

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)

STATEMENT OF EVIDENCE OF CATHERINE CLARKE

ON BEHALF OF WINSTONE AGGREGATES

Dated: 19 September 2023

Hearing Stream 4 – Urban Development

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1.0 Qualifications and Expertise

- 1.1 My name is Catherine Mary Clarke. I am a Partner and Planner at Boffa Miskell Limited, a national firm of consulting planners, ecologists, and landscape architects.
- 1.2 I hold the qualification of Bachelor of Regional Planning (1st Class Honours) from Massey University. I am a full member of the New Zealand Planning Institute and a past president of the Auckland branch. I have accreditation under the “Making Good Decisions” programme for RMA decision makers.
- 1.3 My professional experience includes approximately twelve years as a local authority planner and over twenty years in consultancy. As a planning consultant, I have had a range of experience in the development and implementation of planning documents under the Resource Management Act 1991 (RMA). I have been engaged by local authorities to assist in the drafting and development of regional and district plans. I have also been engaged by infrastructure providers and various industry groups including Winstone Aggregates to provide planning advice and present expert evidence on a range of regional and district planning documents that affect their activities.
- 1.4 Most recently I have assisted Winstone Aggregates in the preparation of the submissions and further submissions on the Greater Wellington Regional Council (**GWRC**), Proposed Change 1 to the Regional Policy Statement (**PC1**).

2.0 Code of Conduct

- 2.1 I have read the Code of Conduct for expert witnesses in the Environment Court Practice Note. I agree to comply with this Code. The evidence in my statement is within my area of expertise, except where I state that I am relying on the evidence of another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

3.0 Scope of Evidence

- 3.1 My statement of evidence is principally focused on the relevant submission points made by Winstone Aggregates (**Winstone**) that are addressed in the Section 42A Hearing Report Hearing Stream 4: Urban Development (**HS4**) of PC1.
- 3.2 I have outlined in the sections that follow my response to several matters raised by the Section 42A author that relate to Winstone's submission. Where I have not made specific comment on a matter addressed by the Section 42A author on a Winstone submission point relating to HS4, it can be taken that I have no further comment.

4.0 Allocation of Provisions

- 4.1 The Section 42A author (Ms Zöllner) has discussed the allocation of provisions that are subject to the Freshwater Planning Instrument (**FPI**) process in Section 3.2 of the Section 42A report. Based on her evaluation, several provisions of the Urban Development topic are subject the FPI process¹.
- 4.2 Of the provisions Ms Zöllner has recommended be subject to the FPI process, Winstone has interest in: Regional form, design and function chapter introduction, Issues B, 1 and 2, and Policies 33 and 55.
- 4.3 I disagree with the allocation of these provisions to the FPI process.
- 4.4 At a high level these policies are aimed at implementing the National Policy Statement for Urban Development not the National Policy Statement for Freshwater Water (**NPS-FM**), as accepted by GWRC, in the Integrated Management Chapter, these provisions relate to matters that are broader than Freshwater considerations.
- 4.5 I note that Winstone's legal counsel provided the following summary of the *Otago Regional Council* decision in legal submissions for Hearing Stream 1. I set out this summary in the following paragraph

¹ As summarised in Paragraph 3 of the Section 42A report

and adopt it to inform my assessment of the correct allocation of these provisions to the FPI or Part 1 Schedule 1 (**P1S1**) process.

4.6 The scope of what can lawfully be included in a FPI was addressed by the High Court in *Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Inc.*² The Court made the following observations as to what amounts to an FPI and is able to proceed through the Freshwater Planning Process (**FPP**):

4.6.1 Parts of a Regional Policy Statement (RPS) will qualify to be part of a FPI if they directly relate to the maintenance or enhancement of the quality or quantity of freshwater.³

4.6.2 Part of a RPS may relate to freshwater through giving effect to the NPS-FM, or by otherwise relating to freshwater.

