference to trout; and I have
309 also included salmon which I did not initially mention in my evidence, and of
310 course freshwater indigenous species.

311 [00.25.00]
312 Next in relation to natural character and form. In paragraph 32 of my evidence I
313 recommend that a new clause is added to Objective 12 to preserve the natural
314 character and form of waterbodies.

315
316 In paragraph 25, Ms Pascall disagreed with my recommended addition. She
317 stated that in her opinion the matter is sufficiently addressed by clause (d) of the
318 Objective.

319
320 Again, I was attending the livestream yesterday and noted that the panel
321 commented on the terminology used in clause (d), specifically recognising
322 “provide for” and how this aligns with s.6(a) of the RMA. I note that s.6(a) of
323 the RMA uses the word “preserve” or “preservation” of natural character.

324
325 I do generally support the amendments sought by Rangtāne o Wairarapa and
326 accepted by Ms Pascall in relation to this sub-clause but I will just briefly talk
327 to the intent of sub-clause (d) and the sub-clause that I have proposed.

328
329 I have reviewed evidence of Ms Burns for Rangtāne o Wairarapa, and I have
330 actually discussed this matter with her.

331
332 It is my understanding that the requested amendments were intended to
333 recognise the variety of unique characteristics that each waterbody has, and to

334 direct the development of management regimes that are unique and specific to
335 individual waterbodies and FMUs.
336
337 The intent of recommended sub-clause (d) differs from the intent of the clause
338 that I have proposed.
339
340 Paragraphs 28 to 32 of my evidence provides discussion as to why reference to
341 the ‘natural character and form of waterbodies’ is necessary to give effect to the
342 National Policy Statement for Freshwater Management, so I won’t repeat that
343 there. But, I maintain my recommendation that a new clause should be included
344 under Objective 12, as per paragraph 32 of my evidence.
345
346 Moving onto Policy 40, in paragraph 215 of her rebuttal evidence, Ms Pascall
347 states that she agrees that clause (o) requires further amendment to provide a
348 consenting pathway for activities within natural inland wetlands.
349
350 Clause (o) of Policy 40 is related to river extent and values. I believe that Ms
351 Pascall may have referred to natural inland wetlands in error.
352
353 Despite this, in paragraph 50 of my evidence, I recommend amendments to the
354 sub-clause refer to ‘functional need’, and the application of the ‘effects
355 management hierarchy’. This has not been addressed in Ms Pascal’s rebuttal
356 evidence, but I note that yesterday during the hearing this matter was discussed
357 and the issue of consistency among provisions was raised as well. Ms Pascall
358 was asked to consider this and to provide further commentary and provide a
359 reply.
360
361 I won’t repeat my discussion and reasons for the [28.10] functional needs and
362 the effects of hierarchy as that is outlined in my evidence, but I will maintain my
363 recommendation that sub-clause (o) of Policy 40, as set out in paragraphs 41 to
364 50 should remain.
365
366 Moving onto Policy 18, there was not an acknowledgement of the consequential
367 amendment that I proposed to Policy 18. I recommended that clause (e) was
368 amended to better give effective to subpart 3.24 of the NPS-FM. This obviously
369 [28.49] Policy 40 clarifies that practicability is subject to the application of a
370 functional needs test and affects to management hierarchy.
371
372 I maintain my recommendation made in my evidence at paragraph 58.
373
374 That’s everything. Happy to take questions. Thank you.
375
376 Chair: Thanks very much. Any questions?
377
378 Paine: Mōrena. I am just looking at your speaking notes and you refer to a discussion
379 that you’ve had with Ms Burns from Rangtāne about natural form and character.
380 I presume that Ms Burns will let us know what her feelings are about your
381 understanding of what she thinks this clause should mean.
382
383 Campbell: Yes, kia ora. I do believe that she will talk to that. Obviously the intent for

384 [00.30.00] Rangtāne was around making sure that [30.09] provisions that apply to them
385 are site specific, and looking at the natural characteristics. Yes, I believe she will
386 speak to that.
387

388 Paine: Thanks Ms Campbell.
389

390 Chair: Commissioner Wratt, any questions?
391

392 Wratt: Thank you, yes one question and I think that's for Ms Campbell.
393

394 In your submissions you've put in the recommendations around engagement
395 with community and stakeholders. I did question Wairarapa Federated Farmers
396 on the stakeholder, including both community and stakeholder. I would just be
397 interested in hearing your comment on that as well.
398

399 Campbell: I don't have a strong opinion on that, because I think with stakeholders in the
400 community, essentially stakeholders are a sub-part of the community. It's a very
401 wide ranging umbrella term I guess you could call it. Where you've got
402 recognition of community values I believe you also have recognition of
403 stakeholder values. However, I know that in some places, although the meaning
404 would be the same and the interpretation will be the same, it will give a
405 perception for those who want to be recognised that those are the stakeholders.
406 A greater perception, although I think the meaning would be the same.
407

408 Wratt: I think her point was that there are stakeholders and I think she actually
409 mentioned Fish & Game as one, where a particular group will have expertise,
410 which we are seeing from, for example, Ms Coughlin's evidence and that it is
411 good to see that acknowledged within the RPS. That's sort of slightly different
412 input from just a more general community input I guess.
413

414 Campbell: Yes absolutely. I think that's fantastic to recognise that specific expertise, and
415 support the use of the word 'stakeholders'. Potentially Craig might want to
416 speak to this.
417

418 Malone: I already addressed that in the legal submission for exactly the reason the
419 Commissioner just raised. It's very much exactly the same thing.
420

421 Wratt: That's very much. That's just clarifying and emphasising that.
422

423 Chair: Ms Campbell, can I check? The change you seek to Objective 12, can I just
424 check, I think it's the [33.32]? You're proposing a new sub-clause at para 7 of
425 your speaking notes. I'm not sure that fits in the current structure or with that
426 chapeau. Are you able to have another look at that – "mana is restored and
427 protected by ongoing management of land and water that is through engagement
428 with community, stakeholders and territorial authorities?"
429

430 Campbell: Yes, that's a bit of a tricky one. You've got that chapeau and then you've got a
431 lot of different clauses coming from that. With respect to [34.22] we have
432 management of land and water that provides for the ability of mana whenua to
433 safely undertake their practices. I think potentially you would need to use the
434 same language – provides for engagement with community, stakeholders and
435 territorial authorities. That would be more appropriate.

436
437 Sorry, I kind of pulled this together yesterday afternoon following listening
438 yesterday.
439 [00.35.00]
440 Chair: No problem. Thanks for clarifying that.
441
442 The ongoing management of land and water that provides for engagement with
443 community stakeholders and territorial authorities?
444
445 Campbell: I think that reads better. Although I will definitely have a think about this and
446 make sure it's drafted as [35.41] as possible if that was of assistance to the panel.
447
448 Chair: That's quite process oriented and I just wanted to check that that is your intention
449 and I'm not missing something there.
450
451 Campbell: That is the intention on the basis that Objective 12 is the Te Mana o te Wai
452 objective for this Freshwater [36.29]. I believe that it's directing how freshwater
453 should be managed and want to give effect the NPS-FM that [36.40] community
454 stakeholders and territorial authorities is really important, as if the active
455 involvement of tangata whenua. I think this is the right place to have that strong
456 direction.
457
458 Chair: Thank you. The relief regarding (gb) of Objective 12, "supports and protects an
459 abundance and diversity of freshwater habitats". Do I understand it correctly that
460 your view is that's too broad to refer to all freshwater habitats because there
461 might be some undesirable things in the habitat that shouldn't be supported and
462 protected in order to uphold Te Mana o te Wai?
463
464 Campbell: Correct. The protection of trout and salmon is directed strongly from the NPS-
465 FM and that's where that should follow through into the objective. Would it be
466 appropriate to extend that protection out to all species regardless of whether they
467 are desirable or not.
468
469 Chair: I know the policy which then implements this objective has that more nuance
470 about what we were talking about earlier, about co-existence unless that's not
471 good for indigenous species; but would it work after freshwater habitats if it said
472 of desirable species?
473
474 Campbell: [38.28] perspective because the [38.30] trout and salmon, I wouldn't be
475 comfortable with the use of desirable, because that's not the language of uses.
476 You might have something to say on that matter.
477
478 Wratt: Could I just clarify that? You're wanting to add – this is (gb) of Objective 12,
479 correct – you're wanting to add "supports and protects an abundance and
480 diversity of freshwater habitats." So, that would that then read "including those
481 of trout and salmon." Is that what you're proposing?
482
483 Chair: Commissioner Wratt, I think the amendment that Ms Campbell is seeking is in
484 para 24 of her speaking notes.
485
486 Wratt: I haven't actually got the speaking notes. If those are on the website this
487 morning, I'm sorry I don't have those.

488
489 Chair: It's "protects an abundance and diversity of habitat that supports trout, salmon
490 and indigenous freshwater species."
491

492 Wratt: I was just concerned that I hadn't picked up the indigenous species as part of
493 that. Thank you for that clarification. That makes more sense.
494

495 Chair: Thanks Ms Campbell. I understand what you're seeking there. We are at time
496 but I did want to ask a question about natural form and character.
497 [00.40.00]

498 The reporting officer, the amendment that Ms Pascall suggested to Objective
499 12(d), about recognising and providing for the individual natural characteristics
500 and processes, your view is that that doesn't give proper effect to s.6(a) of the
501 RMA.
502

503 Individual natural characteristics – can you explain to me why that doesn't factor
504 in natural character in the way that you would like, or is the issue the verb
505 'preservation'?

506

507 Campbell: Good question. I think there's two parts to this. You have language in the RMA
508 which asks you to preserve the natural character. You also have direction in the
509 NPS-FM as a component of ecosystem health to protect habitat and the natural
510 character and that forms a [41.35] part of that. We've got your RMA direction
511 to preserve natural character, and you've got your NPS-FM direction as well. In
512 terms of clause (d) the individual natural characteristics is not a good way of
513 saying "natural character". "Natural character is a defined term in the NZCPS. I
514 don't see it being clear for plan users, that when they see or recognise individual
515 characteristics that we're actually seeking the preservation of [42.14]. I don't
516 think it's going to be a clear link. That's in addition to the fact that my
517 understanding is that is not the intent of that clause as per Rangtāne o Wairarapa
518 in their submission.
519

520 Chair: I might be looking in the wrong place. I have just brought up the glossary to the
521 NSCPS. I don't think 'natural character' is in there. Is it in one of the policies,
522 do you know?
523

524 Campbell: Policy 13. We've got a big description of what forms part of natural character
525 under Policy 13.
526

527 Chair: Would an amendment that said "recognise and provides for"... you think
528 "provides for doesn't go as far enough as you would like as well?
529

530 Campbell: Or, can be appropriate. However, I'm more concerned about what [43.58] to
531 "natural character". Only having reference to "natural characteristics" I think
532 they have quite different meanings.
533

534 Chair: Would "recognise and provide for the natural character and processes of
535 waterbodies and their associated ecosystems" would that work?
536

537 Campbell: I'm just looking at s.6 of the RMA, clause (a) and the chapeau. "All persons
538 shall recognise and provide for the preservation of natural character." I would

539 be more comfortable with the use of the word “preservation” as well as.
540 However, I think you do still have strength in “recognise and provide for”.

541 [00.45.00]

542 I’ve simply sought the terminology “preserve” because Objective 12 already
543 states in its chapeau the mana and [45.14] within freshwater ecosystems is
544 restored and protected.” I feel like it's got quite a bit of strength there, before it
545 leads into what I would propose, which is the preservation of natural character
546 and form of waterbodies.

547
548 Chair: We are obviously talking about freshwater here and the NZPCS is coastal, but I
549 understand. I think I understand better the difference between the natural
550 characteristics that’s here and the concept of natural character. Thank you.

551
552 Policy 42(j) refers to natural form. Is that including the natural form and flow of
553 the waterbody? Does that speak to natural character in your view?

554
555 Campbell: I do consider that [46.50] in part to the concept. However, I do think because
556 natural character is set out in the NZCPS it's understood in case law and it's
557 referenced in the National Policy Statement for freshwater management. It is a
558 well-known term and it is used [47.09]. I do think that reference to natural
559 character is important because of all those other examples.

560
561 Chair: Thank you Ms Campbell. We’ve read the points you make about Policy 14 and
562 18. Yes, I think Ms Pascall is happy to have another look at that and the
563 consistency points. Thank you.

564
565 Thanks very much for coming along today and presenting your submissions in
566 evidence. We really appreciate your time.

567
568 I think we’re just going to have a short break before Mr McDonnell joins us.
569 Thank you. We’ll come back in five.

570
571 [Break taken 48.05]

572
573 **Porirua City Council**

574
575 Chair: Mōrena. Welcome back Mr McDonnell. You’ve presented to us before. Would
576 you like us to do introductions? You’re happy. Great. We can hand over to you.
577 We’ve pre-read everything. If you can take us to the points where there are
578 outstanding matters, that would be really helpful. Thanks.

579
580 McDonnell: Ngā mihi ki a koutou, ngā mihi ki ngā mana whenua o tēnei rohe, particularly
581 Ngāti Toa Rangatira with regard to Te Awaroa o Porirua harbour, which we are
582 talking about today.

583
584 I’m Torrey representing Porirua City Council today. It's just me. I’m providing
585 expert planning advice for Porirua City Council.

586
587 I produced the statement of planning evidence in support of a number of
588 submission points from PCC. I have provided specific recommended changes to
589 various provisions in Appendix A of my statement of evidence.

590

591 I have read the rebuttal evidence and I would like to acknowledge the work of
592 reporting officers and advisors. It's clear that PCC's submission points have been
593 carefully considered, and many of the points raised have been addressed in
594 recommendations to the Panel.

595
596 The provisions I want to discuss today is where I consider there is some
597 contention for PCC. There's basically three broad groups. There's Policy 14 and
598 the associated provisions relating to urban development; Policy 15 relating to
599 earthworks and vegetation clearance; and Policy's 18 and 40 relating to works
600 near waterways.

601 [00.50.00]

602 Just as a high level comment, I think in the rebuttal version of the provisions
603 there's still a number of provisions where there are certain matters that are
604 required to be regulated by both regional and territorial authorities as we've
605 mentioned in previous hearing streams. I don't see a point in doubling up in
606 regulation. I consider it to be inefficient and consider that it will create regulatory
607 uncertainty where we are not clear who is doing what.

608
609 We've recently had Plan Change 1 to the Natural Resources Plan notified. These
610 rules have immediate legal effect. The Regional Plan now regulates hydrological
611 controls for the creation of impervious surfaces greater than 30 square metres.
612 It's pretty clear that the Regional Council is now fully exercising its s.30
613 functions with regard to regulating the impacts of land use in terms of
614 stormwater.

615
616 I support the inclusion of the requirement to incorporate hydrological controls
617 and water sensitive design into developments. I think it's a critical tool to manage
618 the effects of land use development. District Plans are part of the puzzle, but
619 they can only go so far within the current jurisdiction provided under the RMA.

620
621 I also wanted to just quickly pick up on something with regard to Objective 12.
622 I agree with the PCC submission that there were some issues with Objective 12
623 as notified, with regard to the statements that form part of notified Objective 12.
624 These contain vision statements for freshwater, Te Mana o te Wai principles, as
625 well as descriptions of issues, objectives and methods. There was a whole bunch
626 of stuff contained in an objective. That's really where PCC's submission was
627 coming from. It was kind of unclear from a drafting perspective.

628
629 In my statement of evidence I supported the solution recommended by the
630 reporting officer to create a new policy and appendix.

631
632 I just want to note that in my support I hadn't fully considered clauses 3.2 and
633 3.3 of the NPS-FM which require Te Mana o te Wai statements and visions to
634 be objectives in an RPS, which I know was mentioned yesterday.

635
636 It's not very relevant to Porirua Whaitua apart from Variation 1 has come out
637 now with vision statements expressed as objectives. So, just alerting the panel
638 to the fact of that statutory requirement.

639
640 Otherwise the reporting officer agreed in principle with my suggestion of
641 clarifying the s.30 and 31 jurisdictions in an advice note. But, I agree with this
642 recommendation.

643 Policy 14 – I am in general alignment with the reporting officer. There is a
644 pathway recommended in relation to the loss of wetlands for urban development
645 in Policy 14(m) which I support.
646

647
648 I prefer the wording in my statement of evidence just because it's more concise
649 than that proposed in the rebuttal version. The effect's management hierarchy
650 itself contains quite a bit of detail. I thought clauses (5) and (6) were sort of
651 inherent in the effects management hierarchy – the avoid where practicable
652 approach.

653 I thought the second clause around benefits to national, regional and district kind
654 of encompassed all benefits. I thought it was a bit surplus to requirements.
655

656 Those are just some drafting notes on that.
657

658 In terms of the definition policy and method, I provided a definition of hydraulic
659 neutrality based on Porirua's proposed District Plan. This is yet to be confirmed
660 by the Hearing Panel. The decisions are imminent on the Porirua Proposed
661 District Plan. I haven't had time to review the various definitions and District
662 Plans against the RPS, but just note I believe there needs to be regional
663 consistency, and just wanted to note that the Porirua decision is coming out soon
664 and might be worth the Panel and the reporting officers considering those and
665 how they align.
666

667 I listened in yesterday to some of the discussion around developed state. It's a
668 little bit outside my area of expertise, the precise technical description of
669 hydraulic neutrality.

670 [00.55.00]

671 For the Porirua proposed District Plan we relied on the advice of Wellington
672 Water. If they weren't a CCO I would probably have one of them next to me
673 right now, giving their opinion on it.
674

675 I just want to note in terms of Policy FW.X hydrological controls I believe that
676 these matters are best regulated by Regional Councils in support of hydraulic
677 neutrality, which is being regulated by territorial authorities, at least Porirua City
678 Council and Wellington City Council, and I note that the draft Hutt City Plan
679 also has some requirements around hydraulic neutrality.
680

681 I want to reiterate the points I made in my statement of evidence, in paragraphs
682 35 and 43, that the success of these provisions (and I know this was discussed a
683 lot yesterday) will rely on having acceptable solutions for people to comply with
684 – especially for those smaller to medium developments. That was both Mr
685 Farrant and the Wellington Water team reiterated that.
686

687 I believe the RPS and Plan Change 1 to the NRP are both a little bit light in that
688 regard, in terms of not providing an acceptable solution. By way of example:
689 the proposed Porirua District Plan requires hydraulic neutrality and it references
690 an acceptable solution produced by Wellington Water which specifically says
691 how you comply with that for small developments; so even just a new home –
692 what sort of rainwater tank is needed and big it needs to be compared to the roof.
693

694 Policy FW.3 – I support the recommended addition of clause (ia) requiring
695 district plans to address hydraulic neutrality. As I mentioned this aligns with the
696 approach that TAs are taking in Wellington and our functions under s.31. I agree
697 with PCC that clauses (g), (i), (k) and (o) should be deleted as outlined in my
698 statement of evidence in the appendix. These are Regional Council functions
699 under s.30 and most of them relate to the discharge of contaminants to land and
700 water.

701
702 Further, it's inconsistent with other policies in the RPS as amended in the rebuttal
703 version. Policy 14 requires that regional plans regulate some of these matters.

704
705 Policy FW.3 directly duplicates Policy 14 in terms of Policy 14 requires the
706 Regional Council to manage water sensitive design under clause (f).

707
708 Policy 42 clause (i) requires the Regional Council to consider the location of
709 development with regard to waterways.

710
711 Policy FW.3 also duplicates functions in Policy FW.X.

712
713 I agree with the comments that were made yesterday by Wellington Water that
714 there's a risk when you duplicate regulation like that, this things will fall
715 between the cracks. I think the RPS as a document should set it straight in this
716 region who is responsible for what.

717
718 Further, I think requiring district plans to regulate hydrological controls in water
719 sensitive design would now duplicate provisions in Plan Change 1 to the NRP,
720 at least for the two Whaitua catchments.

721
722 Policy 15 – I support the recommended splitting of Policy 15 into two limbs in
723 the S42A Report. However, I disagree that vegetation clearance and earthworks
724 near waterbodies should be managed by TAs.

725
726 I note there is some inconsistency in Change 1 as with the recommended rebuttal
727 provisions. Policy FW.6 for example says Wellington Regional Council is
728 responsible for earthworks and vegetation clearance in riparian margins and
729 waterbodies. That policy sets out the responsibilities.

730
731 I am not sure how the rebuttal version of Policy 15 squares with that.

732
733 I would like to reiterate the points made in my statement of evidence that the
734 management of sediment is addressed as a discharge of contaminants and land
735 and water under s.30; and the NES for freshwater and the NRP have both made
736 it clear that earthworks and vegetation clearance near waterways are matters that
737 Regional Council's regulate.

738 [01.00.00]

739
740 I consider those two matters should be elevated to the first limb of the amended
741 Policy 15 – so elevating the two matters relating to earthworks and vegetation
742 clearance.

743
744 Finally, in regard to Policy 18 and 40, I support the addition of a consenting
745 pathway for works in rivers, subject to the effects of management hierarchy, in
line with the approach in national direction. I noted that the pathway wasn't

746 provided in Policy 40, but I think this was discussed yesterday with Ms Pascall.
747 She agreed that the recommendation in relation to my evidence in paragraph
748 2.1(3) wasn't carried through. Just noting I heard that.

749
750 Those are the main points I wanted to raise. Happy to take any questions.

751 Chair: Thank you.

752
753 Paine: Mōrena. It's not really a question. I am looking at the Porirua City Council plans
754 and the RPS. It's come up in the hearing quite a few times about definitions or
755 provisions that are different in each document. Say I'm thinking the definition
756 of hydraulic neutrality. If Porirua says it's one thing and the RPS says it's
757 another.

758
759 McDonnell: There's probably two things. I guess there's discussion on which is the more
760 correct definition to be applied depending on what context it's used in the
761 provisions. The second issue would be obviously a change in definitions and an
762 RPS would need to flow through into the District Plans, because the District
763 Plans need to be consistent or give effect to the RPS. Those are the two areas I
764 guess – is the definition “fit for purpose”; and the other would be regional
765 consistency. Is it possible to have a definition we all agree on and apply
766 consistently?

767
768 Paine: Thanks for that Mr McDonnell. Hopefully you will be able to achieve that.

769
770 The other thing I wanted to ask you about was in your evidence on para 35 when
771 you talk about water sensitive urban design. You talk about for that to deliver
772 on the outcomes as sought through the RPS provisions a coordinated regional
773 implementation programme is needed. So, what have you got at the moment?

774
775 McDonnell: Good question. I was working for Porirua City Council to May so I am not sure
776 of any recent work, but there was until relatively recently a regional working
777 group looking into water sensitive design. The Wellington Water's guidelines
778 for water sensitive design were a product of that regional working group. That
779 looked at getting regional consistency on how water sensitive design is applied
780 in this region.

781
782 They looked a lot around the country at experience around the country, but kind
783 of acknowledging that Wellington is different. Auckland is often seen as one of
784 the best practice examples for sensitive design. Wellington is quite different in
785 terms of our topography, soils and climate.

786
787 There was a set of regional guidelines proposed that was specific to this region.
788 There's also more of the inter and intra agency and how water sensitive design
789 is delivered, because there's a lot of agencies at play. For instance, if Greater
790 Wellington is now regulating hydrological controls for anything over 30 square
791 metres, to implement those rules they need to get a lot more involved in land
792 development basically. They need to be monitoring urban development to pick
793 up where it's being applied or not.

794 [01.05.00]

795 That might involve reviewing building consents and see who's building
796 impervious surfaces greater than 30 square metres – that the rules should be

797 being complied with, or a consent might be triggered. That sort of stuff needs to
798 be agreed between agencies who is monitoring the roll out of it.
799

800 Some of these features, if they're outside a site will be in the road reserve, so
801 that will be typically managed by the territorial authority, or it might be in a
802 reserve. It might be in some form of draining reserve that a territorial authority
803 takes on and they're going to need to maintain that through its life time. It's quite
804 complicated how it all fits together.
805

806 At least my experience was there doesn't seem to be a real coordinated regional
807 programme around delivering water sensitive design and I think there should be
808 for it to be successful.
809

810 Paine: We had another submission talking about the same sort of thing and it did come
811 across to me anyway it was complicated and there wasn't a clear pathway or
812 direction of travel.
813

814 Thank you for that. And just to say, I've noted your comments around Policy
815 14(m) and the sub-clauses in there. I understood you thought they were overly
816 prescriptive? It's about urban development effects.
817

818 McDonnell: I just wanted to note and apologies I haven't been able to provide a redrafted
819 version. I just noted that it's quite a number of sub-clauses that I thought could
820 be condensed down, especially seeing the effects management hierarchy covers
821 a few of those anyway.
822

823 Paine: Thank you Mr McDonnell.
824

825 Chair: The definition of 'hydraulic neutrality' in your evidence, you support that it
826 refers to stormwater released from the site, is not a rate that exceeds a pre-
827 development peak stormwater run-off. I think in questioning yesterday Mr
828 Farrant was concerned that referring to the pre-development could lock-in flows
829 from impervious areas that have been created by the immediate development
830 that's just occurred, as opposed to going back to the undeveloped state.
831

832 I guess I'm just wondering if your wording "exceed the pre-development peak
833 run-off"... there's no temporal element there is there. It could be, how far back
834 do you go?
835

836 McDonnell: Yes, I made that point in my statement of evidence that the pre-development
837 state, at least for large sections of Porirua, City Centre in Wellington used to be
838 harbour, it's reclaimed land. I guess I've just suggested the use of Porirua's
839 definition just because that's what was landed on, based on our consultation with
840 the community and experts, and relying on Wellington Water and their advice
841 there.
842

843 Chair: Decisions on this will be coming out shortly you said?
844

845 McDonnell: Yes. I wasn't the reporting officer for this topic, but I believe there was some
846 discussion around including the ten and hundred year events, either in the
847 definition or the provision. I just wanted to flag that if the RPS is aiming for
848 some regional consistency. There will soon be a decision's version.

849 [01.10.00]

850 The Minister gave Porirua until 15 December to notify decisions.

851

852 Chair: Thank you. Just that issue about the possibility of an MOU that I think
853 Commissioner Paine asked. I understand that other regions have MOU with their
854 territorial authorities. I understand in Otago there is one.

855

856 We've heard different submitters, or quite a few submitters talk about there
857 being this risk of duplication and more clarity is needed. We talked yesterday
858 about how the language in sections 30 and 31 there is overlap there – integrated
859 management responsibilities; and also I think it's 3.5(4) of the NPS-FM as well
860 is expressed really broadly.

861

862 Something like an MOU, do you think that something like that could come in as
863 maybe a method? I would have to see if there's scope. There's scope in that.
864 We've got a lot of parties saying there needs to be more clarity of functions and
865 who is doing what. Do you think an MOU could work as an option of clarifying
866 the responsibilities?

867

868 McDonnell: Yeah, I think so. I think an MOU would be useful, especially where so much of
869 the success of it relies in how it's implemented and how agencies work together.
870 My first preference though would be to make sure that duplication doesn't exist
871 in the RPS by removing some of those clauses that requires both regional
872 councils and territorial authorities to do exactly the same thing. My preference
873 would be a clear RPS that sets out jurisdictions. Then once those jurisdictions
874 are set out then we can use methods like and MOU. Councils have lots of
875 different fora where we engage and work together on things. That's kind of
876 phase two I guess of implementing it.

877

878 Chair: Ms Pascall's suggestion in her rebuttal, in Policy 15(b)(5) to limit or managing
879 sediment for earthworks less than 3,000 square metres, which I understand is in
880 the District Plans in the region?

881

882 McDonnell: No. The Regional Plan does regulate earthworks less than 3,000 square metres.
883 It just doesn't do so through a consent. It does it as a permitted activity.

884

885 If there is concern with earthworks going on under 3,000 square metres, the
886 Regional Council should look to monitor the implementation of that permitted
887 activity rule.

888

889 District Councils do manage earthworks but it's more a visual amenity
890 perspective. There is a lot of overlap. At least in the proposed Porirua District
891 Plan we do have some controls on earthworks that do relate specifically to
892 sediment. We do require some sediment controls for small scale earthworks.

893

894 The reason behind that isn't so much the impact of discharge of contaminants
895 where it's going to enter a water way; it's more the impact of sediment getting
896 into the stormwater network which we manage. There is an overlap but that's
897 where we landed. Sort of similar to hydraulic neutrality and hydrological
898 controls – there is an overlap and some of the solutions are the same. At least in
899 our minds drafting the proposed District Plan we were doing it under our
900 functions.

901
902 Chair: Thank you. I will just see if anyone else has any questions.
903
904 [01.15.00]
905 Wratt: Just following up on that conversation, as I'm sure you're aware, we're getting
906 differing views on the needs I guess in some cases for overlap. It seems that
907 there is a reality that in some situations there just are overlaps. I could perhaps
908 just draw attention to a comment from the Department of Conservation, Mr
909 Brass, in relation to FW.3, in relation to protecting the ability of streams and
910 rivers to meander I think it is, where he comments, "I consider this is a matter
911 which sits squarely within the functions of territorial authorities. From a
912 regulatory point of view those functions include integrated management of the
913 effects of the use, development or protection of land and associated natural and
914 physical resources of the district – s.30(1)(a); and the control of any actual
915 potential effects of the use, development or protection of land in s.31(1)(b).
916 These actual and potential effects must include the effects on rivers and
917 streams."
918
919 He is really presenting that in some cases there does actually need to be
920 responsibility on both the Regional Council and the District Councils. But, what
921 I am hearing from you is that you don't agree with that.
922
923 Your concern, I take it, is you get regulatory [01.16.56] and I acknowledge that.
924 But, his comment would be that there are still overlapping responsibilities that
925 need to be recognised. It's a bit simplistic to say that you've got to completely
926 separate everything out in the RPS.
927
928 McDonnell: Thanks for that. I must admit, I didn't listen into that submitter and I haven't
929 read their evidence.
930
931 Wratt: He is on this afternoon.
932
933 McDonnell: There obviously some overlap. I've just provide a few examples in terms of
934 earthworks and hydrological controls, and that's the integrated management of
935 water. I think the degree of overlap in the RPS and the rebuttal version of the
936 provisions is there's far too much overlap. For example, just looking at Policy
937 FW.3 here, which lists matters that District Plans need to regulate, there's one
938 here, clause (o) that says: "manage land use and development in a way that will
939 minimise a generation of contaminants". That's almost the wording of s.30,
940 which is the responsibility of Regional Council.
941
942 There's far too much overlap here. I do acknowledge there are some areas where
943 the plans need to be complementary.
944
945 In terms of the meandering of rivers, an example of that might be esplanade
946 reserve or esplanade strips where there can be taken by District Councils for
947 certain waterbodies or the coastal marine area, and that would provide some
948 space I guess for the river to meander. So there is an overlap.
949
950 I guess I'm just saying that some of these overlaps are a bit on the nose in terms
951 of our respective responsibilities under the RMA.
952

953 Chair: I think the sediment and earthwork related activities as well are particularly
954 complex.

955
956 Thank you. We will give that a lot more thought. We'll receive Ms Pascall's
957 updated advice on these provisions as well. Thank you very much for coming
958 along and presenting your evidence.

959
960 McDonnell: Thank you all.

961
962 **Horticulture New Zealand**

963
964 Chair: Welcome Ms Levenson. Welcome to the Te Mana o te Wai hearing. Is Ms
965 Landers with you as well? Kia ora.

966 [01.20.00]

967 Landers: Hello, can you hear me okay?

968
969 Chair: You can hear us okay?

970
971 Landers: Yes.

972
973 Chair: You've both presented to us before. Would you like us to go through
974 introductions again, or are you comfortable?

975
976 Levenson: I think we're comfortable.

977
978 Chair: Just as before, if you could just say your name into the microphone for the
979 transcript. We have pre-read everything. If you're able to take us to the key
980 points of difference between you and the reporting officer. Otherwise, over to
981 you.

982
983 Levenson: Thank you for the opportunity to speak with you again today for the Freshwater
984 Hearing Stream. My name is Emily Levenson. I am an Environmental Policy
985 Advisor at Horticulture New Zealand (Hort NZ). I am joined by our planner
986 Jordan Landers online.

987
988 Today I will address our main concerns regarding the interpretation of the Te
989 Mana o te Wai hierarchy and Jordan will discuss our points on specific
990 provisions and address the reporting officer's rebuttal.

991
992 Te Mana o te Wai establishes a hierarchy of obligations, the first being the health
993 and wellbeing of water bodies and freshwater ecosystems; the second being the
994 health needs of people (such as drinking water) and the third priority obligation
995 is social, cultural and economic wellbeing.

996 I agree with the S42A author that the second priority of Te Mana o te Wai is not
997 limited to drinking water. Hort New Zealand's position is that domestic food
998 supply also falls under this priority.

999
1000 The water needed to cultivate, grow and pack fresh fruits and vegetables to feed
1001 New Zealanders has to be of a similar quality to drinking water, because it has
1002 to be safe for humans to ingest. This is s requirement for food safety.

1003

1004 Most streams and rivers in New Zealand are too contaminated to be safely used
1005 for irrigating vegetable crops that are eaten raw. Commercial fruit and vegetable
1006 growers are required to meet good agricultural practice or GAP standards to sell
1007 to supermarkets. The standards include regularly testing water used for
1008 production and harvesting for the risk of microbial, physical and chemical
1009 contamination, to ensure that the final production products will meet food safety
1010 requirements. Given that drinking water and water for horticultural use must
1011 meet similar requirements to ensure safety for human consumption, it follows
1012 that that they would fall under the same hierarchy of Te Mana o te Wai.

1013
1014 Fresh fruits and vegetables themselves are essential to human health and
1015 wellbeing. Generally food production and supply can fit within the third-tier
1016 priority. However, domestic food supply including access to fresh fruits and
1017 vegetables for New Zealanders is a fundamental requirement for the health of
1018 our country's population. Food falls under the first tier of Maslow's hierarchy
1019 of needs, alongside drinking water, shelter and air to breathe. Everyone in New
1020 Zealand needs to eat and nutrition is well recognised as a key component of
1021 human health.

1022
1023 Fruits and vegetables in particular are key to a healthy diet. Low vegetable and
1024 fruit consumption is associated with increased risk of developing some concerns,
1025 Type 2 Diabetes, cardiovascular disease and obesity.

1026
1027 Almost all vegetables in the Wellington region and many fruits are produced
1028 through the domestic market. This produce goes to supermarkets, greengrocers,
1029 fruit and vege boxes and farmer's markets in the region to feed each and every
1030 one of us who lives here.

1031
1032 Building resilience in the local food system and ensuring local supply of fresh
1033 produce for our health requires reliable and prioritised water access.

1034
1035 The reporting officer Ms Pascall wrote in her rebuttal evidence on behalf of
1036 Greater Wellington Regional Council that she disagrees with this
1037 recommendation to include domestic food supply in the second hierarchy of Te
1038 Mana o te Wai.

1039
1040 Ms Pascall's rebuttal states in paragraph 171-172 that Hort New Zealand
1041 evidence on clause 3.33 of the NPS-FM which relates to specified vegetable
1042 growing areas to make our argument.

1043
1044 I believe this may be a mis-characterisation. My evidence states that the value
1045 of domestic food supply and resource allocation decision-making has been
1046 recognised in several policy instruments – yes in the NPS-FM specified
1047 vegetable growing areas, but also in Waikato, Horizons and Canterbury plans.
1048 These specific policies are [01.24.19] in my evidence.

1049
1050 The new draft Northland Freshwater plan describes domestic food supply as a
1051 discreet value, writing "Growers rely on water of suitable quality and sufficient
1052 quantity to produce fruits and vegetables which are fundamental to the health of
1053 New Zealanders."

1054

1055 My evidence also referenced Minister Parker's letter, which asked all councils
1056 to consider how they were providing for vegetable production in their freshwater
1057 planning.

1058
1059 These pieces of evidence are not the reason why domestic food supply falls
1060 under the second priority of Te Mana o te Wai, but rather show that these
1061 concerns are relevant to resource management.

1062
1063 My evidence also laid out a research base for the importance of fresh fruits and
1064 vegetables for human health needs, which provides the specific justification for
1065 this position from a health perspective.

[01.25.00]

1066
1067 On a separate note I want to appreciate Ms Pascall's acknowledgement that
1068 lower emission land uses should be recognised under Method 48 in response to
1069 our evidence.

1070
1071 Thank you for your time. I will pass it along to Jordan to discuss specific
1072 provisions and then we'll be happy to answer any questions you may have.

1073
1074 Landers: My name is Jordan Landers. I will just go through my planning evidence.

1075
1076 I was just going to run through the provisions in order of my evidence. There's
1077 two that I wish to speak to mostly and the rest are more just [01.25.39] support
1078 for the rebuttal of the S42A.

1079
1080 Would it be useful to go through and just note where I do support those rebuttal
1081 amendments, or should I just focus on those two where I want to comment on
1082 the additional clarification?

1083
1084 Chair: I think it's probably fine to focus on the points of difference. Thank you.

1085
1086 Lander: The first one is in relation to Issue 10 Policy 17, around the taking of water for
1087 the health needs of people. Acknowledge that there has been some grammatical
1088 improvements there in terms of the interface between having a definition and a
1089 list.

1090
1091 One thing I wanted to provide a bit of additional clarification on, in relation to
1092 the edits that I saw in my evidence, is the edits that I sought were to not rely on
1093 the definition of health needs to people proposed that's come through the NRP,
1094 but to just to have the health needs of people include this list and pull out the
1095 relevant bits of that definition, as I think they're relevant to this policy; which
1096 was the reason after (d) I proposed to the extent that these are needed to provide
1097 for health needs with the hydro and sanitary domestic requirements coming from
1098 that definition.

1099
1100 The reason for that is, I guess my overall position in my evidence on Policy 17
1101 is that I think it's valid to list some of these things where it's acknowledged that
1102 they are a health need of people in terms of that Te Mana o te Wai hierarchy, but
1103 noting that in a way that Te Mana o te Wai can be defined at a local level as
1104 well, that we should be mindful to not unduly constrain the definition here in
1105 terms of what might be coming through at a Whaitua or other local level around
1106 how communities and tangata whenua might define that in other instances.

1107
1108 I guess my thoughts are including the definition of health needs of people in the
1109 way that it takes away from that more inclusive list and does provide quite a
1110 ring-fence of what you can consider health needs of people.

1111
1112 I note within there that it does consider animal drinking as a health need to
1113 people. I don't question that. That is an important ethical... animals need water
1114 of course; but I think that definition maybe needs some further interrogation.

1115
1116 Also the other point I raised was around the quality and quantity side of water
1117 management. My view is that Te Mana o te Wai and the hierarchy kind of applies
1118 to both, but it's quite clear in this policy that it is about taken use of water and
1119 that definition does include the equality aspect as well.

1120
1121 For those reasons my edits I prefer are not carrying across that definition, but
1122 rather pointing out those bits which help add to the bullet points (a) to (d) in
1123 Policy 17 around health needs, so that health needs aren't unduly constrained by
1124 this policy and how that might be interpreted through future processes at a more
1125 local level.

1126
1127 The other provision that I will talk to just quickly is Policy Freshwater 7. That
1128 one is a policy about promoting water attenuation and retention and support the
1129 S42A author's rebuttal which broadens it to rural rather than just Wairarapa. I
1130 support that change.

1131
1132 One thing I just wanted to note is I still would prefer the change in my evidence
1133 in (b) to not have that addition sought by the S42A in relation to the health needs
1134 of people in that context.

1135
1136 [01.30.00] The reason for that is, I guess this is a policy around promoting water attenuation
1137 and retention of rural areas, and that water is necessary for a whole range of
1138 purposes. Drinking water obviously is one but also the ability to do land uses,
1139 such as horticulture, in a way that enables you to store water so you're not
1140 putting as much pressure on the waterbodies, etc.

