

WELLINGTON REGIONAL COUNCIL

PROPOSED CHANGE 1 TO THE WELLINGTON REGIONAL POLICY STATEMENT

MINUTE 18

HEARING STREAM 5 - COUNCIL'S REPLY AND REQUEST FOR INFORMATION SOUGHT FROM SUBMITTERS DURING THE HEARING

1. We acknowledge the comprehensive legal submissions, evidence and presentations filed for Hearing Stream 5 – Freshwater / Te Mana o te Wai (HS5) and we thank all submitters and the Reporting Officer for this topic for her very thorough analysis of submissions.
2. This Minute:
 - a. sets out specific questions we would like the Council to address in their Reply for HS5 and the due date for the Reply, and
 - b. notes information requests that were made of Horticulture NZ at the hearing.

Council's reply

3. We have identified a number of matters on which we would be assisted by further information as part of the Council's Reply. The Council is able to reply to any other matters it wishes arising out of the hearing, but we request that the following matters are specifically addressed.

General / issues across the HS5 suite

- a. Please provide information (a visual / schema or similar would be useful if possible), on the stage of each freshwater process in the region eg where each whitua process is at and expected timeframes for futures stages. Among other things, please refer to freshwater visions (for the whitua that propose to include these), mana whenua/tangata whenua statements, the scope of Variation 1, the stage each whitua is at and a high level summary of the provisions in Change 1 of the Natural Resources Plan eg will they include visions, values, target attribute states, flows etc and for certain whitua only?
- b. In the provisions included with Council's Reply, please include all the provisions in this topic and not only the amended provisions, eg the recommended definition of 'undeveloped state', 'hydrological control', Method FW.XX etc. It would also be helpful for the panels if we can have a set of all the definitions referred to in HS5, even if they are not part of Proposed Change 1 or coded to HS5. If you would prefer to include these definitions in a separate appendix to your Reply rather than in the set of recommended provisions that is fine, so that way it is clear they are not within the scope of PC1. It would be useful for us to have these definitions in one place including definitions of 'Community drinking water supplies', 'group drinking water supplies', 'urban development', 'functional need', 'minimise', 'rural areas'.

- c. The amendments Ms Pascall supports in Obj 12(ga) in her rebuttal recognise values relating to wellbeing and recreation. What are the Officer's views on the values from Appendix 1B, NPS-FM that Wairarapa Federated Farmers seek to be included?
- d. Is it appropriate in the Officer's view to include a reference to 'of desirable species' in Obj 12(gb)?
- e. Can you please consider the legal submissions and evidence presented by the Director General of Conservation and advise whether the PC1 provisions remove from the RPS, coastal protection provisions in the NZCPS (for example by deleting 'coastal wetlands' from draft Policy 18(c) and deleting 'coastal marine area' from Policy 40(b)). If the provisions do not give appropriate effect to the NZCPS, what amendments do you propose and are there any issues of scope with these amendments. Is the caselaw in paragraph (o) below relevant to this analysis?
- f. The chapeau to draft Policy FWXXB has a particular structure which is different from similar policies in this topic eg Policies 40 and 42. Can you please assess these provisions across the topic for consistency of terminology eg 'have regard to' vs 'have particular regard to', and also confirm when notices of requirement may be relevant or when the consenting matters in issue are solely regional council functions.
- g. Can Ms Pascall, in conjunction with the Reporting Officer for HS3 (Climate Change) and any technical experts who presented evidence for Council, please review alignment and workability of the nature based solutions provisions with the HS5 provisions regarding hydrological control, hydraulic neutrality and water sensitive urban design. Do these provisions and definitions work as a cohesive, easy to understand and implement suite of provisions across the RPS? Please review the appropriateness of definitions when considering this issue. Are the directions to regional and district plans and for consent applications clear, consistent, workable and for an RMA purpose?
- h. Some submitters were of the view that there was not an appropriate balance in the suite of provisions between protection and use/development (other than urban development). For example, Wairarapa Federated Farmers noted that Policy 17 does not refer to all the limbs of Te Mana o Te Wai. Having heard submitters, does the Reporting Officer consider that the balance in the provisions she supports is appropriate in light of the direction in the NPS-FM and Te Mana o Te Wai?

