

Before the Independent Hearings Panels

In the matter of the Resource Management Act 1991 (**RMA**)

And

In the matter of Proposed Change 1 to the Wellington Regional Policy Statement (**RPS**) (being both a freshwater planning instrument, and a non-freshwater planning instrument)

And

In the matter of Hearing Stream 5 (Freshwater/Te Mana o te Wai)

**Legal submissions on behalf of Wellington Regional Council –
regarding Variation 1 to Change 1 to the RPS**

Date: 27 October 2023



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MAY IT PLEASE THE PANELS:

Introduction

- 1 These legal submissions on behalf of the Wellington Regional Council (**GWRC**) have been prepared for the purpose of Hearing Stream 5 of the hearings on Proposed Change 1 to the Regional Policy Statement (**RPS**) (**Change 1**), scheduled to commence on 20 November 2023.
- 2 The purpose of these legal submissions is to update the Panels and submitters on Variation 1 to Change 1 (**Variation 1**).
- 3 These submissions address:
 - 3.1 a summary of Variation 1, and
 - 3.2 the legal position and status of Variation 1.

Summary of Variation 1

- 4 On 13 October 2023, Variation 1 was publicly notified by GWRC. Variation 1 is a freshwater planning instrument (**FPI**),¹ using the Freshwater Planning Process (**FPP**).²
- 5 Submissions close at 5pm on 13 November 2023. GWRC anticipates that the hearing for submissions received on Variation 1 can be heard as part of the currently scheduled Change 1 hearings, likely Hearing Stream 7. However, that is a matter for the Panels to determine.
- 6 At a high level, the purpose of Variation 1 is to insert two new long-term freshwater visions (objectives) into Chapter 3.4: Fresh water (including public access) which give effect to Te Mana o te

¹ Section 80A(2)(d), RMA.

² Subpart 4–Freshwater planning process, section 80A, RMA.

Wai, and clauses 3.2 and 3.3 of the National Policy Statement – Freshwater Management 2020 (**NPS-FM**).³

- 7 As notified, Change 1 did not include long-term freshwater vision objectives. GWRC did make a submission on Change 1, seeking the inclusion of two long-term freshwater vision objectives, the wording of which has now been updated and refined through Variation 1. In addition, as set out at paragraphs 128 – 134 of the Section 42A Report: Freshwater and Te Mana o te Wai, Forest and Bird, Taranaki Whānui and Ngāti Toa also sought the inclusion of long-term freshwater visions in Change 1 through the submissions process.

- 8 Variation 1 introduces four amendments to proposed Chapter 3.4, all of which are insertions, with no other changes or deletions to the provisions of Change 1 (or the RPS). These are:
 - 8.1 Insertion of new section heading 'Long-term freshwater visions'.

 - 8.2 Insertion of a new long-term freshwater vision for Te Awarua-o-Porirua as an objective.

 - 8.3 Insertion of a new long-term freshwater vision for Te Whanganui-a-Tara as an objective.

 - 8.4 Insertion of new map, figure 3.4, showing whaitua boundaries for Te Awarua-o-Porirua and Te Whanganui-a-Tara.

- 9 A full copy of the amendments introduced by Variation 1 are included at **Appendix 1**.

³ Section 32 Evaluation report for Proposed Variation 1 to Proposed Change 1 to the Regional Policy Statement for the Wellington Region (**Section 32 report**), page 7.

Legal position and status

- 10 Under clause 16A of Schedule 1 of the RMA, the Council can initiate variations to Change 1 at any time before the Change is approved.
- 11 Clause 16B of Schedule 1 of the RMA states that Variation 1 will merge and become part of the Change as soon as the Variation and the Change are both at the same procedural stage,⁴ and from the date of notification of Variation 1, Change 1 has effect as if it had been so varied.⁵
- 12 Clause 53 of Schedule 1 of the RMA sets out some procedural differences where the variation is to an FPI, which is the case here. This includes notification of the Chief Freshwater Commissioner and the need for the Chief Freshwater Commissioner to accept the Variation.
- 13 The Chief Freshwater Commissioner has accepted Variation 1 to the proposed Change 1 of the RPS.⁶ Clause 53(6) of Schedule 1 of the RMA states that clauses 16A and 16B apply to such Variations, with any necessary modifications.
- 14 The impact of Variation 1 on submissions coded to Hearing Stream 5 is set out in section 3.7 of the section 42A Report: Freshwater and Te Mana o te Wai. Specifically, Variation 1 is referenced in paragraphs 137 – 140, with a recommendation that the relief sought by submitters on Change 1 (ie, the submissions by GWRC, Forest and Bird, Taranaki Whānui and Ngāti Toa seeking the inclusion of long-term freshwater visions) is more

⁴ Clause 16B(1), Schedule 1, RMA.

