

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: 3 November 2023

Hearing Stream 5 – Freshwater / Te Mana o te Wai

Solicitor Acting:

Penelope Ryder Lewis
Bartlett Law
Level 9, Equinox House
111 The Terrace, PO Box 10-852
The Terrace, Wellington
Tel: (04) 472 5579 Fax: (04) 471 0589
Email: prl@btlaw.co.nz

Counsel Acting:

PD Tancock/ Duncan Ballinger
Harbour Chambers
Level 1, 5 Cable Street
PO Box 10-242
Wellington
Tel: (04) 499 2684
Email:
phernne.tancock@legalchambers.co.nz

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-five 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 5: Freshwater (**HS5**) 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, it can be taken that I have no further comment.
- 3.3 Throughout my evidence, I have provided discussion, and where appropriate suggestions, on how the provisions addressed in my evidence could be amended in line with the relief sought by Winstone. I have provided a set of marked up provisions in **Appendix 1** of this evidence.

4.0 Allocation of Provisions

- 4.1 The Section 42A author (Ms Pascall) has discussed the allocation of provisions that are subject to the Freshwater Planning Instrument (**FPI**) process in Section 3.4 of the Section 42A report. Based on her evaluation, Ms Pascall has recommended that Policy 15 and Policy 41 and Objective 12 AER 6¹ are recategorized as subject to the Part 1 Schedule 1 process while all other provisions remain subject to the FPI process.
- 4.2 I support Ms Pascall's recommendation for the re-allocation of provisions subject to the FPI process. I particularly support the re-allocation of policies to the Part 1 Schedule 1 process where they apply to non-freshwater objectives such as Policies 15 and 41 which relate to Objective 29 (soil erosion).

¹ Though it is noted that that appears to be no changes to existing AER6 of Objective 12 by PC1 to the RPS.

5.0 Policy direction for “urban development”

- 5.1 Ms Pascall has clarified the extent to which the urban development provisions (Policy 14, Policy FW.3, Policy 42 and Method FW.2) make reference to the existing definition of ‘urban development’ in the Operative Regional Policy Statement². She has also rejected submissions seeking that its application is broadened to additional activities³.
- 5.2 I agree with the interpretation taken by Ms Pascall and support that these provisions remain targeted at urban development. I agree that there would be considerable impracticalities and unintended consequences associated with giving effect to this direction if it were applied to other non-urban development activities such as quarrying activities.

6.0 Protection and enhancement of waterbodies

- 6.1 There is a policy direction throughout Proposed Change 1 that directs to “protect and enhance” water bodies. Specifically, I note that this direction is provided through the updated Objective 12 and Policies 18 and 40 in the Section 42A report. I have included the relevant parts of Objective 12 and Policies 18 and 40 based on the recommended changes provided (as clean versions) in the Section 42A report below (emphasis added):

Objective 12⁴ – Te Mana o te Wai in the Wellington Region

The Region’s waterbodies and freshwater ecosystems are returned to a healthy state and the ongoing management of land and water:...

- b) *Protects waterbodies and freshwater ecosystems from further degradation;...*

Policy 18⁵: Protecting and enhancing the health and wellbeing of water bodies and freshwater ecosystem health— regional plans

² Paragraphs 346 – 350.

³ Paragraphs 381 - 382, 346 – 350, 381- 382.

⁴ Pages 3 - 4, Appendix 1, Recommended amendments to provisions, Hearing Stream 5, Freshwater and Te Mana o te Wai.

⁵ Pages 17-18, Appendix 1, Recommended amendments to provisions, Hearing Stream 5, Freshwater and Te Mana o te Wai.

Regional plans shall include policies, rules and/or methods that give effect to Te Mana o te Wai, and in doing so protect and enhance the health and wellbeing of water bodies and freshwater ecosystem health, including by:...

Policy 40⁶: Protecting and enhancing the health and well-being of water bodies and freshwater ecosystems – consideration

When considering an application for a regional resource consent, the regional council must give effect to Te Mana o te Wai and in doing so must have particular regard to:

(a) managing water quality, flows and water levels and aquatic habitats of water bodies in a way that protects and enhances the health and well-being of waterbodies and the health and wellbeing of freshwater ecosystems;

(b) managing freshwater quality in a way that protects and enhances the health and well-being of receiving environments....

6.2 Winstone sought that the provisions in PC1 are consistent with the National Policy Statement for Freshwater Management⁷ (**NPS-FM**).

6.3 The NPS-FM does provide direction to both ‘protect’ and ‘maintain’ water bodies, but importantly protection is only afforded to some water bodies of significance or ecological value. In summary, Policy 8 requires the protection of the *significant* values of *outstanding* water bodies, Policy 5 requires the maintenance of water bodies generally and Policy 9 requires the habitats of indigenous freshwater species are protected. There is no direction in the NPS-FM requiring enhancement of *all* water bodies, but rather improvement where the water body is degraded or if it is the desire of the community⁸. I have included Policies 5, 8 and 9 from the NPS-FM in **Appendix 2** of this evidence.

6.4 While not directly responded to in the Section 42A report, it appears that the overall intent of the proposed Freshwater /and Te Mana o te Wai provisions are to give effect to the NPS-FM particularly Policy 5. I note in paragraph 687 of the Section 42A Hearing Report where Ms Pascall recognises the NPS-FM requires *that freshwater be “maintained or*

⁶ Pages 19-20, Appendix 1, Recommended amendments to provisions, Hearing Stream 5, Freshwater and Te Mana o te Wai.

⁷ Submission points [S162.003] [S162.007] and [S162.013]

⁸ Policy 5 of the NPS-FM.

improved ". Despite this, she has continued to recommend retaining the direction of 'protecting and enhancing' of waterbodies.

- 6.5 While the terms "protect" and "maintain" are not defined, they are commonly used in planning documents and are well understood as taking their ordinary meanings. I have provided their understood meanings below, but in a general sense, protect is a stronger direction and sets a higher bar than maintain.

Protect means to avoid material harm, which requires a decision-maker to be satisfied that there will be no material harm, or alternatively that conditions can be imposed that mean (i) material harm will be avoided; (ii) any harm will be mitigated so that the harm is no longer material; or (iii) any harm will be remedied within a reasonable timeframe so that taking into account the whole period harm subsists, overall the harm is not material⁹

Maintain means to cause or enable to continue, keep at the same level or rate, and keep in good condition¹⁰

- 6.6 "Water body" is defined in section 2 of the RMA as meaning:

Water body means fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area.

- 6.7 'Water body' has a broad definition in the RMA (noting this definition is also adopted in the Operative RPS) and applies to all water in the region with the exception of piped and coastal water. Notably, the definition does not differentiate by the level of modification, its naturalness, or ecological value or significance.

- 6.8 I refer to Dr Keesing's evidence describing receiving environments that would be considered 'water bodies' and would require protection under the proposed policy framework. Dr Keesing also explains some of the impracticalities associated with implementing protection in such instances.

⁹ *Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board* [2021] NZSC 127, [2021] 1 NZLR 801 at [252], [292]–[293] and [309]–[311]; *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZSC 112, [2023] NZRMA 422 at [65]–[66].

¹⁰ *Port Otago Ltd v Dunedin City Council* EnvC Christchurch C4/02, 22 January 2002 at [41].

- 6.9 As previously noted¹¹, I understand that the overall intent of the direction of the freshwater provisions in PC1 are to give effect to Policy 5 of the NPS-FM. I consider that the current proposed direction of protecting and enhancing (rather than maintaining and improving) is not consistent with Policy 5 and rather introduces a more stringent requirement. I consider it is also inconsistent with Policy 8 of the NPS-FM by requiring protection of all water bodies regardless of whether the water body is outstanding, or its values are significant. In my view, this diminishes the intent of Policy 8 by broadening the direction. While I acknowledge the direction of the RPS can be more stringent than the NPS-FM, there must be an appropriate evidential basis and a Section 32 evaluation that corresponds to the scale and significance of this direction. Based on the evidence of Dr Keesing, I do not consider that there is evidence requiring protection and enhancement for all water bodies in the Wellington Region. I also do not consider that the Section 32 evaluation has appropriately evaluated the costs and benefits, or the efficiency and effectiveness of this proposed policy direction.
- 6.10 I consider the provisions relating to all waterbodies including Objective 12 and Policies 18 and Policy 40 should be amended to be consistent with Policy 5 of the NPS-FM, and that 'protect' and enhance' is replaced with 'maintained¹² and improved'¹³ I have provided some suggested amendments to these provisions in **Appendix 1** of this evidence in line with the relief sought in the Winstone evidence.

7.0 Definitions

- 7.1 Ms Pascall has in part accepted Winstone's submission point¹⁴ relating to the inclusion of definitions required by the NPS-FM in paragraphs 944 and 951 of the Section 42A Report. As a result, Ms Pascall has recommended the addition of various definitions to the RPS, including: 'earthworks', 'vegetation clearance', 'health needs of people', 'hydrological control',

¹¹ Refer Paragraph 6.3 of this evidence.

¹² It is suggested that the ordinary meaning of 'maintained' is adopted, and not the definition of *maintained* as proposed in PC1 in relation to indigenous biodiversity.

¹³ Note: Para 687 of the Section 42A, Hearing Report, Hearing Stream 5 which states "... However I consider Policy 40 ('protect and enhance') more accurately reflects the requirements of the NPS-FM which requires that freshwater be 'maintained or improved...'."

¹⁴ Submission point [S162.034]

‘effects management hierarchy’, ‘community drinking supply’, and ‘group drinking supply’.

- 7.2 As a general comment, I note in the Operative RPS where definitions are adopted from other higher documents, then the source of the definition is included.¹⁵ For instance, the recommended definition of ‘earthworks’ is taken from the National Planning Standards 2019, and the definition of ‘effects management hierarchy’ is from Section 3.21 of the NPS-FM. In terms of best practise in policy drafting, where any new definitions are adopted from higher order policy documents, these higher order documents should be referenced in the RPS, in a manner consistent with the Operative RPS.
- 7.3 As already noted, the inclusion of the ‘effects management hierarchy’ is derived directly Section 3.21 of the NPS-FM. I support the inclusion of this definition and consider it is important to include reference to this in the Freshwater Te Mana o te Wai policy framework. However, I note the omission of the associated definitions of ‘aquatic compensation’ and ‘aquatic offset’, which are referred to in the effects management hierarchy definition in the NPS-FM. Without including those associated definitions from the NPS-FM, I consider there is risk for interpretation and implementation issues. As an aside, I note the corresponding proposed definitions for ‘biodiversity compensation’ and ‘biodiversity offset’ have been included in the proposed indigenous biodiversity provisions in PC1.¹⁶ I consider the definitions of ‘aquatic compensation’ and ‘aquatic offset’ from the NPS-FM need to be included for completeness in the definitions in the RPS.
- 7.4 In relation to the other definitions introduced, I also support their inclusion. As an aside, I note definition of ‘vegetation clearance’ from the Proposed Natural Resources Plan for the Wellington Region (**PNRP**) has been adopted in PC1. This definition of ‘vegetation clearance’ appears to incorrectly use ‘and’ rather than ‘or’ when listing the exclusions to vegetation clearance. Retaining the wording suggested would require the

¹⁵ For example, Waterbody - As defined in the Resource Management Act. Freshwater or geothermal water in a river, lake, stream, pond wetland, or aquifer, or any part thereof, that is not located within the coastal marine area, Operative Regional Policy Statement for Wellington Region.

¹⁶ Refer Pg 216 of Proposed Amendments to Appendix 3, Definitions, Plan Change 1, RPS of the Wellington Region.

four exemptions to be read as conjunctive which I suspect was not intended. Replacing the 'and' with an 'or' creates a more appropriate and workable definition.

- 7.5 I also consider that Ms Pascall has only partially responded to Winstone's submission point on the definitions. In addition to the lack of inclusion of NPS-FM definitions, Winstone's were also concerned with the use of new indigenous biodiversity definitions and their application to the freshwater provisions. For example: 'protect', 'maintain', 'enhance', 'ecological integrity', 'ecosystem health' and 'resilience'. These definitions are focused primarily on the terrestrial indigenous biodiversity and there are impracticalities with these definitions applying to freshwater systems. I do recognise that in most cases, these defined terms (relating to terrestrial indigenous biodiversity) are not used in the freshwater policies. However, Policy 40 continues to use the defined term 'maintaining' (as defined in the RPS) in various parts of the policy, including in relation to amenity, recreational values, fish passage and aquatic functions. Dr Keesing has described some of the impracticalities of applying the defined meaning of 'maintaining' from the RPS, rather than the ordinary meaning in his evidence¹⁷. I suggest Policy 40 (and any other Freshwater provisions) is amended to remove any reference to the proposed defined meaning of '*maintain/maintained/maintenance*¹⁸' in PC1, and that freshwater provisions adopt ordinary meaning of 'maintaining'. Suggested amendments to Policy 40 are included in **Appendix 1** of my evidence.