1141
1142 I guess I am just concerned that wording in there might have some sort of
1143 implication as to how this policy is read and constrain it's applicability for some
1144 reason; so maybe only promoting for where it's for drinking water.

1145
1146 I just think without it, I don't think the policy is lacking. I don't think there's a
1147 need for those words in there. I don't think that adds to the policy and the context
1148 of the policy.

1149
1150 That was the only two bits that I wanted to talk to. Otherwise I acknowledge the
1151 S42A author has I think considered our evidence really thoroughly in the rebuttal
1152 and appreciate the recommendations proposed.

1153
1154 Chair: Thank you very much Ms Landers. Yesterday, and you might not have heard,
1155 but we did ask Ms Pascall to look again at that wording in Policy about the health
1156 needs of people. I had raised a question that I'm not sure as a defined term it
1157 worked there. It may be overly limiting. Ms Pascall will be coming back to us
1158 about that.

1159
1160 I think she noted - you're talking very much about the water being safe to use,
1161 but just whether that definition goes further than that. She will have another look
1162 at that.
1163
1164 The Te Mana o te Wai priority issue I understand the point that you're making
1165 but is there a way in Policy 17 where your relief could be accepted but without
1166 opening up all food production to that second tier.
1167
1168 Levenson: The relief that we're seeking specifically is for domestic food supply, meaning
1169 food that's being produced for New Zealand's consumption. I think also it could
1170 be possible to reference the recent Natural Inbuilt Environment Act included a
1171 clause that the national planning framework will have to address enabling the
1172 supply of fresh fruits and vegetables. So, that could be another direction, would
1173 be to use language from there. But, we believe that domestic food supply covers
1174 that need for the health needs of New Zealanders.
1175
1176 Chair: Thank you, but wouldn't that also cover other farming activities, so beef and
1177 lamb, dairying?
1178
1179 Levenson: From my understanding most beef and lamb and dairying products are exported
1180 and so it would be not for the domestic market but rather the export market;
1181 whereas in the Wellington region nearly all vegetables are produced for
1182 domestic supply and also a good amount of the fruit produced in the Wellington
1183 region as well.
1184
1185 Landers: I guess a further consideration around that would be defining 'domestic foods'
1186 if possible. I guess the wording in the NPS-FM is specific to vegetables in that
1187 case.
1188
1189 I wonder whether also a potential means of addressing that ability to articulate
1190 it at that more local level would be to have a more general statement around 'all
1191 other health needs identified through xyz process or community
1192 vision/objectives.'
1193
1194 I don't quite had the right word in mind, but that could potentially be a way of
1195 [01.35.00] keeping the door open to consider at that local level – which at that point maybe
1196 it's articulated what that is for that Whaitua or whatever the spatial area that's
1197 considered.
1198
1199 Chair: The relief that you support for Policy 17, by saying that list in (a) to (d) to the
1200 extent that those takes are needed to provide for people's health needs, am I
1201 understanding correctly that you're saying that then allows that discussion about
1202 what that is at that more local level? But, this is still a Regional Plan direction
1203 though. Wouldn't it need to come into a consenting assessment to do that?
1204
1205 Landers: I guess to add the clarity to the relief sought is keeping that inclusive list where
1206 we're saying "including". Maybe the wording could be clearer – it's intent isn't
1207 coming across. Including these things relating to health needs, it's not an
1208 exclusive list of only these things are health needs, if you know what I mean. It's
1209 saying, "Yes, we're acknowledging at the RPS level that we are considering
1210 these takes where they are for these requirements to be health needs under this

1211 priority, but not necessarily excluding other things to be considered. It's lower
1212 down the RPS train, underneath.
1213
1214 Whether that's clear enough in terms of that relief sought, if that's the kind of
1215 outcome that's supported by the Panel. Maybe there could be some wording
1216 tweaks just to make that maybe clearer.
1217
1218 Chair: It still needs to provide for people's health needs in order to come into one of
1219 the priorities – 1 or 2 in Te Mana o te Wai.
1220
1221 You don't want that list in (a) to (d) to be an exhaustive list?
1222
1223 Landers: Yes, that's kind of the main outcome sought of my evidence. I think we're
1224 potentially too limiting in terms of that list, if that's only what we consider to be
1225 health needs, and that we should anticipate that there may be others that there's
1226 a justified health need to consider.
1227
1228 Levenson: I think that the limiting factor there may be the definition of human health needs
1229 that's currently in the plan that is more restrictive.
1230
1231 Chair: Thank you. Maybe just one final thing from me.
1232
1233 Is there anything in Policy 44 – and I'm not sure if you had a submission point
1234 on this, but does Policy 44... I suppose that takes you back to Te Mana o te Wai.
1235 If your concerns are addressed through the Regional Plan direction in Policy 17
1236 with horticultural food production second tier then I guess you've got that policy
1237 support for any water take consenting in Policy 44. Have I understood that right?
1238
1239 Landers: I'm just looking at Policy 44 now. I guess that policy, the chapeau there refers
1240 to giving effect to Te Mana o te Wai and then lists considerations I suppose for
1241 resource consent and/or regional plans.
1242
1243 I would have to double-check the submissions to confirm. Obviously Hort New
1244 Zealand did make that submission around lower emissions which has been
1245 recommended by the author. We didn't seek anything in the domestic food
1246 supply specifically in that policy. I think what I understand you to be saying in
1247 terms of all these policies you are giving effect to Te Mana o te Wai.
1248 [01.40.00]
1249 So, if you're considering it in Policy 17 then I guess that does kind of carry
1250 through that consideration, yes.
1251
1252 Chair: Thank you. I will see if any of the other Commissioners have any questions.
1253
1254 Paine: Ms Levenson, I looked at your evidence. Did you actually give us a reference
1255 for Maslow?
1256
1257 Levenson: I'm not sure that I did. I can check and send one to you if you like.
1258
1259 Paine: Thank you. I think we've traversed a lot of your submissions yesterday. Thank
1260 you.
1261
1262 Chair: Commissioner Wratt, any questions for Hort New Zealand?

1263
1264 Wratt: No, I'm good. Thank you both for your presentations.
1265
1266 Chair: Commissioner Kara-France?
1267
1268 Kara-France: No thank you Madam Chair.
1269
1270 Chair: I'm just doing a final check of my list.
1271
1272 Ms Landers can I ask you, I think in your evidence you had asked that Policy 41
1273 ceases to have effect once Policy 15 is given effect to in the Regional Plan.
1274
1275 Landers: Yes. In relation to Policy 41, happy to see some of the rebuttal recommendations
1276 around cutting out some of the other bits of the policy that would result in
1277 duplication with the Regional Plan. I still think that in terms of the utility of that
1278 policy that it would be useful to have a statement in there that once the Regional
1279 Plan implements Policy 15, that that policy won't really give you much
1280 additional direction. Obviously the RPS directing the Regional Plan to manage
1281 sediment discharges in a certain way, which they will give effect to through
1282 policies and rules, which then you obviously have to consider in terms of your
1283 resource consent application.
1284
1285 I think it just involves then a bit of duplication or additional policies you have
1286 to assess at the resource consent stage once the regional plan is given effect to.
1287 It would still be my preference that there is a statement that limits that
1288 applicability I guess, until such time as the regional plans have filled the gap in
1289 terms of what the new policy directs.
1290
1291 Chair: I think there was some text in the explanation originally. I can't quite recall why
1292 Ms Pascall supported that being deleted, but I will go back. I think it is covered
1293 in the S42A Report.
1294
1295 Landers: I think from my memory, I couldn't see in the rebuttal where that point was
1296 specifically addressed. I think it's useful to test that and confirm.
1297
1298 Chair: Just a question on Policy 5. I think you had sought that water storage schemes
1299 be added into Policy 5.
1300
1301 Landers: Is this FW.5?
1302
1303 Chair: Yes, sorry, FW.5.
1304
1305 Landers: That one, I think in Hort New Zealand's original submissions sought that it be
1306 broader to include rural considerations around water storage. In the S42A it's
1307 kind of described that it's intended to be quite specific to urban development.
1308
1309 In my evidence, in relation to the boarder picture and particularly in the context
1310 of Freshwater 7, which I feel like has added some more context to the rural
1311 space, kind of accept if that's the intent of the policy that it would just be actually
1312 [01.45.00] helpful for that to be specifically referring to urban developments, so that it is
1313 clear to all plan users; and the S42A rebuttal does recommend an amendment as
1314 such to say that it relates to urban development.

1315
1316 Chair: That addresses that point. Thank you.
1317
1318 Just finally, Ms Levenson thank you for referring to the Waikato PC1 and those
1319 other examples at para 29 of your evidence. I haven't had a chance to look at
1320 those yet. Are these regional plans?
1321
1322 Levenson: I would have to double-check for you, but they are at the regional level.
1323
1324 Chair: Do they support or recognise domestic food supply within that Te Mana o te
1325 Wai second priority?
1326
1327 Levenson: These plan changes all were before the Te Mana o te Wai considerations. They
1328 recognised domestic food supply or security explicitly as a value, or as part of
1329 another policy, but not necessarily within the Te Mana o te Wai hierarchy.
1330 Northland has just released their draft freshwater plan change to their RPS which
1331 does consider that question within Te Mana o te Wai.
1332
1333 Chair: They've released, so they've just notified that?
1334
1335 Levenson: They've just released. It's a draft plan. It might be helpful to see how they've
1336 considered it.
1337 Chair: But, you're not aware of any statements from the court that address the issue
1338 specifically?
1339
1340 Levenson: Not yet. We did provide evidence in the PORP's hearing – the Proposed Otago
1341 Regional Policy statement hearings seeking the same relief. We have legal and
1342 planning, and industry evidence all in that region as well on the topic.
1343
1344 Chair: Yes. And, decisions are coming out soon aren't they on that?
1345
1346 Levenson: I'm not sure exactly when.
1347
1348 Chair: I think someone else had said they were coming out, possibly before Christmas
1349 or otherwise early next year. We'll look out for that as well. Thanks very much.
1350
1351 Levenson: Thank you.
1352
1353 Chair: Thanks Ms Landers for joining us and for your evidence.
1354
1355 Landers: Thanks everyone. See you later.
1356
1357 Chair: We are having a lunch break now. We will come back at 1.15pm for the
1358 Director-General of Conservation.
1359
1360 [Lunch break taken – 01.47.50]
1361
1362 **Director-General Conservation**
1363
1364 Chair: Kia ora. Welcome back to the Freshwater Te Mana o te Wai hearing and the
1365 afternoon session. We welcome the team representing the Director-General of
1366 Conservation. Kia ora.

1367
1368 Ms Anton, Mr Brass you've presented to us before but welcome. Is it Dr Boddy?
1369
1370 Boddy: Yes.
1371
1372 Chair: Welcome. Would you like us to do some brief introductions so you know who
1373 we all are?
1374
1375 Boddy: That would be fabulous. Thank you so much.
1376
1377 Chair: Ko Dhilum Nightingale tōku ingoa. I am chairing the Freshwater and PIS1
1378 Panels. I live in Te Whanganui-a-Tara Wellington. Over to Commissioner Paine.
1379
1380 Paine: Kia ora. Ko Glenice Paine tōku ingoa. I am an Environment Court
1381 Commissioner. I come from Picton and I have been appointed to both Panels.
1382 Kia ora.
1383
1384 Kara-France: Tēnā koutou katoa. Ko Ina Kumeroa Kara-France tōku ingoa. Independent
1385 Hearing Commissioner on both panels. I come from a former background
1386 working with WSP Engineering in Tāmaki Makaurau as a Senior Advisor. I am
1387 currently on the New Zealand Conservation Authority Board and the liaison for
1388 the Auckland, Northland and Far North Conservation boards. [01.49.35] Kia ora.
1389 Welcome.
1390
1391 Boddy: Thank you.
1392
1393 Wratt: Kia ora koutou katoa. Ko Gillian Wratt ahau.
1394 [01.50.00]
1395 I am coming into you today from Nelson courtesy of fog in Wellington Airport.
1396 I was initially appointed to the Freshwater Panel and now on both panels. My
1397 background is in the science sector. Kia ora and welcome to the hearing.
1398
1399 Chair: We have pre-read your legal submissions Ms Anton and your evidence
1400 statements as well that you have prepared. Thank you very much for those. We
1401 also have your talking points Mr Brass. Is that the bundle of material? I haven't
1402 missed anything?
1403
1404 Anton: That's correct.
1405
1406 Chair: We'll hand over to you. We have about half an hour. Please leave time for
1407 questions. I think we have a few for each of you. If you are able to focus in on
1408 the areas of difference between you and the reporting officer that would be in
1409 Ms Pascall's rebuttal evidence that would be great.
1410
1411 Anton: Thank you Madam Chair. Ko Katherine Anton tōku ingoa. I am a solicitor with
1412 Department of Conservation. I am coming to you today from Te Awa Kairangi
1413 ki Uta, Upper Hutt.
1414
1415 In the order that we will present today we've got Dr Boddy who is a freshwater
1416 science advisor from Ōtautahi, Christchurch and Mr Brass who you know who
1417 is from Ōtepoti Dunedin who has the speaking notes and will wrap up in relation
1418 to the planning points for the Director General.

1419
1420 Thank you for the acknowledgement that everything is read. I would like to start
1421 by taking a step back a bit in relation to the RSP context and in particular the
1422 national director context that applies to it.

1423
1424 We are dealing with an amendment to the RPS that was made operative in 2013.
1425 Back in 2013 it's probably fair to say that the RPS gave partial implementation
1426 to the New Zealand Coastal Policy Statement, not full implementation. It's fair
1427 to say also that Greater Wellington's proposed natural resources plan takes that
1428 NZCPS implementation a bit further, but it's still not yet complete.

1429
1430 The NZCPS obviously needs to be implemented by a date specified and none is
1431 specified, or as soon as practicable if there is no date.

1432
1433 The reason I am taking a step back and talking about that context is there is some
1434 urgency, and in fact a large part of the purpose of this plan change is to
1435 implement the NPS-FM and NPS Urban Development which have some
1436 urgency attached to them and some statutory dates.

1437
1438 As a consequence, I think what we're seeing in this plan change is the emergence
1439 of quite sophisticated provisions that merge those two bits of national direction,
1440 being urban development and freshwater, which is appropriate and proper with
1441 what's happening.

1442
1443 However, there is potential there for a risk that NZCPA implementation is
1444 overshadowed. I'm not suggesting that it needs to do more, because the primary
1445 purpose of this plan change is not implementing the NZCPS, but I think I would
1446 urge the panel to take a two pronged approach to mitigating the risk that coastal
1447 provisions fall through the cracks.

1448
1449 The first approach I would suggest is where there is scope to give effect to the
1450 NZCPS through submissions, and that should be done obviously following the
1451 proper assessment such as s.32 and recommendations of the reporting officer
1452 etc.

1453
1454 For example, we listened into Forest & Bird's submissions yesterday that made
1455 some points in relation to coastal provisions. The second and most important in
1456 my submission approach that needs to be taken, is to ensure that no existing RPS
1457 provisions that have been amended by this freshwater change have coastal
1458 provisions diluted as a consequence.

1459
1460 I can talk to an example of this, which Ms Downing for Forest & Bird raised
1461 yesterday, which is Policy 40(b). This isn't in our primary material. I apologise
1462 for not having notes on it.

1463
1464 Policy 40(b) if the panel has caught up with that provision, if you have it in front
1465 of you, now has very much a freshwater focus. The operative version of it
1466 however took a more directive management for coastal water. The proposed
1467 change loses that directive for coastal water. Now it's quite directive for
1468 freshwater and refers to coastal water as the receiving environment.

1469 [01.55.00]

1470 With the tracking I'm looking at Ms Pascall's rebuttal. It's a little bit hard to
1471 remember what it used to say. But, what it used to say was "requiring as a
1472 minimum water quality in the coastal marine area to be managed for the purpose
1473 of maintaining or enhancing aquatic ecosystem health." It was specific talking
1474 about managing water quality in the coast marine area. It's not just talking about
1475 consequential effects of freshwater management and land management affects
1476 freshwater on the coast.

1477
1478 I acknowledge, through listening to the livestream, that the Panel has asked Ms
1479 Pascall to check that the coastal water provisions of the RPS haven't been lost
1480 through this change. The point of what I am saying here is that we support that.
1481 We hope that exercise is done. This is an example. I haven't picked up any
1482 others.

1483
1484 This is an example where I think as a matter of law there might be the scope for
1485 Ms Pascall to recommend what she's recommended in relation to freshwater,
1486 but there isn't the scope to remove what's been removed in relation to coastal
1487 water.

1488
1489 Ms Downing's submissions recommend what might need to be done in order to
1490 fix that, but perhaps the thrust of the RPS as it was, also as Plan Change 1 was
1491 notified, still had that reference to the coastal marine area.

1492
1493 In essence, what we want to see is that original Policy 40(b) from the RPS in so
1494 far as it refers to coastal water – that the essence of that is retained, and we think
1495 it needs to be retained as a matter of law.

1496
1497 That aside I just wanted to briefly touch on territorial authority functions which
1498 Mr Brass will talk to in some more detail. In relation to my submissions, I would
1499 just like to reiterate what I have said at paragraph 13. This point actually applies
1500 to both stream daylighting and giving rivers room to meander. It is basically
1501 saying that primarily when it comes to the direct doing for example of stream
1502 daylighting that will be implemented by Regional Council consents. However,
1503 there won't be much opportunity for stream daylighting unless the planning for
1504 it starts with the District Council. For example, through spatial plans, through
1505 open space zoning above piped streams – which only they can do, and through
1506 general policy support to acknowledge the benefits of stream daylighting, it's the
1507 Director-General's submission that District Councils need to have that policy
1508 direction to begin planning for their part in letting stream daylighting happen in
1509 future. When it does happen, when hopefully it does happen in the future, then
1510 it will squarely be the Regional Council function to regulate how it's done and
1511 provide consents for it.

1512
1513 The same applies at paragraph 18. It's the same essence of the argument for
1514 planning, for interaction between urban development and waterbodies and their
1515 margins. So, if that's also not done then it can literally and figuratively narrow
1516 the Regional Council's ability to protect, restore or manage water quality. I
1517 really do mean 'narrow' in the literal sense, because if the urban planning let's
1518 urban areas be built up too close within certain flood margins etc. then the
1519 Regional Council's ability to import that best practice by letting rivers have that
1520 room to meander will be constrained.

1521

1522 That's all I intend to say to my submissions thank you. I will pass over to Dr
1523 Boddy, assuming questions will be at the end. Thank you.
1524

1525 Boddy: Ko Nixie Boddy tōku ingoa. Lovely to meet you all. I understand my evidence
1526 is taken as read, but just wanted to take the opportunity to draw your attention
1527 to a couple of the figures. Figure 1 from my evidence, looking at how the natural
1528 flow of the Hutt River has been constrained over time by urban development,
1529 over the last 80 years; and also Figure 2, just the next page down, on how
1530 constraining the river margins through urban development and the Waiohata
1531 duck creek catchment has led to already quite a lot of erosion and control
1532 measures having to be taken. Just to really reiterate the value of giving rivers
1533 room to move naturally.
1534

1535 I would also like to take you now to paragraph 35, a couple of pages further
1536 down.
1537 [02.00.00]

1538 Just to really emphasise around 700kms of piped streams just within the
1539 Wellington city limits that it is real extensive issues that we're dealing with here.
1540

1541 Thank you very much.
1542

1543 Brass: I have provided some speaking notes. It's not anything too extensive. It was
1544 really the points that I had in mind and I scribbled them down. I thought it might
1545 be helpful to provide to the panel.
1546

1547 These notes are intended to assist the Panel by providing updates to my Evidence
1548 in Chief in response to matters raised in the hearing so far.
1549

1550 First in terms of urban development effects on water bodies (EiC para 22): At
1551 the hearing there has been discussion about whether it is still necessary to
1552 remove the word "adjacent" from Policy 14(h) given that the rebuttal has
1553 recommended adding reference to "other receiving environments".
1554

1555 My reason for raising this matter was concern that water bodies affected by a
1556 development may not be "adjacent", they could be within or downstream of a
1557 development. On the face of it, reference to other receiving environments
1558 addressees that, but my understanding from discussion in the hearing yesterday,
1559 from Ms Pascall, was that her intention that clause be read such that "adjacent"
1560 applies to all of the following terms: adjacent rivers, adjacent waterbodies etc.,
1561 which would then also mean adjacent to other receiving environments, so that
1562 my concern in that reading remains.
1563

1564 I would also note that in this clause and FW.3(k) Ms Pascall has agreed to
1565 reinstate the term "gully heads". I would suggest as a matter of consistency this
1566 should be carried through also in Policy 40(i).
1567

1568 The next issue around giving rivers room to move ("natural form and function")
1569 and daylighting, there has been discussion about whether these matters are
1570 relevant to territorial authority functions or only to regional councils.
1571

1572 In my experience, the physical location, design, servicing etc. of land use and
1573 development can directly constrain or provide space for rivers and daylighting.

1574 This is illustrated by the photos in Dr Boddy’s evidence, where increasing extent
1575 and intensity of development has constrained the space available for waterways.
1576 These are matters that basically where people build sits squarely within
1577 territorial authority plan and consenting functions.

1578
1579 I also point out that water in a pipe is not “water” in terms of the RMA
1580 definition, and the pipe is not “bed” so that does limit The Regional Council’s
1581 direct abilities or direct functions. Similarly, to allow room for a river to move
1582 that will involve land outside the current active bed (again illustrated by
1583 Dr Boddy’s photographs). The Regional Council doesn’t control land that’s not
1584 currently bedded. In those photographs you could see where the rivers were
1585 meandering and so over the course of long time periods, you would expect those
1586 meanders to move and shift back and forth, but what has happened is that people
1587 have built into the currently dry bits and then to protect that built property there
1588 has been subsequent protection measures to hold the river into that shape. So,
1589 that’s sort of what I am referring to there.

1590
1591 Just from a statutory point of view, in my Evidence in Chief I address the
1592 territorial functions under the Act, but Ms Downing of Forest & Bird has
1593 helpfully also pointed out relevant provisions of the NPS-FM in clause 3.5,
1594 which I consider further support my view that territorial authority functions are
1595 directly relevant.

1596
1597 Turning now to earthworks and vegetation disturbance, discussion in the hearing
1598 has involved a similar question regarding regional vs territorial functions. In my
1599 experience, (and I should just note that I have worked about ten years of regional
1600 councils in that fourteen years and in District Councils, so I’ve seen both sides
1601 of the coin) most consents for the actual earthworks and vegetation disturbance
1602 sit with the territorial authority with land use matters, while regional consents
1603 are more generally focussed on discharges.

[02.05.10]

1604
1605 This is reflected in Ms Pascall’s rebuttal at [149], where she accepts that
1606 territorial authorities have a role to play in managing these activities. She
1607 recommends addition of a reference to district plans managing earthworks “less
1608 than 3,000m²” reflecting the permitted activity standard in the Wellington
1609 Natural Resources Plan.

1610
1611 Just for comparison, I note that the proposed Wellington City District Plan
1612 permitted activity standard there kicks in at 250m² – so a much lower level. So,
1613 District Councils and City Councils are going to be much more involved in
1614 actively managing those earthworks.

1615
1616 I would also just note the witnesses for Wellington Water at the hearing, and
1617 similarly this morning from Porirua, have noted that it's much easier to manage
1618 sediment at the source, so avoid it being run off in the first place; and that is to
1619 deal with it once it's in the stormwater network.

1620
1621 Turning now to the health needs of people, my Evidence in Chief proposed
1622 changes to avoid potential conflict in the drafting. Ms Pascall’s rebuttal
1623 recommends slightly different drafting, but I confirm that I am comfortable with
1624 what she now proposes.

1625

1626 I do have a note that support is based on the fact that Ms Pascall’s drafting retains
1627 the intent of the original definition as opposed to what was in the policy, as I
1628 would have concerns if the terms meaning was expanded beyond that.
1629
1630 Just briefly on the fish passage my EiC supported two options: Ms Pascall’s
1631 rebuttal prefers the version proposed by Fish and Game, and I just want to
1632 confirm that I do support that [02.07.01] NPS-FM.
1633
1634 Those are my updates as I have. Apart that from that I guess back to Ms Anton.
1635 I’m happy to take any questions.
1636
1637 Chair: Thank you Mr Brass.
1638
1639 Anton: Thank you. That is it in terms of presentation of the Director-General. Happy to
1640 take questions now.
1641
1642 Chair: Mr Brass I’m looking at Appendix 1 in your evidence. I’m just trying to
1643 reconcile. I know that some of the changes you seek have come through – Ms
1644 Pascall supports them in her rebuttal evidence. I am just trying to do a bit of a
1645 reconciliation of what is left.
1646
1647 You’re speaking notes don’t have track changes to the provisions that you’re
1648 still concerned about, which is fine. Looking at your Appendix 1 is that a good
1649 place to start? We can talk through what changes are still outstanding?
1650
1651 Brass: Yes, I’m happy to do that. Happy to take any questions as you go.
1652
1653 Chair: Maybe starting with Policy 14.
1654
1655 Brass: In terms of what I have tracked there, my understanding is that’s now resolved
1656 through the rebuttal evidence apart from that word “adjacent”.
1657
1658 Chair: I did have a question on that. I take the point that a waterbody could be within
1659 an urban development. When I asked Ms Pascall this question yesterday I think
1660 the response was other receiving environments would capture rivers, lakes, etc.
1661 [02.10.00] that weren’t adjacent. But, they may not capture waterbodies within an urban
1662 development –is that the point you’re making?
1663
1664 Brass: No. It's one of those ones if you read it one way it works, and if you read it a
1665 different way it doesn't. On the face of it, if you just take the “and other receiving
1666 environments” in itself, that to me would seem to address both within and
1667 downstream or further afield.
1668
1669 My concern with Ms Pascall’s explanation is that she intended the word
1670 “adjacent” to apply to everything that follows, which means that it would only
1671 be adjacent other receiving environments, which would be a slightly odd
1672 construction. But, if that’s the intent then it kind of negates it working as
1673 covering other receiving environments because it's narrowed it back down to
1674 only adjacent environments.
1675
1676 It may be something that she can cover in that final draft. I think it's an issue of
1677 drafting rather than intent.

1678
1679 Chair: Yes I agree. I didn't take from the explanation yesterday that it was adjacent
1680 receiving environment. There might be something we can do with a comma,
1681 semi-colon or something to clarify that.
1682
1683 Just to be clear: the receiving environments, that covers your concern about
1684 waterbodies within urban developments?
1685
1686 Brass: Yes, as long as that's not restricted to "only adjacent".
1687
1688 Chair: If we can just stay with Policy 14(h), just because we are there already, the
1689 natural form and flow of the waterbody, you had some relief on this text in Policy
1690 FW.3. The natural form and flow of the waterbody, would that encompass
1691 natural character in your view?
1692
1693 Brass: It would be an element of natural character is probably how I would describe it.
1694
1695 Chair: But, natural character could be broader than that?
1696
1697 Brass: Yes, my understanding is it could include for example the species that are
1698 residing within that form and flow.
1699
1700 Chair: I will let you continue with the provisions in your Appendix 1.
1701
1702 Brass: In terms of FW.3, while that wording has been accepted in terms of regional
1703 plans, that's remains a matter of difference with Ms Pascall in terms of district
1704 plans, and that's really where my view is that these are matters that districts can
1705 and do control.
1706
1707 If I could perhaps just speak to that a little more. Porirua City this morning was
1708 sort of raising concerns about overlaps, but gave an example in terms of giving
1709 rivers room to move, where a territorial authority can require esplanade reserves
1710 for example, and similarly zoning, setbacks, open space and so on.
1711
1712 The way that I would see it is that while both territorial and regional authorities
1713 may have a role to play in allowing rivers room to move, the way that that will
1714 come down into a district plan will be around things like esplanade reserves,
1715 zoning, setbacks. Whereas a regional plan they'll look at their functions and that
1716 may be more around things like referring soft engineering solutions rather than
1717 hard engineering solutions that close off future options for example.
1718
1719 So while they've both got a role to play, it's not so much an overlap, they just
1720 need to think through how that role applies to their own functions.
1721
1722 Chair: Thank you. Do you think that the RPS needs to go further in providing that
1723 clarity, rather than just referring to their functions in sections 30 and 31?
1724 [02.15.00]
1725 Brass: I think it's useful for the RPS to be clear that they both have a role to play in the
1726 natural form and flow of waterways for example. I don't know that that it needs
1727 to get into the detail of one organisation does esplanade reserves and one
1728 organisation does... etc. etc. In my experience, that's more something that is
1729 worked out at the plan stage. Obviously the territorial authority will be

1730 submitting and involved in development of the regional plans and vice-versa. In
1731 my experience that's something more that gets nudded through how it works for
1732 a particular council – particular issues, geography and so on that you're dealing
1733 with in a different location.

1734
1735 I don't know that the RPS needs to get highly prescriptive in that.
1736

1737 Chair: We've heard quite a range of responses on that point. There are some submitters
1738 that are saying it needs to be clearer otherwise there's a risk that a TA might say,
1739 "No the Regional Council is going to do that," and vice-versa and then the issue
1740 falls through the cracks and remains unregulated. Otherwise it's confusing for
1741 developers for example, who they need to go to for consent.
1742

1743 We'll be very interested to see what Ms Pascall comes back with in her reply
1744 about that. Thank you.
1745

1746 Thank you also Ms Anton in your submissions. I had a read through that
1747 Environment court case about allocation of functions. There were some very
1748 interesting statements in there, that 2022 decision. Certainly a lot to think about.
1749 They talk about how the memorandum of understanding helped clarify the roles
1750 between the QLDC and the Regional Council.
1751

1752 While I'm finding my notes, I'll see if the other Commissioners have any
1753 questions.
1754

1755 Paine: Mr Brass, I'm just wondering, a stream doesn't have to meander to be daylighted
1756 – is that correct?
1757

1758 Brass: No. Daylighting is about streams that have been covered over and opening them
1759 up. When you open them up, and this is being done, I think one in urban Porirua,
1760 as part of that process look at what would be the appropriate form for that river
1761 in that location. Whereas, the issue more around meandering, or allowing rivers
1762 room to move, that's for rivers that are still rivers I guess is the key difference.
1763

1764 Paine: It was just in a sentence which I now can't find. Nevertheless, thank you for that.
1765

1766 You can't always allow a stream or a river to take its natural course. Sometimes
1767 that would not be appropriate or feasible?
1768

1769 Brass: Yeah. In both these cases these are policies that are intended... or what I am
1770 suggesting drafting is policies that would provide direction and support for that.
1771 I don't think it's something you could make an absolute requirement. If you've
1772 got several hundred kilometres of stream and pipes under Wellington City you
1773 couldn't daylight them all without removing the city – so that's not realistic. But,
1774 it is about having provisions that encourage it, so that things are moving in the
1775 right direction.
1776

1777 Also the enabling in both cases and that's really about not doing further things
1778 now, in terms of where we put development services, new housing and so on,
1779 and ways that's going to cut off options for the future.
1780

[02.20.00]

1781 Anton: Excuse me. I wonder Commission Paine your question about the interaction
1782 between daylighting and meandering, I wonder if I might give Dr Boddy an
1783 opportunity to respond on that.
1784

1785 Paine: That would be fine.
1786

1787 Boddy: Thank you very much Commissioner Paine. In response to your point, I think
1788 opening streams is always a good idea. Having them exposed to the air and thus
1789 daylight you can have photosynthesis occurring. You can grow the algae which
1790 then feeds the invertebrates, which then feeds the fish, and you can start to
1791 establish a food web.
1792

1793 In terms of habitat quality it's incomparable to having a natural stream bed of
1794 course, in terms of actual rocks to lay eggs on and hide in between; overhanging
1795 vegetation for shelter and refuge and specific life stages that require that. But, I
1796 think it would be hard to contest that it wouldn't always, if you could daylight a
1797 stream, be better to be exposed to sunlight than to be covered over in a pipe.
1798

1799 Of course it's always better to give it as much of a natural environment as
1800 possible, in terms of the species that live there. We just understand it's not
1801 possible to completely get rid of concrete everywhere.
1802

1803 Paine: Thank you Dr Boddy. I was just sort of getting at these things aren't as absolute
1804 as Mr Brass said. Thanks for that explanation.
1805

1806 Kara-France: Kia ora Mr Bass. Just in relation to your statement made regarding piped water
1807 is not water. Can you speak more to that please?
1808

1809 Brass: That's simply the definition in the Act of water; does not include water that's in
1810 a pipe.
1811

1812 Also the fact that a pipe isn't a bed of a stream.
1813

1814 So, the things where a Regional Council would normally have very direct
1815 control, rules and consent requirements, don't apply in those cases. They're
1816 essentially treated more as part of the stormwater network than as a natural
1817 resource that's managed by the Regional Council.
1818

1819 Kara-France: Thank you Mr Brass.
1820

1821 Chair: Commissioner Wratt did you have any questions?
1822

1823 Wratt: No thank you. No questions. Just thank you for your very concise and to the
1824 point evidence. Really useful. I found it really useful to have some examples of
1825 that interaction between the territorial authority and the Regional Council
1826 responsibilities. Thank you very much.
1827

1828 Chair: Looking through your Appendix 1 Mr Brass, it seems like really probably the
1829 key point is the change you're seeking to Policy FW.3 to include the words
1830 "including the natural form and flow of the waterbody" which is letting the
1831 stream meander or take it's natural course issue that we've been talking about.
1832

1833 I think you're saying that appropriately sits as part of District Council function
1834 because it's at that stage of identifying the role and subdivisions, layout and that
1835 sort of thing, that that opportunity comes up.
1836

1837 I can't recall now why Ms Pascall didn't support that wording, but I will go back
1838 and check. Do you have any response to her reasoning in her rebuttal statement?
1839

1840 Brass: It seemed to be really a general statement about this not being a territorial
1841 authority function. I feel that I've dug into the details of that a little bit more.
1842

1843 I do also just note the same issue applies to Policy 41 for earthworks and
1844 vegetation clearance. It should be limited to only regional resource consents, as
1845 it currently is. My view both in evidence and the speaking notes is that
1846 earthworks also is an area where territorial authorities have a role to play. They
1847 don't manage the discharges: but if you don't manage what's done the ground
1848 [02.25.00] before it rains then it can be an awful lot harder to control the sediment once that
1849 happens.
1850

1851 Chair: Yes, there is some acknowledgement of that in the changes to Policy 15. We
1852 have heard different views about this. It would be good to also ask Wellington
1853 City Council this afternoon. The current drafting Ms Pascall supports says that
1854 "district plans have a role in managing sediment associated with the smaller
1855 scale earthworks less than 3,000 square metres."
1856

1857 If that applies to all earthworks, is there a risk of who's actually responsible for
1858 that? The District Council, the Regional Council, or does that overlap not matter
1859 in your view?
1860

1861 Brass: Again I think it just comes down to the councils having and understanding of
1862 the different parts of their roles. Where the Regional Council is managing
1863 earthworks over 3,000, even then a territorial authority I would think is being
1864 thoughtful about when it looks site layout, development, timing and when work
1865 is allowed to occur under resource consents etc. That they're not thinking about
1866 how that is going to interact with stormwater run-off, and for developments
1867 under that 3,000 square metres, then the territorial authority clearly needs to be
1868 thinking about it.
1869

1870 But again, even above 3,000 I think the same applies. A territorial authority
1871 should be being cognisant of the impacts of that land development in terms of
1872 the potential to generate sediment run-off; but not controlling the discharge. That
1873 was certainly one of the things in that Queenstown case. It was very clear the
1874 territorial authority does not control the discharge, but it does control what
1875 happens on the land prior to the discharge.
1876

1877 Chair: The land use elements.
1878

1879 Just finally (and I know we've gone over) coastal wetlands, and Ms Anton
1880 maybe you can help with this.
1881

1882 It seems as if the references to coastal wetlands Ms Pascall recommends deleting
1883 those. I think that's partly because of the February changes to the NPS-FM, to
1884 bring the focus into natural inland wetlands. Are we at the point where to give

1885 effect to the NZCPS is that we're going to check back and see what the coastal
1886 chapter is providing for or protecting? I've sort of lost a little bit of where we
1887 are at with coastal wetlands.
1888

1889 Anton: I understand. I have to acknowledge Ms Downing because she's certainly
1890 covered this in more detail than we have. I think there are three ways that there
1891 are concerns with coastal wetlands. The first is when the new policies talk about
1892 no further loss or extent of natural inland wetlands. That happens in Policy 18(c)
1893 and in Policy 40(p) of the RPS plan change.
1894

1895 My understanding there is that Ms Pascall says that's an NPS-FM
1896 implementation issue and it just refers to natural inland wetlands now and that's
1897 the end of it. That is okay so long as the RPS still makes provision for coastal
1898 wetlands.
1899

1900 Making provision for coastal wetlands doesn't necessarily need to be in that
1901 same place. It just needs to be at the very minimum as it was before this plan
1902 change was notified – preferably improved, but at the very minimum as it was.
1903

1904 The other area or way in which coastal wetlands come about in the Forest &
1905 Bird submission is in relation to setbacks therefrom. Policy 15(b)(3) and Policy
1906 42(m) talk about setbacks from waterbodies and provision of riparian buffers.
1907

[02.30.00]

1908 Those waterbodies don't include water that contains salt. So, basically there's a
1909 direction and this is both to district plans and regional plans to provide setbacks
1910 from waterbodies unless they're salty. That just doesn't seem to make sense,
1911 because we need to talk about receiving environments here. We need to talk
1912 about setbacks from estuaries. I think that's what I was talking about in the first
1913 instance, that we need to make sure that NZCPS doesn't fall through the cracks
1914 here. And, just because the RPS is talking about one of the primary purposes is
1915 implementing NPS-FM, I don't think that Policy 15(b)(3) and Policy 42(m)
1916 should exclude coastal areas from the requirement to have setbacks, where those
1917 setbacks are appropriate.
1918

1919
1920 Does that help clarify some of the coastal issues?
1921

1922 Chair: I think it does. If it's not dealt with in the coastal chapter, then there's a problem.
1923 But there's scope in your relief to make those changes in these provisions?
1924

1925 Anton: Yes, there's scope in the combination of the Director-General's relief and Forest
1926 & Bird's relief. Sometimes the RPS the way it's structured, some of the coastal
1927 and freshwater objectives manifest themselves in the same policy. One of those
1928 examples is Policy 40. It talks about coastal and freshwater quality.
1929

1930 It is a bit of a job to make sure that none of that had been undone. In the Policy
1931 40(b) example, it's actually, when you look at it closely, quite easy to see that
1932 the RPS direction on coastal water quality has been undone.
1933

1934 In other policies, for example talking about buffers and setbacks, it's harder to
1935 tell, possibly because it wasn't as directive before the NPS-FM amendment. I'm
1936 not sure.

1937
1938 Chair: Quite complicated. I wonder if there might be an opportunity in the last hearing
1939 stream integration for us all to have done that work. We will have of course Ms
1940 Pascall’s reply as well by then. If there are gaps that could be... and I think there
1941 are some coastal provisions that might within the scope of that hearing stream;
1942 there may be something on character, I can’t recall. But, that could be the
1943 opportunity to come back if there are problems that are not addressed in the
1944 coastal chapter.
1945
1946 Anton: That sounds very reassuring that there’s that mechanism to take this forward.
1947 We’re happy to engage in the detail. Thanks.
1948
1949 Chair: The RPS still has to give effect to the NZCPS. It’s clearly as you said within the
1950 scope of your relief.
1951
1952 I think we might have to leave it there.
1953
1954 Paine: Just a really quick one Mr Brass. In your evidence on page-10, para [48] you
1955 talk about Policy 17 and make some suggestions to remove the health needs of
1956 people. You’ve put your rationale for that in paragraph 48. Is that still your
1957 thoughts?
1958
1959 Brass: My intent remains. Ms Pascall’s rebuttal has addressed that same issue with
1960 some slightly different wording. So, where I had sought, “that may include the
1961 following” I think her drafting is simply “includes”. I am comfortable that she
1962 she’s the same intent.
1963
1964 Chair: I have one slightly technical question about gully heads. Mr Brass, you say in
1965 para [22] that they are known critical source areas for contaminant transport. Are
1966 you or Ms Boddy able to explain why that is?
1967 [02.35.00]
1968 Brass: This is something that I’ve dealt with in other plans. I don’t claim to be a
1969 freshwater processes expert, but the issue with “gully heads” as I understand it,
1970 is that you’ve got the two things that make a critical source area, which is they
1971 tend to be somewhere where contaminants are concentrated and there’s a
1972 transport method. Essentially when it runs it runs down the gully, so those
1973 contaminants can then be taken downstream.
1974
1975 Chair: And, that’s where they happen to accumulate at that point?
1976
1977 Brass: Yeah. One of those places, if you think of an overall farming property, those
1978 gully heads tend to be one of the places that contaminants are concentrating.
1979
1980 Chair: Thank you all. I’m sure we’ll be seeing you at the indigenous biodiversity
1981 hearing. Look forward to talking more then.
1982
1983 Anton: Thank you very much commissioners for your time.
1984
1985 Chair: Kia ora.
1986
1987 **Peka Peka Farms**
1988

1989 Chair: Welcome Mr Lewandowski. Sorry to keep you waiting. You've presented
1990 before so I'm sure you know who we all area.
1991

1992 Lewandowski: Indeed.
1993

1994 Chair: Even though we've gone over we will make sure you get your allocated time.
1995 The floor is yours.
1996

1997 Lewandowski: I might be able to assist you Commissioners. I don't think I will be here for too
1998 long so we might be able to catch you up as well.
1999

2000 Thank you and good afternoon. Nice to see you all again.
2001

2002 You will have seen that as compared to a couple of other streams there was a
2003 pretty targeted approach here from Peka Peka Farm and I really only probably
2004 want to drill in and dwell on two matters.
2005

2006 Taking it from the top and starting at Policy 14 Commissioners, there were a
2007 few matters there. It sounds like you were just having a conversation about a
2008 similar theme. I understand Porirua City Council traversed issues of respective
2009 functions and overlap between the two, so I won't wade into that too much. I
2010 accept Ms Pascall's discussion around matters in Policy 14, such as (f), (h) and
2011 (i), those being within a Regional Council s.30 functions.
2012

2013 I guess the query remains as to where is the appropriate line of delineation and
2014 some of those matters around water sensitive urban design etc. might create
2015 simply issues of duplication. We've now had the change recently notified to the
2016 NRP and there's a lot grappling I guess around those sorts of issues. I will park
2017 my comments on Policy 14 there, noting I support the deletion of matters (k)
2018 and (l) as Ms Pascall has now proposed in her rebuttal.
2019

2020 The matter I want to dwell on is matter (m). You will have seen at paragraph
2021 4.12 the relief sought by PPFL. First of all to say that I accept Ms Pascall's
2022 rationale around the functional need bit there. That was grabbed from a different
2023 aspect of the policy, probably without due consideration and needless to say I
2024 accept that functional need is not appropriate there.
2025

2026 What Ms Pascall has come back with now is I guess an acknowledgment of the
2027 point made. She has grabbed the wording from the NPS-FW and effectively
2028 picked that up and transposed it into the RPS.
2029

2030 I don't think we need to get to that level of detail. The NPS direction is a
2031 direction to regional plans and it says, paraphrasing it, that the regional plan
2032 should include that policy or a wording of similar effect.
2033

2034 [02.40.00] The PPFL submission or my evidence highlighted that in the absence of that you
2035 were creating a situation where the NPS made that provision. It was directive to
2036 a regional plan two tiers below, but the intervening tier simply took an avoid
2037 position, so you created an inconsistency or a clash in that subsequent jump
2038 down the hierarchy.
2039

2040 I think it's probably sufficient to simply acknowledge the NPS intent rather than
2041 duplicating all of those matters. As a result, if we look at the relief I've suggested
2042 at 4.12 of my evidence, I absolutely agree that that functional need in
2043 introduction can disappear. The 'comma' and the 'or' could disappear and the
2044 relief could simply start with "unless the activity is otherwise identified in the
2045 National Policy Statement for freshwater." I think that does the job of removing
2046 the inconsistency identified, while in a simpler way acknowledging that NPS
2047 direction.
2048

2049 The other reason that I think the wording Ms Pascall has suggested could be
2050 removed now is that I wonder whether through a subsequent change to the
2051 regional plan, when this aspect of the NSP is given effect to, it might just be
2052 opportune to consider how best to put that wording into the regional plan. That
2053 wording is a little bit cumbersome. I'm looking at Ms Pascall's rebuttal
2054 evidence. You have seven matters there, (i) through to (vii). Matters (iii) and (iv)
2055 for instance say the same thing slightly differently.
2056

2057 Chair: I've got the rebuttal evidence. Have you got a paragraph?
2058

2059 Lewandowski: I am at page-9 Commissioner Nightingale. Sorry, not her rebuttal evidence, I'm
2060 looking at the recommended amendments. Apologies. It's of her recommended
2061 changes. Sorry. It's at page-9 of that.
2062

2063 At page-9, apologies again, you have matter (m) and then in the blue text is the
2064 transposition of the NPS wording. Matter (iii) and matter (iv) are effectively
2065 saying the same thing; that urban development occurs on land identified for
2066 urban development. The urban development is not on zoned land for rural.
2067

2068 Matter (v) and matter (vi) are very, very similar in the wording. What they
2069 effectively also say, or what the inference of those matters is, is the first test of
2070 the effects management hierarchy of course – avoid unless not practicable to
2071 avoid.
2072

2073 My point here is that even if you were go down the road of including this
2074 wording, I think it bears to really test that wording, rather than simply transpose
2075 it, acknowledging that the NPS allows for that transposition at a minimum in a
2076 regional plan, to a regional plan. I just don't think that's required here. I think
2077 the simplified version as I suggest is probably a more efficient way of
2078 acknowledging the point or addressing the point that has been made.
2079

2080 The other element...

2081

2082 Wratt: Sorry, before you move on, where in your evidence was your proposed... I'm
2083 having trouble find that. You referred to a clause in your evidence.
2084

2085 Lewandowski: Sure Commissioner Wratt that is at paragraph 4.12 of my evidence at page-9.
2086

2087 Wratt: Thank you. That clarifies it. Thanks very much.
2088 [02.45.00]

2089 Lewandowski: The other point at 4.14 of my evidence I noted that an equivalent change to
2090 Policy 40(n) and (p) could be made. Ms Pascall hasn't recommended that
2091 equivalent change. I haven't quite tracked her rationale for not doing so. I also

2092 noted in reviewing evidence that Mr MacDonnell for Porirua City has also spied
2093 and identified an equivalent change to 18(c). I haven't specifically commented
2094 on that Commissioners but just note the equivalency of that.

2095
2096 I am still of the view that if that change is to be made to Policy 14 that I struggle
2097 to see the rationale for not making it in those two other policies. I'm sorry, I'm
2098 not sure if you've questioned Ms Pascall on that, on Monday. I didn't get the
2099 chance to listen into that so I apologise for that.

2100
2101 To my reading, that change should still be made because if you don't make that
2102 change there it would appear to me you've got an internal inconsistency within
2103 this document.

2104
2105 That is all I wanted to talk to you about on that policy. Would you like me to
2106 carry on, or do you want to question as we go?

2107
2108 Chair: Question if that's okay, if that's not going to interrupt your flow – just because
2109 I might forget otherwise.

2110
2111 I take the point about how functional need doesn't work there, and in fact Porirua
2112 Council had also supported an amendment like that. There's a problem with
2113 functional need in terms of urban development.

2114
2115 For the RPS to have a fair go at articulating this direction in the NPS-FM,
2116 assuming it has some sort of role there, rather than just having it dealt with only
2117 in the natural resources plan, we've got the version that Ms Pascall supports
2118 which is essentially repeating that provision in the NPS-FM. Could it refer
2119 instead to the extent practicable probably doesn't work either, but "where
2120 appropriate"?

2121
2122 Lewandowski: I think the appropriateness is derived from the NPS-FM and the specifics there.
2123 All my evidence is trying to do is to fix the disconnect between NPS level and
2124 regional plan level by removing the clash that is occurring with a straight avoid
2125 policy.

2126
2127 I think one could simplify it even more and simply reference the section of the
2128 NPS perhaps, because all you're looking to do is to avoid that intervening step
2129 and sort of breaking the flow if you like between those two documents.

2130
2131 Why the NPS-FM didn't direct a tweak to a Regional Policy Statement as well
2132 as a Regional Plan would be a great question. Presumably by inference it should
2133 be there, or rather it should be inferred that the RPS lines up.

2134
2135 Chair: I think at 3.52 of the NPS which has the key direction for an RPS...

2136
2137 Lewandowski: "Every Regional Council must make or change its regional policies to the extent
2138 needed." Yeah.

2139
2140 Chair: Integrated management. I think yes there's a role in terms of the bridge between
2141 the two.

2142

2143 I think there might have been another submitter who had also sought some relief
2144 on that. We've got your suggestions and we've got some other suggestions.
2145 [02.50.00] We'll take all of that into account.
2146

2147 Lewandowski: None of that is to suggest that what Ms Pascall has suggested doesn't work. I
2148 am simply suggesting that it could be done in a simpler way, and if you do go
2149 down that road of more mirroring the NPS-FM, then I think that wording could
2150 be played with a little bit. I haven't got to that point of massaging, if you like,
2151 those words. I really have looked at them and gone at the very least there's a
2152 couple of aspects here that could be condensed or removed entirely.
2153

2154 Chair: Someone had also raised a point about upstanding natural wetlands and how it
2155 may be that there are some wetlands that are so precious that actually it's not
2156 appropriate to have development leading to a loss of their extent or values.
2157

2158 Lewandowski: There's certainly a differentiation from memory in the Regional Plan as it stands.
2159 Whether that's carried over into the plan changes, I don't think it's changed
2160 there.
2161

2162 I think then whether that differentiation is consistent with what the NPS is
2163 directing here, I don't know. I will keep clear of that one for now. But, I think
2164 those are matters to be resolved at a regional plan level rather than here.
2165

2166 Chair: It might also be covered in Part 2 of the RMA. We'll think about that some more.
2167
2168 Was there some further relief that you wanted to...
2169

2170 Lewandowski: No. Only to highlight Policy 18(c) and Policy 40(n) and (p) connections on the
2171 same issue.
2172

2173 Jumping Commissioners to Policy 42, just to say I support the changes to (j) and
2174 (h) and I support the deletion of matter (o).
2175

2176 Nothing to dwell-on on that one, but obviously happy to answer questions if
2177 needed.
2178

2179 Kara-France: Kia ora Mr Lewandowski. I understand that you have very good relationships
2180 with mana whenua/tangata whenua. I understand that. Is that correct?
2181

2182 Lewandowski: In terms of Peka Peka Farms certainly yes.
2183

2184 Kara-France: Have they spoken to Peka Peka Farms in regards to the cultural values regarding
2185 wetlands and their historical activity of wetlands for many iwi, Māori in regards
2186 to wetlands. They have been historically known to be wāhi tapu.
2187

2188 Lewandowski: Why I paused Commissioner at the start of your question was because those
2189 conversations have been happening directly between PPFL, its directors and iwi.
2190 I haven't been party to them. Can I simply answer your question by saying, "I
2191 just don't know the exact details of those conversations?"
2192

2193 Kara-France: Kia ora. Thank you.
2194

2195 Chair: Commissioner Paine or Commissioner Wratt did you have any questions?
2196
2197 Lewandowski: Which takes me to the last policy Commissioners, which is Policy FW.3 – to
2198 acknowledge and support the changes made to sub-matters (a) through (c). I
2199 think that just provides a useful piece of rationalisation there.
2200
2201 That then takes me to the next point I want to dwell on, which is matter (ia)
2202 relating to hydraulic neutrality.
2203
2204 That matter in itself is fine and supported. It is the definition I want to dwell on.
2205 That definition requires the modelling for hydraulic neutrality purposes, as
2206 treating the site in an undeveloped state.
2207
2208 That is quite a departure from existing practice.
2209 [02.55.00]
2210 It's a matter that is currently a live issue before the hearing panel on the
2211 Wellington City District Plan.
2212
2213 The concern here, and acknowledging it's not specifically an issue for Peka Peka
2214 Farm but it's more of an in-principle issue that I wanted to address, is that for
2215 certain areas, and I can narrow that down even more to, for example, the
2216 Wellington Central business district or the central area, you have a significantly
2217 built up area of high coverage and high permeability.
2218
2219 The evidence that I was involved with at the Wellington City hearing put to that
2220 hearing panel that a live example of a site not far from here that has been
2221 consented for redevelopment and that the impacts of hydraulic neutrality of a
2222 site that was already 100 percent impervious, but would be required to achieve
2223 hydraulic neutrality on the basis of it being in an undeveloped state, would have
2224 significant impacts on the foundation design for that building and a consequently
2225 impact on costs.
2226
2227 I appreciate I am not introducing that evidence to you directly, so you need to
2228 weigh it appropriately. I can give you, I guess, at best that it was evidence
2229 provided for Stratum Management, if you wanted to look into that further.
2230
2231 What was difficult at that time was trying to trace, I guess, the connection of
2232 where that direction was coming from. I guess that picture is now a little bit
2233 clearer.
2234
2235 What is the relief? Preference would be for, as in my evidence, pre-development.
2236 I would however acknowledge that in a more general residential environment
2237 accommodating that requirement is probably easier. It is really dense built
2238 environments such as the city centre zone that that is getting a little bit more
2239 problematic and has potentially quite significant cost impacts, and I am not sure
2240 that those cost impacts have been sufficiently considered in proposing this now.
2241
2242 I don't know where you can necessarily take that. I think in the circumstances
2243 I've offered you the best I can in terms of some further context on that matter.
2244
2245 Happy to answer questions on that point Commissioner Nightingale or
2246 Commissioners.

2247
2248 That is all I have to speak to you about today. Thank you.
2249
2250 Chair: Thank you. On that point of cost, it would be borne by the developer. If the
2251 version of that definition that Mr Farrant supports, which is from the site in an
2252 undeveloped state, did come into the RPS; and I appreciate that the Wellington
2253 City PDP might have a different definition and that in time would need to be I
2254 guess aligned, but that cost would be borne by the developer of that particular
2255 site?
2256
2257 Lewandowski: One way or the other, yes. A couple of things in there. The WCC definition at
2258 the moment very much aligns with this. The WCC definition as proposed in the
2259 proposed district plan is square with this.
2260
2261 Chair: Square with Mr Farrant's version?
2262
2263 Lewandowski: Correct, but is being opposed. It's being contested is the point made.
2264 Where do the costs fall? Yes, to the developer. There will be cases where it's
2265 probably quite readily achievable. The city is highly fragmented. Sites are often
2266 reasonably small. There's policy support for, but also there's an economic
2267 imperative for maximising the utilisation of a site. To put these tanks
2268 underground some of these smaller sites has a cost implication in terms of
2269 foundation design etc.
2270 [03.00.00]
2271 That was the nature of the evidence presented to WCC.
2272
2273 Alternatively, it requires a portion of the site at ground level to not be utilised to
2274 accommodate whatever those storage requirements might be. That has a cost
2275 implication, I guess, in terms of a loss floor area etc.
2276
2277 There is also the issue of what is the difference between post-development – and
2278 that's an existing environment argument effectively, and I appreciate the
2279 distinction in a plan making sense as opposed to a resource consenting sense
2280 around that. The driver there really seems to be trying to buy some capacity if
2281 you like for a stormwater network that might be stretched.
2282
2283 The suggestion simply is that I'm not sure the costs of that have been fully
2284 explored. If there is an opportunity for a carve-out, the city centre zone in the
2285 Wellington City context is an appropriate place to explore that, because there is
2286 far less flexibility within that area to accommodate this requirement than there
2287 is elsewhere.
2288
2289 Greenfield development, that very much lines up with what is being said. Infield
2290 development, much more opportunity. But, when you're getting into really
2291 dense environments achieving this is challenging or requires compromises
2292 elsewhere around that efficient use of land.
2293
2294 Chair: Thank you. You've summarised the complexities there really well. Thank you.
2295
2296 Any questions? Commissioner Wratt did you have any?
2297
2298 Wratt: No thank you.

2299
2300 Lewandowski: Thank you Commissioners.
2301
2302 Peka Peka won't be attending for your next hearing stream, but if I could ask a
2303 question of you – the last hearing stream is the integration hearing; and I think
2304 Commissioner Nightingale at might have been the climate change stream, you
2305 and I briefly talked about the opportunity to revisit some of these matters at that
2306 integration hearing.
2307
2308 The question for you really is one of guidance as to what is that opportunity. I
2309 am not looking for opportunities necessarily to come and repeat evidence, but
2310 equally we've had an FDS now land and more recently Change 1 to the NRP,
2311 which has just filled in some of the picture around how these things slot together
2312 – particularly the urban development stuff.
2313 I guess my question being, what is the scope, I guess, for coming back to you in
2314 that hearing and looking at some of these issues in an integrated way?
2315
2316 Chair: It's a really good question. We've been talking about that amongst ourselves as
2317 well. I don't quite have an answer for you but there will be a Minute coming out
2318 in due course. The topic, I think there's a few things that are covered in that
2319 stream, and one of them is integration and wrap-up. We're all trying to achieve
2320 integrated management of these provisions and am very aware of the multiple
2321 national direction that we are trying to also work with and reconcile.
2322
2323 I think there absolutely will be an opportunity, but just what that looks like right
2324 now we're still working that through.
2325
2326 Lewandowski: That is answer enough. I appreciate that thank you. Thank you very much.
2327
2328 Chair: We'll just have a short break and then we have our final submitter for the day –
2329 the Wellington City Council team. Thank you.
2330
2331 [Break taken 03.04.20]
2332
2333 **Wellington City Council**
2334
2335 Chair: We are hearing now from Wellington City Council. Welcome Mr Jeffries and
2336 Ms Cook. Were you here before when we did introductions or would you like
2337 us to introduce ourselves?
2338
2339 Jeffries: I've appeared in front of you before, so I'm okay, but Maggie...
2340
2341 Cook: It wouldn't harm.
2342
2343 Chair: We have plenty of time. Kia ora. Welcome.
2344 [03.05.00]
2345 Ko Dhilum Nightingale tōku ingoa. I'm a Barrister at Kate Shepherd Chambers
2346 chairing the P1S1 Panel and the Freshwater Panel.
2347
2348 Paine: Kia ora. Commissioner Paine. I'm an Environment Court Commissioner and I'm
2349 appearing on both panels.
2350

2351 Kara-France: Kia ora. Commissioner Kara-France, Ina. Ko Waikato Tainui, ko Ngāti
2352 Kahungunu, ko Ngāti Tūwharetoa, ko Te Ati Haunui-a-Pāpārangī, ko Ngā Rauru
2353 ngā iwi i ngā takiwā. Independent Hearing Commissioner on both panels. Tēnā
2354 koe. Welcome.
2355

2356 Wratt: Kia ora. Ko Gillian Wratt tōku ingoa. I am an Independent Commissioner and
2357 Freshwater Commissioner, initially appointed onto the Freshwater Panel, now
2358 on both. My background is in the science sector. I am based in Whakatū Nelson
2359 where I am coming from today courtesy of Wellington fog. Welcome and kia
2360 ora.
2361

2362 Chair: We have your evidence. We have obviously read the City Council submission.
2363 I haven't had a chance to fully read your supplementary evidence. If you are able
2364 to take us through that. I understand it emphasises the key points of difference
2365 between yourselves and the reporting officer.
2366

2367 Jeffries: That's right. We do have a slight change of position since our evidence. That's
2368 why we filed supplementary evidence. It provides a brief summary of our
2369 primary evidence and this updated position. I will run through all of that.
2370

2371 My name is Joe Jeffries. I am a Principal Planner at Wellington City Council. I
2372 have provided planning evidence on behalf of the Council co-authored with
2373 Maggie Cook who I have beside me – a Senior Planner at Wellington City.
2374

2375 Our primary evidence recommends amendments to the new hydrological control
2376 policy and definition, Policy FW.2, Policy FW.6 and Policy 14. We have
2377 provided a s32AA evaluation for all of these amendments.
2378

2379 The Council rebuttal recommends amendments to Policy 14 that are consistent
2380 with our recommendations. We support these and will focus here on the
2381 remaining points in contention.
2382

2383 We have updated our position on the proposed hydrological control policy and
2384 now seek its deletion. We have filed supplementary evidence to record this
2385 updated position.
2386

2387 The key issue address in our evidence is clearly defining the roles and
2388 responsibilities of the Regional Council and territorial authorities respectively
2389 to avoid duplication and undue bureaucratic burden.
2390

2391 We generally are not seeking to change the outcomes sought in relation to
2392 freshwater, only to ensure that the provisions are efficient and effective, and to
2393 ensure that they do not place an unnecessary burden on the councils, consent
2394 applicants or the public.
2395

2396 Firstly I will cover the hydrological control policy.
2397

2398 In our primary statement of evidence we recommended amending the new
2399 hydrological control policy. While we expressed concerns with the concept in
2400 general we considered that if it is to be required it is more appropriate for this to
2401 be managed by district plans when development is connected to a stormwater
2402 network.

2403
2404 We consider that functions and roles with respect to stormwater should be
2405 clearly articulated to avoid duplication, specifically by ensuring that run-off
2406 from urban development connected to a stormwater network is addressed
2407 through district plans and direct run-off to a waterbody and discharges from the
2408 stormwater network are addressed through the regional plan.

2409
2410 Section 3.54 of the NPS-FM requires territorial authorities to manage adverse
2411 effects of urban development on waterbodies and ecosystems. The Wellington
2412 proposed plan gives effect to this by requiring development to achieve hydraulic
2413 neutrality. We note that the NPS-FM does not specifically direct regional plans
2414 to address the effects of urban development on water quality.

2415
2416 In rebuttal, Ms Pascall responds to our concern about duplication by noting some
2417 of the limitations of hydraulic neutrality and some of the key differences that has
2418 with hydrological control.

2419
2420 While we can accept that hydrological control is a different concept to hydraulic
2421 [03.10.00] neutrality and it is one that appears to apply a more onerous standard, our point
2422 is that both involve management of run-off from urban development.

2423
2424 Requiring hydrological control through a regional plan and hydraulic neutrality
2425 through a district plan duplicates functions and would like require separate
2426 consents from both regional and city councils to manage the same effect.

2427
2428 Our position in our primary statement of evidence was that this duplication and
2429 its associated costs will not improve the freshwater outcomes sought.
2430 Hydrological control in relation to urban development would be more
2431 effectively implemented through the district plan than the regional plan. This
2432 could be achieved by updating the PDP to integrate the concept of hydrological
2433 control in a way that does not duplicate the existing hydraulic neutrality
2434 provisions.

2435
2436 Mr Farrant's rebuttal states that our primary evidence was incorrect to
2437 characterise hydrological control as relating only to onsite management
2438 methods.

2439
2440 Mr Farrant's rebuttal statement leads us to conclude that the concept of
2441 hydrological control as proposed is more expansive and less clearly defined than
2442 we had appreciated in our primary evidence.

2443
2444 On a practical level, it is also difficult to see how private developers could
2445 respond to these requirements other than through onsite methods. As such, we
2446 can no longer provide even tentative support for the proposed hydrological
2447 control policy.

2448
2449 We also note that no S32 evaluation has been provided of the policy, despite this
2450 being a new concept and a significant policy shift. We therefore do not consider
2451 that the Reporting Officer has demonstrated that this framework is the most
2452 appropriate way to achieve the objectives of the RPS, and accordingly we seek
2453 it's deletion as an update of our position set out in primary evidence.
2454

2455 Moving onto Policy FW.2, we recommend deleting this policy which requires
2456 district plans to include provisions to reduce water demand from community
2457 supplies. In our view this issue is better addressed outside of the District Plan,
2458 including through methods such as water pricing, addressing leaks and
2459 infrastructure investment through long-term plans.

2460
2461 In rebuttal Ms Pascall rejects this and states that while non district plan methods
2462 can and should be used there is a role for the District Plan in promoting alternate
2463 supplies, to support resilience and climate change adaptation.

2464
2465 In our view resilience and climate change adaptation are distinct matters to
2466 reducing water demand. If addressing these matters is the core purpose of the
2467 policy then the policy should state this directly and be framed in those terms.

2468
2469 Moving on finally to policy FW.6, we recommend amending this policy to
2470 clarify the respective roles and responsibilities of territorial authorities and
2471 Regional Council regarding fresh water.

2472
2473 Specifically, we recommend amendments to clarify that territorial authorities are
2474 responsible for managing land use and development that connects to the
2475 stormwater network, and the Regional Council is responsible for discharges to
2476 land and water, to maintain and enhance water quality. This includes managing
2477 land use activities that discharge directly to water, as well as discharges from
2478 the stormwater network.

2479
2480 Our recommended amendments are intended to remove the policy overlap
2481 between territorial authorities and Regional Council and addressing land use and
2482 development connected to the stormwater network. This will ensure integrated
2483 management without undue duplication and bureaucratic burden.

2484
2485 In rebuttal Ms Pascall states that “Policy FW.6 essentially repeats the statutory
2486 functions set out in sections 30 and 31 of the Act” and on this basis considers
2487 the policy is accurate and no amendments are required.

2488
2489 While we agree that the wording of Policy is generally consistent with sections
2490 30 and 31, it remains that the policy fails to adequately define responsibilities in
2491 accordance with the integrated management requirements of the NPS-FM.

2492
2493 The policy adds little value if it only re-states the RMA provisions without
2494 offering any additional clarity.

2495
2496 We also agree with the statement of evidence of Caroline Horrox provided on
2497 behalf of Wellington Water which states that: “Policy FW.6 needs to distinguish
2498 more clearly at a high level the different roles Greater Wellington and territorial
2499 authorities have in relation to managing land development effects on water
2500 quality.”

2501 [03.15.00]

2502 That’s the end of my summary statement. We’re happy to take questions. Thank
2503 you.

2504
2505 Chair: Are the changes that you seek to Freshwater Policy 6 are they in your primary
2506 evidence?

2507
2508 Jeffries: Yes they are. That position is unchanged. That's correct. It is a relatively
2509 contained change to add reference to discharges in relation to the Regional
2510 Council functions.
2511
2512 Chair: Your Appendix 1?
2513
2514 Jeffries: That's right, yes.
2515
2516 Chair: Otherwise FW.X, you're recommended that now be deleted and then the
2517 definition would also go in your evidence.
2518
2519 Jeffries: Yes.
2520
2521 Chair: You're comfortable with Policy 14 now with Ms Pascall's recommended
2522 amendments?
2523
2524 Jeffries: Yes, they were consistent with what we sought in evidence – slightly different
2525 but they achieved the same outcome.
2526
2527 Chair: I think you were here when Mr Lewandowski was presenting. We were looking
2528 at this definition of hydraulic neutrality. Ms Cook, I think you've been involved
2529 with your PDP on this issue. Are you able to summarise the difference between
2530 the words "site in an undeveloped state" and what that means versus "the
2531 development prior to" – and sorry, I might have those words wrong.
2532
2533 Cook: Yes I can. Kia ora my name is Maggie Cook. I am a Senior Planning Advisor at
2534 Wellington City Council. For context I hold a Bachelor of Environmental
2535 Planning with a specialised major in freshwater science. I have also previously
2536 worked for Environment Canterbury in the resource consent space, as well as
2537 currently being the Hearings Officer for WCC for the Three Waters Chapter.
2538
2539 Yes, that's pre-developed versus undeveloped I believe are the two differences.
2540 For Mr Lewandowski, a few of those points, there is a key difference and it is
2541 that removal to a certain extent of an existing environment argument for the
2542 modelling. You have to do a modelling to that scale, noting that the economic
2543 assessment that we have, and we can provide, shows it's a user-pays system. It's
2544 incorporated into the land cost. There will be market changes eventually (this is
2545 in the evidence) but currently land prices do not fully reflect infrastructure costs
2546 as we do not have any requirements for Three Waters Infrastructure. This is the
2547 costing of this higher level of modelling is incorporated there.
2548
2549 The difference is with the modelling you are then also doing that particularly for
2550 the city centre zone, also water sensitive urban design. These are multiple
2551 concepts kind of overlapping at the same time, noting that we don't expect every
2552 single site to meet and undeveloped state. That just doesn't happen. Everything
2553 is going to be site by site. So, also incorporating water sensitive urban designs
2554 there is other tools they can use other than just tanks and then be able to manage
2555 hydraulic neutrality.
2556 [03.20.00]
2557

2558 Wratt: Could I just explore that you're concerned around hydraulic control? It seems to
2559 me that there are two aspects to that – one is whether or not hydraulic control is
2560 actually a concept that should be being pursued; and the second is, if it is then
2561 should it be a Regional Council responsibility, a District Council responsibility,
2562 or are there responsibilities at both levels?
2563
2564 Mr Jeffries, am I hearing that you don't accept the concept of hydrological
2565 control as something that should be achieved in urban development?
2566
2567 Jeffries: Not necessarily. I take the point about there being a distinction with hydraulic
2568 neutrality and there being different effects. My point would be that I don't think
2569 it's adequately defined.
2570
2571 Our position in primary evidence was to seek that change to more clearly define
2572 the responsibilities. We did update that in response to rebuttal because I was less
2573 clear on the nature of it and on the justification for it.
2574
2575 I'm not necessarily opposed to the concept outright but I don't think the case has
2576 been made – especially the case made that something is required above what can
2577 be achieved through hydraulic neutrality.
2578
2579 Wratt: As I'm sure you're aware, there is considerable discussion over what would be
2580 used as the measure for hydraulic control. Certainly I think it was Wellington
2581 Water and Mr Farrant in terms of the approach that's used in Auckland and the
2582 approach that Mr Farrant was proposing. There's obviously some different views
2583 that would need to be explored there. That's in how you would actually apply it
2584 rather than what it is.
2585
2586 You're still staying that you don't accept that the concept of hydraulic control is
2587 well enough defined to be included in the RPS, even if it was at a level where it
2588 required territorial authorities to implement hydrological controls; so it wasn't
2589 telling you what it was, or how to do it, but just required it – which was one of
2590 the suggestions that came up in the discussion yesterday.
2591
2592 Jeffries: Unfortunately I missed that discussion yesterday so I'm not aware of the
2593 specifics. Yes, that is our position – that it's not sufficiently well-defined and the
2594 case for it has not been sufficiently well made for us to support. If it was better
2595 defined then our position would be, as it relates to urban development connected
2596 to a stormwater network, we would prefer that to be a district plan function, so
2597 as not to duplicate the other obligations we have, including through this RPS that
2598 requires us to have hydraulic neutrality provisions.
2599
2600 Wratt: I think that's clear. Thank you. Thanks for that feedback.
2601
2602 Jeffries: Thank you.
2603
2604 Chair: Mr Jeffries, quite a lot of the City Council's relief that it sought in its submission
2605 was to retain the provisions as notified with respect to this topic. I appreciate that
2606 the hydrological control policy has come in through the S42A Report. I
2607 understand that wasn't part of the notified Proposed Change 1.
2608
2609 Jeffries: That's my understanding, yes.

2610
2611 Cook: All that I recommended through the S42A Report was shifting the content of the
2612 definition of hydrological controls into a policy, as was requested by Wellington
2613 Water. The content, there have been some changes, I do acknowledge that, but
2614 [03.25.00] they're not substantive. Policies 14 and FW.3 had clauses them as notified
2615 requiring hydrological controls for both regional and district plans.
2616
2617 I would also just like to make a correction. The submitters have stated that I
2618 didn't provide a S32AA evaluation. I direct the Panel to my S42A Report where
2619 I did actually provide that.
2620
2621 Chair: Thank you.
2622
2623 Sorry Mr Jeffries, I'm just trying to understand scope. Looking at this
2624 submission, and I don't have your further submission in front of me (I don't have
2625 enough screens) but do you think there are any scope issues with what you're
2626 now seeking compared to what was in your original submission or further
2627 submission.
2628
2629 Jeffries: Do you want to take that?
2630
2631 Cook: I will note the major changes between the S42A and the original notified version
2632 is the responsibility of hydrological controls is solely sitting with the regional
2633 plan now. It has been struck through for is it FW.3 which is the district plan, and
2634 as set out by Ms Pascall. The standalone policy is solely for regional plans.
2635
2636 Jeffries: Taking that, that gives scope to make it a district plan function. In terms of our
2637 deletion it wasn't proposed as a separate policy in the notified, so I think there
2638 is some scope there. There was a hydrological control element buried in another
2639 policy. I would leave the scope issue with you. We're trying to give our honest
2640 position responding to rebuttal and that's where we landed.
2641
2642 Our primary evidence was entirely based within the scope of our submissions.
2643 This does depart somewhat from that.
2644
2645 Chair: I'm just wondering if maybe the experience through the PDP something has
2646 changed, it seems to me, from lodging the submission up until this point. I'm
2647 wondering if it's things that might have come out through the PDP process to
2648 reflect the change in approach.
2649
2650 Jeffries: There has been a major change. One of them is the notification of the regional
2651 plan change that does include a rule around hydrological control. That came out
2652 the same week our evidence was due. I didn't get to take that in before
2653 submitting evidence. So, that is something that has influenced me. But, also the
2654 comments in rebuttal. I was grappling with them. I had a different position and
2655 that's where we ended up because I was struggling to really support the concept.
2656 It just became less well-defined to me.
2657
2658 Cook: I note probably the main change and thought process behind that is that my
2659 understanding probably from the initial submission was that it was in both
2660 because you can separate out between development connected to a stormwater
2661 network and greenfields and other development outside of it. It would still, in

2662 order to cover most types of development, make sense to be in both plans;
2663 however now it's been completely removed from the district plan and now there
2664 is that overlap of consenting processes being for hydrological controls and other
2665 stormwater management systems that we are requiring to the PDP.
2666

2667 Chair: I understand hydraulic neutrality and the role for territorial authorities, which is
2668 also reflected in Policy FW.3(ia) but your concern with the new FW.X is that an
2669 unnecessary overlap, or do you think that the Regional Council doesn't have
2670 jurisdiction to deal with that issue, and that it's a territorial function?

2671 [03.30.00]
2672 Jeffries: I think in a strict sense it does have jurisdiction, but there is overlap in
2673 jurisdiction, ss.30 and 31. They don't entirely divide cleanly. It would be cleaner
2674 to have a clear distinction that perhaps 30 and 31 does not provide; so it's not
2675 maybe strictly a matter of jurisdiction.
2676

2677 Chair: So, then the concern is not there's no jurisdiction, but the concern is with the
2678 particular wording of this policy?
2679

2680 Jeffries: Yes and it would create an overlap. I think in a strict sense the Regional Council
2681 does have that power, but I don't think it's good planning to have an overlap and
2682 to have the public to require consents for some parts that will be the same effect.
2683 I'm not saying they're the same thing but there would be an overlap that could
2684 require consent for the same thing.
2685

2686 Chair: If you have that information in front of you from Ms Pascall's rebuttal, is the
2687 overlap the words "or via a stormwater network that discharges to a stream". Is
2688 that the main overlap issue?
2689

2690 Cook: Yes. I believe in the primary evidence we noted that we currently have a global
2691 stormwater discharge consent that is managed through there, as well as a
2692 stormwater management strategy. In that stormwater management strategy we
2693 have requirements to reduce contaminant loads and do other strategies on a
2694 catchment basis in order to manage those discharge points. Whilst the
2695 requirement is also to be able to meet the conditions of those consents and the
2696 stormwater management strategy and be able to manage our stormwater
2697 network, as well as the requirement set out in the NPS-FM in s.3.54.
2698

2699 So, a few reasons why. Our general thought is that if it's managed, particularly
2700 with urban development, the Regional Council at that higher level managing our
2701 global stormwater discharge consent through the stormwater management
2702 strategy and then we do the implementation through the District Plan, to keep
2703 everything streamlined and to minimise overlap.
2704

2705 Chair: Sorry, I might have got that wrong. Did you say "reducing contaminants"? Was
2706 that part of the stormwater strategy?
2707

2708 Cook: That is set out in the stormwater management strategy, noting that through the
2709 NRP process that has been also updated specifically to include considerations of
2710 retention measures in and the stormwater management strategy.
2711

2712 Chair: That's with the Regional Council?
2713

2714 Cook: Yes.
2715

2716 Chair: That fits with s.15 discharge?
2717

2718 Cook: Yes.
2719

2720 Chair: Your main concern with overlap is with those words “via a stormwater network
2721 that discharges to a stream”. Would you still be concerned with this policy if
2722 those words were removed?
2723

2724 Cook: Or, perhaps a specific exclusion is made; so it specifically sets out that local
2725 authorities to water network is excluded if it's managed by stormwater
2726 management strategy.
2727

2728 Chair: Would you mind repeating that?
2729

2730 Cook: It's something along the lines of an exclusion clause for local authority
2731 stormwater networks.
2732

2733 Chair: Local authorities or territorials?
2734

2735 Cook: I believe the word that you're using, and I'm just trying to be consistent with the
2736 language being used in the Natural Resources Plan, I think it's along the lines of
2737 local authority stormwater network, or [03.34.13] stormwater network that is
2738 managed by a stormwater management strategy.
2739

2740 Chair: So, where that occurs then the Natural Resources Plan has no role in setting
2741 provisions relating to the hydrological control?
2742

2743 Cook: It's a double-up because they're requiring us to have it in the stormwater
2744 management strategy and through the catchment management plans and having
2745 that set up; having us give effect to the conditions of our consent. But, then also
2746 [03.35.00] having standalone resource consenting requirements that means that you have to
2747 go to both consenting authorities in order to get the same outcome.
2748

2749 Chair: Did anyone have any follow-up questions from that? Commissioner Wratt?
2750

2751 Wratt: No thanks.
2752

2753 Chair: It's complicated. I think as we acknowledged yesterday, we are not hydrological
2754 experts. From the experts such as yourselves we've got very different views on
2755 this issue. Working our way through it is not going to be an easy task.
2756

2757 Paine: I would like to say that's been helpful and has made it quite clear. It has been
2758 helpful, but I need to reflect on what you have told us. Thank you.
2759

2760 Kara-France: I don't have any questions thank you Madam Chair.
2761

2762 Chair: I know it's not going to necessarily influence our deliberations, but do you know
2763 when decisions are expected from your independent panel on these provisions
2764 in the PDP?
2765

2766 Cook: Our decisions are due for notification in March next year.
2767

2768 Chair: We've heard from various other submitters about allocation of responsibilities
2769 regarding vegetation clearance and earthworks. Do you still have any
2770 outstanding relief that you're seeking regarding Policy 15. I think originally you
2771 had supported the notified version.
2772

2773 Cook: Off the top of my head I believe we wanted it also clear around earthworks and
2774 vegetation clearance in the riparian margin. This also kind of plays into the relief
2775 sought in FW.6 because though we do acknowledge that we have responsibilities
2776 in the natural character area, as well as an esplanade reserve, when you're doing
2777 earthworks and vegetation clearance in the riparian margin, over a certain
2778 threshold of clearance you are going to need to do an assessment of the sediment
2779 laden discharge that has potential to enter into the waterbody. That kind of
2780 emphasises the functions that we're trying to set up in FW.6 – that when there
2781 is an associated discharge into a receiving environment that is the responsibility
2782 of Regional Council, but we also have functions for the land use and
2783 development; and noting that in the PDP for our natural character we do have
2784 requirements looking building location in relation to streams.
2785

2786 Jeffries: We didn't address that through evidence that policy, so we weren't seeking any
2787 additional changes.
2788

2789 Chair: It's okay if you don't have any comments on this, but we have heard a bit today
2790 about the daylighting of streams and how it's at that early planning stage, maybe
2791 spatial planning or zoning, where those opportunities might come up.
2792 Submission from the Director-General and I think Forest & Bird was that that is
2793 appropriate to sit as part of a territorial authority function. Has that come up in
2794 [03.40.00] your experience – opportunities for the daylighting of streams?
2795

2796 Cook: It has come up in higher strategic directions for Wellington City Council and the
2797 considerations we make towards that. However, it is considered harder for the
2798 daylighting of streams and Wellington City boundaries because the majority of
2799 them are connected up into our stormwater network. So, there is an extra layer
2800 of nuance there. It's not just drainage. Putting a stream underground there is also
2801 a function for them being part of our stormwater network as well.
2802

2803 So, while I don't believe it's against the strategic direction WCC is going in,
2804 however it is going to be materially more difficult to achieve than in other places.
2805

2806 Chair: And, that's because if that was to happen it could have impacts on the
2807 stormwater network?
2808

2809 Cook: Yes. And, also just the level of development that we have in places such as the
2810 city centre. Where the stream paths currently go in relation to building, such as
2811 parliament. There's a fair few of the piped streams around there.
2812

2813 Chair: Mr Lewandowski had suggested an exemption from these hydrological control
2814 provisions for the Wellington City zone. I think he was talking there about how
2815 in some places there's such a high level of impervious surface going to an
2816 undeveloped state and requiring the flows at that level would be practically
2817 really very difficult.