⁵ Clause 16B(2), Schedule 1, RMA.

⁶ Full Public Notice, Variation 1 to Proposed Change 1 to the Regional Policy Statement for the Wellington Region - Submissions Open, 13 October 2023.

appropriately addressed at the time Variation 1 and submissions on it are heard.

Date: 27 October 2023

A handwritten signature in blue ink, consisting of a large, stylized initial 'R' followed by several horizontal strokes.

.....
K M Anderson / E L Manohar / K H Rogers
Counsel for Wellington Regional Council

APPENDIX 1

Variation 1 to Proposed Change 1 to the Regional Policy Statement for the Wellington Region (**Variation 1**) inserts the below:

Insert new section heading after the chapter introduction as follows:

3.4.A: Long-term freshwater vision

Insert new Objective TAP as follows:

Objective TAP: Long-term freshwater vision for Te Awarua-o-Porirua



By the year 2100 Te Awarua-o-Porirua harbour, awa, wetlands, groundwater, estuaries and coast are healthy, wai ora, accessible, sustainable for future generations, and:

1. The practices and tikanga associated with Te Awarua o Porirua are revitalized and protected; and
2. Mahinga kai are abundant, healthy, diverse and can be safely gathered by Ngāti Toa Rangatira and served to Ngāti Toa Rangatira uri and manuhiri to uphold manaakitanga; and
3. Have restored and healthy ecosystems that support an abundance and diversity of indigenous species, and have a natural water flow and energy that demonstrate kei te ora te mauri (the mauri of the place is intact); and
4. Provide for safe access for people and communities to enjoy a range of recreational activities including fishing, fostering a strong connection to these waterbodies; and
5. Are taken care of in partnership with Ngāti Toa Rangatira giving effect to the rights, values, aspirations and obligations of Ngāti Toa as kaitiaki for the mana of Te Awarua-o-Porirua as a taonga; and
6. Are resilient to the impacts of climate change; and
7. The use of water and waterways provide for social and economic use benefits, provided that such use does not compromise the health and well-being of waterbodies and freshwater ecosystems or the take and use of water for human health needs.

Insert new Objective TWT as follows:

Objective TWT: Long-term freshwater vision for Te Whanganui-a-Tara



By the year 2100 Te Awarua-o-Porirua harbour, awa, wetlands, groundwater, estuaries and coast are healthy, wai ora, accessible, sustainable for future generations, and:

1. The practices and tikanga associated with Te Whanganui-a-Tara are revitalized and protected; and
2. Mahinga kai are abundant, healthy, diverse and can be safely gathered by Taranaki Whānui and Ngāti Toa Rangatira and served to Taranaki Whānui and Ngāti Toa Rangatira uri and manuhiri to uphold manaakitanga; and
3. Have mauri/mouri that is nurtured, strengthened and able to flourish and restored natural character, have a natural water flow, and ecosystems that support an abundance and diversity of indigenous species; and
4. Provide for the safe access and use of all rivers, lakes, wetlands, estuaries, harbours, and the coast for a range of recreational activities including fishing, fostering an appreciation of and connection to these waterbodies; and
5. Are taken care of in partnership with Taranaki Whānui and Ngāti Toa Rangatira giving effect to the rights, values, aspirations and obligations of Ngāti Toa and Taranaki Whānui that respects the mana of Te Whanganui-a-Tara and the whakapapa connection with Taranaki Whānui and Ngāti Toa Rangatira; and
6. Are resilient to the impacts of climate change; and
7. The use of water and waterways provide for social and economic use benefits, provided that such use does not compromise the health and well-being of waterbodies and freshwater ecosystems or the take and use of water for human health needs.

Insert new Figure 3.4 as follows:

