

BEFORE THE INDEPENDENT HEARING PANELS

UNDER the Resource Management Act
1991

IN THE MATTER of submissions and
further
submissions on Greater
Wellington Regional Council
Proposed Change 1 to the
Regional Policy Statement.

Submitter **WINSTONE AGGREGATES**
(Submitter 162)

**MEMORANDUM OF COUNSEL ON BEHALF OF WINSTONE
AGGREGATES ON HS 7 – INTEGRATION MATTERS**

Dated 28 March 2024

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MAY IT PLEASE THE PANEL:

1. This memorandum is filed on behalf of Winstone Aggregates (Winstone) in respect of the Hearing Stream 7 Integration hearing. Winstone does not wish to appear and has not filed any further evidence on this Chapter. It has one matter which it wishes to raise with the Panel for consideration.

Involvement in RPS - PC2 Hearings

2. Winstone has made a submission on the RPS and over the course of the hearing has made legal submissions and filed evidence on the following Chapters of the RPS-PC2:
 - a. HS1 Introductory Chapter (Legal Submissions and Planning evidence from Mr Heffernan and Panel Presentations dated 13 June).
 - b. HS2 Integrated Management (Statement of planning evidence of Mr. Heffernan dated 28 June 2023).
 - c. HS3 Climate Change (Statement of Evidence of Mr Heffernan dated 14 August).
 - d. HS4- Urban Development (Planning evidence of Ms Clarke dated 19 September 2023)
 - e. HS5 Freshwater /Te Mana o te Wai (Legal submissions and Planning evidence from Ms Clarke, Ecology evidence from Dr Keesing, and company evidence from Mr. Heffernan and Panel Presentations dated 22 November 2023).
 - f. HS6 Indigenous Biodiversity (Statement of Evidence of Ms Clarke (Planning) dated 30 January 2024).
3. As noted in opening submissions on HS1 Introductory Chapter a key theme for Winstone across all chapters of the plan was how the RPS can better recognise and provide for aggregate extraction and clean filling of overburden, which are activities that have recognised consenting pathways in the NPS-FM (Jan 2023 update), in the then draft NPS-IB and underpins housing growth sought via the NPS-UD.

4. Across the first four chapters of the Draft Plan, the Officer's Reports and Officer's Reply Winstone's submissions seeking specific provisions that afforded better recognition for aggregates were either:
 - a. Ignored or viewed as not requiring a response.
 - b. Dismissed as being "out of scope" of the PPC-1.
 - c. Subject to comment that the only appropriate place for extraction of aggregate to be mentioned in PPC1 is in the "minerals and Soil Chapter of the RPS", and that seeking to have any Policy recognition for aggregate extraction or quarrying and clean filling in any other relevant chapters of the RPS, where these interact with other activities was "out of scope."
5. At the commencement of the Introductory Chapter, Council's initial view was that Winstone's request that the RPS give effect to relevant National Policy Statements including NPS-FM was wrongly seeking to expand the scope of Plan Change 1 and was therefore out of scope or no decision was required.¹
6. This extract of the Officer's Report on the introductory Chapter paras 138-147 is set out in full in **Appendix 1** to these submissions because it sets the tone and was a touchstone for Officer's responses to Winstone's submission points in subsequent chapters (Chapters 1, 2 and 3) in terms of its submission points being rejected for being "out of scope", ignored or "no decision required."
7. Winstone made detailed legal submissions throughout the Hearing of the Chapters that the RPS be amended in line with National Policy Direction i.e. NPS-FM, NPS-IB and NPS-UD was "on the plan change", was very much "in scope" and should be included as relevant matters for PPC1 to address.

¹ See Hearing **Stream 1 – Introductory Chapter** example, Hearing Stream 1 Officers Report para 138,140-145 and 141-147, Councils response to Submission points S162.001 and FS27.001 and .002 and S162.001, S162.002 and S162.003. These were addressed in the Hearing Stream 1 Evidence of Mr Heffernan dated 13 June para 8.2-8.3 and 8.7-8.10 and Opening Legal Submissions by counsel on behalf of Winstone Aggregates dated 13 June 2023 para 10-14 and 31-40.