- i. Sometimes 'urban development' in the HS5 provisions is italicised (ie to refer to the defined term) and sometimes it is not eg in Policy FW.3(e), (g), Policy 42(a) and (j). Can you please check this across all the provisions for consistency/intent.

- j. Concerns were raised by submitters about possible duplication of local authority roles/functions eg Wellington Water commented that a territorial authority may not act if they think the matter is in the jurisdiction of the regional council, and vice versa. The legal submissions of the Director General of Conservation referred to various cases. The *Otago Regional Council* case (footnote 16 of Ms Anton's legal submissions) refers to *Canterbury Regional Council v Banks Peninsula District Council* [1995] 3 NZLR 189 where the Court stated that "Neither a regional council nor a territorial authority has power to make rules for purposes falling within the functions of the other, except to the extent that they fall within its own functions and for the purpose of carrying out its own functions." We also note that s 75(4)(b) of the RMA states that a district plan must not be inconsistent with a regional plan for any matter specified in section 30(1).

Can you please review your advice on the RPS direction in the HS5 provisions regarding local authority functions/roles and jurisdiction in light of submitters' evidence and legal submissions including the views of Mr Brass for the Director-General of Conservation?

- k. Does Council have any views on whether a Memorandum of Understanding between the Council and the territorial authorities may assist in clarifying roles/functions (see *Otago Regional Council* [2022] NZEnvC 101 referred to in Ms Anton's submissions and whether a Method could be included requiring the development of an MOU. Are there scope issues with this?

- l. 'Water Sensitive Urban Design' is referred to in various places eg FW.3(i). This is a defined term so we understand that it should be in italics. Please review / confirm and also advise on whether the definition (which was considered as part of HS3) is appropriate for the HS5 suite of provisions.

- m. '*Nature based solutions*' is referred to only in draft Policy FW.7 in the HS5 suite of provisions. Please advise whether '*nature based solutions*' should also be mentioned in draft Policies FW.3 and 14. We query whether FW.7 should refer to 'prioritising' *nature based solutions* given the description of the policy intent in the Explanation, and also draft Policy CC4.A (in HS3) which require district and regional plans to include provisions requiring development and infrastructure to be located, designed and constructed in ways that provide for climate change mitigation, adaptation and resilience, 'prioritising' the use of *nature based solutions* and informed by mātauranga Māori.

- n. Are the NPS-FM 'natural inland wetland' and 'rivers' consenting pathways in clauses 3.22 and 3.24 of the NPS-FM given appropriate effect to in Policies 18 and 40? Should the pathways be recognised in a consistent way, for instance functional need and the effects management hierarchy is recognised for some activities, but others refer to 'to the extent practicable'. Mr Slyfield, Counsel for Wellington Water and others presenting at the hearing talked about the 'absolute' language in provisions such as Policy 18(c) which do not reflect the nuances in the NPS-FM.

Can you please review the HS5 provisions and recommend any amendments you consider are needed to give appropriate effect to the NPS-FM. Please consider, among other things, the comments in para 4.2 of Ms Tancock's hearing presentation notes on this issue and Mr Slyfield's submissions (from para 17).

- o. Related to the question above, can Counsel for the Council please advise whether the recognition Winstone Aggregates seek for quarrying activities is within the scope of Proposed Change 1 and whether we are required or permitted to grant the relief sought on the basis of caselaw including *Southern Cross Healthcare Ltd v Auckland Council* [2023] NZHC 948 and *Balmoral Developments (Outram) Ltd v Dunedin City Council* [2023] NZEnvC referred to in Ms Tancock's hearing presentation notes.
- p. Ms Burns for Rangitāne o Wairarapa raised some consistency and alignment concerns in her evidence regarding Policies 14 and 18. We ask that the Council please review these draft policies taking into account Ms Burns' views. There are some policies in PC1 that are focused on urban development impacts on freshwater and receiving environments, and other policies that apply across the region. Can the Officer please explain the rationale for these different approaches?