2818
2819 I think he had suggested if those provisions are staying that there should be a
2820 carve-out for the Wellington City zone.
2821

2822 Cook: That is consistent with the relief that was sought by Mr Lewandowski also in the
2823 WCC PDP for hydraulic neutrality. I will just another point onto that: he did
2824 bring up it's to do with the constraints around the stormwater network and that
2825 is a portion of the reason why we have asked for that undeveloped state level:
2826 one is that s.3.54 of the NPS-FM sets out requirements that we must promote
2827 positive effects as well as managing adverse effects in the district plan, as well
2828 as this is the management of our adverse effects on our stormwater system;
2829 noting currently we have reports around the level of constraint that we have in
2830 the areas, particularly in places like the city centre zone; and to balance the NPS-
2831 FM and the NPS-UD this undeveloped state level was the middle ground
2832 because the constraining level in some areas could also have a potential effect
2833 to make them qualifying matters, limiting development in areas where we have
2834 no stormwater capacity.
2835

2836 Instead of doing that, this is the middle ground of trying to get those positive
2837 effects, as well as trying to allow that medium term development; noting that in
2838 my right of reply I have noted for my Commissioners that if it isn't to an
2839 undeveloped state, we would have to reconsider it as a qualifying matter.
2840

2841 In order to get the stormwater networks up to standard to be able to meet
2842 development that's the only tool that we could use to finance that, would be
2843 through the rates; because development contributions cannot consider existing
2844 issues – it can only be used to pay for future upgrades to consider that
2845 development. That would be through either targeted or general rates which is a
2846 significant increase in order to be able to meet the NPS-UD requirements for
2847 development capacity.
2848

2849 Chair: You're talking there about the definition of hydraulic neutrality, which you do
2850 support – it's the hydrological controls which...
2851

2852 Cook: Yes. To get to the point, the definition of “undeveloped state” is being used in
2853 both. This was the meetings that we had to come to this definition between a few
2854 different entities, including WCC, Wellington Water and Greater Wellington. It
2855 would be a similar kind of matter – the carve-out. If we were to do hydrological
2856 controls perhaps in the district plan it would be a similar consideration of
2857 network capacity as well as trying to propose positive effects.
2858 [03.45.00]

2859 Chair: Thank you. This issue feels like one of the more challenging ones we're having
2860 to grapple with in this Proposed Change 1. Thank you for your evidence and
2861 your supplementary statement. Given us lots to think about. Was there any
2862 follow up? No.
2863

2864 Thank you very much.
2865

2866 Jeffries: Thank you.
2867

2868 Cook: Thank you.
2869

2870 Chair: That concludes the hearing of submitters for Day 2. We have a final day
2871 tomorrow. We are starting at 9.25am tomorrow morning. Thank you very much.
2872 We will conclude with karakia.
2873
2874 Farrant: Unuhia, unuhia
2875 Unuhia ki te urutapu nui
2876 Kia wātea, kia māmā te ngākau
2877 te tinana, te wairua i te ara tangata
2878 Koia rā e Rongo
2879 Whakairia ake ki runga
2880 Kia tīna, tīna
2881 Hui e, tāiki e
2882
2883
2884 [End of recording 03.46.11]

Greater Wellington Regional Council

Transcription
Hearing Stream Five – Freshwater / Te Mana o te Wai
Day Three

SUBMISSIONS

Proposed Change 1 to Regional Policy Statement for Wellington Region

Date: Wednesday 22nd November 2023

Location: Venue: Naumi Hotel, 213 Cuba Street, Te Aro, Wellington 6011

Hearing Panel: Commissioner Dhilum Nightingale (Chair)
Commissioner Glenice Paine
Commissioner Gillian Wratt
Commissioner Ina Kumeroa Kara-France

Hearing Advisors: Jo Nixon
Whitney Middendorf

1 Chair: Mōrena. Karakia tātou.
2
3 Admin: Kia tau ngā manaakitanga a te mea ngaro
4 Ki runga ki tēnā, ki tēnā o tātou
5 Kia mahea te hua mākihikhi
6 Kia toi te kupu, toi te mana
7 Toi te aroha, toi te reo Māori
8 Kia tūturu ka whakamaua kia tīna
9 Tīna, hui e, tāiki e
10
11
12 Chair: Tēnā koutou katoa. Nō Heraka aku tīpuna. Nō Poneke ahau. Kei Taputeranga au
13 e noho ana. Tokotoru aku tamariki. He rōia ahau. Ko hilum Nightingale tōku
14 ingoa. Nō reira, tēnā koutou, tēnā koutou, tēnā koutou katoa.
15
16 Tēnei te mihi ki ngā tangata whenua o te rohe nei, nau mai, haere mai ki te
17 kaupapa o te rā.
18
19 Good morning. My name is Dhilum Nightingale. I am a Barrister in Kate
20 Shepherd Chambers and an Independent Hearings Commissioner and

21 Freshwater Commissioner. I live in Taputeranga Island Bay in Te Whanganui-
22 a-Tara, Wellington.
23
24 It's a pleasure to welcome you all to the third day of the hearing of submitters on
25 the Freshwater Te Mana o te Wai hearing stream five for Proposed Change 1 to
26 the Wellington Region RPS.
27
28 We will start with some health and safety measures: follow the instructions of
29 the hotel staff if there's an emergency.
30
31 We are the Independent Hearing Panels that will be hearing submissions and
32 evidence and making recommendations to Council on Proposed Change 1. We
33 are sitting as two panels with overlapping membership and will hear and
34 consider both the Freshwater and non-Freshwater provisions of the change
35 document.
36
37 I have been appointed as Chair of both panels and I would like to invite the other
38 panel members to introduce themselves.
39
40 Paine: Tēnā koutou katoa. Ngā mihi nui ki a koutou i tēnei wā. Nau mai, haere mai. Ko
41 wai au. Ko Piripiri te maunga, ko Waitoi te awa, ko Waikawa te marae. Ko Te
42 Ātiawa me Ngāi Tahu ōku iwi. Ko Glenice Paine, tōku ingoa.
43
44 My name is Glenice Paine. I am an Environment Court Commissioner. I have
45 been appointed to both panels. Welcome. Kia ora.
46
47 Kara-France: [Loss of audio – 02.46] o Te Whanganui-a-tara, tēnā koutou. E ngā rangatira i te
48 ruma, tēnā koutou. Ngā hau e whā, ngā iwi e tau nei, tēnā koutou, tēnā koutou,
49 tēnā koutou katoa. Ngā mate, ngā aituā ō koutou aroha mātou, ka tangihia e tātou
50 i tēnei wā, haere, haere, haere. E tika ana me mihi ki tō tātou kīngi Māori a
51 Tūheitia, te pou herenga waka, te pou herenga iwi, te pou herenga tangata Māori
52 katoa. Paimārire.
53
54 Karanga mai [03.37] ngā mātua i te kaupapa o te rā. Nō reira, kāpiti hono, tātai
55 hono, te hunga mate ki te hunga mate, te hunga ora ki te hunga ora. Tēnā koutou,
56 tēnā koutou, tēnā koutou katoa.
57
58 Ko Ina Kumeroa Kara-France tōku ingoa. Ko Waikato Tainui, ko Ngāti Koroki
59 Kahoka rā [04.01] ko Ngāti Tipa, ko Ngāti Kōata, ko Rangitoto ki te tonga. Ko
60 Rongomaiwahine, ko Kahungunu, ko Ngāti Pahauwera, ko Ngāti Popoia, ko
61 Maungaharere [04.10]. Ko Ngāti Whakaari, ko Ngāti Ruruku, ko Ngāti
62 Kahungunu. Ko Ngāti Tūwharetoa, ko Ngāti Te Rangi Itā. Ko Te Ati Haunui-a-
63 Pāpārangi, ko Tūmango, ko Tūpoho, ko Paerangi, ko Ngā Rauru, ko Ngāti
64 Hinewaiatarua. E ngā whānau, e ngā hapū, e ngā iwi i ngā takiwā. Nō reira, tēnā
65 tātou katoa.
66
67 Nau mai, haere mai ki te kaupapa o te rā, e ngā iwi, e ngā mana whenua o Te
68 Whanganui-a-Tara. Nau mai, haere mai. Ina Kara-France, Independent Hearing
69 Commissioner appointed to both panels. I am also a board member on the New
70 Zealand Conservation Authority. It's an honour to have you here today. Nō reira.
71 Tena tatou katoa. Kia ora.
72 [00.05.00]

73 Wratt: Tēnā koutou katoa. Ko Wharepapa te maunga, ko Motueka te awa, nō Whakatū
74 ahau. Ko Gillian Wratt tōku ingoa.
75
76 I'm Gillian Wratt. I am an Independent Hearing Commissioner and Freshwater
77 Commissioner. I am coming to you today from Whakatū, Nelson, courtesy of
78 flight disruptions that have prevented me and are still preventing me getting to
79 the hearing in person, but connecting in online for "Day 3 today again after the
80 other two days.
81
82 Pardon me if I seem like I'm suffering from overdose of Zoom connection, but
83 I am doing my best to stay connected with the hearing from a distance. Kia ora.
84
85 Chair: Kia ora. If the Council teams that in the room would be happy to introduce
86 themselves, thank you.
87
88 Pascall: Kia ora. I'm Kate Pascall. I'm the Reporting Officer for this topic Freshwater
89 and Te Mana o te Wai. I have been contracted by the Council in this role. I am a
90 Senior Environmental Planner with GHD.
91
92 Chair: Kia ora. We will of course move onto our manuhiri, our submitters, very shortly.
93 Just a couple of very brief housekeeping matters: hearings are being
94 livestreamed and recorded for transcription purposes. If you could, those who
95 are presenting in the room, please speak into the microphones and say your name
96 first. We will try to remember to do that as well for the transcript.
97
98 Everyone has some hearing times that they have requested. All extension
99 requests that we've received have been able to be accommodated in the schedule.
100 Our hearing administrators, Ms Nixon and Ms Middendorf, may sound a bell
101 when you're getting close to the end of your allocated time and also to the end
102 of our panel question time. This is just to keep the hearings on track and make
103 sure everyone has a fair opportunity to be heard.
104
105 We have pre-read everyone's submissions, evidence and speaking notes. We
106 thank you for providing us with those. We do invite you to take us to the key
107 points you would like to make and in particular if you are able to talk about the
108 areas where your views differ from those of the reporting officer in the rebuttal
109 version of the amendments - that would be really helpful for us. We will of
110 course listen with an open mind and ask any questions of clarification at the end
111 of your presentation.
112
113 Finally, if cells phones could be turned off or to silent mode. Are there any
114 procedural points that anyone would like to raise? If not, we will start.
115
116 **Ātiawa ki Whakarongotai Charitable Trust**
117
118 We welcome Ms Gibb of Ātiawa ki Whakarongotai Charitable Trust. Nau mai
119 haere mai. Nice to see you again. Welcome.
120
121 Gibb: Tēnā anō koutou. He mihi mahana ki a koutou ki raro i te kaupapa nei. Ko Te
122 Mana o te Wai tērā. Te ara mai te pūtahitanga o te wai tō mātou pono, tō mātou
123 tika. Nō Kotirana, nō Ingarangi ōku tūpuna. Ko Claire tōku ingoa. [09.18] he
124 whakaaro tēnei nā Te Ātiawa ki Whakarongotai o te rā Whaitua Kāpiti.

125
126 Good morning. Thank you for having me again to speak this morning about this
127 important kaupapa, Te Mana o te Wai. I am here today on behalf of Te Ātiawa
128 ki Whakarongotai and also as part of Whaitua Kāpiti.
129
130 I have sent through my speaking notes. Thank you for taking the time to have a
131 look at those. There is really just two points to make in addition to what I have
132 got here.
133 [00.10.00]
134 I have had the opportunity to speak with Ngāti Toa. I just wanted to clarify on
135 their behalf some of the points that I raised about whether their Te Mana o te
136 Wai statement is sitting in this process. I understand that Ngāti Toa is working
137 with the Council and they have provided in their submission a Te Mana o te Wai
138 statement which they are seeking to have within the body of the planned text,
139 rather than in an appendices. That has some consequence of what I have written
140 both in regards to Objective 12 under my point three, and also in the note under
141 point four.
142
143 I understand they are not able to speak [10.52]. I am just providing that on their
144 behalf.
145
146 The other point is just my last point five around Policy 42 that I have laid out. I
147 am just a bit unclear about whether that text around mapping of wetlands is being
148 retained anywhere in the plan. It seems to be removed from both Policy 14 and
149 42. I just wondered, acknowledging the reporting officer and the statements
150 made in the rebuttal text. I just wondered if there was an opportunity to clarify
151 what was happening. Otherwise I'm happy to take my points as read and take
152 any questions on those.
153
154 Chair: Kia ora. We do have questions. I will ask the Commissioners if they would like
155 to start.
156
157 Paine: Mōrena Ms Gibbs. I've got your speaking notes in front of me. I am just looking
158 through your expression, or the Whaitua Kāpiti Committee expression of Te
159 Mana o te Wai. It's not included in this RPS as I understand it.
160
161 The question I was going to ask was about the inclusion of those expressions in
162 the text or in the appendix. I understand what you've said before on Ngāti Toa's
163 behalf. What about on Ātiawa's behalf?
164
165 Gibbs: Ātiawa have worked within the Whaitua Kāpiti process to develop these
166 objective statements and the absolute intent and desire is for them to be within
167 the text; so the main body of the plan or the policy statement. That's where my
168 points around changing the heading of Objective 12 is really important; so
169 acknowledging that Objective 12 is representative of the other Whaitua
170 processes that have happened, and just ensuring that space is held for the
171 Whaitua Kāpiti objectives to be included through the appropriate process next
172 year.
173
174 In summary, absolutely Ātiawa have total intention to have those objectives
175 within the body of the text.
176

177 Wratt: Can I just clarify whether it's the whole of the iwi statement that you want in the
178 body and similarly for Ngāti Toa, or whether it is the vision/objectives that come
179 out of the Whaitua process. As I understand it those are quite different.
180

181 Gibbs: Ngāti Toa have provided a statement and they would like that in the body of the
182 policy statement. They're working with Council to develop that further is my
183 understanding.

184 [00.15.00]

185 For Whaitua Kāpiti, the intention is that those two objectives that I've provided
186 as an appendices will go in the body of the text. Because we're working within
187 the Te Tiriti Whare model all of the content that's being produced is within that
188 context. There isn't an intention for each of the three iwi to provide an additional
189 statement. It's seen as strength in coming as a collective under the Te Tiriti
190 Whare which has representatives from both Council and the three iwi to have
191 that collective statement – which is expressed through the objectives which I
192 have included in my speaking notes.
193

194 Paine: Ms Gibbs, the other thing I wanted to ask about in your speaking notes, you talk
195 about **Muaūpoko** [16.06]. I am not wanting to talk more about what their
196 submission is but was more about (and I will read it to you): “Ātiawa posed the
197 suggested amendments made by the reporting officer upon legal advice that seek
198 to absolve the Council's need to directly refer to the number of iwi/named iwi in
199 the rohe.” So, taking out the six.
200

201 I had a look at all of the evidence/submissions we've got before us and I couldn't
202 find any reference to that. Could you point me to where it says “upon legal
203 advice”?
204

205 Gibbs: That is drawn from the reporting officer's report. The reporting officer's report
206 references legal advice provided by [17.05] Beverley, which offers that option
207 of removing the reference to the six iwi.
208

209 Paine: Was that in the rebuttal? I will have another look.
210

211 Gibbs: Yes.
212

213 Chair: Commissioner Paine, if I can also help that was quite early in our hearing process
214 where we had the legal submissions from Buddle Findlay. David Allan presented
215 those.
216

217 Paine: Thank you. That's all I have at the minute Madam Chair. Thank you Ms Gibb.
218

219 Chair: Kia ora Ms Gibb. The provisions in your Appendix, Objectives 1 and 2, just so
220 I make sure I really understand, these are Whaitua o Kāpiti objectives that your
221 expressions of Te Mana o te Wai, that give effect to Te Mana o te Wai, and these
222 are going to also support what's in the Kāpiti Whaitua Implementation Plan
223 which is going to be developed and in time put into the Natural Resources Plan.
224 Have I understood that right?
225

226 Gibbs: Whaitua Kāpiti is developing a WIP as other Whaitua have developed. There's
227 a very direct intention of Whaitua Kāpiti to develop the Policy Statement Plan
228 content also. So, rather than developing a WIP and providing that to Council to

229 reinterpreted and develop into objectives, policies and rules, the intention of this
230 Whaitua Kāpiti is to develop as much of the actual Policy Statement and plan
231 content as possible.

232
233 Council has developed Objective 12 for the other Whaitua processes. This is the
234 corresponding Whaitua Kāpiti objectives. It's the desire of Whaitua Kāpiti that
235 [00.20.00] Objective 12 only refers to those other Whaitua processes, and these two
236 objectives are specifically for Whaitua Kāpiti.

237
238 Chair: In terms of the new policies that the reporting officer has recommended in the
239 S42A Report and the rebuttal – so these are the policies FW.XXA, FWXXB –
240 are some changes needed here to fully acknowledge the objectives that are in
241 your Appendix? Why I ask that is because they refer to mana whenua/tangata
242 whenua statements of Te Mana o te Wai. Are we talking about the same thing,
243 or are these objectives additional provisions that need to be reflected in these
244 new policies?

245
246 Gibbs: I think there's a real tension here, where we are making changes that reflect
247 previous Whaitua processes, and it's really important that that progresses
248 because those Whaitua processes need to be implemented.

249
250 We also have this Whaitua Kāpiti process that's happening. It's under the
251 updated NPS-FM. It's really looking at the new structure and opportunities there
252 in terms of mahinga kai and the mana of ART. We're operating under the Te
253 Tiriti Whare Model which means that there's a collective development of
254 content from the community and iwi. It's not the intention of ART, the three iwi
255 collective, to write expressions of Te Mana o te Wai that sit separate from that
256 collective Whaitua Kāpiti process.

257
258 I have tried to acknowledge that in my points three and four, and recognise that
259 the cascade of objectives and policies is an expression of those other Whaitua
260 processes. It's tricky for me to really comment on the full scope of everything
261 that's proposed because that's pre-empting the decisions of Whaitua Kāpiti.
262 There's a real tension in being able to respond to this hearing stream because of
263 the context that we're in.

264
265 I've attempted to in the note for Chapter 3.4 acknowledge that Ngā Hapū o
266 Otaki, Te Ātiawa ki Whakarongotai and Ngāti Toa rangatira are working within
267 the Whaitua Kāpiti model, and that the objectives I've provided are that first
268 decision of the Whaitua Kāpiti about Te Mana o te Wai, and that is the Te Mana
269 o te Wai statement, or Whaitua Kāpiti, rather than the mana whenua Te Mana o
270 te Wai statement. Does that help?

271
272 Chair: I think I do understand the changes that you're seeking to Objective 12. But, I'm
273 not completely clear how the new policies, the FW.XXA and B, might need to
274 change. Currently they refer to the mana whenua/tangata whenua statements of
275 Rangtāne o Wairarapa, Kahungunu, ki Wairarapa and Taranaki Whānui.

276 [00.25.00]
277 I'm sorry if I have misunderstood, but is it your expectation that Ātiawa is at the
278 point now where Ātiawa's statement can also be included, or is that still being
279 developed through the Kāpiti Whaitua process?

280

281 Gibbs: There's not going to be an individual Te Mana o te Wai statement for Āti Awa.
282 It's a collective statement that's coming out of Whaitua Kāpiti for both the
283 community and the three iwi.
284
285 Statements are going to be made [26.00] Whaitua Kāpiti will be collective
286 statements. The NPS-FM provides for that. It provides the opportunity for mana
287 whenua to be involved and contribute to the development of Te Mana o te Wai.
288 It doesn't prescribe that there needs to be a separate Te Mana o te Wai statement
289 from mana whenua.
290
291 This is really aligned with the Te Tiriti Whare Model where both the community
292 develop their ideas and concepts and mana whenua also do the same; then they
293 come together collectively, we come together collectively in the Te Tiriti Whare
294 and really work through collectively what Te Mana o te Wai means.
295
296 Paine: Ms Gibb, I understand ART. We've got the expressions of Te Mana o te Wai in
297 there now. I'm just trying to clarify for my own self. Ātiawa, Toa and Hapū will
298 all have a separate thing from Objective 12. It would be different from Objective
299 12 and that would cover the three. Then you will have your own objectives one
300 and two. You will have your expression which is under ART and the two
301 objectives. They will be separate from what's in the rebuttal Appendix 2 now?
302
303 Does that make sense? Am I on the right track?
304
305 Gibbs: There won't be a collective ART statement. There will be a collective Whaitua
306 Kāpiti statement.
307
308 Paine: But, that encompasses the three, ART, in the Whaitua Kāpiti.
309
310 Gibbs: ART holds the mana whenua whare. The expression has been drafted as two
311 objectives. At the August hearing I sent through the expression of Te Mana o te
312 Wai as it will be presented in the WIP. I haven't provided that here, because I
313 really wanted to focus on the objectives. The committee which includes mana
314 whenua and the community, coming out of that Te Tiriti whare, have taken that
315 expression of Te Mana o te Wai which will sit in the WIP as a non-regulatory
316 document, and produced Objectives 1 and 2.
317
318 Paine: What I'm not understanding is, if these are finished, if they're completed for
319 Whaitua Kāpiti, why aren't they in this RPS.
320
321 Gibbs: It's a matter of timing. For this process there's been the public submissions
322 process and people have been able to comment and reflect on it. Due to the
323 timing of the Kāpiti process this wasn't ready in time. It is important that it does
324 go through the public submission process because the intent is that it is a
325 representation of the community and mana whenua's understanding and
326 relationship with Te Mana o te Wai.
327 [00.30.10]
328 Paine: That makes it clear for me, thank you.
329
330 Wratt: One more clarification from me please, is the situation with the Ngāti Toa. I
331 think if I interpret correctly you said they do still want a separate statement, a
332 mana whenua statement, which they would want to go in the body of the RPS,

333 not as an Appendix. So, they are one of your three mana whenua iwi, am I
334 correct? Apologies for my lack of knowledge of your iwi arrangements in your
335 region.

336
337 Gibbs: That's okay. Within the Wellington region there's obviously different Whaitua
338 processes. They cover different areas. Ngāti Toa Rangatira their rohe covers a
339 much broader area than [31.16] it crosses into multiple Whaitua. For Te Awarua-
340 o-Porirua there has been a Whaitua process and my comments around the Te
341 Mana o te Wai statement are in relation to Porirua. They have a Te Mana o te
342 Wai statement that they're seeking to have included as it relates to Porirua, and
343 then they're also part of Whaitua Kāpiti and for Whaitua Kāpiti their voice is
344 included within this Te Tiriti Whare Model. There won't be a separate Ngāti
345 Toa statement that crosses into the Whaitua Kāpiti area.

346
347 Wratt: That clarifies that. I guess my concern is I'm just having a bit of a challenge
348 figuring out how in the context of the RPS we seem to be ending up with... I
349 can get my head around, my Pākehā head I suppose, around the concept of
350 having specific objectives for Whaitua, but then if you start then adding into the
351 body of the RPS also the Te Mana o te Wai statements from individual iwi, it
352 seems to me we end up with a complex RPS that will be quite difficult for those
353 who have to work with it, to interpret and make it work.

354
355 Any comment on that?

356
357 Gibbs: There's six principles for Te Mana o te Wai. I have asked actually in my
358 speaking notes that they are included because they really form an important part
359 of the framework of Te Mana o te Wai alongside the hierarchy. One of those
360 principles is mana whakahaere and it's central to Te Mana o te Wai that mana
361 whenua have a voice and are in partnership in implementing Te Mana o te Wai.

362
363 Having a mana whenua statement within the plan is an expression of mana
364 whakahaere, and it also relates to kaitiakitanga and manaakitanga. It is critical
365 for mana whenua to be able to express themselves within the plan in a way that
366 is appropriate for them.

367
368 Wratt: It's not adequately done with the drafting at the moment, which has very strong
369 drafting about requirements for councils, local authorities, whether they're TA's
370 or regional councils? I can't remember the exact RMA terminology – take
371 account of, consider, the statements which it's proposed now would be included
372 in the Appendix. So, still part of the plan and still very strong drafting around
373 those having to be part of Council considerations, whether they're doing
374 whatever they're doing – planning, consenting or whatever.

375 [00.35.00]

376 Gibbs: Ātiawa's sought to be involved to set-up and work with the community within
377 the Te Tiriti Whare Model to really ensure that the mana of all of Kāpiti is
378 expressed on an equal footing. We are very clear that there's no desire to be
379 having any content in an appendices. I can't speak on behalf of the other iwi in
380 the region. I've just been asked to convey from Ngāti Toa that they have no
381 desire to have their statement in an appendices.

382
383 My understanding is that through the principles of Te Mana o te Wai it's not
384 appropriate to have an expression of who someone is in an appendices. I guess

385 if we reflect on the opening of the hearing today and the importance of the
386 whakawhanaungatanga and the introductions that we had in understanding of
387 who each other is, so that we can then move into the conversation and the
388 content, that's what is being sought to be reflected in the plan, and if the content
389 is in an appendices that doesn't have the same expression.
390

391 Wratt: Thank you for that.
392

393 Chair: Ms Gibbs, just coming back, and sorry to keep raising it, but these new policies,
394 FW.XXA and B, and I understand now that Ātiawa won't be providing a
395 separate Te Mana o te Wai statement, but the Objectives 1 and 2 that you
396 propose, you talked about a public consultation process for them, and we have
397 of course just had Variation 1 notified and submissions have closed on that. That
398 relates to Porirua and Te Whanganui-a-Tara, the long term visions.
399

400 These objectives, is it your proposal that they would sit as perhaps Objective
401 12A, Objective 12B. I just want to be sure I understand where they would sit in
402 the RPS. I can see them sitting alongside Objective 12. Perhaps the existing
403 Objective 12 would be Objective 12A. Then sitting in the same level in the
404 hierarchy would be what I have included as Objective 1 and 2, which could be
405 Objective B and C.
406

407 Chair: Just that point about the process. Again being tangata Te Tiriti obviously and
408 not mana whenua/tangata whenua myself, and Ātiawa have absolutely the mana,
409 you talked about the mana whakahaere to develop these objectives, and I am not
410 sure if they to go through and be part of the Schedule 1 process so they can be
411 open to submission by other parties. Do you have any views on that?

412 [00.40.10]

413 Gibbs: Yes, absolutely they need to go through a similar process likely to this. Maybe
414 we'll see you next year.
415

416 As the other Whaitua processes have been through the process of public
417 consultation and hearing, Whaitua Kāpiti will go through the same process.
418 Council has a whole work schedule for that and it needs to be publically notified
419 by the end of December next year.
420

421 I'm providing it now because the Whaitua Committee, which includes
422 community representatives and mana whenua, have developed this content. It's
423 important that the mana of this Whaitua Kāpiti process is recognised in the
424 decisions that you make by allowing space for the Whaitua Kāpiti process to run
425 and the hearings community engagement process to run, so that the Whaitua
426 Kāpiti decisions can be included at the appropriate time.
427

428 Chair: I understand that now. Any further questions?
429

430 Sorry Ms Gibb, I think I did have one more final question.
431

432 The proposed heading to Objective 12, you're proposing that that is amended to
433 acknowledge the Whaitua processes that have concluded?
434

435 Gibbs: Yes.
436

437 Chair: Te Awarua-o-Porirua (and I appreciate this is Ngāti Toa) that Whaitua process
438 has concluded I understand.
439
440 Does that need to also be acknowledged in that amendment to the heading?
441
442 Gibbs: Yes it does. I apologise. I didn't want to put it in there because I wasn't sure
443 whether [43.16] with Council. I know that it's been through a slightly different
444 process. So, yes, it does need to put in.
445
446 Chair: I'm quite a visual person and I might have a go I think, unless the Council officer
447 or team are able to... I can see a bit of a visual that shows the different stages
448 where the five Whaitua are and that just captures where everyone is at. I know
449 Kāpiti Whaitua are going through their process now. There are some that have
450 completed. Then we've also got the Variation 1 and then the Natural Resources
451 Plan process commencing. It would be great to have a visual showing where all
452 of that is at. We'll see what we might be able to develop.
453
454 Thank you very much Ms Gibb. Was there anything further that you wanted to
455 raise?
456
457 Gibbs: I just had that question about Policy 42(o) which is about the mapping of
458 wetlands. I am not sure whether Ms Pascall is able to make any comment on that
459 now if that's appropriate for you.
460
461 Pascall: My reasoning for recommending deletion of those clauses really came down to
462 [00.45.00] a practicability perspective when you're looking at an individual urban
463 development and I suppose if you've got a larger development it might be easier
464 to do. But, I think that intent of the NPS-FM is that that gets done on a regional
465 basis rather than an individual urban development basis. I think that's something
466 that the Council would need to look at doing through a subsequent change to the
467 RPS. It's in the NPS already, so it could be done at any stage.
468
469 That was really my rationale there, was the practicability of doing it on an
470 individual development basis and whether it's better to do it on a larger scale.
471
472 Chair: Ms Gibb, is that provision in Policy 14? That's proposed to be deleted from
473 Policy 14 as well – 14(l)?
474
475 Gibb: I haven't noted Policy 42 and Policy 14.
476
477 Chair: If I understand Ms Pascall correctly, I think looking at Policy 14(l) which is
478 proposed to be deleted, in the rebuttal evidence, I think Ms Pascall is saying
479 identifying and mapping them on a site specific basis rather than across the
480 region, which is I think a requirement in the NPS; but I can't recall if there is
481 another provision in the RPS that requires the mapping...
482
483 Gibbs: There's also Policy 42(o) which is also proposed to be deleted. It's been deleted
484 from both places, both Policy 14(l) and Policy 42(o).
485
486 Just obviously the NPS-UD process has just been completed within the Kāpiti
487 District and there are these large areas of land that have been rezoned for
488 development. Without wanting to pre-empt the decisions of Whaitua Kāpiti -

489 because we've had conversations about wetlands and ground water and it hasn't
490 happened yet – but from an Ātiawa perspective within the context of the NPS-
491 UD changes the removal of that requirement for mapping is a concern.

492

493 Chair: Sorry, I just missed the last few words there, did you say is of concern?

494

495 Gibbs: Yes, that's right.

496

497 Chair: We understand the point. I would like to just see if that NPS requirement is
498 reflected anywhere else in the provisions before us. It's something that we've
499 noted the point and we will have another look at that. Ms Pascall may also come
500 back to that in her reply based on this discussion. Thank you.

501 [00.50.00]

502 Gibbs: Thank you.

503

504 Chair: Thanks for your time. We might see you in the indigenous ecosystems hearing
505 next year.

506

507 Gibbs: Mihi nui, kia koutou.

508

509 Chair: Kia ora. Ngā mihi.

510

511 **Rangtāne o Wairarapa Inc.**

512

513 Chair: Nau mai haere mai Rangtāne o Wairarapa. Welcome. Really nice to see you in
514 person. Thank you very much for joining us today. I think you were here for the
515 introductions. Are you happy that you know who we are? You've obviously
516 presented to us before as well.

517

518 Anything that you want to raise, otherwise we'll pass over to you.

519

520 Craig: Tēnā koutou katoa. Ko te manu e kai ana i te miro, nōna te ngahere; engari, ko
521 te manu e kai ana i te mātauranga, nōna te ao. Ngā mihi nui ki a Papatūānuku,
522 tēnā koe. Ngā mihi nui ki ngā mana whenua o te rohe, tēnā koutou. Ngā mihi
523 nui ki ngā wāhine toa o te pae o tēnei rā, tēnā koutou. Ngā mihi nui ki te hunga
524 mate, ngā mihi nui ki a tātou te hunga ora. Tēnā koutou katoa .

525

526 My name is Amber Craig. He uri au nō Rangitāne o Wairarapa, Kahungunu ki
527 Wairarapa, me Muaupoko. I am the Pou Rautaki Whenua for Rangtāne o
528 Wairarapa. With me is Maggie Burns, Planner at Kahu Environmental. We will
529 both be giving evidence to our areas of expertise.

530

531 Firstly, we've actually prepared a video. Some of the kaumātua couldn't be here
532 in person today. The video is of kaumātua Mike Kawana and Manahi Pawae
533 talking about what Te Mana o te Wai means to Rangtāne o Wairarapa. I am
534 hoping that it works.

535

536 **[Plays video – 52.28]**

537

538 “Te Mana o te Wai to me is regards to Ranginui and Papatūānuku and that
539 association, like there was a prior relationship of Ranginui to Wainuiātea [52.46]
540 and from that we get water essentially. Water is te mātāmua. The oceans of the

541 world. That was what that came from that relationship. That was that
542 relationship. Other things followed that – land etc. etc. The water, koia te
543 mātāmua. We didn't necessarily get this from a book, we got this from our own
544 people – in fact Uncle Jim [53.35] was a great early advocate of that sort of
545 thinking. We've been able to substantiate that since. Often water has been
546 deemed in some secondary position, but it's not utilising the power of water to
547 bless people. It's in our oriori, all that sort of, the use of water. I recall the item
548 from one of our matekite people saying to us that if te wai Māori doesn't work
549 on a particular occasion we just go back to te mātāmua and we'll go to the sea
550 and get some ocean water.”

551
552 “I think probably, and I tautoko katoa i ēnei o ngā whakaaro ki ā tātou rangatira,
553 probably one thing I can say is we can explain Te Mana o te Wai and what it
554 means to us. For others to understand that though, they kind of have to have a
555 little bit of understanding about te ao Māori and Māori belief and the things that
556 are in place that have been
557 [00.55.00] handed down and passed down, so that we are able to explain it in this way. All
558 of that kōrero, that Matua has just finished giving us or tells those of us that
559 understand where it's coming from a clear picture of Te Mana o te Wai. For those
560 who haven't though been fortunate enough to be raised or to be taught in tikanga
561 Māori and te ao Māori and Māori world view, Māori belief and all of that, some
562 of this stuff that we're saying, as far as our explanation around Te Mana o te
563 Wai, they may not be able to understand well, or it may be difficult for them to
564 get their head around some of those things. I just want to elaborate on one of the
565 things that Matua said, around Koro Jim's kōrero. One of the ways in which he
566 often expressed, or often explained the wai and it's association with Papatūānuku
567 in terms of all of the waterways being the veins of Papatūānuku. If our
568 waterways are in any way damaged, blocked, polluted or anything like that, then
569 it affects Papatūānuku. Our tūpuna had ways and means of being able to
570 understand how that worked and how to fix that, and how to mitigate those sorts
571 of things. Of course the understanding and a good knowledge of the environment
572 that they lived in was a big part of that. So, while we can give an explanation of
573 what Te Mana o te Wai is, those who are listening to an explanation probably
574 need to do a little bit of research themselves in terms of some of the things that
575 they're hearing from us in that explanation we give. The other thing too is when
576 you do start to look into those sorts of things, you start to understand that not
577 everything you've been told is entirely accurate, or absolutely 'the' what it is, so
578 the crux of everything. Just as we've heard this morning with Matua's kōrero, a
579 lot of the understanding around te tīmatatanga, te orokotanga te kunenga mai o
580 te ao, is Ranginui Papatūānuku. As Matua has explained, there were other
581 connections involved. It's about knowing all of that stuff, which is pretty deep.

582
583 So, now it's time for them to take heed of ours and listen to ours. We know that
584 we have some answers for the environmental world, or the world that we live in
585 where environment has been mitigated, it's been challenged, it's in need of some
586 TLC and all the rest of it that we might term today. It's in need of help, so we
587 know want to implement the knowledge of our old world. I think the world needs
588 to listen to the indigenous voices of their own countries as well. There is some
589 answers there.

590
591 When we talk about the old world, some of the information we're sharing, that
592 Matua's sharing, I know spans a seven hundred or eight hundred year timeframe.

593 One of the things I often think about, when the conversation around the
594 degradation of our wai, our awa and our environment comes up, is some of the
595 names that in place for some of those – geographical features that were given
596 six or seven hundred years ago. It helps us understand just how much things
597 have declined for some of these places.

[01.05.05]

598
599
600 Two examples: Manawatū is one. When Haumi and Nanaia gave the name
601 Manawatū, it took his breath away – the beauty, the awe of that water that he
602 saw. It just took his breath away. Hence the name Manawatū. There's places that
603 would probably do that today but these are also places that would take your
604 breath away for a different reason today. Waipoua is another one, just as we go
605 into town into Masterton. Waipoua was named because Haumi had to use his
606 tokotoko to test the depth, to make sure he could get through it, because it was
607 really, really deep. You can walk across on your hands and knees basically our
608 Waipoua River today. Names tell us a lot about our environment and what it was
609 like those many years ago. When you see a name that's for a particular wai or
610 particular space or place, you kind of wonder of wonder why this place got that
611 name because it's not that anymore. That's how much it's degraded over the
612 years.

613
614 Even Wairarapa.

615
616 Yes exactly.

617
618 And, where that name comes from.

619
620 Absolutely. Ka rarapa ōna kanohi ko Wairarapa. His eyes sparkled, hence
621 Wairarapa. He'd have problems getting a sparkle in the eyes if you looked at it
622 today.

623
624 Our culture, ninety percent of our food came from water. We left water and
625 looked after water. We left the filter system in place. That was the bush cover
626 and all of what nature had provided as a filter, the repo, and all those sorts of
627 things, all played a part as we all know. But, ninety percent of our food came
628 from water and ten percent from land. But, the new culture coming in, ninety
629 percent of their food came from land. So, waterways just really became a septic
630 tank, sewerage or soakage for them to put their waste. That's what they did. It
631 just gives some extra understanding I suppose as to why we revered water. We
632 did our darndest to ensure that nature was left alone to do its job, to keep water
633 clean because of the food supply that it was.