4.6.3 The scope of a FPI is narrower than what is included in the NPS-FM. Not all parts of the NPS-FM relate directly to freshwater quality or quantity, and therefore assessment is needed of whether provisions in a regional policy statement relate to freshwater through the way they give effect to the NPS-FM.⁴

4.6.4 Other provisions that do not give effect to the NPS-FM may relate to freshwater in the required manner to qualify for inclusion in the FPI, by relating directly to matters that impact on the quality and quantity of freshwater, including groundwater, lakes, rivers and wetlands.⁵

4.6.5 Parts of a regional policy statement cannot be included within a FPI simply because of a connection to freshwater through the concepts of Te Mana o te Wai, ki uta ki tai or the integrated management of natural and physical resources.⁶

² *Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Inc* [2022] NZHC 1777, [2022] NZRMA 565.

³ At [192].

⁴ At [201].

⁵ At [202].

⁶ At [206].

4.6.6 A provision that is concerned with sea water cannot be considered as related to freshwater or included in a FPI process.⁷

4.6.7 The starting point is that all provisions in a proposed RPS should be subject to the normal P1S1 process.⁸

4.7 I now consider the allocation of the six relevant provisions that Winstone has submitted on.

Chapter Introduction to Chapter 3.9 Regional form, design, and function

4.8 The notified amendments to the Chapter Introduction cover a broad range of topics, of which freshwater is a relatively small component and the chapter principally relates to urban development and regional form. When considered holistically, I do not consider that the notified amendments are directly related to quality and quantity of freshwater.

Issue B – inappropriate development

4.9 The Section 42A author considers that Issue B – inappropriate development (in the Chapter Introduction to Chapter 3.9 'Regional form, design and function') is correctly allocated to the FPI because the matters it describes form a direct relationship between inappropriate land use and development, and impacts on aquatic ecosystems, which are inherently connected to freshwater quality and quantity through the NPSFM.

4.10 I do not agree with that assessment. Issue B – inappropriate development. While there is reference to "ecosystems, particularly aquatic ecosystems" within the issue, I note that the issue itself relates to inappropriate urban development and not a degraded aquatic ecosystem. A purposive approach must be taken in this regard.

⁷ At [202].

⁸ At [203].

- 4.11 I also note Issue B – inappropriate development refers to “ecosystems, particularly aquatic ecosystems”. The reference to “aquatic ecosystems” is not specifically limited to freshwater ecosystems and can include ‘sea water’, which I understand cannot be considered as related to freshwater or included in an FPI.

Issue 1 – poor quality urban design

- 4.12 I consider that the notified amendments to Issue 1 do not have any direct link to freshwater quality or quantity. The notified amendments only refer to “the cultural practices and wellbeing of mana whenua / tangata whenua and communities” as additions to a list of how poor-quality urban design can have adverse impacts.

Issue 2 – sporadic, uncontrolled and/or uncoordinated development

- 4.13 As with Issue B, the reference to adverse effect on “water” is not specifically limited to freshwater ecosystems and includes seawater. I understand that this means the provision cannot be considered as related to freshwater or included in an FPI.

Policy 33

- 4.14 I note that the Section 42A author considers that Policy 33 should not be in the freshwater planning instrument (FPI), because Policy 33 is primarily about seeking a reduction in transport emissions through the Regional Land Transport Plan.⁹ The author recommends that this policy is moved into the P1S1 process.¹⁰
- 4.15 I agree that Policy 33 does not have the direct link to freshwater that is required to qualify for inclusion in the FPI. I support Policy 33 being allocated to the P1S1 process.

Policy 55

- 4.16 The Section 42A author considers that Policy 55 should be subject to the FPI because that Policy specifically seeks to integrate and recognise the role of Te Mana o Te Wai, as part of achieving well-

⁹ Section 42A report at page 17, table 5, entry for Policy 33.

¹⁰ Section 42A report at paragraph 82.

functioning urban environments. The author says the policy forms part of the integrated implementation of the NPS-FM in relationship to urban development.