8.0 Policy 18 - regional plans

- 8.1 Policy 18 of the RPS provides policy direction on the policies, rules and/or methods that shall be included in regional plans of the Wellington Region.
- 8.2 The Section 42A author has provided various recommended changes to Policy 18, including:

¹⁷ Paragraphs 4.17 – 4.27 of Dr Keesing's evidence

¹⁸ PC1 - New definition of *maintain/maintained/maintenance* (in relation to indigenous biodiversity) At least no reduction in the following: (a) the size of populations of indigenous species (b) indigenous species occupancy across their natural range (c) the properties and function of ecosystems and habitats (d) the full range and extent of ecosystems and habitats (e) connectivity between and buffering around, ecosystems (f) the resilience and adaptability of ecosystems. The maintenance of indigenous biodiversity may also require the restoration or enhancement of ecosystems and habitats, PC1 of the RPS.

- Amending clause (e) to:

“avoiding the loss of river extent and values to the extent practicable”

- Amending clause (n) to:

“~~restricting~~ avoiding the reclamation, piping, straightening or concrete lining of rivers unless:

there is a functional need for the activity in that location; and

the effects of the activity are managed by applying the effects management hierarchy”.

- Amending clause (r) to:

“restoring and maintaining fish passage where appropriate”

- 8.3 I support the recommended changes made to clause (e) which aligns with the suggested wording provided in Winstone’s submission¹⁹.
- 8.4 I also support the amendment to clause (r) which recognises practical and physical constraints to fish passage and an assessment of the appropriateness of providing fish passage in all instances.
- 8.5 I support to some degree the amendments proposed to clause (n). However I do have remaining overall concerns with Policy 18 and the direction this policy provides on the policies, rules and/or methods to be included regional plans in the Wellington Region, particularly it’s apparent lack of consistency with the NPS-FM (February 2023).
- 8.6 Overall, with the exception of urban development, there is a lack of policy direction in PC1 recognising and providing for the use and development of water and waterbodies for other beneficial activities, While I understand that there are separate chapters of the RPS that seek to recognise activities that provide for regionally significant cultural, economic, and social benefits, I note that Change 1 seeks to provide an integrated approach to its policy direction for freshwater management, as supported

¹⁹ Submission point [S162.007].

by Proposed Objective A recommended by the Section 42A Report Author at Hearing Stream 2 - Integrated Management.

- 8.7 I consider the Freshwater / Te Mana o te Wai policy direction in Change 1 needs to recognise the circumstances when use and development of waterbodies may be appropriate. This includes specifically recognising the policy direction providing consenting pathways for beneficial uses (such as quarrying activities and cleanfilling of relevance to Winstones) as directed by Section 3.22(1) – Natural Inland Wetlands and 3.24(1) Rivers of the NPS-FM as introduced in February 2023.
- 8.8 For example, significant quarrying activities (such as those at Winstone’s Belmont quarry) which provide local, regional, and national benefits, are constrained by the actual location of the regionally significant aggregate resource and the need for the activity to occur in a particular location. It is at times, not functionally or operationally practicable to simply avoid the potential loss of extent or value of any existing river or natural inland wetland to undertake quarrying activities.
- 8.9 In summary, all regional plans must now include policies (and rules and/or methods) that provide a consenting pathway for beneficial activities such as quarrying activities and cleanfilling (and a range of other beneficial uses) to be consistent with Section 3.22(1) and 3.24(1) of the NPS-FM (February 2023). Correspondingly, I consider that the Reginal Policy Statement also needs to include higher order policies recognising Sections 3.22(1) and 3.24(1) of the NPS:FM, which must be given effect to by the lower order policies (and rules/methods) in regional plans prepared under it. At present the Freshwater provisions in PC1 of the RPS, particularly Policy 18 (except to some extent, with the amendments to clause (n)) is silent on these policy directions in the NPS-FM. I note the role of Regional Policy Statement and the importance of the policy directives has been further elaborated in Winstone’s legal submissions.
- 8.10 Section 3.22(1) – Natural Inland Wetlands of the NPS-FM (February 2023) is linked to Policy 6 of the NPS-FM. It requires all regional councils to include in their regional plan, a policy providing for the loss of value and extent of natural inland wetlands and a consenting pathway for certain identified activities that provide for significant cultural, social, and

economic wellbeing (including urban development, specified infrastructure, quarrying activities, construction or operation of cleanfills or landfills etc).