634
635 Just again as a way of supporting that kōrero, about ninety percent of our kai
636 coming from the waterways, you just have to look at where we came from to
637 understand why that is. That's the importance of these types of kaupapa and this
638 type of mahi. As everybody knows, our water is not in a good state at the
639 moment, so we have to do something. We can't just sit back anymore and just
640 allow things that have happened to carry on as they have been. That's not going
641 to help. Not going to do anything. In fact make it worse. We have to work out
642 ways and first start changing our thinking around water and what it means.
643 That's the importance of Te Mana o te Wai: people understanding that there is
644 mana in the wai. All of this kōrero that Matua has just been saying that we've

645 been sharing, as I say, in order for people to understand that they have to do a
646 bit of their own learning around that. Matua is right: it's not just our way of
647 seeing the wai, but many indigenous cultures are the same. It would be good for
648 those who are looking for solutions to ask the indigenous people, because we
649 had solutions. We knew how to live alongside, with and in harmony with our
650 environment.

651
652 There was a purpose for everything in nature as we know. A purpose for
653 everything, whatever it might be – birds, the trees, bats, things in the water that
654 [01.05.00] have lived there. All of it had a purpose. If there wasn't a need for it and
655 particular reason they weren't there, those things weren't there. But, if they were
656 there, [01.05.18] as well. The same thing too is that nature had thought of
657 everything. But, we felt that we were, or mankind, or the new culture in this
658 particular case, came along thinking that they were at a greater level than all of
659 that, didn't they, and interfered with all of that.

660
661 One of the things that had a major effect on our waterways is the draining of our
662 repo. They played such an important role in keeping our waterways clean. Just
663 to reiterate what I said before, of the importance of this type of kōrero, as much
664 of it, especially [01.06.21], those who work in that space and the environmental
665 space and are looking for answers or looking for ways in how to whakatinanahia
666 i tērā o ngā whakaaro, and how to embody the thinking that we have mō tēnei
667 mea te tiaki, he kaitiaki. That's what we are. We are the kaitiaki. We're not
668 fulfilling that responsibility at the moment. We need to start fulfilling that
669 responsibility as kaitiaki for Papatūānuku.

670
671 [Video recording ends – 01.07.11]

672
673 Craig: Ngā mihi nui ki a kōrua, ngā rangatira o Rangitāne, o Wairarapa me Rangitāne
674 o Tamakinui-a-Rua.

675
676 [Waiata]
677 Kei hea ngā tuna o pā whakatipu
678 Ruru ana, ruru ana
679 Ko he nui piri noa
680 Tū ana tau ana e
681 E heke tuna e heke rangatira
682 Ruru ana, ruru ana
683 O ngoke [01.08.09]Wairarapa moana
684 Tū ana tau ana e

685
686 This is a waiata that our Aunty Suzanne Murphy wrote. One part of the lyrics
687 says, “Where are our tuna?” Tuna is also a synonym for our people too. Our tuna
688 was an integral part of our economy and culturally was important for us in the
689 Wairarapa as gifts. Our tuna was traded across the motu and this practice has
690 been passed down through our generations. Even today we can go to other
691 regions and the still talk about the amazing tuna from Wairarapa. However, there
692 is a direct correlation between the health of our awa, moana and our people.
693 When we are disconnected, when our access to our waterways is shut off, when
694 we are not able to enact kaitiakitanga, not only do our people suffer but our
695 waterways do too.
696

697 We are mokopuna of Kupe who discovered Aotearoa chasing Te Wheke a
698 Muturangi across Te Moananui a Kiwa. We sit here as mokopuna of Whatonga
699 who captained the Kurahaupō, whose sons, Taraika and Tautoki were influential
700 in this area. We sit here as mokopuna of Wairarapa Moana. Our tūpuna have
701 achieved many great things, but our biggest challenge is colonisation. We have
702 been on this whenua since our tūpuna arrived. We are the mokopuna of
703 Rangtāne. We are also born into this obligation of kaitiakitanga. We have a
704 spiritual connection to our waterways. Our waterways cry out to us. We listen
705 and we enact. This is a small fraction of our role as tangata whenua.

706
707 Rangtāne o Wairarapa work hard to ensure we obtain equitable solutions for
708 [01.10.00] our taiao, our people, but also the wider community through our whakapapa and
709 our mātauranga Māori. That is because we are part of the communities we live
710 in. Our tūpuna were the original famers. We are horticulturalists. Our tūpuna
711 grew gardens extensively throughout the lands. In fact, many of our rangatira
712 were revered because they grew such gardens and could feed our people. No-
713 one was left behind in te ao Māori. We uplifted our people ensure we all had
714 what we needed. We lived sustainably. We gave back to Papatūānuku as much
715 as she gave to us.

716
717 There is a role for our community and we support Greater Wellington Regional
718 Council collaborating with our communities. We know that this has been done
719 poorly in the past. However, there role is as tangata Te Tiriti.

720
721 I would just caution replacing or adding into say that it's tangata whenua and
722 communities. There is a role for communities, but our role as tangata whenua is
723 quite different.

724
725 We also believe that first in first served only serves the privileged and those in
726 power. This is not an equitable solution. Systems of power need to understand
727 that when you have inequitable solutions, then those who are not in places of
728 privilege or power will never participate in them. The systems are designed that
729 way.

730
731 Rangtāne o Wairarapa stands here speaking about our whānau and hapū roles as
732 tangata whenua and kaitiakitanga. We come into this relationship with Te Tiriti
733 o Waitangi. That is our role as tangata whenua. Partnership is the least you can
734 do when we are talking about our roles. We are always striving for tino
735 rangatiratanga and mana matuhake which is part of Te Tiriti o Waitangi.

736
737 While others may sit in this seat and ask you to prioritise their industry and they
738 seek importance for their way, I would ask for whose economic means do they
739 ask it for?

740
741 When we talk wai we cannot talk about wai without the full ecosystems and how
742 they impact and support our waterways. Ignoring this would be ignoring half the
743 root cause. Again we find that Greater Wellington Regional Council is only
744 wanting to support half a problem in your policy work, to come back and tell us
745 provisions and policies can only be protected for our urban development
746 absolutely is a misuse of your responsibilities. I find it ironic you preach to us
747 about integrated management and yet we are here debating this with you.

748

749 Nothing in te ao Māori is out of scope. If it is for the betterment of our taiao, our
750 mokopuna then we deal with it. If it's messy deal with it. We don't have time to
751 much around while we are watching on the ground the degradation of our
752 waterways. Techniques that absolutely should not be implemented are still being
753 implemented today.

754
755 Our mokopuna need us to take action now – not tomorrow, not in a week, not
756 next year. Now.

757
758 I also want to remind you that words matter. For us, 'maintain' is not good
759 enough. Protect, ensures, active participation and ensuring nothing goes
760 backwards.

761
762 I stumbled on an article in our archives from 1989 that talked about Frank Codie
763 who is the previous Masterton mayor, and I believe he went on to be a councillor
764 for Greater Wellington, and he was convincing councillors of Greater
765 Wellington Regional Council that tangata whenua should be able to attend hui
766 of the Wairarapa Committee.

767
768 Funnily enough one of the comments, who shall rename nameless, said in the
769 article, "What concerns me is that they've got full speaking and voting rights
770 and if it is extended right through to planning an environmental committee it
771 will become unworkable."

772
773 This is a committee that I am now a Rangtāne o Wairarapa representative on, of
774 which I am a voting member. I can assure you it hasn't become unworkable
775 working with tangata whenua. I can assure you mātauranga Māori holds answers
776 western science hasn't even thought of yet. I can assure that being brave, taking
777 these steps is important. These policies are the bottom line for behaviours that
778 we need to see. We're seeing the bare minimum on the ground. The actions you
779 do during this hearing will ensure we consistently see the right behaviours across
780 not only yourself but district councils too. Not only for us as mokopuna of Kupe,
781 Whatonga, Rangtāne, but many other tīpuna who need their stories told, but have
782 passed their intergenerational knowledge down to us. It's a big burden, but we
783 are more than willing to do it.

784
785 But, more importantly for our mokopuna who are yet to be born, to save them
786 from standing in 34 years' time arguing the same provisions and reading articles
787 about what happens here today; so we can move forward and innovate with
788 mātauranga Māori and create a better world for all of our whānau, our hapū and
789 our communities.

790
791 Nō reira, tēnā koutou katoa. I will pass on to Maggie and then I close out once
792 Maggie is done.

793
794 Burns: Tēnā koutou. Ko Maggie Burns ahau. Thank you for the opportunity to speak
795 again at this hearing.

796 [01.15.00]

797 I have been asked to provide planning evidence on this matter on behalf of
798 Rangtāne o Wairarapa. I take my statement of evidence. I would just like to
799 reiterate some key points and respond to some points in rebuttal evidence. I will
800 keep my summary brief, but happy to answer any questions.

801 I note I am largely supportive of the recommendations in the S42A Report. I
802 recommended a number of amendments to Objective 12 in order to give better
803 effect to Te Mana o te Wai and the NPS-FM, including the active involvement
804 directive for mana whenua/tangata whenua.
805
806
807 I discussed the requirement in clause 3.4 of the NPS-FM to identifying the local
808 approach to giving effect to Te Mana o te Wai, which is reflected in the
809 expressions from Rangtāne o Wairarapa, Kahungunu and other iwi as they are
810 included.
811
812 I note that Ms Pascall has accepted my recommended amendments to Objective
813 12 in their rebuttal evidence. I do have a few outstanding concerns about the
814 redrafting of sub-clause (b). In my evidence sub-clause (a) I see it as the outcome
815 sought for degraded waterbodies, where sub-clause (b) protects those
816 waterbodies that are already in good health from degradation. In my opinion the
817 redrafted version of sub-clause (b) confuses these outcomes.
818
819 Sub-clause (b) needs to be clear that it applies to those waterbodies that are in a
820 state of good health but where that needs to be protected.
821
822 I note clause 3.20(1) of the NPS-FM which I my view applies to situations where
823 degradation is occurring, but where the FMU has not progressed below a state
824 of good health.
825
826 I support the two additional policies that implement Objective 12, FW.XXA and
827 B. I acknowledge and support the clarifying wording changes from Ms Pascall
828 in their rebuttal evidence.
829
830 With regard to Policy 12 and the identification of FMUs I note my concerns
831 regarding the Whaitua boundaries not being sufficient fine-grained for effective
832 management.
833
834 I accept at this stage the amendments in Ms Pascall's rebuttal which removes
835 reference to the Whaitua as FMUs.
836
837 I discussed the discrepancies between Policies 14 and 18 and that adding some
838 elements from Policy 14 that are missing from Policy 18 would help in achieving
839 consistent outcomes across the region and meet the relief sought by Rangtāne
840 with regard to wider development and not just urban development.
841
842 For Method 48, while I agree that may be premature to dictate exactly what
843 alternative allocation methods are required, in my opinion the RPS is a key
844 document in determining what the NRP prioritises.
845
846 The use of consider in the context of phasing out first in first served water
847 allocation frameworks is not strong enough language and conflicts with sub-
848 clause (g) which requires equitable allocation of water.
849
850 Thank you for your time. I will pass back to Ms Craig to close our presentation.
851
852 Craig: Ngā mihi nui ki a koe Maggie. Karakia.

853
854 Unuhia, unuhia
855 Unuhia ki te uru tapu nui
856 Kia wātea, kia māmā
857 Te ngākau, te tinana, te wairua
858 Koia rā e Rongo
859 Whakairia ake ki runga
860 Kia tīna, tīna, haumi e, hui e, tāiki e
861
862 We will now take questions.
863
864 Chair: Kia ora. Who would like to go first?
865
866 Paine: Tena kōroua. Welcome. Thank you both for your presentations.
867
868 I would first like Ms Craig to talk about the video. I thought that was really
869 helpful. I think what struck me from that was one of the kaumātua saying that
870 the thoughts he’s given on the video didn’t come from a book and that it came
871 from his kaumātua. That reinforces the intergenerational knowledge that you
872 speak of.
873
874 Matua Mike talked about that he felt that Rangtāne wasn’t fulfilling their
875 obligations as kaitiaki. I won’t say what I took that to mean.
876
877 Why do you think he made that statement?
878 [01.20.00]
879 Craig: I think there’s been a lot of barriers. I believe what he meant was that we may
880 only be doing part of what we see as kaitiakitanga. We have had no access to
881 our waterways in some cases; people have been doing things without engaging
882 with us first and talking about what the river is. Moving rivers – they moved the
883 Ruamahanga from Lake Wairarapa into Lake Onoke. There is some instances
884 where some of our whānau have moved away, urbanisation and they’re no
885 longer in this area. That was part of the, Kei hea ngā tuna, “where are our
886 people”? But, also we have the other spectrum where we’ve had some of our
887 aunts and uncles fighting on the whenua to stop actions – stop roads being put
888 throughout papakāinga, stop the moving of our awa.
889
890 I wouldn’t say we’re fully not being kaitiaki: we’re doing kaitiaki within what
891 we can do. There are many instances before I was even born when actually
892 protesting a lot of this you would get arrested. Actually there were massive
893 barriers put in place. It was illegal for us for many, many years with the Tohunga
894 Suppression Act for us to even be able to do any of our spiritual wairua mahi
895 that we needed to do.
896
897 That’s what I believe Matua was talking about, when he was saying that we
898 haven’t been able to do kaitiakitanga.
899
900 Paine: That’s what I was trying to get to – so not fulfilling those responsibilities is not
901 something that you choose to do, but is something that is happening to you.
902
903 Craig: Through colonisation, yes.
904

905 Paine: The other thing I wanted to talk about, and this might be for Ms Burns, is you
906 talk about Rangtāne being horticulturalists. You will be aware that we've had
907 submissions from some of our primary producers about the levels for Te Mana
908 o te Wai and whether they should be in the third level, the second level, or
909 whatever. I would just like to get your thoughts about that.
910

911 Burns: I understand that particularly domestic vegetable growing is something that's
912 being discussed as whether that's a second priority need or a third priority. My
913 opinion on that is that domestic vegetable growing is a third priority. It's
914 inherently economic. I don't think you can move away from that. I also think
915 that health needs of people, that definition is quite narrow. That should be
916 retained, that narrowness.
917

918 Certainly I don't see an issue with prioritising within the priorities. That third
919 priority, there was given to domestic vegetable growing than exports for
920 example. Not an issue I see there. But, yes, certainly think the health needs of
921 people needs to be kept in that narrow frame.
922

923 Paine: Thank you for that. Ms Craig, I haven't got any further questions on the values
924 of anything that you've said this morning, or in your submission. I think you've
925 been quite fulsome over the hearing streams in providing us with information of
926 what Rangtāne's values are and so I don't see any need to go there again.
927

928 Thank you both for your submission. That's all the questions I have.
929

930 Kara-France: Kia ora. Tena kōroua. Ms Craig, just in regard to your appendices in your
931 submission, regarding the iwi's statement Te Mana o te Wai expression for the
932 Regional Policy Statement, are you happy with the entirety of the expression
933 statement to be highlighted within the RPS?
934

935 Craig: Does that mean putting it within the RPS, as a whole as it is now?
936

937 Kara-France: As a complete document?
938

939 Craig: Yes.
940

941 Kara-France: Kia ora. Thank you.
942

943 Craig: Can I just clarify? I do understand that means that it wouldn't be until further
944 planning updates come up. But, we will always keep this as a living document.
945 So, although this is what is in the RPS, we will make changes as RPS changes
946 come through.
947 [01.25.00]

948 This will always be a living document for us, so that's hence why in a lot of the
949 provisions we have asked people to come and collaborate with us, so that they
950 can always make sure we're working to the latest information.
951

952 Kara-France: Kia ora Ms Craig. I am very sure that Ms Pascall has actually recorded your
953 comment made to your expression. As you're aware in the conclusions from the
954 S42A Report from Ms Pascall she has recommended both statements,
955 yourselves, and also Rangtāne o Wairarapa, and also Taranaki Whānui at this
956 time because they are completed statements of expressions. As we've heard this

957 morning from Ātiawa ki Whakarongotai the objectives will be highlighted as the
958 Kāpiti expressions within the document. Kia ora.
959

960 Chair: Tena kōroua. Ms Burns, just a point following on from that. You note in your
961 evidence, in one of your bullet points to paragraph 23, that you seek to amend
962 the Te Mana o te Wai statement from Rangtāne o Wairarapa to remove a
963 whakataukī in the supporting text. Is that amended version in your submission?
964

965 Burns: Yes, that's part of the submission. I believe that's been accepted by the 42 also.
966

967 Chair: Then you note also in that paragraph that it's not necessary to repeat the six
968 principles from Te Mana o te Wai that are in the NPS. There have been other
969 iwi who have asked that they be reinstated. Any major objections if they were
970 to go back in?
971

972 Burns: From a planning perspective, and I can't really speak as Rangtāne, but certainly
973 from a planning perspective is that it's not repeated. I don't think that's
974 necessary. But, if that's something that other iwi would like to see reflected then
975 I'd consider that.
976

977 Chair: The heading of Objective 12, I think in your relief, you're comfortable with
978 referring to Te Mana o te Wai in the Wellington region? Other iwi are saying,
979 "Our processes are still being incorporated and that will happen in the future, so
980 can it be a reflection of the processes that are completed to date?" Again any
981 issues with that?
982

983 Burns: No major objections.
984

985 Chair: Thank you. I just want to acknowledge the value of both of your evidence
986 statements because not only has it really given us a really good understanding
987 of the issues that are front of mind and of concern, but also I think there's been
988 a lot of movement in the reporting officer's provisions. I think on the back of
989 your submission and your evidence I just want to acknowledge that what you've
990 provided is having a really big impact. Thank you for that.
991

992 I understand the protecting waterbodies point in Objective 12 isn't it?
993

994 Burns: Sub-clause (b) I think.
995

996 Chair: Thank you. I think the officer is saying Policy 5 of the NPS-FM says if it's
997 [01.30.00] degraded improve; if the mana of the wai is okay then it's okay to maintain.
998 And, your view is that no, protection is really important for all waterbodies?
999

1000 Burns: Certainly for those that are not degraded, or at that state of good health. I still
1001 think that the protect directive is necessary there. I think that's a reflection of
1002 what's in the Te Mana o te Wai statements from iwi as a reflection of defining
1003 that through community involvement.
1004

1005 I also note in my evidence, I think paragraph 41, that Rangtāne expression is a
1006 return of wai to Tūhoura, not just a maintenance objective. I still think that that
1007 protect directive is necessary there.
1008

1009 Chair: Looking at the wording in (ab) of Objective 12, the rebuttal version, do you have
1010 a concern with the word “maintains” in that clause as well?
1011

1012 Burns: Yes, I think that would actually make more sense if that was also a protects.
1013

1014 Craig: Can I just give some context as well to on the ground. As an example the
1015 Waiohine is considered healthier, although that’s debatable. But, I guess for me
1016 “maintain” just kind of says that we’re just participating and we’ll watch it go
1017 past and we’ll just keep it as it is. However, I am actively, along with a lot of my
1018 whānau, on the ground ensuring that it doesn’t go backwards. There are so many
1019 mahi, so many resource consents that are trying to actively attack our waterways.
1020 I guess that’s just where a Rangtāne Wairarapa perspective “protects” is actually
1021 what we are doing on the ground right now. I don’t spend my waking moments
1022 “maintaining”. I spend my waking moments protecting the hard line for our
1023 waterways.
1024

1025 Chair: Thank you. Policy 5 of the NPS I think does have that extra part in there that
1026 says something about “unless the communities choose”.
1027

1028 Burns: Yes, certainly. I also point out I think there’s part of the NPS-FM which says
1029 that there’s nothing in the NPS-FM that prevents an authority from using a more
1030 stringent measure than what’s reflected in the NPS-FM. That protect directive
1031 would be an example of that.
1032

1033 Chair: I think just lastly I had a question on Method 48.
1034

1035 Ms Pascall that’s not in the rebuttal provisions, is that because you’re not
1036 proposing any changes? I don’t think it’s in the rebuttal provisions. Oh, it is
1037 sorry. You’re right, page-18. I missed that there.
1038

1039 Ms Burns, there are some wording differences in the relief that you’re seeking.
1040

1041 Burns: Yes.
1042

1043 Chair: What really jumps out to me is that in (b) you’ve got a timeframe, short as
1044 practicable timeframe for existing over allocation to be phased out.
1045 [01.35.00]

1046 I don’t know if there are provisions in the natural resources plan that provide for
1047 that or not, but your view is that this method needs to include more direction
1048 around the timing for when that has to happen.
1049

1050 Burns: Yes that’s right.
1051

1052 Chair: Are there any other key differences in the wording of Method 48 that you’re
1053 seeking, that are not in this version of the rebuttal evidence?
1054

1055 Burns: Yes, certainly. The main one for me is really that sub-clause (f) which relates to
1056 that ‘first in first served approach’. My opinion on that is that ‘first in first
1057 served’ is not an appropriate allocation method and it needs to be phased out;
1058 and that we can’t equitable allocation under a ‘first in first served method’.
1059

1060 As you say, the RPS needs to be a little bit more directive in this method on
1061 those topics.
1062

1063 Chair: Thank you, that's very clear. I think that was it.
1064

1065 I also noticed the directive. In the new policies, FW.XXA and B, the "recognise
1066 and provide for" is the wording that you would prefer?
1067

1068 Burns: I'm shifted slightly on that opinion. Certainly for the XXA, that's already in
1069 there, in that XXA for regional district plans. For the consenting one, which I
1070 know there has been a little bit of amendment to the chapeau of that – just to
1071 make it clear that it is for resource consents and notices of requirement and not
1072 plan changes. I am comfortable with the wording that's been proposed by the
1073 S42A officer.
1074

1075 Chair: Thanks for clarifying that. I had a question about how we have one for the
1076 wording and so how... thank you for clarifying that.
1077

1078 The words "to the fullest extent" that you are suggesting be added into the 'A'
1079 policy, the one directing plans, "recognise and provide for the statements and to
1080 the fullest extent relevant to the scope." I just want to check I understand that
1081 correctly. Are you able to talk a little bit about why you think those words are
1082 needed?
1083

1084 Burns: Certainly. My opinion on that would just be that those statements are recognised
1085 and provided for as much as they can be within the context of that district and
1086 regional plan. I think those words just clarify that that is what needs to be done.
1087

1088 Chair: I just wonder, it could potentially be interpreted the other way, that if there's a
1089 reason that they are not "recognise and provided for" then that's okay. I don't
1090 think that's the intent. That's okay. I understand what you're seeking. We can
1091 have a look.
1092

1093 Do you see we don't want to create and 'out'?
1094

1095 Burns: I understand that's how it's going to be read then. I would be comfortable with
1096 removing those words, or amending in some way.
1097

1098 Chair: Any questions from anyone else?
1099

1100 Kara-France: No thank you Madam Chair. No issues.
1101

1102 Chair: Commissioner Wratt?
1103

1104 Wratt: I think the submissions have been well explored thank you. Thank you.
1105 [01.40.00]
1106 Thank you, as others have said, for your presentations. I hope that through these
1107 processes the non-Māori population of New Zealand will begin to engage much
1108 more and appreciate the mana of our wai. I think we are seeing that that is
1109 happening and certainly the Whaitua process is seeing an important part of that.
1110 Thank you for those presentations. There was a lot that was said there, that I
1111 certainly appreciate. Thank you for that.

1112
1113 Chair: Thank you very much.
1114
1115 We'll have a short break just for ten minutes and we will come back for
1116 Kahungunu ki Wairarapa.
1117
1118 **Kahungunu ki Wairarapa**
1119
1120 Chair: Mōrena, welcome. Thank you very much for joining us today. I think we would
1121 like to formally acknowledge you. Kia ora Natasha.
1122
1123 Natasha: Kia ora. I just wanted to formally acknowledge Kahungunu ki Wairarapa joining
1124 us and joining the RPS Change 1 Hearing process. I want to welcome Ra Smith
1125 from Kahungunu ki Wairarapa. He is joining us from, as I can see, I think it's
1126 Wairarapa KKW office. I also want to acknowledge Ra Smith and also Kiriana
1127 Simms. They were both significant contributors with their knowledge and
1128 information during the RPS Change 1 provisions development. Kia ora.
1129
1130 Smith: Kia ora. Kei te mihi ki a koe mō tō mahi, mō tō mahi o te kaunihera. Kia ora.
1131
1132 Kara-France: Tēnā koe. Tēnā koe e te rangatira.
1133
1134 Smith: Kia ora koutou.
1135
1136 Chair: We'll just do some introductions. I think this might be the first time that you're
1137 presenting to us, so you know who is here.
1138
1139 Ko Dhilum Nightingale tōku ingoa. I am a Barrister and am chairing the
1140 Schedule 1 process as well as the Freshwater process that's part of this Proposed
1141 Change 1. I live in Te Whanganui-a-Tara Wellington, in Taputeranga, Island
1142 Bay. Welcome. I will pass to the other Commissioners.
1143
1144 Kara-France: Tēnā koutou Ngāti Kahungunu ki Wairarapa. Tēnā koe e te rangatira, tēnā koe.
1145 Ko Ina Kumeroa Kara-France taku ingoa. Ko Waikato Tainui, ko Ngāti Koroki
1146 Kahukura, ko Ngāti Tipa, ko Ngāti Kōata ki Rangitoto ki te tonga. Ko
1147 Rongomawahine, ko Kahungunu. Ko Ngāti Pahauwera, ko Ngāti Popoia, ko
1148 Maumaharutanga ki [01.43.52], ko Ngāti Whakaari, ko Ngāti Ruruku, ko Ngāti
1149 Popoia, ko Ngāti Kahungunu. Ko Ngāti Tuwharetoa, ko Ngāti Te Rangi Ita, ko
1150 Te Atihaunui-a-Pāpārangi, ko Tūmango, ko Tūpoho, ko Paerangi. Ko Ngā
1151 Rauru, ko Ngāti Waiatarua. E ngā whānau, e ngā hapū, e ngā iwi i ngā takiwā,
1152 nō reira, tēnā tātou katoa. Kia ora e te whānau.
1153
1154 Ina Kara-France, Independent Hearing Commissioner on both panels. Board
1155 member of the New Zealand Conservation Authority. As a board member I am
1156 also the liaison for Tāmaki Makaurau Auckland, Te Tai Tokerau, Northland, Te
1157 Hiku o te Ika, Far North Conservation Boards as their liaison.
1158
1159 I come from my former employment with WSP New Zealand, Transport and
1160 Planning, Māori Business Services, as the Kaitautoko Māori Matua, Senior
1161 Advisor.
1162 [01.45.00]

1163 My job in that role was an advocate for mana whenua regarding cultural values
1164 and sites of significance with a clear aim to really avoid litigation and advise our
1165 engineers and architects and clients accordingly.
1166
1167 I would like to say to you e te iwi, e te rangatira, welcome, nau mai haere mai,
1168 nau mai haere mai. Nōr reira. Kia ora.
1169
1170 Smith: Kia ora, kei te mihi.
1171
1172 Paine: Tēnā koe Matua. Ko Piripiri te maunga, ko Waitoi te awa, ko Waikawa te marae,
1173 ko Te Ātiawa me Ngāi Taku ōku iwi. Nō Waikawa ahau. Ko Glenice Paine tōku
1174 ingoa.
1175
1176 My name is Glenice Paine. I'm an Environment Court Commissioner. I have
1177 been appointed to both hearing panels. Welcome. Kia ora.
1178
1179 Wratt: Tēnā koe. Ko Wharepapa te maunga, ko Motukea te awa, nō Whakatū ahau. Ko
1180 Gillian Wratt ahau tōku ingoa.
1181
1182 I am Gillian Wratt. I am based in Whakatū, Nelson where I am coming from
1183 today, courtesy of not being able to fly into Wellington because of fog the last
1184 few days. My background is in the science sector and I am an Independent
1185 Hearing's Commissioner. Was initially appointed on the Freshwater panel, now
1186 on both panels. Tēnā koe.
1187
1188 Smith: Kia ora koutou.
1189
1190 Chair: Just so you know who the Council staff who are who are here as well, if they
1191 could introduce themselves. Thank you.
1192
1193 Pascall: Kia ora. Kate Pascall. I am the Reporting Officer for this Freshwater and Te
1194 Mana o te Wai RPS hearing.
1195
1196 Chair: Hello Kate.
1197
1198 Natasha: Kia ora, Natasha here. Kia ora.
1199
1200 Arnenson: Kia ora. Ko Nicola Arnenson tōku ingoa. I'm the Manager of Policy.
1201
1202 Smith: Kia ora.
1203
1204 Chair: Mr Smith, thank you very much. I think we have an email that you sent which
1205 has a summary of the points that you would like to make. We're all ears. Over
1206 to you.
1207
1208 Smith: Kia ora. Ko Rawiri Smith tōku ingoa. Ko mokopuna o Wairarapa ahau.
1209
1210 My name is Rawiri Smith. I'm a grandchild of Wairarapa, springing from my
1211 nannies moko kauae or chin tattoo.
1212

1213 I would like to present why the Kahungunu ki Wairarapa te Mana o Te Wai
1214 statement should be included in Greater Wellington's Regional Policy Statement
1215 based on a community framework known as Mauri Tuhono.

1216
1217 This framework states there should be 7 shifts in thinking that results in an
1218 overarching approach that might be considered as transformational. This
1219 overarching thinking is similar to our moemoea at Kahungunu ki Wairarapa
1220 which is that our water can reach its full potential.

1221
1222 In order for this to happen, there are some other shifts in thinking that need to
1223 happen.

1224
1225 The first shift in thinking, I would like to address, is known as Ma Tatau, Mo
1226 Tatou, For Everyone, Everywhere. The shift is from our environment is locked
1227 up in Conservation Land and for water this space to appreciate now are
1228 catchments.

1229
1230 Water is sometimes hidden from the view of people by piping but it doesn't hide
1231 the fact that water runs throughout our community. If we add to this complexity
1232 groundwater we should quickly see that water and the environment it flows in is
1233 extensive, and we all should have a role in ensuring it continues to play a role in
1234 our lives.

[01.50.00]

1235
1236 The second shift is Ko te Taiao ko Au, or I am the environment. This is a shift
1237 from not acknowledging our subjective experience in the environment, to
1238 understanding the environment and the water through our connection to our
1239 whenua, including water.

1240
1241 Listening to our waters is something my Poupou or grandfather taught me to do
1242 before I made contact with our waters. Watching the places that made no sound
1243 through to places that made loud noises was accompanied by Poupou asking me
1244 why these things were happening.

1245
1246 The third shift is Turanga or knowing our place in the environment. This is a
1247 shift from thinking people can control water, to understanding how people can
1248 work with water.

1249
1250 Giving rivers enough room to work in can mean that other interests that want to
1251 narrow the river is balanced against what waterways need to do to look after its
1252 water.

1253
1254 The fourth shift is Hononga or our connection to each other. This is a shift from
1255 isolated approaches to water, sometimes due to the commercial value of water
1256 to acknowledging the wellbeing water can be to all of us.

1257
1258 Sometimes this can be seen as a threat to individuals or individual groups'
1259 interests. The sustainability of water, a purpose of the Resource Management
1260 Act, section 5, should be a uniting concept as the law demands, and what water
1261 needs.

1262
1263 The fifth shift is Pataka or the water is a storehouse of resources. This is a shift
1264 from undervaluing our water by restricting its functions to something like

1265 attenuating floodwaters. The widening of the thinking of purposes for water and
1266 waterways means we can see the wider values of water.
1267
1268 The sixth shift is Te Manawaroa or the endurance of water. This shift looks to
1269 ensure that water is a part of a renewable process that enables sustainability.
1270 While sustainability has been discussed above, considering sustainability in a
1271 period of climate change can bring resilience to our environment, especially our
1272 aquatic ecosystems.
1273
1274 The last shift is Maramatanga or understanding water more fully. While the
1275 shifts above will help understanding to happen, acknowledging the depth and
1276 breadth of knowledge bases can help us to have a wider range of insights into
1277 water.
1278
1279 Local knowledge about water and waterways can include lived experience in
1280 decision making. An example of this is the evidence Whataho Jury from Lake
1281 Wairarapa gave a parliamentary committee outlining the changes in Lake
1282 Wairarapa after the 1855 earthquake. As we address sediment in Lake Wairarapa
1283 for better water quality, consideration of the original source of sediment will be
1284 important.
1285
1286 The blossoming of water as a concept means that water can reach its full
1287 potential. For Wairarapa Moana this means that can have more functions than
1288 attenuating flood waters.
1289
1290 It can ensure the health of indigenous flora and indigenous fauna. Then when
1291 Wairarapa Moana is healthy, the people of Kahungunu ki Wairarapa are healthy.
1292
1293 For the Ruamahanga catchment or Whaitua this means the Ruamahanga is
1294 [01.55.00] weaving with other waterways in a way that strengthens each waterway as
1295 traditional Maori thought when they blessed their babies in the waters of
1296 confluences.
1297
1298 Can we better prepare for extreme climates as we use our aquifers better; as we
1299 connect to groundwater better? Te Mana o Te Wai seeks to make water its
1300 highest priority.
1301
1302 I hope that the highest priority for this hearings panel is the quality of water too.
1303
1304 Chair: Kia ora. Thanks very much.
1305
1306 Mr Smith, that really brought for me a lot of the values in the things that are
1307 important in Kahungunu ki Wairarapa's expression of Te Mana o te Wai which
1308 is in the RPS. It really brought that very much to life. Thank you for that. We
1309 will make sure that this is on the Hearing's website and part of all of the written
1310 information that is available for everyone to see, and for us to go away and
1311 reflect on in our deliberations.
1312
1313 Smith: Thank you.
1314
1315 Chair: There has been some discussion about the Te Mana o te Wai expressions and
1316 where they should sit in the RPS. I think two of the options that have been

1317 discussed are that they can be in an Appendix or they could be in the body of the
1318 RPS, where they are in the version that was notified.
1319
1320 Any particular views or preferences on that?
1321
1322 Smith: Yes I do have a view on that. That's a view in terms of the National Policy
1323 Statement for freshwater management clearly outlines that Te Mana o te Wai
1324 should lead our thinking about managing freshwater.
1325
1326 What it doesn't perhaps say as clearly is that this is a value led policy. Sometimes
1327 when we have problem solving policies then there's often an operational
1328 rethinking about what we should do in our policies. When you have a value led
1329 policy that's quite different in that we're putting out in front of people our
1330 aspiration and about how we're going to get to acknowledge our values and to
1331 make sure that our values are a part of what is leading our communities.
1332
1333 It's hard to think of a process that's more democratic than that, where we actually
1334 go out and get... sometimes Te Mana o te Wai because of its name is often
1335 thought of as just iwi values, but actually when you look at Te Mana o te Wai
1336 the community values are there as well.
1337
1338 I've been lucky enough to be a part of Greater Wellington's Ruamahanga
1339 Whaitua planning. We went out to our community and we heard their values. We
1340 also heard the iwi values. We did this so that Te Mana o te Wai in its final
1341 iteration didn't come to us until 2020, but we actually had finished our
1342 consultation with our community in 2016.
1343
1344 We had already been looking at what valued led policy looks like.
1345
1346 I'm sorry about the context and long explanation, but the context is to say I think
1347 it should be upfront in the values, and that our regional policy statement should
1348 [02.00.00] follow the National Policy Statement as it's required to do, in terms of freshwater
1349 management by being a value led policy.
1350
1351 Chair: Thank you, that was very clear.
1352
1353 The seven shifts in thinking that you have talked about today, these very
1354 important shifts that need to happen to uphold Te Mana o te Wai, I think that's
1355 come across really clearly in your presentation.
1356
1357 Are these seven shifts also reflected in the expression, or are they going to be
1358 reflected in the Whaitua implementation process for Ruamahanga?
1359
1360 Smith: In a poutama we have different stages in terms of our education policy. You
1361 might not start on your poutama at the top step – that would make the journey
1362 boring. But, if you were starting from the mauri tūhono. So, mauri tūhono we
1363 acknowledge and we connect the mauri between the people and the
1364 environment. There's something extra happening. We think about that, as Māori
1365 will tell us, through ihi, wehi and wana.
1366
1367 Those are actually different stages of learning in terms of what mauri tūhono is.
1368

1369 Kahungunu, and I don't expect the rest of the planet to follow Kahungunu – it
1370 might be the one time we're not the centre of the universe – but part of the kōrero
1371 is mahi tūhono. So, what's the work of connecting like?
1372

1373 Really I wanted to acknowledge that in order for groups to take on Te Mana o
1374 te Wai there's actually some shifts of thinking that need to happen for people to
1375 take that on.
1376

1377 It's an acknowledgement that perhaps we're not all there, but I would say that
1378 out of one's values that we could choose, and shifts that we could start with, I
1379 think these seven shifts are things that the rest of the community can take on.
1380

1381 Then if we were working up our way till we got to a whare wānanga kōrero, that
1382 might be quite a bit different. In terms of our progressing our Te Mana o te Wai
1383 statement, just wanted a good knowledge that these are the shifts that need to
1384 happen for us to acknowledge our statement.
1385

1386 Is there more than we would like to think? Yes, there's quite a lot more, but the
1387 outline in Te Mana o te Wai from the National Policy Statement for Freshwater
1388 was outlining a way that we could progress. So, we've taken up that framework.
1389

1390 To be fair to the previous Secretary for the Environment, Vicky Robertson, who
1391 left the Te Mana o te Wai from about 2012 and 2013 though to 2020 when it
1392 was going through the three year cycle of changing, and that might match the
1393 three year cycle of new governments. But, what happened was that there was a
1394 socialising of Te Mana o te Wai that now local district councils etc. are
1395 supporting Te Mana o te Wai in many different places. I am hoping that our new
1396 National Government will catch-up with that.
1397

1398 Paine: Tēnā koe Matua. I haven't got any questions. Just to tautoko our chairperson's
1399 comments and thank you for your insights you have provided us with today. Kia
1400 ora.
1401

1402 Smith: Kia ora.
1403 [02.05.00]
1404 Wratt: Thank you Mr Smith for that presentation, and that very clear outline of your
1405 shifts in thinking, which certainly personally make a lot of sense to me. Also I
1406 appreciate your commentary around that we have to bring the whole community
1407 with the concepts of Te Mana o te Wai. We are not going to resolve these issues
1408 in New Zealand unless we get engagement across our communities, not only
1409 with iwi who have a special relationship and special role, but across our whole
1410 communities with the concepts of Te Mana o te Wai. Thank you for your
1411 presentation. I don't have any questions. Kia ora.
1412

1413 Smith: Thank you.
1414

1415 Chair: Mr Smith, I have just been thinking a bit more about what you were saying.
1416 There are some things reflecting back on what we have heard from other
1417 submitters over the last two days before today. We heard a bit about the
1418 importance of daylighting streams. During that urban development there are
1419 waterways buried all underneath us, and there are there opportunities to have
1420 them surface. I think you have expressed that really beautifully in the first shift

1421 of thinking that you talk about, when you say water is sometimes hidden from
1422 the view of people, but piping doesn't hide the fact that it runs throughout our
1423 community. I think that's a really clear and expressive way of what we've been
1424 looking at in the provisions.

1425
1426 That is something that you've also noticed in your rohe?

1427
1428 Smith: In our rohe much of the waterways are sometimes separating from the roading
1429 system. If you are looking at the Wairarapa moana and you wanted to go straight
1430 to Martinborough, I don't know why, maybe for wine, you might not see Lake
1431 Wairarapa. On the Eastern side of Lake Wairarapa, if you then travel from
1432 Martinborough to Onoke and then around to Ngawi you still wouldn't see Lake
1433 Wairarapa.