8. GWRC remained silent on this issue until the Panel directed counsel for GWRC to consider the issue of scope during Hearing Stream 5.
9. The issue was finally addressed in legal submissions in reply by counsel for GWRC in respect of Policies 18 and 40 and clause 3.22 NPS-FM on 20 December 2023 which accepted that the relief Winstone sought was both relevant and “in scope”.
10. The Panel sought and received advice on the extent to which it was to implement the NPS FM, newly released NPS IB and NPS-HPL from Brookfield’s, in an opinion dated 8 February 2024. That advice drew attention to what the author saw as a “consensus” between GWRC and Winstone’s legal submissions on HS5 and found that the relief sought was “in scope” of the RPS-PPC1, noting that the Panel could provide Policy recognition for CI 3.22 NPS-FM in the RPS if it considered it was appropriate. That advice also agreed with the more general proposition advanced by counsel for Winstone in terms of the Panel’s obligation “to give effect to” updated NPS-FM, and recently released NPS-IB as best it could in the circumstances.
11. Ultimately, Council’s reply on Hearing Stream 5 made amendments that were recommended in response to the relief sought by Winstone (which Winstone unsurprisingly supports) and counsel notes a similar approach was proposed by the Officer in Hearing Stream 6 to include the pathway for aggregate extraction included in the Officer’s Report for Hearing Stream 6 – Indigenous Biodiversity Chapter in line with the NPS-IB and NPS-HPL.

Integration – consistent treatment across the plan

12. Winstone is not seeking to re-litigate the issues. It has filed substantive evidence and submissions over the course of the Plan Change setting out its views to which the Panel can refer.
13. It was not until the conclusion of Hearing Stream 5 (some six months after the Hearing of Plan Change 1 had commenced) that GWRC accepted that the relief being sought via Winstone’s submission was relevant, “on” the plan change, in scope and that its suggestions may have some merit. Up until that point Winstone’s submission points had been largely dismissed in Officer’s reports (despite filing submissions and evidence to the contrary).

14. It is respectfully suggested that as part of the Integration Chapter, the Panel may wish to revisit or reconsider legal submissions and evidence on submission points made by Winstone in the earlier Hearing Streams 2 (Integrated Management)² and Hearing Stream 3 Climate Change,³ that were previously dismissed by Council on scope grounds. This could be done on the basis that GWRC (and Brookfield's) both now do appear to agree and support (at a high level) that there is scope to consider the relief sought, should the Panel consider it appropriate.
15. While these submissions have focused on Winstone's submission points, it is acknowledged that there may be a number of other submission points which may need to be considered in light of the advice in terms of how the Panel should consider the various NPS in its deliberations on RPS- PC-1.
16. The Panel may also wish to look closely at the Officer's recommendations for Winstone's submission points on Chapter 4 – Integrated Management, with a more focused NPS-UD, NPS-IB, NPS-FM and NPS-HPL lens considering that advice.

² **Hearing Stream 2** – Integrated Management – Officer's Report was silent on Winstone's submission, this was covered in evidence by Mr Heffernan dated 28 June 2023 para 5 -8.1, this was considered, Winstone's relief was accepted in part by Mr Wyeth in his statement of rebuttal on integrated management dated 7 July 2023 at para 36.3 but the reasoning referred back to the Council's introductory view.

³ **Hearing Stream 3** – Climate Change – See Mr Heffernan's evidence on Hearing Stream 3 (Climate Change) - NPS-FM and NPS-IB for example his para 6.10 - 6.18 the link between Policies 39 and 7 in terms of the link between infrastructure and renewable electricity and quarrying of significant mineral resources – needing to locate where the resource exists is dismissed by the Officer, despite all these activities having use pathways afforded in the NPS-FM, NPS-IB and NPS-HPL. He notes the Officer's response was that "minerals should stay in the soils and mineral chapter." There is also a link to NPS-HPL in his comment on Policy 64 at para 6.22-6.6.23 about the need for consistency with the NPS-HPL. See Officer's Rebuttal Report Mr Wyeth Climate Change & Energy & Waste dated 31 July 2023 para. 106, 138, 147 (minerals out of scope of PC1 belong in the mineral chapter) and 190.

Concluding comments:

17. Winstone do not intend to appear before the Panel for the final Integration Chapter of PPC-1, however counsel (and the wider Winstone team) would like to express their gratitude to the Panel for their robust and careful consideration of the issues, and the dedicated Hearing Management Team for the way in which the RPS-PC1 hearings have been run.



P D TANCOCK/D BALLINGER
Counsel for Winstone Aggregates

Dated the 28th day of March 2024

APPENDIX 1

Proposed Change 1 to the Regional Policy Statement for the Wellington Region
Hearing Stream: 1
Officer's Report: General Submissions

Expand the Change 1 scope to give effect to mineral and aggregate quarrying provisions in the NPS-FW, NPS-HPL and NPS-IB (draft)

138. Winstone Aggregates [S162.001, 002 & 003], the AQA [S29.005 & 006] and Fulton Hogan [S114.008] all consider that Change 1 should be amended to give effect to the relevant provisions in the NPS-FM, the NPS-HPL and the exposure draft of the NPS-IB which variously provide a consenting pathway for aggregate and mineral extraction provided the identified criteria are met. This would include adding in new definitions. Rangitāne [FS2.24, 25 & 26], Ātiawa [FS20.002, 268, 269 & 270, 271], and Forest and Bird [FS7.0.19 & 020] variously oppose or oppose in part the aggregate companies' relief. Winstone Aggregates [FS27.001 & 002] supports the relief sought by the AQA and Fulton Hogan respectively. HortNZ [FS28.001] also supports the AQA's relief. Waka Kotahi [FS3.004] supports in part Winstone Aggregates.