4.17 I do not agree with that recommendation for two reasons.

4.17.1 First, the Section 42A author relies on a connection to freshwater through the concept of Te Mana o Te Wai.¹¹ I understand from the summary of the *Otago Regional Council* decision above that a provision cannot be included with an FPI simply because of a connection to freshwater through the concepts of Te Mana o Te Wai.

4.17.2 Secondly, Policy 55 requires particular regard to be given to a detailed list of matters in paragraphs (a)–(d), including sub paragraphs (and sub-subparagraphs) within paragraph (a). Most of these matters do not relate to maintenance or enhancement of the quality or quantity of freshwater in any direct manner. I consider that the link to freshwater through the concept of Te Mana o Te Wai in one sub-sub-paragraph is in context a relatively minor feature of Policy 55 and does not create a direct link to freshwater quality/quantity or justify the inclusion of the provision in the FPI process.

5.0 Introduction of Chapter 3.9 Regional form, design and function

5.1 The Section 42A author has supported Winstone’s submission point¹² and recognises the positive role of a local supply of aggregate in providing for well-functioning urban areas¹³. She has recommended the following paragraph is inserted into the introduction of Chapter 3.9: Regional form, design and function¹⁴:

“Well-functioning urban areas support the efficient use of existing urban-zoned land and infrastructure and protect regionally significant infrastructure from potentially incompatible development and reverse sensitivity effects. They also support the local supply of

¹¹ Otago Regional Council [2022] NZHC 1777 at [206].

¹² Submission point [S162.041]

¹³ Paragraph 347 of the Section 42A report

¹⁴ Paragraph 4 on Page 3 of Appendix 1 to the Section 42A report

aggregate to support urban development where necessary. By being compact they also retain productive rural land”.

5.2 I support the inclusion of recognition of the local supply of aggregate in the introduction to Chapter 3.9. I note that this is consistent with the proposed Objective A which recognises the benefits of protecting and utilising the region's significant mineral resources¹⁵. However, I note that as currently drafted, the wording is somewhat unclear, particularly in how the local supply of aggregate relates to well-functioning urban areas. The following drafting points are noted:

- a. The second sentence states “They also support the local supply of aggregate”. This implies that ‘well-functioning urban areas’ generate supply the local supply of aggregate, rather than require a local supply of aggregate resource to support urban development.
- b. The last sentence is unclear in what is referred to as ‘compact’. I anticipate that this is intended to refer to compact urban form. However, as the paragraph flows, this could be interpreted as being local quarry supplies as being compact, which is not appropriate nor relevant to the chapter. I note that the inferred statement is also incorrect: compact urban form does not necessarily retain productive rural land, rather it promotes retention.

5.3 I recommend that further amendments (or wording to similar effect) to clarify the intent of the paragraph and the relationship between local aggregate supplies and well-functioning urban areas as follows (additions underlined, deletions struck through):

“Well-functioning urban areas support the efficient use of existing urban-zoned land and infrastructure, and protect regionally significant infrastructure from potentially incompatible development and reverse sensitivity effects. The retention of productive rural land is promoted through compact urban form. Well-functioning urban areas must be supported by ensuring a They also support the reliable local supply of aggregate to ~~support~~ enable urban development and and

¹⁵ Clause (i) of Objective A provided in Appendix 1 of Mr Wyeth’s right of reply for Hearing Stream Two

associated infrastructure where necessary. By being compact they also retain productive rural land."