1434
1435 We often say at home that the people have the closest contact to Lake Wairarapa
1436 when they're on the train heading to Wellington. They see Lake Wairarapa then.
1437 But, I also note that it is at a certain time of the morning or night where sleeping
1438 is one of the preferences for many of our travellers as well.

1439
1440 In terms of actually having that contact and awareness, but I would say
1441 something a little more: and that's about the mauri connection. It's really hard to
1442 get the mauri connection through [02.08.55], or if we don't come and feel the
1443 water around our feet. That beautiful kōrero about turangawaewae where we're
1444 standing in the sand and feeling our feet sink into turanga, into the whenua,
1445 knowing this is where we're rooted is in this space.

1446
1447 It's difficult to bring the community on. One of the things that I think we have
1448 to do is face up to the profile the environment should have with our community.
1449 That means being around our community.

1450
1451 I do think that as tangata whenua we are shaped by our whenua, by the taiao. In
1452 [02.10.00] our shaping, of being shaped by that, I would ask is our whenua so weak that the
1453 only people that it can affect are Māori.

1454
1455 You only need to look at foreign visitors who have been here less than 24 hours
1456 most times, talking about our environment. They know how special it is.

1457
1458 I'm going to suggest to you that actually all the rest of New Zealand in tangata
1459 Te Tiriti know how special our environment is as well. Actually, that's a place
1460 that we can start working from to bring our whole communities with us.

1461
1462 If we're all taking up the responsibility of being tangata whenua, and there's
1463 more meanings than the one that I gave for tangata whenua, but one of them is
1464 to be affected by the land, then that's a starting point that we can have for our
1465 wider community.

1466
1467 Chair: Thank you so much.

1468
1469 Smith: Kia ora. Thank you.

1470

1471 Chair: Thanks very much. Quite a friendly environment. We hope to see you again
1472 perhaps at another hearing stream. There are two more to come for the Proposed
1473 Change 1 Hearing. We hope to see you again.

1474
1475 Smith: Thank you.

1476
1477 **Ngā Hapū o Ōtaki**

1478
1479 Chair: We welcome Ngā Hapū o Otaki. Ms McCormick, good morning.

1480
1481 McCormick: Tēnā koutou. We also have online Whaea Denise and Dr Aroha Spinx as well.

1482
1483 Chair: Nice to see you again. Thank you for joining us at the Te Mana o te Wai hearings.
1484 I think you have all presented before. Are you comfortable that you know who
1485 we all are? Or, would you like us to run through any introductions again?

1486
1487 Hapeta: Kia ora Whaea, Denise Hapeta. We're more than comfortable to walk through.
1488 Mel has become what we would deem a whāngai to us now at Ngā Hapū Ōtaki.
1489 I'd describe it in that way Mel. Mel and her group of consultants and other group
1490 of very capable Māori women have joined Ngā Hapū on a number of our
1491 projects. We are very pleased to have Mel presenting with us today. Thank you
1492 Mel. We're happy to hand over to Mel and then we'll come in behind you Mel.
1493 Tēnā koe.

1494
1495 Chair: Great.

1496
1497 McCormick: I'm comfortable I've met everyone. Happy for you to just take off.

1498
1499 Chair: Over to you thank you.

1500
1501 McCormick: Tēnā koutou katoa. Tēnei te mihi atu ki a koutou. Ko Melanie McCormick tēnei.

1502
1503 Good morning Madam Chair, Commissioners and staff officers. My name is
1504 Melanie McCormick and I have been engaged by Ngā Hapū Ōtaki to provide
1505 the oral submission on Hearing Stream Five to Proposed Regional Policy
1506 Statement Change 1.

1507
1508 I would also like to acknowledge mana whenua who have spoken or are speaking
1509 today. Tēnā koutou e ngā rangatira, e ngā mana whenua o Te Whanganui-a-Tara.

1510
1511
1512 Firstly, I appreciate where our further submission points have been supported by
1513 the Reporting Officer – thank you.

1514
1515 Ngā Hapū Ōtaki together with Ātiawa ki Whakarongotai and Ngāti Toa
1516 Rangatira (and the community representatives) are currently developing the
1517 Whaitua Kāpiti Implementation Plan.

1518
1519 Where possible, I have sought to align my commentary with the available
1520 Whaitua Kāpiti commentary.

1521

1522 I have taken my speaking notes as read, so I won't read this. I will now provide
1523 comments on specific provisions or broad themes.
1524

1525 Firstly, I would like to draw your attention to Policy 41. This is a more minor
1526 point and perhaps one of clarification.
1527

1528 It remains unclear to me how the effects of earthworks and vegetation clearance
1529 will be managed when considering a regional resource consent once target
1530 attribute states and limits are drafted and included in the regional plan.
1531 [02.15.00]

1532 By deleting clause (b) and (c) of Policy 41, there is no requirement for a regional
1533 resource consent application to consider the extent to which the proposed
1534 activity will meet the relevant environmental outcomes, target attribute states
1535 and limits once they have been established, despite any future direction from a
1536 regional plan.
1537

1538 I consider that the higher order direction in a Regional Policy Statement will be
1539 missing if these clauses are deleted. My relief sought is to reinstate the proposed
1540 wording sub-clause (b) and (c) of Policy 41, provided in the Reporting Officer's
1541 S42A Report and Appendix 2.
1542

1543 My next point of focus is Objective 12. In line with Atiawa's additional
1544 amendment made this morning after their discussion with Ngāti Toa Rangatira
1545 to include reference to Te Awarua-o-Porirua in the title heading, we support the
1546 position and the amendments sought by Ngāti Toa by Ātiawa's presentation and
1547 do not seek further amendments, other than what's included in my speaking
1548 notes.
1549

1550 I thought it might also be helpful if I echo what Claire has said this morning and
1551 also reflected in my speaking notes, is it is Whaitua Kāpiti's intention to include
1552 our Te Mana o te Wai statement as objectives in the body of RPS, as Objective
1553 12(b) and 12(c) and that that is a collective expression from Whaitua Kāpiti.
1554

1555 Finally, Appendix 5, a further comment from me and also leads on from the
1556 discussion of Ātiawa this morning and what is stated in my speaking notes is
1557 that absolutely Ngā Hapū Ōtaki do not think it's appropriate for Whaitua Kāpiti
1558 Te Mana o te Wai objectives to be included in an Appendix.
1559

1560 Thank you. I am happy to take any questions or defer to Whaea Denise and Dr
1561 Aroha if they would like to present anything additional to that.
1562

1563 Chair: Thanks very much.
1564

1565 Spinx: Shall we continue to kōrero. I'm just wondering if my paper had been received
1566 yet?
1567

1568 Hapeta: Yes.
1569

1570 Spinx: We can assume similarly that that has been read. We just wanted to point out
1571 very briefly around the removal of that sheep/stock exclusion policy. We'll just
1572 sort of lower the bar further for no harm being done to the waterways. The
1573 identifying of Ōtaki River is the only significant river for beds nesting and

1574 foraging in their habitat etc. within our rohe. We weren't part of determining
1575 that significance criteria and our values haven't been incorporated in that
1576 assessment.

1577
1578 So, just by including only Ōtaki it means by default other waterways are not
1579 significant. That diminishes the values of those areas which we have not
1580 determined. We are hoping to have that opportunity in the future. As Mel
1581 mentioned we're going through Whaitua Kāpiti process and looking for build-
1582 up on the monitoring of things that is done by mana whenua and having our
1583 mātauranga Māori knowledge and expert advice included. It would be fabulous
1584 as we move [loss of audio – 02.18.30].

1585
1586 Chair: Dr Spinx, I think the sound has just cut off.

1587
1588 Spinx: ... quality in the future and working in Te Tiriti model together.

1589
1590 Chair: Thank you Dr Spinx. I will just interrupt. Just because the sound cut out for
1591 about fifteen seconds, but we can hear you again. Sorry about that. We didn't
1592 want to miss anything. Please absolutely continue, but I think that these
1593 particular provisions that you're talking about now, and we are very happy to
1594 listen, because it's all about te taiao and protecting it, but I think these refer to
1595 provisions in the Natural Resources Plan?

1596
1597 Spinx: Is that separate to these ones?

1598
1599 Chair: The policies and things that we're looking at here, obviously they do flow
1600 through into the Natural Resources Plan. Very happy to take on-board the
1601 concepts and the points that you're making. Then we can see how they might
1602 apply in the context of the Regional Policy Statement.

1603
1604 Spinx: Ka pai, that's fine then. You do have the paper to read.

1605 [02.20.00]
1606 Chair: We do have your speaking notes in front of us, yes.

1607
1608 Spinx: Ka pai. Did you want to kōrero more Whaea just in regards to...

1609
1610 Kara-France: Tēnā koutou katoa e ngā rangatira o ngā hapū o Ōtaki. Nau mai, haere mai, ngā
1611 mihi nui, ngā mihi nui. I just want to acknowledge you all and acknowledge your
1612 presentation. Thank you.

1613
1614 I recall your last presentation that you gave was very in-depth which
1615 complements this particular kaupapa of Te Mana o te Wai. This morning in
1616 regards to the kaupapa and the kōrero and the mihi from Ngāti Awa ki
1617 Whakarongotai certainly encapsulates the collaboration and the
1618 whakawhanaungatanga of yourselves, Raukawa and Ngāti Toa o Rangatira in
1619 regards to the objectives and the expression of Te Mana o te Wai.

1620
1621 Just in conclusion, thank you for your presentation. I certainly acknowledge you
1622 all and kia ora.

1623
1624 Spinx: Tēnā koe.

1625

1626 Chair: Dr Spinx if there was anything further you wanted to add from your talking
1627 points please feel free.
1628

1629 Hapeta: Tēnā koutou. Just wanted to firstly thank you Mel. Then also in Mel’s paper she
1630 talks about the principles of Te Mana o te Wai, which we talked about that a lot
1631 in terms of our earlier presentation to you back in June I think it was, June or
1632 July. We dug down a little bit in terms of the Treaty House Model, which is
1633 captured in the first paper that Aroha has just referred to earlier; where that is
1634 apparent and in the forefront of any literature or imagery that’s been shared
1635 about Te Mana o te Wai and National Crown Policies. The treaty house should
1636 sit right there at the very front of such documents that says that whatever follows
1637 after this is in partnership with community, iwi and Crown. That then says that
1638 the principles of Te Mana Wai and it gives you confidence, all the readers.
1639 Anyone participating in those forums it gives them confidence that those
1640 principles are going to be upheld.
1641

1642 If I take a step back, because I’m not the technical person here – that’s certainly
1643 Mel and Aroha – but if you look at the purpose, when we talk about Te Mana o
1644 te Wai and the treaty house, whether a Te Tiriti House Model is being upheld.
1645 That’s been presented to GWRC. We do have good robust discussions on that,
1646 and with the Crown.
1647

1648 Then when the principles rollout, and we talk about the six principles for Te
1649 Mana o te Wai, it's a given in a partnership that they will be upheld and
1650 acknowledged and flow through all policy making. That flows through.
1651

1652 I think if we’ve got anything final to say, I think it's those key points that talk
1653 about what the partnership is really about, what are our arrangements with the
1654 Crown and GWRC is about. Then what as a partner we bring.
1655

1656 We bring that mātauranga Māori that is encompassed in those six principles on
1657 Te Mana o te Wai. I think where they’re upheld by anyone who engages in that
1658 environment then our wai will be looked after. Our mokopuna and our future
1659 generations won’t have to go looking for clean water, because it will be easily
1660 found.
1661

1662 We said last time, if we do no harm and we all follow those six principles then
1663 there won’t be any harm done. The waterways will continue to serve future
1664 generations. That has to be the focus for anyone who participates in this forum.
1665

1666 Tēnā koutou.
1667

1668 Paine: Tēnā koe Whaea. When we talk about the six principles of Te Mana o te Wai
1669 and as you say they’re implicit, so whether they’re there or not we need to follow
1670 them. There’s been a lot of discussion about whether they should be duplicated
1671 in the RPS since they are implicit. Is your position that they should be spelt out?
1672

1673 Hapeta: I would have to say yes. When I mentioned earlier about the principles of the Te
1674 Tiriti House and the principles of Te Mana o te Wai, there’s a hononga, there’s
1675 a link directly between what that good partnership would look like in these
1676 principles. It says, “Mana whakahaere.” There’s the first one, an example. The

1677 [02.25.00] power, authority and obligations of tangata whenua to make decisions that
1678 maintain, protect and sustain the health and wellbeing of and their relationship
1679 with freshwater. That shouldn't just be about tangata whenua, that should be
1680 about everyone who participates there. So, there's an example and that's just the
1681 first one.
1682
1683 I think it should be to the forward part of any policy papers that are written, and
1684 therein whatever flows, e honoranga tēnā ki ēnei me kī, tikanga, mō Te Mana o
1685 te Wai. I think that's uppermost in those papers and discussions, then it should
1686 follow through all remaining and all subsequent discussions and policies that
1687 flow out.
1688
1689 Paine: Thank you Whaea. We've had quite a lot of kōrero around the Treaty House
1690 Model from several submitters. Thank you for that. Kia ora.
1691
1692 Hapeta: Kia ora. Tēnā koutou.
1693
1694 Kara-France: Tēnā koutou e ngā rangatira. Just to confirm, we have your notes and your
1695 presentation that was given on the 31st of August 2023 in front of us – the
1696 kaupapa regarding Te Mana o te Wai. So, just to rest assured that we are viewing
1697 that in front of us right now. Kia ora.
1698
1699 Hapeta: Tēnā koe.
1700
1701 Chair: Whaea Denise, or Dr Spinx, or Ms McCormick – please, anyone who would like
1702 to answer this – in paragraph 16 of your evidence, and Ms McCormick I think
1703 this is your evidence statement, you say that Objective 12 as it's currently written
1704 represents a status quo where mana whenua are not in partnership with counsel
1705 to draft relevant provisions such as Objective 12. Can you talk a little bit more
1706 about that? Is it your hope that bringing in the two Objectives, which will be
1707 coming in, in a future change to the RPS, there's the Kāpiti Whaitua process
1708 which is under way. Is that where you're saying that the partnership and your
1709 iwi's reflection and upholding of Te Mana o te Wai will happen, and we're not
1710 there yet with Objective 12.
1711
1712 McCormick: Tēnā koutou. Yes. What I meant by that statement is from my perspective I don't
1713 think that drafting a significant policy such as Objective 12, which is giving
1714 expression to Te Mana o te Wai through this late end of the process, this
1715 Freshwater Plan change, this Schedule 1 Process, gives effect to principles such
1716 as mana whakahaere and it's not a true reflection of a partnership, with respect
1717 to Ms Pascall, when it's been drafted from the Reporting Officer's perspective.
1718 My view is that it's for mana whenua to express and the community to express
1719 what Te Mana o te Wai means at that objective level. That's clearly set out in
1720 the NPS-FM itself.
1721
1722 That's what I meant by representing the status quo where mana whenua are not
1723 in partnership with Council for such a significant objective.
1724
1725 I acknowledge that this is part of the hearing process itself, where drafting comes
1726 out and amendments are made, but I think when it comes to something which
1727 has that significance and it's really leading the direction on Te Mana o te Wai

1728 for those, for Te Awarua-o-Porirua, **Whanganui-a-Tara** [02.29.12] and
1729 Ruamāhanga.
1730
1731 From my view, and again it's for mana whenua, for those Whaitua to speak to
1732 that I think that's not a Te Tiriti partnership, which is why we've suggested the
1733 amendment for Objective 12 title, and then also the following future plan
1734 changes where we will include our expression through additional Objective
1735 12(b) and (c) I think was referred to this morning.
1736
1737 I'm not sure if Whaea Denise or Dr Aroha would like to add anything additional
1738 to that. Happy to let them speak to it as well, if they want.
1739 [02.30.00]
1740 Spinx: Just tautoko your kōrero Mel. Similarly different mana whenua, iwi, rohe.
1741 Having that ability to whakamana our kōrero and our perspectives and things
1742 like that is really, really important and is why we're engaging in that process.
1743 Tautoko what you've said there Mel.
1744
1745 Chair: Thank you. Just a quick question. Are there any timing, possibly cart before
1746 horse kind of things going on here? By that I mean the Ruamāhanga Whaitua
1747 process has been completed in conduction with the community and with
1748 yourselves. But, these objectives, these two objectives which you're proposing
1749 and which you've developed with Ātiawa, Ngāti Toa, they are going to come in
1750 later. They may be in turn further refined and developed as you're going through
1751 the Whaitua implementation process. Any issues with having the objectives
1752 coming after the Whaitua process has been completed?
1753
1754 McCormick: I guess when you're saying 'any issues' is that issues for Greater Wellington
1755 Regional Council or issues for the ART Confederation or for Whaitua Kāpiti?
1756
1757 While I'm not as closely involved with Whaitua Kāpiti as Claire and Dr Aroha,
1758 I think there is a timing issue, in which we're seeing through this process right
1759 now, is how do we implement parts of completed Whaitua, but that doesn't
1760 necessarily give effect. It can't give effect to work that hasn't yet been finalised
1761 and gone through a similar process. It does create in my view difficulties trying
1762 to review the S42A Report and amendments that are made and then trying to
1763 pre-empt what effects that would have on Whaitua Kāpiti when we haven't yet
1764 reached that point of concluding those, or letting that follow its natural course
1765 to understand what that effect would be.
1766
1767 I would personally see that as a cart and horse issue, but I'm not as closely
1768 involved in Whaitua Kāpiti and it's drafting as some of the others. That's my
1769 whakaaro on that. Hopefully that answers your pātai.
1770
1771 Chair: Yes thank you. I guess it's the structure, it's the process that we have isn't it. But,
1772 thank you for continuing to engage with it. We can see that there's timing issues.
1773 I think someone had talked about fragmentation of freshwater management. Just
1774 acknowledging that ideally things might have happened in a different sequence
1775 and be more sort of coordinated, but we are where we are.
1776
1777 Thank you. Any...
1778
1779 Kara-France: No Madam Chair, thank you, no more questions.

1780
1781 Chair: Commissioner Wratt, any questions from Whakatū, Nelson?
1782
1783 Wratt: Thank you Madam Chair. No further questions from me. Just to say thank you
1784 for coming to present and engage with our process. I appreciate you taking the
1785 time to do that. Kia ora.
1786
1787 Hapeta: Tēnā koe.
1788
1789 Chair: Actually, I'm so sorry, there was one final thing I wanted to ask Ms McCormick.
1790 Sorry to not have raised this earlier.
1791
1792 The relief that you are seeking on Policy FW.XXB, I think you had a concern,
1793 [02.35.00] and I think this concern was also shared by Rangtāne o Wairarapa, that the
1794 words "have regard to the Te Mana o te Wai statements" is not strong enough
1795 as a direction. I think the words "recognise and provide for" are more
1796 appropriate.
1797
1798 When we were talking to Ms Burns just earlier, the key point was "recognise
1799 and provide for" is written into the district and regional plan provision,
1800 FW.XXA and she was now comfortable that "have regard to" is appropriate
1801 terminology for the consenting direction in Policy B.
1802
1803 Would you still prefer that "recognise and provide for" is written into FW.XXB.
1804
1805 McCormick: I'm just trying to bring up the two changes now that you're speaking so I can
1806 provide a coherent answer.
1807
1808 I guess just off the top of my head now, and again it's kind of an issue of timing
1809 because these policies relate to the completed Whaitua and then are referring to
1810 the statements where they're held in Appendix, which we have also raised in our
1811 submission, or sorry my speaking notes.
1812
1813 What I would say is, I don't necessarily disagree with only changing FW.XXA
1814 to say "recognise and provide for" and then retaining the "have regard to" in
1815 FW.XXB. I think that the resource consent direction should still have to
1816 recognise and provide for Te Mana o te Wai statements, or expressions of Te
1817 Mana o te Wai. I believe that's the intent of the NPS-FM, is to have that level of
1818 consideration for having to provide and recognise those statements.
1819
1820 Again, I guess what I'm going back to saying is, Whaitua Kāpiti aren't providing
1821 a mana whenua/tangata whenua statement. It will be the statement for Whaitua
1822 Kāpiti and that will be an objective Policy 12(b) and (c). So, it's a little bit
1823 difficult to put those two together when perhaps they don't exactly sit in the
1824 planning framework as the same as the other ones perhaps; which is why I didn't
1825 actually request relief sought to change it. I just wanted to make the note here
1826 that for future plan changes to come, to give effect to Whaitua Kāpiti, that I don't
1827 think at this point resource consent should only have regard to however we
1828 articulate Te Mana o te Wai for Whaitua Kāpiti. I think they should be
1829 recognised and provided for, which I think more closely aligns with the NPS-
1830 FM and its intent.
1831

1832 Spinx: We would agree with that, and to maintaining that consistency. Again, it just
1833 helps to reinforce. Certainly in those consent areas there's an area of
1834 enforcement and concern. Maintain that similar wording. It's strong throughout.
1835

1836 Hapeta: Consistent.

1837

1838 Spinx: Consistent, yeah.

1839

1840 McCormick: If I may take the liberty of asking a pātai myself and not having heard Ms Burns'
1841 speaking notes this morning, and I guess a matter of this not being fair for me
1842 is, not understanding why there is the differentiation between when it's a
1843 resource consent you only need to have regard to it, but when you're writing the
1844 plan itself I understand why you must recognise and provide for that, and
1845 therefore the whakaaro may be, "Okay, we've considered that in the plan change
1846 writing, so therefore we only need to be having regard to it when you're actually
1847 doing the planning, writing or considering a resource consent." That doesn't
1848 come across clearly enough as to why that does have that, I guess, lower order
1849 consideration for my perspective.

1850 [02.40.05]

1851 That's just to add onto what I said. I don't think that's a pātai for you. [02.40.12].
1852

1853 Chair: Ms Pascall might want to address this in her reply. I think it stems from
1854 requirement in s.104 of the RMA. Another example of where you've got the
1855 structures and frameworks in which we're sort of working in. I absolutely
1856 understand the point.
1857

1858 Looking at FW.XXA, when it says "District and Regional Plans should include
1859 objectives and other methods to give effect to Te Mana o te Wai." The two
1860 objectives that you've developed with the other iwi, which are going to be
1861 coming in, in the future change to the RPS, if they do sit as separate objectives
1862 in the RPS and they're not mana whenua/tangata whenua statements like the
1863 three iwi, Rangtāne o Wairarapa, Kahungunu and Taranaki Whānui, that's how
1864 they have chosen to express what Te Mana o te Wai means to them. But, as I
1865 understand it, your approach is different. There are these two objectives which
1866 you've been developing and you would want to see those come into the RPS in
1867 the future.
1868

1869 Have I understood that right?

1870

1871 McCormick: We would like the objective, I think it's (1) and (2) in the notes that Claire has
1872 shared this morning, they would be for example Objective 12 (b) and (c) in the
1873 Regional Policy Statement.
1874

1875 Chair: From a planning perspective, it would be interesting to get Ms Pascall's view. It
1876 is this very point we were talking about. You've got the "recognise and provide
1877 for" or "give effect to the lower order instruments". Regional District Plans have
1878 to give effect to these objectives in the RPS. That's the two objectives you were
1879 talking about.
1880

1881 But, then there's the mana whenua/tangata whenua statements of Te Mana o te
1882 Wai. If they're not written as objectives is there a different weight and

1883 consideration given to them in the cascade of considerations. It is part of mana
1884 whakahaere, for each iwi to determine how they would like that to be expressed?
1885

1886 McCormick: Aē. If I may make a comment on that just quickly, and I will leave it for Ms
1887 Pascall to answer your pātai. Again, for those mana whenua who have completed
1888 their Whaitua processes, and only knowing off my head, and I can bring up the
1889 document now for myself to look at, is that some of the content within those Te
1890 Mana o te Wai statements are written as objectives. I think quite clearly they are
1891 articulated as a planning objective would be articulated. I haven't looked at all
1892 of them, but some of them that I quickly referenced earlier when I was thinking
1893 about this are articulated as an objective.
1894

1895 I will leave that there, but that's what I'm trying to say.
1896

1897 Chair: Thank you. It might be Ms Pascall has some further points to make in her reply
1898 on this. Unless there is anything you would like to respond to Ms McCormick?
1899

1900 Pascall: I did just want to acknowledge that what we have heard this morning around
1901 [02.45.00] there being a timing issue, and that in no way is there an intention that certain
1902 mana whenua are excluded at all. I did just want to acknowledge that we're in
1903 an awkward space at the moment with some Whaitua having been completed
1904 and others not; and also that because of the process we're in that this redrafted
1905 objective has come in – that perspective of it being a bit late in the piece. That's
1906 the nature of the process.
1907

1908 I'd probably just want to say that it doesn't necessarily mean that when future
1909 changes are made to bring in other statements that that objective couldn't be
1910 amended to reflect those statements. I do just want to make that point for the
1911 submitter's benefit in particular.
1912

1913 Chair: Thank you Ms Pascall. Just that point about if some iwi have statements because
1914 that is what they want, and other iwi want to have objectives only as their
1915 expression of Te Mana o te Wai, again in this framework we're working in are
1916 there any... not disparities but unintended consequences for anybody.
1917

1918 Pascall: Off the top of my head the one area that could be (and I would need to probably
1919 think about this and come back in reply, but thinking about it on the fly here)
1920 those two new policies I've recommended, which specifically refer to the
1921 statements. I think there would just need to be something thinking about;
1922 because that could be read as excluding those who have chosen not to provide a
1923 statement. So, that's something to think about I think.
1924

1925 Chair: Thank you Ms Pascall. You have far better articulated what I was trying to
1926 explore. Thank you. I'm glad that you picked up the point. Thank you.
1927

1928 Ms McCormick, anything further? Dr Spinx or Whaea Denise, anything further
1929 that you would like to share with us?
1930

1931 Spinx: Probably just one, and then if you want to finish off for us Whaea. I think Mel
1932 and myself and no doubt Claire around the freshwater management units within
1933 our Whaitua Kāpiti being based on those catchments, tributaries and things like
1934 that, and along with Council be showing the evidence of why that sort of

1935 direction has been included; but making sure that any of the changes that are
1936 made now provide for that in the future would be really, really important for us.
1937

1938 Hapeta: Kia ora Aroha. Kia ora Ms Pascall. It's a really good question. I'm just sitting
1939 here with Aroha thinking, before we get back to the final hearing in 2024 we
1940 should think about when drafting our submissions about whether we think these
1941 things should be statements or objectives. That's a really good question. We're
1942 sitting here pondering on that now thinking, 'Yeah, if we had the time to have a
1943 far wider discussion with our people and delve into that,' in terms of in the past
1944 where perhaps it's been a statement and they haven't been taken as seriously
1945 perhaps as we would have hoped. So, when we write something now it needs to
1946 be an objective perhaps, where it is intended that that will be achieved.
1947

1948 Tēnā koutou. Thank you for that.
1949

1950 Chair: Kia ora. Thanks very much. Really great to see you all again. We wish you a
1951 very nice afternoon.
1952

1953 We are now at the lunch break. We have heard that Te Rūnanga o Toa Rangatira
1954 will not be attending this afternoon, so we'll take a slightly longer break and we
1955 will start back at 1.40pm. Thanks.
1956

1957 [Break taken – 02.49.25]
1958

1959 **Winstone Aggregates**
1960

1961 Chair: Welcome to this afternoon's session for the Te Mana o te Wai Freshwater
1962 Hearing. Welcome. We have just one submitter this afternoon. Welcome to the
1963 team from Winstone Aggregates. Ms Tancock you've presented to us before but
1964 we'll do some quick introductions so you know who we all are, and I will also
1965 ask the Council (I was going to say team) representative in the room to also
1966 speak or the officer, to introduce yourself.
1967 [02.50.05]

1968 Kia ora. Welcome. Ko Dhilum Nightingale tōku ingoa. I am a Barrister at Kate
1969 Shepherd Chambers and Chair of the Part 1 Schedule 1 and the Freshwater
1970 Panel. I live in Te Whanganui-a-Tara, Wellington. Welcome to the hearing.
1971

1972 Paine: Kia ora koutou. My name is Glenice Paine. I'm an Environment Court
1973 Commissioner and I am on both panels. Thank you.
1974

1975 Kara-France: Kia ora koutou katoa. Ko Ina Kumeroa Kara-France tōku ingoa. Ko Waikato
1976 Tainui, ko Ngāti Koroki Kahukura, ko Ngāti Tipa, ko Ngāti Koata, ko Rangitoto
1977 ki te tonga. Ko Rongomaiwahine, ko Kahungunu, ko Ngāti Pahauwera, ko Ngāti
1978 Popoia, ko Mangaharuru [02.50.48], ko Ngāti Whakaari, ko Ngāti Ruruku, ko
1979 Ngāti Popoia, ko Ngāti Kahungunu. Ko Ngāti Tuwharetoa, ko Ngāti Te Rangi,
1980 ko Te Ati Haunui-a-Pāpārangī, ko Tūmango, ko Tūpoho, ko Paerangi. Ko Ngā
1981 Rauru, ko Ngāti Hinewaiatarua. E ngā whānau, e ngā hapū, e ngā iwi i ngā
1982 takiwā, nō reira, tēnā tātou katoa.
1983

1984 Independent Hearing Commissioner on both panels. I am also a board member
1985 on the New Zealand Conservation Authority, as part of the board I am also the
1986 liaison for Auckland, Te Tai Tokerau and Te Hiku o Te Ika Far North

1987 Conservation Boards as their liaison. I come from WSP. I am the former Senior
1988 Advisor within Transport & Planning and Māori Business Services. I am no
1989 longer with them and I am a full-time Independent Hearing Commissioner.
1990
1991 Nau mai haere mai. Welcome. Honoured to have you here. Kia ora.
1992
1993 Wratt: Tēnā koutou katoa. Ko Gillian Wratt ahau. I'm Gillian Wratt joining today from
1994 Whakatū, Nelson which is where I'm based and where I haven't been able to get
1995 out of, to Wellington, courtesy of fog in Wellington Airport the last few days –
1996 despite three attempts at getting to be at the hearing in person. I have
1997 endeavoured to see you in person. Apologies I am not there.
1998
1999 My background is in the science sector. I am an Independent Hearings
2000 Commissioner. I was initially imported onto the Freshwater Panel and now on
2001 both panels for the hearing. Thank you for your submissions. I look forward to
2002 hearing your concerns today, which obviously we have read in terms of your
2003 submissions and evidence. Kia ora.
2004
2005 Chair: Thank you Commissioner Wratt. Ms Pascall?
2006
2007 Pascall: Kia ora. Kate Pascall, Reporting Officer for this topic of Freshwater Te Mana o
2008 te Wai.
2009
2010 Chair: Thank you. We have read your submission from Winstone Aggregates and we
2011 have read also your legal submissions Ms Tancock and your statements of
2012 evidence. I'm sorry, I don't know if my notes are up-to-date. We'll pass over to
2013 you for introductions. We also have speaking notes, which I'm sorry I haven't
2014 had a chance to read yet. I'm sure you can take us through those, and in particular
2015 the key points of difference between what you're seeking and the provisions in
2016 Ms Pascall's rebuttal evidence.
2017
2018 We'll hand over to you, thank you.
2019
2020 Tancock: Thank you Commissioner Nightingale. In terms of introductions I am Pherne
2021 Tancock and I appear as counsel on behalf of Winstone Aggregates. I also appear
2022 here with Mr Heffernan and Ms Clarke.
2023
2024 In terms of the summaries that have been provided, the presentation will provide
2025 an overview of the legal submissions filed by Winstone's and sets out
2026 Winstone's position following the Officer's response and amendments now
2027 proposed to Hearing Stream Five, which have resolved many of the concerns
2028 that we had.
2029
2030 I will just say that the Officer's report didn't actually deal with Winstone's
2031 specific relief in one respect, and so a lot of the material was in relation I guess
2032 'guess work' on what Council's response might be to that.
2033
2034 Now we've had the response we have tailored the submissions and the
2035 presentation to that. Apologies it was a little bit late on the hearing notes, but
2036 I'm hopeful they will be useful.
2037

2038 Chair: Sorry, just before you start, can I just check. If we had any questions for Mr
2039 Keesing.
2040 [02.55.00]
2041 Tancock: Unfortunately Mr Keesing is unavailable this afternoon and was travelling. If
2042 you do have questions for Mr Keesing or Dr Keesing I am able to make him
2043 available at another time. Alternatively if you've got written questions I could
2044 get him to respond to those.
2045
2046 Chair: Thank you.
2047
2048 Tancock: Winstone's has filed expert evidence from Mr Heffernan, Dr Keesing and from
2049 Ms Clarke.
2050
2051 In terms of the Allocation between FPP and P1S1 Winstone agrees with the
2052 recommendations of the Officer in that regard.
2053
2054 The role of the RPS in the RMA context is dealt with in my legal submissions.
2055
2056 I just wanted to make a couple of points there. First of all, that the quarrying
2057 activities and clean filling of overburden will inevitably result in removal of
2058 vegetation and impacts on water. The aggregate industry operates in an
2059 increasingly difficult regulatory environment. Winstone's consider that the RPS
2060 strikes the wrong balance by focusing on protection and ignoring use; and that's
2061 been a consistent theme in Winstone's submissions across the plan.
2062
2063 Unfortunately, Chapter 5 is a primary example of that. The provisions do very
2064 little (and I do acknowledge that Ms Pascall has made a number of amendments
2065 that make it a lot better) but they do little to reconcile the need for a secure and
2066 quality supply of local aggregate with the need to protect freshwater values.
2067 That's sort of our focus in the presentation today.
2068
2069 I will just note that my legal submissions on Chapter 5 (paragraphs 6.1 - 6.9)
2070 provided further basis for the role of a RPS as providing policy recognition and
2071 clear direction to the way in which corresponding resource management issues,
2072 (for example protection) is reconciled with use, and how these are to be
2073 addressed.
2074
2075 I will just refer the Panel to the recent Supreme Court decision in Port Otago
2076 which has come out since we spoke about this last time. The Supreme Court
2077 confirmed that any conflict between the NPS policies should be dealt with at the
2078 RPS and Regional Plan level, as far as possible. The reason that it found for that
2079 was to provide as much information as possible for people to determine whether
2080 it's worth applying for a resource consent for a particular project and how a
2081 resource consent application would be approached.
2082
2083 I think I was trying to make that point in my submissions on the opening of the
2084 plan and subsequently the Supreme Court has confirmed the role of the Policy
2085 Statement in doing that.
2086
2087 The remaining issues in dispute for Winstone and the focus of the presentation
2088 to the Panel is the amendment of Policies 18 and 40 to provide for recognition

2089 of the consent pathways for quarrying and clean filling, which is provided for in
2090 Clause 3.22 and 3.24 of the NPS-FM.
2091
2092 It objects to the narrow scope in Policy 18 (n) and Policy 40 (o) which provides
2093 that the effects management hierarchy is only available to piping, straightening
2094 or concrete lining of rivers. In Winstone's view it doesn't give effect to NPS-
2095 FM-3.24 Rivers. And, also just addresses the Officer's view that the relief sought
2096 by Winstone in respect of those matters is out of scope.
2097
2098 Turning to Policy 18, Policy 18 provides policy direction on the policies, rules
2099 and methods that should be included in Regional Plans for the Wellington
2100 Region. In Winstone's submission, the current wording of Policy 18 restates
2101 Policy 6 of the NPS-FM. There is no further loss of extent of natural inland
2102 wetlands, and their values are protected and restored, and their restoration is
2103 promoted.
2104
2105 In Winstone's submission this doesn't give effect to the qualifier in Clause
2106 3.22(1) of the NPS which provides a mandatory direction. I have set that out for
2107 you there, that: Every regional Council must include the following policy (or
2108 words to the same effect) in its regional plan: and the loss of the natural inland
2109 wetlands is avoided, their values are protected, and their restoration is promoted.
2110
2111 In my submission, "except where" is crucial. Then it says: the loss of extent or
2112 values arises from the following. It goes on to list a number of exceptions
2113 including aggregate and clean-filling.
2114
2115 Policy 18 is silent on the exceptions set out in Clause 3.22 that Regional Plans
2116 must include specific wording that provides for the potential loss of extent or
2117 values of natural inland wetlands where certain circumstances are met.
2118 [03.00.00]
2119 In Hearing Stream One, Commissioner/Chair Nightingale we had a discussion
2120 around whether those policies actually applied to the RPS or not. I think you
2121 made the point at the time that it's intended to apply for the Regional Plan.
2122
2123 I have had a chance to consider that and I would like another bite at that answer.
2124 In my view Policy 18 seeks to dictate the content of Regional and District plans.
2125 It follows that it must also refer to the matters set out in Cl.3.22. I think that was
2126 probably the link that was missing. Failure to do so in my submission would
2127 expressly make it contrary to the NPS-FM direction.
2128
2129 If the RPS wants to set out the matters that are going to be provided for in
2130 regional plans and district plans in relation to the NPS needs to make sure that
2131 it's doing so in a manner that's consistent with that direction.
2132
2133 In a similar vein, 'Policy 40 provides that when considering an application for
2134 resource consent, the Regional Council must give effect to te Mana o te Wai and
2135 have particular regard to,' again is inconsistent with the direction in Cl. 3.22(2)
2136 and (3). Those aspects of the NPS are the clauses which deal with the specific
2137 requirements for resource consents for activities that are provided for as those
2138 exception pathways in 3.22. Again those are missing from Policy 40.
2139

2140 Again Policy 40 sets out the matters that the Regional Council must consider
2141 when it's looking at a resource consent application. So, while those clauses are
2142 supposed to be in a regional plan it also follows if the RPS is going to direct
2143 specifically what should be considered at a Regional Plan resource consent
2144 stage, that it is giving effect to those policies.

2145
2146 The loss of river and extent of values, Winstone's is concerned about the NPS
2147 rivers, clause 3.2, is given effect to in Policy 18 and 40, with the current wording
2148 of Policy 18(n) says, 'avoiding the reclamation, piping straightening or concrete
2149 lining of rivers unless, there is a functional need for the activity. Then it goes
2150 onto apply the effects management hierarchy.

2151
2152 In my submission this is narrower than what is envisaged in clause 3.24 of the
2153 NPS-FM2 which allows use of the effects management hierarchy where there is
2154 a functional need in situations where there is a 'loss of river extent and values,'
2155

2156 Winstone's do not consider that there is evidential basis to justify the narrowing
2157 of that application. Council certainly doesn't appear to have provided any
2158 evidence to support that.
2159

2160 Dr Keesing has discussed the difficulties associated with doing this in para 4.8,
2161 4.11 - 4.13 of his evidence; and I do recognise that obviously Dr Keesing was
2162 commenting on the Officer's report version and the wording of the provisions
2163 have changed somewhat. So, there is a slight disconnect in terms of what he is
2164 saying and the situation that we are submitting on now, but they are still valid
2165 concerns. His evidence has highlighted the difficulties that would occur using
2166 the Belmont Quarry's current operations as a bit of a test case for that.
2167

2168 Winstone's seek that Policy 18 be reworded to refer to a range of activities that
2169 may potentially result in the loss of river extent and value which is consistent
2170 with Cl.3.24 of the NPS.
2171

2172 Again, similar relief is sought for Policy 40(o) for the same reason. And, again
2173 that clause 3.24 in rivers does provide for further rules that need to be put into
2174 regional plans when you're looking at the resource content context, and because
2175 Policy 40 is directing or dictating what needs to be considered in a regional
2176 resource consent, in my submission that's appropriate that both of those policies
2177 do give effect to the NPS.
2178

2179 Now moving onto the recognition in the NPS-FM February update. I understand
2180 you have probably read far more about the February update than you ever
2181 imagined you would need to.
2182

2183 For Winstone's the February update was really important. It provided a vital
2184 pathway through a protect and no net loss of inland natural wetland policy, and
2185 provided use of land for quarrying and clean filling where there would be
2186 damage to natural inland wetlands, and management of the effects through the
2187 hierarchy.
2188

[03.05.00]

2189 The RPS doesn't currently provide for these pathways - meaning that the
2190 protection provided is absolute in the RPS, but we understand that it does sit
2191 outside in the NPS and the NES. My question is, why would you do that if you're

2192 implementing an RPS at the moment? Someone should be able to look at the
2193 document and understand what the situation is and not have to try and reconcile
2194 a national policy direction and a regional policy statement if you don't have to.
2195 We do sometimes, but I don't think in this position we have to.