8.11 For example, in relation to quarrying and cleanfilling activities of relevant to Winstones activities, Section 3.22(1) states in relation to these activities, regional plans shall include a policy (or words to the same effect) that:

“The loss of extent of natural inland wetlands is avoided, their values are protected, and their restoration is promoted, except where:....

(d) the regional council is satisfied that:

- (i) the activity is necessary for the purpose of quarrying activities; and*
- (ii) the extraction of the aggregate will provide significant national or regional benefits; and*
- (iii) there is a functional need for the activity to be done in that location; and*
- (iv) the effects of the activity will be managed through applying the effects management hierarchy” [..]*

(f) the regional council is satisfied that:

- (i) the activity is necessary for the purpose of constructing or operating a new or existing landfill or cleanfill area; and*
- (ii) the landfill or cleanfill area:*
 - (A) will provide significant national or regional benefits; or*
 - (B) is required to support urban development as referred to in paragraph(c); or*
 - (C) is required to support the extraction of aggregates as referred to in paragraph (d); and*
 - (D) is required to support the extraction of minerals as referred to in paragraph (e); and*

- (iii) *there is either no practicable alternative location in the region, or every other practicable alternative location in the region would have equal or greater adverse effects on a natural inland wetland; and*
- (iv) *the effects of the activity will be managed applying the effects of the effects management hierarchy.*

8.12 Section 3.24(1) Rivers of the NPS-FM, February 2023 is linked to Policy 7 of the NPS-FM. Similarly, Section 3.24(1) states regional plans shall include a policy (or words to the same effect) that provides for the loss of river value and extent where there is a functional need for an activity and the effects management hierarchy is met, as follows:

“The loss of river extent and values is avoided, unless the council is satisfied that:

- (a) There is a functional need for the activity in that location; and*
- (b) the effects of the activity are managed by applying the effects management hierarchy.”.*

8.13 In my opinion, providing for Clauses 3.22(1) – Natural Inland Wetlands and 3.24(1) – Rivers of the NPS-FM in the RPS would seem be best achieved through amendments to Policy 18 of PC1. To provide for this, I have suggested two alternatives for the consideration of the Panel.

8.14 Firstly, to recognise Section 3.22(1) – Natural Inland Wetlands ,the addition of a new clauses (ca) and (cb) (as set out below) that provides for quarrying activities and clean filling (of relevance to Winstone) required to support aggregate extraction and cleanfilling that may result in the loss of extent of a natural inland wetland. I recognise that similar clauses would also need be added for all the other exception activities listed in Section 3.22(1) of the NPS-FM (February 2023).

For example:

(ca) Despite clause (c), an activity may result in the loss of extent of natural inland wetlands where the regional council is satisfied that:

- (i) the activity is necessary for the purpose of quarrying activities; and*

(ii) the extraction of the aggregate will provide significant national or regional benefits; and

(iii) there is a functional need for the activity to be done in that location; and

(iv) the effects of the activity will be managed through applying the effects management hierarchy.

(cb) Despite clause (c), an activity may result in the loss of extent or values of natural inland wetlands where the regional council is satisfied that:

- (i) the activity is necessary for the purpose of constructing or operating a new or existing landfill or cleanfill; and
 - (A) the landfill or cleanfill will provide significant national or regional benefits; or
 - (B) is required to support urban development; or
 - (C) is required to support the extraction of aggregates; or
 - (D) is required to support the extraction of minerals and
- (ii) there is no practicable alternative in the Wellington region, or every other practicable alternative location in the region would have equal or greater adverse effects on a natural inland wetland; and
- (iii) the effects of the activity will be managed through the effects management hierarchy.

8.15 With respect to recognising Section 3.24(1)- Rivers, I note that the Section 42A Report Author has somewhat incorporated Section 3.24(1) through the suggested amendments to clause (n) of Policy 18; however, has narrowed the scope to refer to only certain activities. As amended, clause (n), pre-emptively assumes that those specific activities referenced (being reclamation, piping, straightening, or concrete lining of rivers) will result in loss to river value or extent. Section 3.24(1) of the NPS-FM which has been incorporated into clause (n) to some extent, provides direction for managing a full range of activities in rivers where there is loss of river value or extent (not just the specific activities referenced in Clause (n)). Also as outlined by Dr Keesing in his evidence, activities including reclamation, piping, straightening or concrete lining of a river can be undertaken in a way that avoids loss of river values and extent. In my opinion, clause (n) is inconsistent with Policy 7 and Section 3.24(1) of the NPS-FM, and there is no evidence provided to support the suggested policy direction of narrowing the scope to refer to only the activities listed.