Objective 12

- q. Obj 12(d) -does 'recognise and provide for' appropriately reflect s 6(a) RMA?
- r. Can you please comment on the relief sought by Fish and Game Council to add a new clause into Objective 12 relating to engagement with communities, stakeholders and territorial authorities (similar to the wording in draft Policy 12(a)).

Policy FWXXA and FWXXB

- s. Having heard mana whenua/tangata whenua concerns about including Statements of Te Mana o te Wai in an Appendix to the RPS, is the Officer able to propose an alternative location in the RPS for the Statements while also ensuring their impact/effect and how they are to be interpreted alongside other provisions in the RPS, NOF and NRP, is clear?
- t. In the tables showing the mana whenua/tangata whenua statements and applicable territorial authority areas, is it also helpful to reference the applicable whaitua?

Policy FW.X Hydrological controls for urban development

- u. What are the Officer's and Mr Farrant's views on Wellington Water's relief to not include the methodology in Policy FW.X, but just to include the outcome and require the regional plan to develop the methodology? Have your views on Policy FW.X and the appropriateness of the proposed hydrological control standards changed at all in light of the evidence Ms Lockyer presented during the hearing? Is it appropriate to require the regional plan to proscribe the methodology?
- v. Can Mr Farrant and the Reporting Officer please consider the relief by PCC and others suggesting that this refer to the state of the land prior to the development in question rather than 'undeveloped state' – or do you still consider that this 'locks in' flows from impervious areas or other 'prior to development' aspects that will prevent effective hydrological control.
- w. There was some discussion at the hearing about a 'carve out' for the Wellington City Zone given the extent of impervious surfaces. Do you have any comments on this?

Policy 12

- x. Can Ms Pascall please consider the request from mana whenua/tangata whenua to delete the word "whaitua" from Policy 12(c)(i) – (v) given the chapeau to Policy 12(c).

Policy 14

- y. The reference to "Māori freshwater values" in Policy 14(ab) – are these intended to be the values in Appendices 1A and 1B of the NPS-FM eg 'mahinga kai' or can these also be other values eg those identified in mana whenua/tangata whenua Statements of Te Mana o te Wai? Other provisions in the suite refer to 'mana whenua / tangata whenua freshwater values' (eg Policy 42(a). Can you please review the references and consider whether consistent references are needed for clarity.
- z. In draft Policy 14(m), should provision (ie protection) be provided for wetlands with outstanding values?

Policy FW.3

- aa. Please consider whether the words "including the natural form and flow of the waterbody" are appropriate to include at the end of draft Policy FW.3(k). Compare with draft Policy 42(j). Also, should the words "health and wellbeing" be included in FW.3(k) in light of clause 3.5(4) of the NPS-FM; again compare the wording in Policy 42(j).
- bb. Should Policy FW.3(g) reference 'effects' on freshwater and receiving environments? It currently just requires rules in district plans to consider the location, layout and design of urban dev in relation to freshwater and receiving environments.

- cc. Can the Reporting Officer please comment on the relief described in paragraph 25 of Ms Horrox's evidence (for Wellington Water). We are not sure that this specific point was addressed in Rebuttal. If the Officer supports Wellington Water's relief, is a similar change needed in Policy 42(j)?

Definition of 'hydraulic neutrality'

- dd. Should 'undeveloped state' be in italics to refer to the defined term?

Policy 42

- ee. Can you please consider the language in the chapeau and whether "giving effect to Te Mana o te Wai" by "having regard to" [the matters listed] is appropriate for a consideration policy. In other words, is the legal direction to 'have regard to' Te Mana o te Wai when assessing a consent application?
- ff. How are draft Policies 42(h) and (l) different?

Policy FW.6

- gg. Some submitters commented that local authorities' functions and jurisdiction is clear in Policy 15 but could be clearer in Policy FW.6 which largely repeats provisions in the RMA or NES-F. Do you have any views and further amendments to Policy FW.6 to suggest in light of submitter comments regarding clarity of local authority functions?