2196
2197 The relief sought by Winstone's to provide for those pathways is necessary to
2198 ensure that an appropriate balance is struck between protection of freshwater
2199 and natural inland wetlands and the use of that land where valid exceptions
2200 apply.

2201
2202 Winstone's isn't seeking anything more than what the NPS and what the
2203 Government and national direction provide for. It's simply asking that that
2204 position is reflected in the RPS.

2205
2206 As alluded to before, the Officer's report was silent on the relief sought by
2207 Winstone's, so counsel had to guess at the reasons for that. The Officers now
2208 acknowledge that there was a lack of consent pathways for quarrying activities
2209 but has rejected the relief and has referred to the Hearing Stream 1 response,
2210 where the author considered Winstone's submission is out of scope.

2211
2212 I have set that quote out for you there, so we don't all have to go to the Officer's
2213 report and find it.

2214
2215 In summary, Council did not consider the access to mineral aggregate resources
2216 as an issue to be addressed in Plan Change 1. The Officer went on to say: "The
2217 operative RPS already includes explicit recognition of minerals, including
2218 Objective 31 and how those mineral resources are utilised.

2219
2220 Then it goes on to say, "As Change 1 proposed no changes to these provisions
2221 amending the Soils and Minerals chapter is proposed" and Winstone's
2222 submission on the whole thing is out of scope.

2223
2224 Winstone's obviously disagrees with that and thinks that perhaps either the
2225 submission has been misinterpreted or the Officer's reliance on the author's
2226 report in the earlier chapter is misguided.

2227
2228 Winstone's initial original submission points and the relief it seeks by
2229 amendments to Policy 40 and Policy 18, are clearly articulated and within scope
2230 of PC1.

2231
2232 Going back to Winstone's original submission, those points were very clearly
2233 articulated. For example, it sought that: "the relief sought, amend the RPS to
2234 provide recognition and protection for significant mineral resources in a way
2235 that's consistent with the policy framework in the NRP and consistent with the
2236 NPS-FM update. When those documents are confirmed Winstone's would be
2237 happy to work with Council to ensure Greater Wellington accurately and
2238 appropriately reflect the NRP policies in the RPS.

2239
2240 There is a section in Winstone's initial submission of the NPS-FM where it notes
2241 that the plan change introduces a number of new policies aimed at implementing
2242 the NPS-FM which don't properly give effect to it. In particular it appears that
2243 the RPS does not implement section 3.22 of the NPS-FM which relates to natural

2244 inland wetlands and which every regional council needs to give effect to in their
2245 regional plan.

2246
2247 The RPS should provide consistent direction to what is required.

2248
2249 Then again the relief asks that the RPS amendments are updated to reflect the
2250 direction sought in those documents.

2251
2252 Similar submissions are made on Policy 18. Amend the policy to more
2253 accurately reflect the requirements of the NPS-FM and the NES. And, also
2254 Policy 40. You get the idea.

2255 [03.10.00]

2256 Winstone's original submission in relief to Policy 18 and 40 are clearly
2257 appropriate and within the scope. The wording proposed by Ms Clarke should
2258 be adopted for the following reasons. I have just set out there some observations
2259 about scope. Firstly, that the plan change is seeking to make significant broad
2260 changes to the management regime. Policy 18 and 40 as notified are essentially
2261 rewritten to respond to the NPS-FM with specific wording to protect natural
2262 inland wetlands and values; and that's consistent with the direction in s.61.

2263
2264 The relief sought by Winstone's in its written submission addresses and
2265 responds to that relief, to the proposed alteration of the management regimes in
2266 a manner aligned with the expected NPS-FM update and is consistent with an
2267 integrated management approach.

2268
2269 My submissions did deal with clear water and motor machinist tests. In my
2270 submission, Winstone's written submission is clear, it's sort of pathway to be
2271 included in line with the exposure draft for quarrying and clean-filling and it
2272 hasn't come out of left field.

2273
2274 The plan is also, and probably most importantly, seeking to give effect to the
2275 NPS-FM and the need to implement it was addressed by the S32 Evaluation
2276 Report.

2277
2278 Furthermore, the amendments that are being sought to Policy 18 and 40 are
2279 required to give effect to the wording in the NPS-FM. That's in accordance with
2280 the requirements in s.55.

2281
2282 Winstone's remain also of the firm view that the most appropriate location for
2283 the RPS to make provision for these consenting pathways is in the Policies 18
2284 and 40 of the Freshwater Chapter that introduces provisions to protect natural
2285 inland wetlands.

2286
2287 With respect to the comment by the Officer, those provisions don't belong in the
2288 soil and minerals chapter. This is to some extent confirmed by the wording of
2289 clause 3.22 of the NPS.

2290
2291 No-one had ever asked that they would be cut up and I think it's very important
2292 that they are addressed as a suite, to make sure that they operate in a way that
2293 was intended.

2294

2295 Lastly, just in case that wasn't sufficiently compelling, it is acknowledged that
2296 the Freshwater Plan does have powers and respective scope to make
2297 recommendations that are outside of the scope of the submissions if it felt that
2298 was necessary.

2299
2300 Moving to 6.3, Winstone's do not support GWRC's alternative approach either,
2301 which is to wait and see whether it will notify a further change to give effect to
2302 another raft of NPS-FW update provisions.

2303
2304 In terms of some history, Winstone's has waited thirteen years for the last RPS
2305 to actually map regionally significant quarries, which it was told in those
2306 processes that there would be a subsequent plan change to do that, and obviously
2307 that hasn't been an important aspect on the agenda.

2308
2309 I appreciate that there is a lot going on in the regulatory environment at the
2310 moment in the NPS does need to be given effect to, but we wouldn't want that
2311 to be lost in the noise.

2312
2313 The aggregate industry, as described by Mr Heffernan, has suffered considerably
2314 as a result of the lack of the pathway and there is no benefit to deferring this
2315 even further.

2316
2317 I have set out some recent case law, another case in Balmoral Developments v
2318 Dunedin City Council, issued earlier this year, which in response to a question
2319 from the Chair last time we spoke about this issue, was whether they Panel could
2320 give effect to or was required to give effect to an update to the NPS which
2321 occurred after notification of provisions.

2322
2323 The court in that case considered the highly productive land NPS and the answer
2324 was, yes, it was required to do so.

2325
2326 The other significant decision that's come out since we discussed this is the High
2327 Court decision in Southern Cross Healthcare and that was an appeal to the High
2328 Court on an error of law from an Environment Court Appeal. In that case the
2329 issue before the court was whether the Environment Court should have given
2330 effect to the NPS-UD that had come out while the appeals on the decisions were
2331 afoot. Justice Campbell provides some useful observations in that case.

[03.15.00]

2332
2333 Justice Campbell found in that case that both the court, and in this case the Panel,
2334 have an obligation to consider the NPS-FW update where there is scope to give
2335 effect to it now as part of the current process. In my submission there is scope.

2336
2337 I have set out four key points, which I say are relevant to the RPS in response to
2338 that case. Clause 4.1 of the NPS imposes an obligation on Councils to implement
2339 an NPS as part of a plan change to the extent practicable.

2340
2341 The Court in that case found that it was "reasonably practicable" for when you
2342 are hearing an appeal, and in this case I think when you're hearing an appeal on
2343 a plan change, or a plan change for the court or the Panel to give effect to the
2344 NPS-FM in that situation.

2345

2346 The court also drew attention to the non-exhaustive list of councils “must do”
2347 to give effect to objectives and policies of clause 3.1 NPS. The court dealt with
2348 NPS-UD and in this case is very similar wording to its counterpart which is
2349 clause 3.1 NPS-FM. They found that the specific directions do not limit the
2350 general obligation to give effect to policies and objectives of an NPS as part of
2351 a plan change.

2352
2353 Lastly, the High Court found it was irrelevant that the Council was engaged in
2354 separate and broader plan changes to give effect to in that case the NPS-UD,
2355 because the other processes do not limit the obligation to give effect to the NPS
2356 as part of this process.

2357
2358 I think they’re highly relevant to the Panel’s consideration.

2359
2360 While it is accepted that the obligation is to give effect to the NPS it would be
2361 limited by scope of a plan change. In Winstone’s submission giving effect to the
2362 NPS-FM via this plan change is not one of those situations. It’s clearly within
2363 scope.

2364
2365 In the event that the panel chose not to give effect to those NPS directions, which
2366 I think would be a difficulty in itself, there’s just a word of caution that the RPS
2367 shouldn’t be left out of step with the higher documents for longer than it needs
2368 to be. There’s a risk that such approach over-emphasises the protection adopted
2369 into lower order planning documents and apply to resource consents.

2370
2371 This is particularly pertinent in terms of the mischief alluded to by Council for
2372 Wellington Water earlier in the week, in relation to the Regional Council NRP
2373 Plan Change 1 Process which has just kicked off.

2374
2375 Also, it just causes entirely unnecessary corresponding uncertainty risk and cost
2376 to everyone that has to use this plan, including the aggregate industry, and the
2377 other beneficial users recognised in clause 3.22 of the NPS-FM; and in addition
2378 the community that rely on those uses.

2379
2380 Turning now to the fact that the Council has chosen to include aspects of the
2381 NPS-FM including the update to implement the RPS now, while ignoring and
2382 refusing to give effect to other aspects of it, it’s not appropriate for the Councils
2383 to pick winners or pick and mix what parts of the NPS-FM it would like to
2384 implement. In my submission that’s not the point of a national policy direction.

2385
2386 One example of this is the Officer’s approach. I do appreciate that this may be
2387 due to the mis-reliance on the earlier Reporting Officer’s conclusion around
2388 scope: is the Officer’s approach at paragraph 94 to submissions seeking Policy
2389 14(m) be amended to be consistent with “and provide a pathway for urban
2390 development activities within natural inland wetlands arising from the
2391 pathway.”

2392
2393 In relation to the urban development request, which is exactly the same was what
2394 Winstone’s are seeking, same provision, same NPS, the Officer agrees that
2395 clause (m) should be amended to reflect this recognition of urban development
2396 activity through the national direction. I have set out the supporting reasons

2397 provided by the Officer for the s32 evaluation. I whole heartedly agree with the
2398 evaluation that the Officer provides there. Says that the amendments are
2399 [03.20.00] effective as they ensure consenting pathways are provided for urban
2400 development. The change implements national direction and the benefits and
2401 costs of this have already been assessed.

2402
2403 The amendments are also highly effective as they remove potentially high
2404 regulatory burden for urban development. They will have social and economic
2405 benefits in terms of removing the barriers for urban development while
2406 continuing to have moderate environmental benefits. The amendments provide
2407 clarity about what the regional plan must manage in relation to urban
2408 development, relative to territorial authorities. This reduces costs associated
2409 with duplicated effort and interpretation issues.

2410
2411 With respect, the reasons given there could equally apply to the Winstone's
2412 request that Greater Wellington give effect to the National Policy direction for
2413 quarrying and clean-filling in clause 3.22 and 3.34 of the NPS and policies 18
2414 and 40.

2415
2416 It's unclear why Policy 14 requires amendment to give effect to the NPS and to
2417 provide a consenting pathway for urban development, but Council is unwilling
2418 to consider the corresponding NPS pathways for clean-filling and quarrying
2419 activities– these have the same status and recognition in the NPS-FW and are
2420 part of the same suite of exceptions and mandatory direction in clause 3.22.

2421
2422 The Officer has also refused similar pathways for beneficial uses sought by
2423 Meridian and Wellington Water but their concerns do not appear to have been
2424 dismissed on scope grounds.

2425
2426 In terms of relief sought by Winstone's, Ms Clarke sets out amendments in her
2427 evidence to Policies 18 and 40 to provide a pathway for aggregate extraction and
2428 clean-filling, (and other beneficial uses) and they properly address clause 3.24.

2429
2430 In my submission, these are the most appropriate place and recognise these
2431 pathways in use, not the Soils and Mineral Chapter, and they will give effect to
2432 the NPS-FM.

2433
2434 Those are my submissions.

2435
2436 Chair: Thank you Ms Tancock. That was really clear. We appreciate the summary.
2437 Thank you.

2438
2439 I wonder, shall we let you finish all of your presentations and then we can come
2440 to questions?

2441
2442 Tancock: Yes, that would be great. Mr Heffernan.

2443
2444 Heffernan: Kia ora tātou. Ko Te Mata te maunga, ko Tukituki te awa, nō Heretaunga ahau,
2445 ko Piripi Heffernana tōku ingoa. I am Phil Heffernan. I am a Principle Planner
2446 and Project Manager with Winstone's. I am here today to give a bit of colour
2447 and overview of the corporate position on Winstone's.
2448

2449 While Counsel was talking I thought it would be useful to say the team I sit in,
2450 being the environmental team, we also have a lot to do with the project
2451 management in the early stages of a lot of the quarries around the country. While
2452 a lot of today what we are dealing with is clearly in the environmental space,
2453 some of the stuff I'll cover does say how the hard issues that the quarry industry
2454 has faced and the aggregate industry around some of these issues. So, while
2455 again it's environmental, we do see the early stages of when we are looking at
2456 where a quarry is, the due diligence and all those type of things. It probably has
2457 been quite covered in some of the evidence I have given today.

2458
2459 I just want to also cover off some of the experience that we've had before the
2460 update to the NPS-FM and then post the '23 update earlier this year. The
2461 challenges by the lack of recognition for quarrying in the current draft, and also
2462 that wait and see approach that counsel covered around "Okay, we'll come back
2463 and cover this at a later stage". The perceived imbalance between the RPS with
2464 environmental protection and the resource allocation where we sit; and the
2465 absence of a robust cost benefit analysis concerning the freshwater provisions
2466 of the RPS.

2467
2468 Winstone's as you well know is the largest manufacturer distributor of aggregate
2469 in the country. We have a number of quarries in the wider Wellington area,
2470 Belmont being the biggest, Ōtaki and Petone Quarry.

2471
2472 The importance of aggregates in the Wellington region cannot be overstated.

2473
2474 Without the aggregate industry, it's vital component in construction, road
2475 construction, building projects, infrastructure. All these things need aggregate.
2476 There is no alternative.

2477
2478 The aggregate industry often faces challenges in consenting process for
2479 requiring of resources. Winstone emphasises the need for local government to
2480 create a planning framework that recognises the significance of aggregates,
2481 streamlines the consenting process, and safeguards quarry resources from
2482 sterilisation and reverse sensitivity effects.

[03.25.00]

2483
2484 Winstone recognises that its aggregate extraction and associated clean-filling of
2485 overburden by its nature does result in adverse effects to the environment, and
2486 not all of these can be avoided.

2487
2488 It seeks to carry out its activities as sensitively and as sustainably as possible,
2489 and to manage adverse effects.

2490
2491 The NPS-FM update introduced a tailored consenting pathway for quarrying and
2492 clean-filling activities. The inherent nature of quarrying necessitates operations
2493 to be situated where the resources are located. This is one of the key points that
2494 we can't pick and choose where the resource is. The resource is where it is.

2495
2496 Absence of a designated pathway under the NPS-FM as published in 2020 risked
2497 sterilising vast tracts of New Zealand land for aggregate and mineral extraction,
2498 which in turn threatened the sustainability and growth of the industry.

2499

2500 The lack of a specific consent pathway, prior to the 2023 update, had a far-
2501 reaching negative impact on the quarrying industry. This was seen in the
2502 operational hurdles faced by existing sites and the challenges in identifying and
2503 securing future sites.

2504
2505 The regulatory environment was uncertain and restrictive, which hampered not
2506 only the strategic planning but also the daily operations of quarrying.

2507
2508 Winstone Aggregates faced substantial adverse effects following the
2509 implementation of the NPS-FM. A specific example I want to bring up is Flat
2510 Top Quarry, which is in Auckland unfortunately and not in Wellington. An
2511 application was submitted in September 2020 to Auckland Council and was
2512 declined guided by ecologist's advice to Auckland Council.

2513
2514 According to the terminology in the NPS-FM at the time, which had only just
2515 been released, a minor wet area within the property was classified as a 'natural
2516 wetland' consequently designating the proposed expansion as a 'prohibited
2517 activity.'

2518
2519 Under the regulatory environment both prior to the original 2020 NPS-FM and
2520 following its 2023 update—which included a specific consenting pathway for
2521 quarrying—the application would have proceeded.

2522
2523 The rejection of Flat Top Quarry's expansion is illustrative of the broader
2524 operational setbacks faced by Winstone Aggregates.

2525
2526 The lack of a clear regulatory pathway meant that essential activities were
2527 embroiled in a complex and uncertain consenting process. This not only delayed
2528 crucial projects but also incurred additional operational, consultant and legal
2529 costs.

2530
2531 The overall impact of the timing of that and the regulatory issues was an over 3-
2532 year delay to the Flat Top Quarry expansion project. The consenting process for
2533 this project has now only restarted. Clearly the update happened in 2023 earlier
2534 this year, but once that started then there was a few months delay and as a team
2535 we go, "Okay we can now have a consenting pathway, now we're gearing up,
2536 now we've got to get our consultants back geared up, they've got to update their
2537 reports, and things have changed in the environment up there. So, it's basically
2538 about a four year delay in that specific project.

2539
2540 Given the adverse impacts Winstone Aggregates has faced, including significant
2541 delays due to the NPS-FM, the Company has considerable concern with the
2542 approach that Greater Wellington Regional Council (GWRC) has adopted in
2543 updating the RPS under PC1.

2544
2545 The current 'wait-and-see' strategy, involving future RPS plan changes to
2546 include quarrying, is unacceptable, particularly given the recent notification of
2547 Plan Change 1 to the Natural Resources Plan.

2548
2549 I believe a better outcome would involve aligning the RPS with the NPS-FM
2550 update of 2023 with the pathways to establish a consistent, streamlined, and
2551 predictable consenting pathway for quarrying and clean-fill activities.

2552
2553 Implementation of the NPS-FM would not only meet the urgent needs of the
2554 aggregate industry but also significantly alleviate the consenting challenges
2555 Winstone Aggregates currently faces, thereby promoting a more sustainable
2556 quarrying environment.

2557
2558 The current draft of PC1 to the RPS appears to lean heavily towards
2559 environmental protection at the expense of resource utilisation. While Winstone
2560 Aggregates acknowledges the paramount importance of environmental
2561 stewardship, we believe that a more balanced approach is necessary.

2562
2563 The RPS should facilitate a balance between environmental preservation and the
2564 pragmatic use of natural resources essential for societal advancement,
2565 community wellbeing and economic growth.

2566
2567 The aggregate industry is a pivotal player in regional development, and a
2568 balanced policy framework will not only ensure environmental sustainability but
2569 also drive economic prosperity by ensuring a steady supply of critical
2570 construction materials.

2571
2572 Winstone Aggregates notes, with concern, the absence of a robust cost-benefit
2573 analysis concerning the freshwater provisions stipulated in the RPS where Great
2574 Wellington Council has adopted an arguably more stringent approach than what
2575 is set out in the NPS-FW. Such an analysis is fundamental in evaluating the
2576 economic implications against the anticipated environmental benefits of the
2577 proposed provisions.

[03.30.00]

2579 While Winstone's supports the intent of improvements to freshwater, they also
2580 bring about economic implications that cannot be overlooked. The costs
2581 associated with adapting to new Policy direction, which will inevitably lead to
2582 new rules affect not only Winstone Aggregates but also have a ripple effect on
2583 the broader construction industry and the economy that may inadvertently
2584 undermine aspirations of the Region in terms of intensification, climate change
2585 response and growth.

2586
2587 Thank you very much.

2588
2589 Clarke: I am Catherine Clarke, Planner from Boffa Miskell Limited.

2590
2591 I just first of all wanted to begin drawing on what Ms Tancock has already said.
2592 I would like to acknowledge the S42A Report by Ms Pascall and her efforts in
2593 responding to many of the points we've actually raised in our evidence in her
2594 supplementary evidence, and also commend you on the very quick turnaround
2595 for the amount of work that went into that.

2596
2597 I am in agreement with many of Ms Pascall's most recent recommended
2598 amendments in the provisions that she set out with her supplementary evidence.
2599 There is just a couple of exceptions. What I wanted to focus on today was just
2600 in commenting on those main outstanding matters of disagreement between her
2601 evidence and mine.

2602

2603 Firstly just going to Objective 12. Firstly, I generally support all the changes to
2604 Objective 12 that were recommended by Ms Pascall in her supplementary
2605 evidence. In particular, I am really supportive of her recent amendments to
2606 clause (b) of Objective 12, which now aligns with Policy 5 of the NPS-FM, as
2607 set out in her evidence. Basically that changes refers to changing clauses to refer
2608 to “maintain and improve” rather than “protect and enhance.” That was
2609 undertaken in Objective 12 and then comes through in the policy framework that
2610 goes below that. I am really supportive of that, thank you.

2611
2612 Just turning to Policy 18 of the Regional Plans, which Ms Tancock has already
2613 referred to, again I also support the changes recommended by Ms Pascall to
2614 Policy 18 again in response to my evidence to change the “maintain or improve”
2615 rather than “protect and enhance”.

2616
2617 However, Ms Pascall has not accepted some of the changes sought to Policy 18,
2618 particularly to clause (c) and clause (n) of Policy 18, and it is those I will address
2619 now.

2620
2621 Proposed Policy 18, as you will be aware, provides direction on the policies,
2622 rules/methods that regional plans must include to give effect to Te Mana O Te
2623 Wai as directed by the NPS-FM. However in my opinion, Policy 18 particularly
2624 clause (c) and to some extent clause (n) as amended in Ms Pascall’s
2625 supplementary evidence, still remain inconsistent.

2626
2627 As I discussed in paragraphs 8.1 to 8.21 of my evidence, Policy 18 needs to
2628 recognise that all regional plans now must include policy provisions that provide
2629 for the loss of the values and extent of natural inland wetlands and rivers in
2630 appropriate circumstances and provide a consenting pathway for these activities
2631 in accordance with section 3.22 and 3.24 of the NPS-FM – as you have already
2632 heard from Ms Tancock.

2633
2634 Just turning particularly to clause (c) which relates to natural inland wetlands,
2635 clause (c) of Policy 18 as now amended just repeats Policy 6 of the NPS-FM and
2636 doesn’t recognise the qualifier to Policy 6, being 3.22 in the NPS, which
2637 specifically requires councils to include a policy in their regional plans that
2638 provide for the loss of extent or values of natural wetlands in certain
2639 circumstances for certain specified beneficial activities.

2640
2641 While we’ve talked about quarrying and clean-filling there’s a number of other
2642 specified infrastructure, urban development, etc. as you will be aware.

2643
2644 Similarly with rivers, clause (n) of Policy 18 is now amended by the
2645 supplementary evidence; seeks to reflect 3.24 rivers of the NPS-FM to some
2646 degree, but by directing regional plans to provide for the loss or extent of natural
2647 inland wetlands only in circumstances where there’s a functional need and the
2648 effects management hierarchy is applied.

2649
2650 Amended clause (n) has been narrowed. It has narrowed the scope of the
2651 provisions in Policy 7 of the NPS-FM, to only refer to the activities listed – and
2652 those are reclamation, piping, straightening or concrete lining of rivers.

2653 [03.35.00]

2654 As I set out in my original evidence at paragraphs 8.15 and 8.16, there appears
2655 to no real evidence for narrowing the scope of clause (n) of Policy 18 to only
2656 refer to those activities. Also in my experience that's quite an overly prescriptive
2657 approach that you would expect in an RPS. You would normally have higher
2658 policy directives in an RPS at that kind of level.

2659
2660 I continue to consider the provisions in Policy 18 should be written to refer to
2661 the full range of activities that could potentially result in the loss of river extent
2662 and value in a manner consistent with section 3.24 - Rivers of the NPS-FM.

2663
2664 At that point I will also mention that at some point Dr Keesing in his evidence
2665 (while he is not here today) his evidence also alerted to sometimes these
2666 activities which were listed there – reclamation, piping and straightening etc.,
2667 can actually be designed so they're beneficial, so they don't have significant
2668 ecological effects. So, I think restricting or narrowing the scope in the RPS level
2669 is really not beneficial, and I continue to agree with the approach I put forward
2670 that it needs to be more wide in the policy clause (n).

2671
2672 As set out in paragraph 8.21 of my evidence, I continue to consider that PC1 of
2673 the RPS, and in this case Policy 18 must include policy provisions that provide
2674 for the potential loss of extent or values of natural inland wetlands and rivers in
2675 the specific circumstances set out in Sections 3.22 and 3.24 of the NPS-FM.

2676
2677 From a planning perspective, I consider that is required so there is a consistent
2678 policy hierarchy, between the RPS policies providing the higher order policy
2679 framework to support the lower order policy (and rules/methods that will come
2680 after that) that the Region must include in the Regional Plan, as directed by
2681 sections 3.22 and 3.24 of the NPS-FM.

2682
2683 As written, the higher order RPS directions in Policy 18 at
2684 clause (c) about no loss of extent of natural inland wetlands, and to a lesser extent
2685 clause (n/9) which talks about avoiding only reclamation, piping, straightening
2686 or concrete lining of rivers unless there is a functional need and applying the
2687 effects hierarchy, will be inconsistent with the required lower order Regional
2688 Plan policy directive to provide for the potential loss or extent of values of
2689 natural inland wetlands and rivers in the circumstances of when that can occur,
2690 as mandated by sections 3.22 and 3.24, NPS-FM.

2691
2692 Just then turning to Policy 40 – which is the policy that talks about the matters
2693 to be considered when assessing an application for regional consent, again I
2694 support the changes that Ms Pascall has proposed to Policy 40 in her
2695 supplementary evidence – again referring to “maintain or improve” rather than
2696 “protect and enhance” in the policy title and clauses (a) and (b).

2697
2698 For the same reasons as I have already mentioned for Policy 18, I consider Policy
2699 40 again must include policy provisions that provide a regional consenting
2700 pathway allowing for the potential loss of extent or values of natural inland
2701 wetlands and rivers in the specific circumstances (and again I won't repeat those,
2702 but set out clearly in s.3.22 and 3.24 of the NPS.

2703
2704 As written, the higher order RPS policy directions in Policy 40 clause (o) (about
2705 avoiding the loss of river extent or extent practicable) and clause (b) (ensuring

2706 there is no further loss of natural inland wetlands - again like Policy 18) would
2707 be consistent with what is required to be included in the lower order Regional
2708 Policy directives required by those sections again of the NPS.

2709
2710 Just then turning to Policy 40. I support the changes recommended by Ms
2711 Pascall to Policy 40. I had sought changes to the former clause (c) which has
2712 since been deleted and replaced with a new clause (a) and (d). While my relief
2713 was not directly accepted, the changes recommended now by Ms Pascall address
2714 my previous concerns.

2715
2716 Then just turning to definitions, my evidence covered quite a bit of detail about
2717 the definitions, which has been picked up by Ms Pascall's recommendations. I
2718 support the amendments and additions she has proposed. These changes align
2719 with the relief sought in my evidence, particularly the addition of defined terms
2720 for aquatic compensation and aquatic offsetting, and the amendment to
2721 vegetation clearance; and also supporting the defined term "maintain" in Policy
2722 40 now aligns with its ordinary meaning and not the one that was previously
2723 referred to in the indigenous biodiversity provisions.

2724 [03.40.05]

2725 That's the conclusion. Of course I will happy to take any questions the Panel
2726 may have. Thank you.

2727
2728 Chair: Thank you. We do have questions. Would you like to start Commissioner Paine?

2729
2730 Paine: Tēnā koutou. I am not sure who this is directed so I will ask it anyway. It was
2731 more around where do you quarry? Is it normal to quarry near wetlands? I know
2732 Mr Heffernan you said, "It is where it is," but you normally find sites by
2733 wetlands and rivers?

2734
2735 Heffernan: Thank you for that question. We don't find them by wetlands but it does seem
2736 to coincide with – well, starting off, the size of a quarry is normally pretty large
2737 for a land holding. A recent one that Ms Clarke is involved in is 360 hectares
2738 down in Canterbury – just to give an example. Our Belmont Quarry here is
2739 significantly smaller than that – 18 hectares. There's a variance in the size and
2740 scope. Also depending on what we're extracting. The Belmont Quarry is hard
2741 rock grey [03.41.44] where we have to use explosives to basically blow up the
2742 hill and break big rocks into smaller rocks to make aggregate.

2743
2744 Other sources can be alluvial, so off streams and rivers – where we don't have
2745 to blow things up. We can actually just dig them out whether it's in the bank or
2746 in the stream bed itself. So, they can vary quite a bit.

2747
2748 We have about seventeen sites around the country, all the way up north in
2749 Whangārei. The furthest site would be probably the Canterbury ones. I don't
2750 have that to hand, which is the furthest south. Again they vary. There's probably
2751 the bigger quarries which Belmont would be one of them. Hanua is our biggest
2752 in Auckland then the smaller ones – Petone and Ōtaki in the Wellington area.

2753
2754 I would suggest the ones I'm involved in or have either a minor or significant
2755 wetland of come description and/or water courses through them. A lot of the
2756 nature of some of those sites are probably either farming or rural in their nature
2757 when they would have been established. Belmont is about a hundred years old.

2758 It would call it almost an urban quarry, but it's not because it's also got a park.
2759 But, when it was started it would have been very rural, and back then clearly not
2760 the same instruments in place. But, it does have wetlands and streams in close
2761 proximity. That's a good example where it's operational. For example, if we look
2762 to open a new quarry and we have these constraints we know how to work with
2763 them.

2764
2765 Some of the things we're talking about today is just to keep that quarry going.
2766 For that quarry specifically it's not trying to get wins so we can open up new
2767 parts of it. Some of what I have put forward today is just to keep it operational.

2768
2769 For example, from Winstone's perspective if some of the things came in and
2770 then flowed through to the lower level planning documents the Belmont Quarry
2771 could close within about five to ten years, because of the constraints we wouldn't
2772 be able to continue to operate.

2773
2774 Clearly we're coming from a different perspective than creative Wellington, but
2775 if some other constraints weren't there, there's 20 to 50 years of resource and
2776 there's a hundred different ways you can calculate resource – which I won't go
2777 into.

2778
2779 Those are the quantum we're talking about from a planning perspective. It's not
2780 that we will run out of rock-bed: it is that we will hit up against ownership or
2781 planning constraints that will close Belmont Quarry somewhere between five
2782 years and fifty years, give or take.

2783
2784 Paine: Thank you for that.

2785
2786 Clarke: I can probably add another example just from a planning perspective. Obviously
2787 I'm working as a planner, working at administering planning documents with
2788 the team from Winstone's, advising them of how they can best achieve the
2789 outcomes they need.

2790
2791 An example I can give you is a quarry that I'm working with, not in the
2792 Wellington region, but in Waikato, where we have a quarry zone. The quarry is
2793 established. There's an area that they are wanting to go into to place overburden,
2794 which is the stripping off etc. which is at the moment to be honest just grazed
2795 paddock with cows in it. They have worked extensively with local hapū to work
2796 out a long-term management for that site. There's other areas that hapū are very
2797 clear that they don't want to go in there. They think there may be areas that are
2798 wāhi tapu and there is a strong sense of not wanting into this particular other
2799 area, which has been set aside. The area there for instance have got no wetlands,
2800 however the paddocks with the cows in, to be honest, has got a small area, which
2801 is a depression, but does fall within that definition of a natural wetland.

[03.45.00]

2802
2803 With the blessing of the hapū, they've worked together to now portal a long term
2804 plan for Council. They will end up effectively going into what is a natural inland
2805 wetland, because it's basically a paddock and it will have disposal overburden.
2806 It will be offset with a whole lot of... because they're applying effects
2807 management hierarchy which s.3.22 allows. There's a whole lot of restoration
2808 going on to a wetland area in another part, which hapū are very keen to support
2809 and that's a big offset of more than 5:1 – anyway a restoration area.

2810 So, yes the wetland will be taken out. It will be filled in, piped, restored and put
2811 cows back in eventually. But, it was a trade-off. We could have avoided the
2812 wetland but gone other areas. So, there's often competing values that a
2813 community wants in terms of outcomes. That is where I think the other thing is
2814 with wetlands. No-one wants to take out wetlands. It's often trade-offs and
2815 competing values and working as a community what's the best way forward.
2816
2817 That's an example I'm directly involved in.
2818
2819
2820 Paine: That's good. Thanks Ms Clarke. So, you're telling me Winstone as a matter of
2821 best practice consults with the iwi or mana whenua whenever they're going to
2822 expand or break new ground so to speak?
2823
2824 Heffernan: Correct. It is one of the first partners that we talk to. We go through all our
2825 different... looking at both expansions and new quarries. I'm involved in two or
2826 three around the country – one in Waikato, one in Hawkes Bay and then in the
2827 Wellington area. We actively seek out iwi. In the Hawkes Bay we're in an early
2828 stage looking at some quarrying expansion there. Iwi were the first party we
2829 talked to before councils, before the local MPs and others. We've got a very
2830 good relationship across the wider New Zealand. We have a large number of
2831 kaitiaki forums particularly in the Auckland areas – probably a little bit more
2832 advanced for some of our quarries. We are trying to set up other similar ones
2833 around.
2834
2835 We try to probably in recent times unlink them from consenting processes,
2836 because both reasons that's not a great outcome when we're seeking a consent
2837 and going through it. We try often to have regular catch-ups – so when we have
2838 our future expansions we're at the table and we've got better feedback. That's
2839 an approach that probably in the last five to ten years that Winstone is taking,
2840 compared to the so-called tradition where you go door knocking when you need
2841 expansion.
2842
2843 We are still moving away from that, depending which area we are. Some are
2844 more advanced than others. Regular catch-ups in different parts – and I will pick
2845 on again one – Hanua is one I am involved in up in Auckland. There is no
2846 expansion in the next years, but we are having regular kaitiaki forums. We'll
2847 have one probably the next month or January/February depending on
2848 availability. We had one three months ago and one three or four months before
2849 that, just talking through the operations of the quarry, because there is still
2850 continued discharges to local streams. There are a lot of things you're continuing
2851 to quarry down and put overburden. There weren't any consents that we were
2852 talking about in the last couple of kaitiaki forums or expansion to that quarry as
2853 an example.
2854
2855 Paine: Mr Heffernan, are you ever in a position where you and the iwi have not come
2856 to an agreement?
2857
2858 Heffernan: That's a very good question. I have been working with Winstone's since about
2859 May this year. There is none that I am aware of in recent history, but I would
2860 suggest there probably would have been in further past. I can't imagine some of
2861 the quarrying we have done would be completely aligned with every iwi around

2862 the country. Again there's none that I'm aware of or where I have been looking
2863 through previous quarrying, or other applications we're doing; mainly because
2864 the front load, and even say five or ten years ago of consultation with iwi, there
2865 have been concerns. At Belmont I am aware of gecko relocations that have
2866 occurred. Again they were quite before my time. They started maybe ten years
2867 ago.
2868
2869 Pherne, you might be able to job the memory.
2870
2871 Tancock: In 2012, yes. I think they started after the plan change.
2872
2873 Heffernan: Relocation by Ngāti Toa of some geckos there. I don't believe that was a "Let's
2874 [03.50.00] get the consent and move them." It was more talking to iwi first, even back then,
2875 and then that was a major concern obviously for iwi around geckos.
2876
2877 Tancock: I think the problem arose as well because the gecko relocation company went
2878 under during the relocation process. There was a bit of tension around that.
2879
2880 Paine: Thank you for that. Next question is for Ms Clarke.
2881
2882 We've got a consenting pathway for quarrying in the NPS. There doesn't appear
2883 to be in the RPS. Is that a real problem? It's there in the NPS allowing you to do
2884 it?
2885
2886 Clarke: As a planner it is a problem for us. We are required to assess every application
2887 by rules in the plan, but also the policy framework. As a planner we have to go
2888 through and assess the policies. For instance, if you've got a higher order policy
2889 document, the NPS which says you can provide quarrying, and then you've got
2890 a policy in the RPS which says "no loss of natural inland wetlands" they don't
2891 align. So, you've then got a tension that you've got to basically work out, etc.
2892
2893 It's not straight forward. It makes sense that when you have policy documents
2894 you have cascading documents. You'll be aware of this – higher order, lower
2895 order, etc. They need to be aligned. It's not helpful to have a policy in the middle
2896 that doesn't align with what's below and what's above to be basically honest.
2897
2898 From a policy point of view it is difficult. It brings in a tension that's really
2899 unnecessary when you're actually doing a policy assessment for resource
2900 consent.
2901
2902 Paine: I understand that. Thank you Ms Clarke. Thank you team.
2903
2904 Chair: Mr Heffernan, when you said that of the seventeen sites around the country, I
2905 think you said that all or most have a minor or significant wetland in them, I
2906 know that the change that was made to the NPS which limited wetlands to
2907 natural inland wetlands and the definition in the RMA of wetland is much
2908 broader than that, with a lot of your sites would you still come into
2909 tension/conflict with natural inland wetlands?
2910
2911 Heffernan: Correct, yes. I suppose you've got more or less as you go down through those
2912 definitions. I would consider we still would have. I'm only intimately involved

2913 with about three or four of those seventeen quarries. I couldn't definitively say
2914 across probably the other thirteen.

2915
2916 This issue in regards to identifying wetlands, trying to get them scoped both
2917 what they are, where they are, the extent, comes up regularly on all the quarries
2918 we are talking about. Just picking on some other quarries where we may not be
2919 looking to expand or do anything in the next few years, like my Hanua Quarry,
2920 we are looking at occasionally we do go out and check where areas are, the
2921 different areas, or the land we might purchase in a quarry like that. Looking at
2922 all those and having those constraints done.

2923
2924 It affects us across the board. Having the pathways does help but even the
2925 pathways we're putting forward for the RPS for example to be consistent are
2926 still high bars. If we could find a site which didn't have any of those we would
2927 choose that site. If we can find the resource and they don't have a wetland on it,
2928 a hundred percent.

2929
2930 I sit in a lot of management meeting where you've got other people, senior
2931 management, the general manager Amanda Croft of Winstone's and we talk
2932 through these issues. I consistently point out if we have two options and they
2933 don't have wetlands or any water or any of these other issues, then clearly please
2934 the other one from a consenting profile.

2935
2936 Unfortunately, almost any I have looked at with Winstone's, and there's
2937 probably a hundred sites, or maybe 150 sites, and I've looked at more the due
2938 diligence phase in the last six months for Winstone's, and I can't remember one
2939 that doesn't have something that is a constraint of that regard. Clearly some are
2940 tiny and some when you're doing due diligence like that haven't been ground
2941 truthed. It's just whatever data we're using sometimes will say that could be a
2942 potential wetland.

2943
2944 It's not a Winstone site but I am also doing one for a different part of the business
2945 called Drycon who do cement. There is a potential wetland in one of the
2946 Auckland sites that's looking for expansion. The first thing for a due diligence
2947 [03.55.00] phase, we're getting an ecologist to tell us what it is because there's probably
2948 about 1500 square metres of a potential wetland out of maybe about 5,000 and
2949 that clearly affects whatever property price that part of the business will play.
2950 Clearly different councils I acknowledge.

2951
2952 The first thing, and ironically it wasn't me that brought it up, it was the general
2953 manager for that different part of the business, because he's come across
2954 wetlands before and he's like, "Phil, this could be a wetland. Who do you know
2955 as an ecologist in Auckland? Can you get them out in the next couple of weeks?"

2956
2957 That is through the concrete part of the business I deal in wetlands. Top of mind
2958 is anything that's potentially a depression or a damp area is highlighted as a high
2959 risk and is across the board acknowledged and doing due diligence is factored
2960 in, in that way.

2961
2962 Chair: I understand that a lot are not currently mapped, so this would be in your site
2963 specific due diligence exercise you're doing?
2964

2965 Heffernan: Correct. You will be aware the data to try for the obvious reasons of wetlands,
2966 and also times of year and different things, that any of the data you do from just
2967 a desktop analysis, apart from some decent aerals is pretty scratchy at best.
2968
2969 Unfortunately, say we're talking about sites where (I can't name the region)
2970 we've looked at 70 potential sites. You can't take ecologists through 70 private
2971 sites that you haven't talked to anyone.
2972
2973 In my experience if something had a significant wetland, just from an aerial we
2974 would scratch that off, that 70 and get down. You don't want to be doing ground
2975 truthing and due diligence on more than five to ten, just from a cost point of
2976 view. So, wetlands would be a red flag and fatal flaw for a number of those sites.
2977
2978 Chair: It sounds like from what you said, where you can avoid them you will in your
2979 MCA or whatever the process you're following; but it's where you have to go
2980 there.
2981
2982 Heffernan: Correct. Some of the ones, particularly say what we are talking about today, is
2983 keeping the Belmont Quarry operational. That is one of the key focuses. I can't
2984 speak for parts of the business who are commercial and [03.57.12] to open a new
2985 quarry or anything any time soon – even though clearly Belmont might run out
2986 at some point.
2987
2988 I'll cover it in two ways. Winstone's preference would be to keep their current
2989 quarries and maximise those. Also the communities through zoning and/or the
2990 quarry being there, understand where they are and the acceptance of those. A
2991 new quarry for obvious reasons into a new community is very tough going, as
2992 Ms Clarke is going down in Canterbury. So, maximising those ones. But, any
2993 new quarries, some of the ones I have looked at the constraints we are talking
2994 about factor higher than the resource. If we're talking millions of cubes of
2995 aggregate which is millions of dollars in money to the business, a wetland could
2996 select a quarry maybe as half as much. I'm just picking numbers here. You've
2997 got ten million cubes on one. If you had a significant wetland on the other one,
2998 which has got ten million cubes versus one that didn't and had five to eight
2999 million cubes, you would go for the smaller one. It would be just the consenting
3000 risk and the time.
3001
3002 There is also the highly productive land and indigenous ecosystems to overlay.
3003 All these go over top. The highly productive land one is particularly problematic
3004 in say Waikato where I spend a lot of time looking for a site. If you excluded
3005 one, two and three because it's predominantly sand we are looking for there,
3006 which is again different to aggregates, but sand, it's around about 97 percent of
3007 the sites are excluded straight away. Those are ones with a resource, so you're
3008 down to two percent. Not of the whole Waikato, just of the sites that could have
3009 sand which becomes microscopic. There's probably only fifty sites or thirty sites
3010 in the whole of the Waikato that don't have highly productive soils. That one
3011 with sand does match to highly productive soils. The aggregate we're talking
3012 about in Belmont is not as closely – follows highly productive soils for different
3013 reasons.
3014

3015 Chair: I did want to ask about those other NPS's. If I just finish this question. You
3016 mentioned the natural resources plan – sorry, it might have been Ms Clarke or
3017 Ms Tancock, I can't remember. Someone mentioned the NRP.
3018
3019 I just want to check. Does Winstone's also have mineral extraction as well as
3020 aggregate? No. Just aggregate. Because there is some provision in both the RPS
3021 and then I think the NRP for significant mineral resources, or mineral resources.
3022 But, that's not what we are talking about here?
3023 [04.00.00]
3024 Tancock: I think the definition in those chapters does include aggregate extraction, but my
3025 understanding is it hasn't been mapped yet. The RPS requires mapping but that
3026 hasn't occurred in the region. I am not sure about the NRP, that's Plan Change
3027 1. That's the job for tomorrow.
3028
3029 Chair: It's a long way of just trying to understand if 3.22 of the NPS-FM is in the Natural
3030 Resources Plan. I couldn't find it. Maybe it's part of Change 1.
3031
3032 Tancock: It's not currently in the Natural Resources Plan. I represented Winstone's on the
3033 appeals for the Proposed Natural Resources Plan at that time. We ended up in
3034 that similar situation where the NPS-FM 2020 was there. Throughout the course
3035 of the mediation on the appeals Winstone's were aware that the exposure draft
3036 update was going to occur, but that didn't happen in time for those appeals and
3037 consent orders to be resolved. I am pretty sure that Council then gave effect to
3038 some further amendments to bring it into line, but not the mineral or the wetland
3039 relief.
3040
3041 The Natural Resources Plan, Plan Change 1 does to do that. I did see that referred
3042 to by Mr Slyfield in his submission for Wellington Water. But, I haven't had a
3043 chance to check the reference. Did you check that Catherine?
3044
3045 Clarke: Yeah, I did. Mr Slyfield referred to Policy 110 in his evidence, but that's as I
3046 understand it, and I could be wrong, but that's in the operative Natural Resources
3047 Regional Plan and it's limited to specified infrastructure only; it doesn't make
3048 cross reference to quarrying activities in the other activities that are in s.3.22 as
3049 I recall.
3050
3051 Chair: Of the NPS-FM?
3052
3053 Clarke: Yes.
3054
3055 Chair: I think that aligns with my very, very quick look earlier.
3056
3057 Tancock: If it would help you we can check that tomorrow.
3058
3059 Chair: I think Mr Slyfield actually gave us... somewhere in here I think I have a paper
3060 from him which sets out that policy.
3061
3062 Clarke: I've got that. I've just passed that to you (Ms Tancock).
3063
3064 Tancock: I'm just reading through the policy. It appears there is some reference to the
3065 extraction of significant mineral resources from existing quarries, but I would

3066 probably have to have a close and quiet read, just to make sure that actually
3067 reflected what was in 3.22.
3068
3069 The note here from Boffers is that it does go some way towards giving effect to
3070 clause 3.22 and 3.24, but there's no reference to the effects management
3071 hierarchy, and it doesn't account to all the activities. I think that's probably a
3072 question mark for now.
3073
3074 Chair: That's fine. I know we're not looking at the NRP. Sorry, I didn't mean to distract
3075 too much from it. There's just so many intersecting puzzle pieces. It's good to
3076 understand where we are.
3077
3078 Tancock: It's very confusing that the NRP plan change has been notified at a time when
3079 the RPS is still afoot. I don't think you would be the only one that's struggling
3080 with that.
3081
3082 Chair: I did see something in there that talked about the extraction of significant mineral
3083 resources from existing quarries. That was just the thing that made me think, is
3084 that Belmont or is that actually...
3085
3086 Tancock: Yes, that would be...
3087
3088 Chair: Would need to have a look at that definition obviously. That's fine. I'll move
3089 away from the NRP. It's probably distracting.
3090 [04.05.00]
3091 The cases Ms Tancock that you mentioned, and we've had legal submissions
3092 both from the regional council's counsel and we've also heard from I think Hort
3093 New Zealand on this point as well. It is about the impact of national direction
3094 that is gazetted post notification of the change. We have the NPS-HPL, which I
3095 know is not your specific concern here, but then of course the NPS-IB was also
3096 notified after PC1 was notified; and then the NPS-FM February 2023 changes.
3097
3098 Do you mind taking me through these recent cases that are in your submissions?
3099 Do they clarify the legal position now on whether we are either allowed to, or
3100 required to, factor in this emergent national direction that's come in after PC1
3101 was notified.
3102
3103 Tancock: Yes I can. That's probably quite simple. We'll take the example of the highly
3104 productive land NPS. That's what the Environment Court was looking at in the
3105 Balmoral case. This is the *Balmoral Developments Outram v Dunedin City*
3106 *Council*. In that case the question that emerged or was before the court was
3107 whether they should... there were a number of rezoning by submission appeals.
3108 The NPS-HPL was released and I think in the words of (and it's quite a
3109 memorable phrase that the counsel used) Mr Paige said, "The NPS-HPL
3110 shouldn't be allowed to torpedo the rezoning submissions."
3111
3112 I think it's a declaration – it might be a preliminary. Sorry, it was a preliminary
3113 finding on that issue. They said that they did have to consider the NPS-HPL that
3114 had come in after the submissions were made and after the plan was notified.
3115 Pretty categorically was the case.
3116

3117 I think that probably confirms the position. I know it makes it difficult when
3118 you've got multiple NPS all doing the same thing.
3119

3120 Chair: I think you make the point that the scope of the change is still relevant.
3121

3122 Tancock: Yes. The scope of the change is relevant. In the RPS case, I think in Plan Change
3123 1, obviously there's the task of the Freshwater Panel, which is to help implement
3124 in a fast and efficient way some of those NPS-FM requirements, so I don't think
3125 you've got a scope issue there in terms of implementing the next version of what
3126 the NPS-FM says.
3127

3128 I'm racking my brain to think of an aspect of that, that hasn't been included, that
3129 isn't directly relevant to the provisions that you're considering. From
3130 Winstone's perspective, the provisions of the NPS-FM that are being
3131 implemented are directly relevant to the policies and the objectives. The
3132 Officer's report says that we are implementing this component of it so there's
3133 not an issue. There will be some aspects, and again I can't think of an example
3134 off the top of my head, but there will be some of them I'm sure, where they have
3135 been left out or they're not included. But, I think you've got wide scope in this
3136 process.
3137

3138 Chair: How specific do we need to go? There are these consenting pathways. If we take
3139 natural inland wetlands for example in the NPS, there's some for landfills,
3140 there's a pathway for specified infrastructure, for the extraction of coal; and
3141 there's probably some others in there.
3142 [04.10.00]

3143 I don't think they're specifically mentioned in these PC1 provisions, however
3144 one option could be to use the "avoid where practicable" or "avoid unless there's
3145 a functional need and the effects management is followed as a general – it's not
3146 an absolute "avoid".
3147

3148 This issue of consistency came up on day one. Ms Pascall was going to have
3149 another look at that in her reply evidence. We did point out that it seems that in
3150 maybe a couple of places it's an absolute avoid and then in some other places
3151 there's recognition of the "avoid unless".
3152

3153 Tancock: I think there's probably a couple of points to unpack there in relation to the
3154 natural inland wetlands. The specificity that submitters are seeking, so
3155 Winstone's relief, is directly in response to what the Policies 18 and 40 are asking
3156 to do and how detailed they are.
3157

3158 I think that is why the approach has been, if you're going to recognise urban
3159 development and the response is to pop the words in for that one, why haven't
3160 you done it?
3161

3162 Ms Clarke in her evidence (and we had a discussion about this when we were
3163 looking at wording to propose) did suggest another alternative; which was a new
3164 policy that provided for beneficial use. But, I think at this stage, given there are
3165 no appeal rights on this, I would be concerned about making a concession on a
3166 possible approach without the ability to comment on some wording in front of
3167 us.
3168

3169 But, yes, in principle there's that general way or a specific way. You can do
3170 both, but in relation to 18 and 40, you have to be very careful about what the
3171 jobs of those policies are doing and how that interacts with clause 3.22 and the
3172 directions there.

3173
3174 Wratt: I have a question. It was to be directed at Ms Clarke, but as we are onto that
3175 topic now, I noted there was the alternative suggestion of 18(a) and I did have a
3176 question in terms of whether there was a preference for clause 18(a) or if we
3177 accepted your evidence, the amendments to Policy 18. In terms of Policy 18,
3178 whether there needs to be the complete repetition of what is in the NPS-FM or
3179 whether that could in some way refer to the NPS-FM. We have been hearing
3180 submitters through our processes commenting on the degree to which we need
3181 to repeat, or there needs to be repetition in the RPS of what is in the NPS-FM.

3182
3183 Ms Tancock or Ms Clarke, or both of you if you want to comment on that.

3184
3185 Tancock: I might have a go and then pass over to Catherine.

3186
3187 I think one of the issues, and obviously the case law in Port Otago did confirm
3188 that it's not best practice to set out the NPS wording directly in the RPS. But, in
3189 absence of not having sufficient information, it's probably the best option that
3190 you have as a Panel. If you are unable to try and reconcile those two issues then
3191 the national direction provides a safe way of doing that where the effects, the
3192 cost and benefits have been considered.

3193
3194 That said, there's a lot to be said for Ms Clarke's 18(a) approach. I think you
3195 just have to be careful that it was condensed sufficiently to provide for all the
3196 uses and did give effect to the NPS Freshwater Management.

3197
3198 I think we think it does. I'm not sure if no-one else has commented on it in their
3199 evidence. I don't know the position of other submitters. Catherine, you might
3200 have some...

3201
3202 Clarke: I don't really have a lot more to add. I probably raised the same caution with
3203 Policy 18(a) and beneficial use. As I said in my evidence, we worked hard to
3204 kind of try and find a helpful way for the panel to get through this issue.

3205 [04.15.00]

3206 That as offered up as a helpful approach, that we thought may assist you; as
3207 opposed to, as you've said Commissioner Wratt, going through and listing
3208 everything.

3209
3210 I referred to what had been done in the Otago Regional Policy Statement at the
3211 back of my statement of evidence, as an example of also what had been done,
3212 where they took a more specific approach and pretty much listed the activities
3213 again in a refined version of what was in the NPS-FM.

3214
3215 I don't really have a lot more to add than what's in my evidence to be honest.

3216
3217 Wratt: Another question then is, if Policy 18(a), if we felt that would work, would there
3218 be a similar approach with Policy 40? Would there be a Policy 40(a) as well –
3219 propose that?

3220

3221 You've suggested that same repetition of what's in the NPS-FM in Policy 40 I
3222 think, is that correct? Am I correct there?
3223
3224 Clarke: Yes, that's correct.
3225
3226 I hadn't suggested a new policy. They're different. Obviously Policy 18 is about
3227 what needs to be included in a regional plan in terms of specific provisions.
3228 Policy 40 talks about what needs to be considered when you're assessing a
3229 resource consent application. The wording in Policy 18(a) "beneficial use" you
3230 couldn't directly include that in Policy 40. The wording is incorrect. It talks
3231 about what regional plans must include.
3232
3233 To be honest, I think that probably including the more specifics, when you're
3234 actually assessing a resource consent application is probably better, because
3235 that's what you would be looking at – the matters that you need to take into
3236 account when assessing a resource consent; as opposed to the boarder directive
3237 in Policy 18 which talks about the matters that shall be included in a regional
3238 plan, which is policies, rules and methods.
3239
3240 I don't think you could directly apply Policy 18 into Policy 40 if that's what you
3241 were kind of insinuating?
3242
3243 Wratt: I was suggesting 18(a) an equivalent. It might not necessarily be exactly the
3244 same wording, but take an equivalent approach, rather than spelling out the
3245 whole detail. Would phrase something that had a more general application
3246 including quarrying activities.
3247
3248 Clarke: Yes there probably is a pathway through that. I haven't drafted it. There possibly
3249 is something in there, yes.
3250
3251 Chair: Ms Clarke, I was looking at Winstone's submission. I know we're probably
3252 going back to a point pre a whole lot of new national direction, but I'm not sure
3253 there is scope from your original relief that Winstone's sought for Policy 18A
3254 for Policy 40A. Very happy if you think differently.
3255
3256 Tancock: I do have the submission. Would you like me to have a go?
3257
3258 Clarke: Yes, you have a go. I haven't got it in front of me actually – not readily available.
3259
3260 Tancock: I do take your point Chair Nightingale in relation to the specific relief that was
3261 sought of Policy 18 and Policy 40 – in what we are talking about is the table.
3262 Whereas if you go to the general submission points, I think you will find there
3263 may be sufficient relief there. There's amend the RPS to provide recognition for
3264 significant minerals in a way that's consistent with the policy framework and
3265 the NRP and consistent with the update." Winstone's would be happy to work
3266 through with Greater Wellington how to provide for that.
3267
3268 Then you've got the section 'Implementation of NPS-FM'. That's another
3269 general relief. In particular it appears that the RPS does not implement s.3.22.
3270 In relation to natural inland wetlands – that councils need to give effect to in
3271 their regional plan, should provide consistent direction. Then the relief sought

3272 was that the RPS amendments are updated to accurately reflect the directions
3273 sought by the NPS-FM.
3274
3275 NPS-FM is given effect to in the NRP. Then there's that recognition around
3276 definitions as well. Also the consistency with the NPS-FM update.
3277
3278 [04.20.00] I had thought that you might possibly raise that comment, and anticipated that
3279 in the legal submissions that actually were filed. At 5.1 there is a section on the
3280 correct approach on the Albany case to general relief, particularly when you're
3281 seeking what Winstone's was in that case, in terms of the update to give effect
3282 to in a general way – the NPS-FM.
3283
3284 I'm hopeful that would provide scope for a policy if required. I don't think you
3285 need to have a specific request for a new policy that achieves that, if the Panel
3286 consider that that's appropriate.
3287
3288 Chair: Policy 18(a) given it is broader, would it still be part of a Freshwater Planning
3289 Instrument?
3290
3291 Tancock: In my submission it would be because that is how the Freshwater Panel is giving
3292 effect to the protection of natural inland wetlands, in relation to that 3.22
3293 direction. Then, again, the way that the policies are split you have the policy
3294 that's directing the plan changes, versus the policy that's directing the resource
3295 consent. I think you would have to use that as a touchstone and provide it in
3296 both.
3297
3298 Chair: You can probably see where I'm coming. I just think that there will be parties
3299 that will say, especially where there's only an appeal right on a point of law to
3300 the High Court; to have something as broad as that that may go further than
3301 what's in 3.22 because it applies to all beneficial use, which you would need to
3302 make the case for in a consenting stage.
3303
3304 Tancock: I think your safest pathway, if I might offer an opinion, would be to just include
3305 the working of the NPS and then I don't think anyone could say that you don't
3306 have scope, and that you shouldn't include it, or it wasn't part of the task. It's
3307 very difficult to restate it in a way that everyone is happy with.
3308
3309 Chair: The safest might be...
3310
3311 Tancock: The safest route might be the only route, or sensible route available.
3312
3313 Chair: Thank you.
3314
3315 Kara-France: Kia ora Mr Heffernan.
3316
3317 Heffernan: Kia ora.
3318
3319 Kara-France: Just a quick question.
3320
3321 Rangtāne o Wairarapa are willing to see the continued loss of our wetlands, our
3322 whenua, and to see the extraction of gravel. What do you have to say to them?
3323

3324 Heffernan: We have a pretty considered approach when it comes to iwi. We respect their
3325 rights, their beliefs when it comes to freshwater to wetlands and we always seek
3326 engagement around those. We do understand where they are coming from,
3327 particularly with no nett loss because of what has occurred over the last 150 plus
3328 years of most wetlands and most areas being taken.

3329
3330 We as a business have to balance that. We have to quarry sustainably. We have
3331 to engage with iwi. But, we do have a business to run. We do acknowledge there
3332 are impacts on communities, on iwi, on the environment. It's a continued balance
3333 between those on how do we acknowledge iwi's concerns in this space but
3334 continue to run a quarry.

3335
3336 If we shut Belmont Quarry for example, if there were wetlands or something to
3337 stop – and I'm not talking about expansion, just the operation – Belmont makes
3338 up 30 percent of the aggregate and 50 percent of the high quality aggregate.

3339
3340 Something from an infrastructure, homes or things wouldn't get done. Roughly
3341 you could argue, because you might be able to get some other ways. But, you
3342 would quickly stop or make very expensive infrastructure and other things.

3343
3344 To one I haven't covered but is a rough guide in the industry, if Belmont closed
3345 and you had to go out of Wellington, which you would have to, every 30kms
3346 doubles the cost of aggregate, which then would flow onto infrastructure and
3347 others.

3348
3349 It's not trying to diminish the iwi's comments in that space, but just to say from
3350 a business point of view, that would be found somewhere else, and that costing
3351 would be borne by new home purchases, which iwi would hopefully be part of;
3352 infrastructure building, which clearly I think everyone knows about the
3353 infrastructure issues in New Zealand – and those bills, whatever has been put
3354 out there, go up by a large percentage, as aggregate makes a large part of it.

3355 [04.25.00]

3356 It's not relevant for these hearings but I am involved on the periphery of the
3357 Hawkes Bay rebuild and the numbers for the aggregate that are required there
3358 are staggering. This week I've been travelling and talking to members of
3359 parliament trying to make them aware of it. Regardless whether Winstone's are
3360 involved or not the numbers are scary large, just to rebuild what was done there
3361 – just as an example where aggregate sits.

3362
3363 It's a hard one to say. We're not saying we don't recognise it, but then also if we
3364 had iwi's concerns completely alieved we would shut a lot of our quarries and
3365 then those projects wouldn't go ahead.

3366
3367 Kara-France: Kia ora. Thank you.

3368
3369 Tancock: If I might just jump in on that question.

3370
3371 Winstone's has a pretty good relationship with Rangtāne. In the NRP process
3372 for the appeals, similar views were expressed. Winstone's and Rangtāne had I
3373 guess counter-active appeals, seeking. Through the mediation process the parties
3374 actually worked really, really hard to make sure that they got provisions on the

3375 NRP that were appropriate and ‘reconciled’ (I guess is the word of the day) the
3376 concerns of iwi and also ensured that there was a pathway for quarrying.
3377
3378 I know that’s not part of this process, and it's been a little quick, and that hasn’t
3379 been able to happen, but there is a history there of that happening. I would expect
3380 that that would be happening in the NRP Plan Change 1 Process, which will
3381 provide for a little bit more of that.
3382
3383 Historic knowledge.
3384
3385 Kara-France: Appreciate the response. Kia ora.
3386
3387 Chair: Mr Heffernan - that ‘doubling the cost’ is that because of the transport?
3388
3389 Heffernan: Yes, sorry I wasn’t clear. It's the transport. Aggregate itself is actually pretty
3390 cheap. It's the transport costs. If you have to go to the Wairarapa or somewhere
3391 to bring it into Wellington you effectively double. I don’t know the exact
3392 numbers and I don’t want to completely speculate, but they had to do that for
3393 Transmission Gully and potentially that’s one of the reasons of the cost
3394 blowouts. I wasn’t involved with that project, I wasn’t with Winstone’s, but I
3395 have heard that raised previously.
3396
3397 There were other reasons for cost blowouts there. One of them was aggregates
3398 – I think may have even come from the Hawkes Bay for Transmission Gully.
3399
3400 It's also to do with the intricacies of depending on qualities and different things,
3401 and not all rock is the same – not all quality is the same, depending on what
3402 you’re doing and using for it. No area is perfect in saying you have an inner city
3403 quarry.
3404
3405 I do try to often in my mind compare Wellington by having a Belmont to what
3406 we are doing in Auckland at Hanua, where I do some work. It is 30 to 40km
3407 from CBD in Auckland and that’s our biggest quarry. We were taking aggregate
3408 to Puhoi to Warkworth which is well north of CBD. You’re probably talking 60-
3409 90kms transport and as per my numbers that would be tripling the cost.
3410
3411 There were no quarries of size and quality near Puhoi to facilitate the growth.
3412 That’s another one that probably went over it, and that may be another reason.
3413 Again, I’m not in the finance, but it's a pretty easy link to make when you look
3414 at the quantities and you’re talking hundreds of thousands or millions of cubes
3415 of some of that material getting put into those big roading projects. They’re the
3416 main ones where often they do take a lot of aggregate and concrete.
3417
3418 Chair: Do you need to bring it back to Belmont to process sit before it needs to go to
3419 where it's needed?
3420
3421 Heffernan: Do you mean if you’re bringing it from outside?
3422
3423 Chair: Yes.
3424
3425 Heffernan: Potentially yes. Some of the processing, that’s a side of the business I don’t see
3426 a lot of, but you have Firth and other parts of the wider Fletcher’s family that do

3427 their concreting and block work. If Belmont wasn't supplying you would have
3428 to bring it there to process effectively to bring it up-to-speed.
3429

3430 Chair: Ms Tancock, just to pick up another question I had on the national direction.
3431 Given the Environment Court's decision in the Balmoral case – that was
3432 Environment Court wasn't it?
3433

3434 Tancock: Yes.
3435

3436 Chair: That decision, is that the most... do we have anything from the High Court?
3437

3438 Tancock: I didn't have a chance to check whether there is an appeal on that one, but I can
3439 do so. Unless you're aware of one on that one.
3440 [04.30.05]
3441

3442 Chair: No, but I think we did ask Ms Manohar who was here for the Council on the first
3443 day. I think we'll make sure this question is clear in the Minute that we issue to
3444 Council asking for more information.
3445

3446 Tancock: I'm happy to query with Mr Paige who was counsel in that case. I will let you
3447 know. The Southern Cross Healthcare decision is obviously High Court that was
3448 relevant to that extended point as well.
3449

3450 Chair: Taking that case law, there's a pathway for quarrying in the NPS-IB. I know
3451 that's the next hearing stream. Is the effect of this decision that the RPS
3452 regardless of any scope issues, regardless of any submissions, we are still
3453 required to give effect to that national direction and those consenting pathways?
3454

3455 Tancock: Yes. That was my reading of the High Court decision and Southern Cross
3456 Healthcare. That dealt with the NPS-UD. I think it was 2020 which came out
3457 midway through – whether the court was required to consider that on appeal, so
3458 the Environment Court.
3459

3460 What happened there was that the Court found that it was reasonably practicable.
3461 The court or the decision-maker had the same obligations and duties as the
3462 Council in terms of reasonable practicality of implementing or giving effect to
3463 the NPS as a result of the change. Again it depends on the changes that you are
3464 considering. I don't want to predetermine anything in the next chapter, but the
3465 NPS-IB obviously has come out and was something that was the subject to quite
3466 a lot of submissions at the time on the RPS. Counsel has issued or shared some
3467 thoughts on that.
3468

3469 It's not easy. I guess we'll have to wait and see how the council's grappled with
3470 that when we get their evidence in the officer's report.
3471

3472 I think where the Southern Cross Healthcare case does land is that as decision-
3473 makers, if it's before you, in front of you, in the scope of what you're
3474 considering, you need to try and give effect to that as best you can regardless of
3475 whether there is something else coming that might do a better job of that. You
3476 have to try and implement with the tools available and the information available
3477 to you at the time.
3478

3479 I think that case was pretty clear that you can't really avoid doing that by saying
3480 the NPS said you can implement this bit at this timeframe or whatever, and that
3481 you have to look at it in the whole.

3482
3483 It's easy at a high level but probably quite difficult when there's been that cluster
3484 of NPS that have come into force during the course of the RPS and can quite
3485 fundamentally alter some of the provisions that you're considering.

3486
3487 Chair: The thing I'm thinking about is giving everybody a fair opportunity to have their
3488 say on those provisions.

3489
3490 Tancock: Might I suggest one minor suggestion, because I did see the Minute that came
3491 out in relation to the NPS-IB and how that might be dealt with, and where
3492 counsel will give effect to that. I think from a submitter perspective it's equally
3493 concerning that we're going into a process on particularly the indigenous
3494 ecosystem chapter where that NPS has come out quite rapidly, and may make
3495 quite a lot of changes and we don't know what they are. One solution or
3496 suggestion that would be helpful, that I was going to write a memo and suggest
3497 [04.35.00] was that the Panel and the Council give some consideration to giving an early
3498 indication on what the allocation will be for those provisions across the
3499 Freshwater Planning Panel and the Schedule 1 Panel. I suspect that may resolve
3500 some of the inherent tension and stress that parties have been put under –
3501 particularly before Christmas on that.

3502
3503 I think the other aspect of that, which would be something that the Panel might
3504 want to consider, and I know that the FPP doesn't necessarily have the liberty
3505 of time, but the Schedule 1 process does have the liberty of taking a little bit
3506 more time, and that there are abilities to have pre-hearing meetings and some
3507 mediation or something like that, in relation to how the Council might move to
3508 give effect to some of those things throughout the submission process that
3509 would, I guess, take submitters along for the journey.

3510
3511 At the moment I'm sitting here for Winstone's, a relatively well-resourced party
3512 with experts able to try and grapple with these things. We're struggling and I do
3513 feel really sorry for some of the parties – particularly some of the iwi parties that
3514 are having to participate that just don't have the resources to grapple with these
3515 really complicated issues.

3516
3517 Allocation indications would be one thing. I know a final decision on allocation
3518 wouldn't happen until the end, but I do think if Council had some thoughts on
3519 how that worked as an early signal then that may help tease out – otherwise
3520 there's going to be inherent tension between submitters like Winstone's,
3521 obviously Forest & Bird, and Fish and Bird, in a very short timeframe and a very
3522 short process because it's just before Christmas.

3523
3524 That was my hope.

3525
3526 Chair: Thank you. It's all very complex. I'm really interested in your views because
3527 you've given this a lot of thought. I think probably given us so far the most
3528 information on these recent cases that have come out which are really useful.
3529 Thank you very much for that.

3530

3531 Is there anything to distinguish the situation from the NPS-HPL which also has
3532 a consenting pathway for aggregate?
3533
3534 Maybe I will go back a bit. Proposed Change 1, Urban Development, giving
3535 effect to the NPS-UD. I think the public notice talked about starting
3536 implementation of the NPS-FM. I think that was a wording used.
3537
3538 The NPS-HPL is not mentioned at all in the public notice. But, the High Court
3539 case in particular, is that saying we as a Panel still need to work out, or we are
3540 able to give effect to the NPS-HPL?
3541
3542 Tancock: So, effectively you're asking whether you need to give effect to the HPL even
3543 though you don't have any valid information or submissions on that point, as
3544 part of the plan change?
3545
3546 Chair: It's not mentioned at all in the public notice.
3547
3548 Tancock: I would offer a view on my feet. It's probably that the Southern Cross Healthcare
3549 Ltd case that was in relation to the NPS-UD. It occurred in the context of a
3550 private plan change for proposed changes to Auckland District Plan that related
3551 to in summary intensification of housing.
3552
3553 [04.40.00] The HPL is a difficult one, given that you don't have that in front. I'm not really
3554 familiar enough with it to be able to say.
3555
3556 Chair: That's probably not fair. I could see us getting into there would be people that
3557 would be saying, "We've been completely denied any change to have an input
3558 into that."
3559
3560 Tancock: I think you would have to think about the scope of the plan change and the
3561 information you had would be factors in how you felt that you could give effect
3562 to that or not.
3563
3564 Chair: Thank you. I think we'll get some more advice as well from Ms Anderson.
3565
3566 Tancock: It may be something Ms Anderson has a more useful view on.
3567
3568 Chair: Coming back to 3.22 and 3.24 of the NPS-FM, and it's only 3.22 that specifically
3569 mentions aggregate extraction – 3.24 loss of river extent, I read that as the law
3570 is saying you need to demonstrate that there is a function need and how the
3571 effects management hierarchy is being achieved.
3572
3573 Tancock: I think you've got (d) where you have "the activity is necessary for the purposes
3574 of quarrying activity".
3575
3576 Chair: Sorry, in 3.24?
3577
3578 Tancock: Sorry, wrong one. I might let Catherine start on that question.
3579
3580 Chair: I think the question is simply it comes back to the option of the different wording
3581 that we've got, which we started talking about before. You've got the "avoid",
3582 "loss of river extent where practicable" and is that enough of a signal or

3583 connection with 3.24, or do we need “unless there’s as functional need” and the
3584 reference to the effects management hierarchy.
3585
3586 Have you got a preference?
3587
3588 Clarke: The latter would be my preference.
3589
3590 Chair: Functional need and effect management?
3591
3592 Clarke: Affects hierarchy, yes. It comes back to (n) I think I said before, which pretty
3593 much... the effects management hierarchy and the functional need. My concern
3594 was obviously it was narrowing the scope to just those particular activities, but
3595 anything that’s basically loss of extent or values of a river are subject to
3596 functional need or affects management hierarchy. That’s what I think should be
3597 included.
3598
3599 Chair: If that came in, instead of what’s in 18(e), and I’m just talking about the loss of
3600 river extent issue, then do you think we don’t need Policy 18(n)? Does it cover
3601 that?
3602
3603 Clarke: I think in my original evidence says that we could probably take out (n) and
3604 change (e) to along those lines.
3605
3606 Tancock: Yes it did.
3607
3608 Clarke: In my evidence, Appendix 1, I suggested for wording sake a new (ea) and
3609 removing clause (n) and that would still be my preference.
3610
3611 Chair: It comes up again in 42. I’m just looking at the provisions here. I am not sure if
3612 you specifically had relief on 42, but 42(ma)...
3613
3614 Clarke: That’s Policy 42?
3615
3616 Chair: Yes, Policy 42.
3617
3618 Tancock: Winstone’s didn’t submit on that. I guess it would be covered by the general
3619 [04.45.00] relief point if you were inclined.
3620
3621 Clarke: That’s the one on urban development, yes.
3622
3623 Chair: This relates to consenting. It’s that same point again. That (ma) specifically
3624 refers to the piping of rivers and I guess I’m just wondering if that can also refer
3625 to loss of river extent.
3626
3627 Clarke: Including what I have included in my evidence for a new (ea) in Policy 18,
3628 you’re asking whether that could be inserted into Policy 42 at (ma) – would that
3629 be correct?
3630
3631 Chair: Yes, as a replacement for what’s in (ma) now.
3632
3633 Clarke: Seems reasonable to me. We didn’t specifically address 42 in my evidence, but
3634 from a quick off-the-cuff look that seems a reasonable approach.

3635
3636 Tancock: There's the same problems with (ma) in terms of how it's drafted as what
3637 Winstone's has raised.
3638
3639 Clarke: In Policy 18.
3640
3641 Tancock: Yes.
3642
3643 Clarke: Policy 14, which you also talk about... no, you talk about Policy 40.
3644
3645 Tancock: I talked about Policy 14 being an unfair example where it had been applied to
3646 urban development...
3647
3648 Chair: For urban development, that's right. It just comes up again Policy 14(ia). I am
3649 not sure. I think we will ask Ms Pascall maybe consider this. If there is
3650 something specific about the piping of rivers, which seems to be referenced
3651 specifically in some of these policies, or whether the provisions can just refer
3652 more generally to avoiding the loss of river extent and values unless.
3653
3654 Clarke: That would be my preference. As I said in my evidence, and again Ms Pascall
3655 can obviously confer with the Panel, but I couldn't see anything that gave
3656 evidential references as to why it was narrowed down to just reclamation piping
3657 and straightening and concreting. As I said, and we don't have Dr Keesing here,
3658 but I am talking to him as a practicing ecologist. There are situations where those
3659 things actually can be constructed and designed so they're not having
3660 detrimental effect. And, other things may do. I just feel it's a concern to narrow
3661 it, especially at a RPS level, which is often quite prescriptive. Often you get
3662 down to rules level at a regional plan level, but at this level I don't think it's
3663 helpful.
3664
3665 That's why I think the loss of river extent and values is to be avoided.
3666 "Functional need effects hierarchy" from my point of view is a better approach.
3667
3668 Chair: I think I just have one more question, about Objective 12.
3669
3670 Objective 12(b), this discussion about protects versus maintains. We heard from
3671 iwi this morning expressing a very strong preference that that change back to
3672 protect. We looked at the wording in Policy 5 of the NPS.
3673
3674 I think everyone agrees from our discussion this morning that if a waterbody of
3675 freshwater ecosystem is degraded then Policy 5 requires that the health and
3676 wellbeing is improved. But, if the waterbody and ecosystem is not degraded that
3677 the health and wellbeing has to be maintained, or if the communities choose it
3678 can be improved.
3679
3680 Iwi representatives today were saying, "We don't just stand by and see a
3681 [04.50.00] waterbody that's actually functioning well and it's healthy - we don't stand by
3682 and let that be. We actually are actively involved in protecting it and ensuring
3683 those qualities that we value will continue to improve."
3684
3685 I guess it's just this word 'maintains'. Is it your evidence Ms Clarke, I think you
3686 talk about what that means?

3687
3688 Clarke: I do. Para 6.5 of my evidence. I suppose the point I was kind of also making was
3689 that ‘protect’ and the way the NPS-FM is structured, it provides protection of
3690 identified significant values of outstanding waterbodies. There’s actual
3691 protection in other policies. It definitely affords protection which is a higher test
3692 than maintain I agree. When you’ve got something about protecting all
3693 waterbodies, given the very broad definition of waterbodies in the RMA, that’s
3694 going well beyond what the NPS-FM identified in its policy directives. As I said
3695 at 6.7 of my evidence, waterbody has a very broad definition and applies to all
3696 water in the region with exception of piped and coastal water. The definition
3697 does not differentiate by level of modification, naturalness, ecological value or
3698 significance.
3699
3700 So, to put in a direction which is much stronger than the NPS-FM, which his
3701 protect all waterbodies, given that very broad definition, is taking a significant
3702 step I suppose by the Council, and it's well beyond what the NPS-FM policy
3703 directives provide for.
3704
3705 Tancock: It's a big jump from Policy 8 which is significant values of waterbodies are
3706 protected as well.
3707
3708 Clarke: I note the beginning of Objective 12 in Ms Pascall’s latest evidence has changed
3709 the opening stanza of Objective 12 to include “the mana of the region’s
3710 waterbodies and systems as restored and protected by ongoing management,”
3711 and then obviously the clauses underneath reflect how that is provided for.
3712
3713 Chair: Thank you. Another area that is complex with perhaps I guess just making sense
3714 of the direction in the NPS-FM.
3715
3716 Tancock: If that was separated out into two different thoughts it could be redrafted so that
3717 you were capturing the two different states for the assigned value of the
3718 waterbody that you were talking about.
3719
3720 Chair: You mean for “outstanding”, by having outstanding...
3721
3722 Tancock: For “significant” and then “maintain”. You could separate (b) out into two sub-
3723 categories that dealt with obviously 5 in Policy 8 perhaps, rather than struggling
3724 to find a word at the front that fitted both.
3725
3726 Chair: Thank you, that’s helpful. Something Ms Pascall might take into account.
3727 Thanks very much.
3728
3729 Any further questions Commissioners?
3730
3731 Paine: No thank you Madam Chair.
3732
3733 Chair: Thank you for requesting that extra time.
3734
3735 Tancock: I’m sorry that we used it again.
3736
3737 Chair: A really helpful discussion again. We appreciate it.
3738 [04.55.00]

3739 Who knows what cases might come out in between now and when we see you
3740 again.
3741
3742 Tancock: Case law update.
3743
3744 Just to close out, Dr Keesing obviously was unavailable to attend. If the Panel
3745 did have any questions for him in relation to his evidence how would you like
3746 to deal with that, or would you like to have a think about it?
3747
3748 Chair: I think in the course of the discussion, I think the things I was thinking about
3749 have been answered – I know not specifically by Dr Keesing, but I'm pretty
3750 comfortable. If there is anything then we'll issue a minute in the usual way.
3751
3752 Tancock: Brilliant. Thank you.
3753
3754 Chair: Thank you very much for your time and your presentation. We might see you
3755 again in one or both of the remaining two hearings. Thank you.
3756
3757 I think we have got karakia to close our hearing.
3758
3759 Admin: Unuhia, unuhia
3760 Unuhia ki te urutapu nui
3761 Kia wātea, kia māmā te ngākau
3762 te tinana, te wairua i te ara tangata
3763 Koia rā e Rongo
3764 Whakairia ake ki runga
3765 Kia tīna, tīna
3766 Hui e, tāiki e
3767
3768
3769
3770 [End of recording 04.56.30]