6.0 Method 52

- 6.1 The Section 42A author rejects Winstone's submission point¹⁶ that sought that Regionally Significant Aggregate Deposits are mapped to provide for their protection¹⁷. Her reason being that undertaking mapping is out of scope of Change 1.
- 6.2 While not directly stated, I understand Section 42A author is referring to the mapping exercise itself as being out of scope, rather than the topic of significant mineral resources generally and the method of mapping these resources. As mineral resources, particularly the local supply of aggregate, is directly associated with both urban development and climate change outcomes, it is considered to be within the scope of PC1.
- 6.3 Currently, Method 52 directs that significant mineral resources in the Wellington Region are identified. This method is yet to be implemented. It is considered that a delay in identifying the Region's significant mineral resources will impose a risk on the ability to recognise and protect these significant resources, which will be necessary in delivering some of the key direction of Plan Change 1, particularly well-functioning urban areas. In relation to Ms Zöllner's point, I accept that there may be some impracticalities in undertaking this mapping exercise as part of the PC11 statutory process. However, I do not consider that the matter should be rejected altogether. Amendments can be made through PC1 to Method 52 to give clear direction on the urgency of identifying and mapping the Wellington Region's significant mineral resources. This can be viewed as a consequential amendment to ensure that the Region's

¹⁶ Submission point [S162.041]

¹⁷ Paragraph 375 of the Section 42A report

*significant mineral resources*¹⁸ referred to throughout the RPS¹⁹ are properly recognised and Method 52 is implemented.

6.4 I suggest that Method 52 is amended to give a clear timeframe. This is consistent with the approach taken by Greater Wellington Regional Council to other provisions which are yet to be implemented²⁰. The timeframe must reflect the urgency. Spatially identifying the Region's significant mineral resources is important to give effect to this policy recognition provided for these resources in the RPS (as discussed further below). It is recommended that mapping could be aligned with, and incorporated into the Future Development Strategy which I understand is intended to be released in March 2024.

6.5 To provide for this, the following changes are recommended (or wording to similar effect):

“Method 52: Identify the region’s significant mineral resources.

Spatially identify the location of significant mineral resources in the region no later than 31 March 2024”.

7.0 Policy 55

7.1 The Section 42A author has supported Winstone’s submission point²¹ on Policy 55 and agrees that the protection of significant mineral resources should be recognised. She has recommended the addition of clause 4, subclause (ix):

“Protecting significant mineral resources from incompatible or inappropriate adjacent land uses, consistent with Policy 60.”

7.2 I agree and support this addition. This addition appropriately recognises and protects mineral resources from further urban growth and aligns with the other RPS direction, particularly Proposed Objective A and Operative Policy 60. Furthermore I note the

¹⁸ Defined as: Deposits of minerals, the extraction of which is of potential importance in order to meet the current or future mineral needs of the region or nation.

¹⁹ Proposed Objective A, Proposed Policy 56, Operative Policy 60, Operative Method 52

²⁰ For instance, proposed changes to Policy 23 include a specific timeframe.

²¹ Submission point [S162.016]

importance of mapping and identifying the significant mineral resources at a regional level to assist in implementing the Policies throughout the RPS including Policy 55.

8.0 Policy 56

8.1 The Section 42A author (Mr Jeffery) has recommended proposed clause (b) to Policy 56 that specifically relates to reverse sensitivity²². This direction had previously been provided through clause (a) but was part of a broad directive that related to primary production.

8.2 I agree and support this change. Having a specific clause that relates to reverse sensitivity and clarifying the specific activities will provide clearer direction to those using and implementing the RPS.

9.0 Conclusion

9.1 It is apparent that the section 42 authors officers have invested considerable time and energy in the preparation of the s.42A reports for this Hearing Stream 4 – Urban Development . Further matters sought as relief in Winstone’s submission have been recommended to be accepted by the authors.

9.2 However, there are issues that I consider are still outstanding including the correct allocation of provisions to the FPI or P1S1 process, clarifying the intent of the Introduction of Chapter 3.9 and the relationship between local aggregate supplies and well-functioning urban areas, and ensuring Method 52 gives clear direction on the urgency of identifying and mapping the Wellington Region’s significant mineral resources.

²² Paragraph 802 and 824 of the Section 42A report

9.3 It is hoped the commentary in my evidence will assist the Hearings Panel in understanding and addressing these outstanding matters.



Catherine Clarke

Dated the 19th day of September 2023