Policy FW.7

- hh. Ms McGruddy (WFF) talked about how water storage is a critical element of a climate resilient future yet it is problematic currently to get storage consented. Can you please consider whether a more enabling policy framework is appropriate eg in Policy FW.7 – 'promote and support' – should this be 'enable'? What limitations may be appropriate eg so a 'large water storage dam' isn't necessarily captured.

Policy 15

- ii. Which district plans in the region currently manage earthworks less than 3000m²? (draft Policy 15(b)(v)).

Policy 41

- jj. Policy 41(e) - Can you please clarify the intent of this provision and respond to the example Ms McGruddy gave of the potential for this consideration policy to cause interpretation issues eg in an application for earthworks, a consent applicant will look at the Natural Resource Plan, but if there is a 'minimise' consideration in the RPS, does this cause workability / interpretation issues? Policy 15(a)(iii) directs the regional plan to include provisions to 'minimise erosion' so is Policy 41(e) intended to apply before Policy 15(a)(iii) is implemented in the plan? Ms McGruddy's view is that for efficiency, effectiveness and clarity, the consideration policy in the RPS can be deleted. Ms McGruddy also noted that Proposed Change 1 to the Natural

Resources Plan has comprehensive coverage of requirements for earthworks. What are your views on this?

- kk. Can you please comment on the impact of having Policy 41 apply on a continuing basis even when Policy 15 is implemented in lower order plans? This relates to the question above but please see the evidence of Ms Landers on this point for Horticulture NZ.

Policy 17

- ll. Having heard the evidence of Horticulture NZ at the hearing, is Ms Pascall still of the view that it is not appropriate to recognise the domestic supply of fruit and vegetables as a 'priority 2' Te Mana o te Wai issue.

Policy 40

- mm. Should Policy 40 say 'have regard to' rather than 'particular regard'?
- nn. Policy 40(n) – Ms Pascall, you support some amendments in para 213 of your rebuttal but these are not reflected in the provisions. Please review and update as you consider appropriate.
- oo. Policy 40(o) – Ms Pascall, you say in your rebuttal in para 215 that this should include a consenting pathway for natural inland wetlands. We are not sure that is reflected in the provisions, or do you think this is adequately recognised by the words 'to the extent practicable'?

Policy 18

- pp. Does Policy 18(c) give appropriate effect to clause 3.22 of the NPS-FM? There were some submitters who recommended that Policy 18(c) be deleted on the basis that it restates Policy 6 of the NPS-FM. Do you have any comments on this?

Method FW.2

- qq. In the s 42A report the Reporting Officer noted in Appendix 3 that "As notified, Method FW.2 applies to any notified resource consent, not just to those relating to freshwater. I therefore disagree that Method FW.2 is directly related to the protection and enhancement of freshwater quality and quantity." We understand that this rationale was used to recommend that Policy 15, Policy 41 and AER 6 be considered under P1S1 but the Officer did not make this recommendation for Method FW.2. Can you please confirm whether Method FW.2 should be considered a P1S1 provision or FW provision?

Due date for Council Reply

4. We thank the Reporting Officer and other Council staff and advisors for their assistance with these questions which will help us with our recommendations on the HS5 provisions.
5. We ask that the Council please provide its Reply by 5pm on 20 December 2023.

Information requested from Submitters during HS5

6. During the hearing, Commissioner Paine asked Ms Levenson (appearing for Horticulture NZ) to provide a reference to Maslow's hierarchy of needs. Ms Levenson was also asked by the panel for the references to the plan provisions referred to in paragraph 29 of her evidence. Ms Levenson has provided this information to the Hearings Advisor. [We request that it be uploaded to the Hearings webpage.](#)
7. We also asked Ms Tancock, appearing for Winstone Aggregates during the hearing, to advise whether appeals had been lodged in the cases referred to in paragraph (o) above. Ms Tancock has recently emailed the Hearings Advisor to confirm that counsel involved in the cases have informed her that appeals have not been filed. [We ask the Hearings Advisor to upload Ms Tancock's email to the Hearings website.](#)
8. If parties wish to provide any information to the panels, they can do so by emailing the Hearings Advisors at regionalplan@gw.govt.nz.



D Nightingale
Chair
Part 1, Schedule 1 Panel
Freshwater Hearings Panel

29 November 2023