139. The relief sought by the submitters includes requests to amend the RPS, the PNRP and to implement requirements which apply to territorial authorities. Whilst the RPS plays a role in providing a consenting pathway for mineral and aggregate production in the Wellington region insofar as it *"provides an overview of the resource management issues and the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region"*¹⁰, it does not include rules directing which activities require consent. This is the role of the regional plan and the relevant district plans. It is also not within the scope of this plan change process to consider changes to the PNRP or district plans – the scope is limited to the RPS only.
140. Change 1 is not a full review of the RPS. The primary purpose is to implement the NPS-UD and parts of the NPS-FM, alongside other legislative direction as mentioned in paragraph 130 of this report. When preparing Change 1, the Council did not identify access to mineral and aggregate resources as an issue to be addressed in Change 1. The operative RPS already includes explicit recognition of minerals, including Objective 31 – *"Demand for mineral resources is met from resources located in close proximity to the areas of demand"*, and policies seeking to minimise reverse sensitivity effects on existing quarries and consider how the region's mineral resources are utilised. As Change 1 proposed no changes to these provisions amending the existing Soils and Minerals chapter in the RPS is out of scope in my view.
141. I have identified the relevant direction (as it relates to mineral and aggregate extraction) in each NPS in the following table, including whether it applies to the RPS or another planning document and the timeframe for implementation.

NPS	Direction	Timeframe	Council response
M	Clause 3.22 – requires amendment to a regional plan	As soon as practicable	Will be part of an upcoming plan change to the PNRP
NPS-HPL	Clause 3.5 – requirement to map highly productive land and include maps in the RPS	As soon as practicable and by September 2025	Will be part of a future review of the RPS
NPS-HPL	Clause 3.9 – applies to territorial authorities		N/A
NPS-IB (Exposure draft)	Clause 3.10 – managing adverse effects on SNAs	As soon as reasonably practicable following gazettal	Will be part of a future review of the RPS or a variation to Change 1

¹⁰ Section 59 of the RMA

142. I agree with submitters that amendments will be required to the RPS to give effect to the NPS-HPL. Assuming the NPS-IB remains as proposed in the exposure draft, amendments will also be required to give effect to Clause 3.10 (current numbering) of the NPS, which I understand will be given effect to in subsequent changes to the RPS.
143. The implementation guide for the NPS-HPL acknowledges there will be a period of time *"where local authorities and applicants will need to consider the policy direction and implementation requirements of the NPS-HPL without highly productive land being mapped ..."*.¹¹ Clause 3.5(7) of the NPS-NPL includes a transitional definition for highly productive land, until the required mapping is complete. I understand that the Council, in its submission to Change 1, proposed amendments to Policies 55 and 56, and a new definition of 'highly productive land', to align with the NPS-HPL. Submissions, and further submissions, on Policies 55 and 56 and the proposed new definition, will be considered in the s42A report(s) for the Urban Development and Freshwater hearing streams.
144. With regard to the NPS-IB (draft), I have been advised by Council officers that they have endeavoured to be consistent with the relevant provisions of the exposure draft of the NPS-IB insofar as they relate to indigenous biodiversity, as described in paragraph 134 of this report. Once the NPS-IB commences, the Council will need to review the RPS in response. If this occurs during the hearing process, there may be the opportunity to amend Change 1 or provide an update via the Indigenous Biodiversity s42a report, otherwise this will be part of a future change to the RPS.
145. In my opinion, the relief sought by Fulton Hogan, the AQA and Winstone Aggregates (and supporting further submitters) should be rejected because it will be part of a subsequent plan change to the RPS or it applies to the PNRP or district plans.
146. I would note that in accordance with Section 104(1)(b)(iii) a resource consent decision-maker is required to have regard to any relevant provisions of an NPS, which would include the relevant objectives and policies in the NPS-FM and the NPS-HPL. Further, the NES-FW now includes a regional consenting pathway for mineral extraction in natural wetlands (Clause 45D).

¹¹ MfE National Policy Statement Highly Productive Land – Guide to Implementation (March 2023), page 9

3.1.14. Recommendation – plan change scope

147. That the submissions and further submissions on 'plan change scope' be accept/rejected, or noted as 'no decision required', as detailed in Appendix 1.