8.16 I consider that consistency with the NPS-FM directions in Section 3.24(1)-Rivers could be better provided in Policy 18, through deleting clause (n) entirely (including the specific reference to reclamation, piping, straightening, or concrete lining of rivers), and instead including an additional new clause following clause (e) that adopts the same wording from Section 3.24(1) – Rivers of the NPS-FM and provides for the full range of activities that may potentially result in the loss of river extent and values as suggested above.

8.17 For example,

(ea) The loss of river extent and values is avoided, unless the council is satisfied that:

- i. There is a functional need for the activity in that location; and
- ii. the effects of the activity are managed by applying the effects management hierarchy.

8.18 I have set out these suggested changes to Policy 18 wording additions in **Appendix 2**

8.19 Importantly I also draw to the Panel’s attention that a similar approach to recognising in an RPS, the enabling consenting pathways in the NPS-FM has been adopted in the Proposed Otago Regional Policy Statement. Proposed Policy LF–FW–P9 (protecting natural wetlands) from the Proposed Otago Regional Policy Statement has been included in **Appendix 3**, as an example to assist the Panel. However, the Panel should note these provisions in the Otago RPS, do pre-date the February 2023 amendments to the NPS – FM (and therefore do not reference the updated consenting pathway provided for quarrying and cleanfilling and the other activities, included in the NPS-FM February 2023 amendment).

8.20 Alternatively, a new policy (as suggested below or wording to similar affect) could be introduced immediately following Policy 18 directing regional plans to include policies, rules and/or methods that recognise and provide for the use and development of water bodies by beneficial activities (as already recognised in Policy P6 and P7 of the PNRP).

Policy 18A: Beneficial activities

Regional plans shall include policies, rules and/or methods that recognise and provide the use and development of water and waterbodies by activities that provide cultural, social and economic benefits, and in particular where an activity:

- (a) Has a functional need to occur in that location,*
- (b) Provides for local or regional or national benefits, and*
- (c) The effects of the activity are managed by applying the effects management hierarchy.*

8.21 Overall, I consider that PC1 of RPS must include policies that provide for the appropriate use and development use of the Region’s waterbodies by beneficial uses, such as those I have suggested above. These higher order policies are required in the RPS in order to provide the necessary policy framework to support the policies (and rules/methods) that required to be included in the Region’s regional plans by Sections 3.22(1) and 3.24(1) of the NPS:FM (February 202) providing a consenting pathway for a range of specific uses including quarrying activities and cleanfilling consistent with the NPS-FM.

9.0 Policy 40

9.1 The Section 42A author has provided various recommended changes to Policy 40, including:

- Deletion of clause (d):

~~“(d) *maintaining or enhancing the functioning of ecosystems in the water body.*”~~

- Amending clause (f) to:

“minimising the effect of the proposals such as gravel extraction, exploratory drilling, flood protection and works in the beds of lakes and rivers on groundwater recharge areas that are connected to surface water bodies”

- Addition of clauses (o) – (r):

“(o) avoiding the loss of river extent or values, to the extent practicable

“(p) ensuring there is no further loss of extent of natural inland wetlands, and their values are protected.

“(q) protecting the habitat of indigenous freshwater species

“(r) protecting the habitat of trout and salmon, insofar as this is consistent with clause (q).”

- 9.2 I agree and support the deletion of clause (d) which removed unnecessary duplication.
- 9.3 I disagree with the proposed changes to clause (f). I consider the proposed changes completely alter the direction of this clause. While the reference to specific activities is not an all-inclusive list, it does single activities out with an assumption that they will cause an associated effect and distracts from the policy intent which is managing effects on unconfined aquifers and recharge areas. I consider that providing clarification on instances where this clause may apply is better suited to the explanatory notes of the policy rather than the policy itself.
- 9.4 In relation to the addition of clauses (o) – (r), I understand these provisions have been included to ensure consistency with policies 6, 7, 9 and 10 of the NPS-FM²⁰. I support an inclusion for consistency, however, as noted in paragraphs 8.3 – 8.19 above, there must also be the link to Sections 3.22(1) and 3.24(1) of the NPS-FM. Should those additional clauses be inserted, I consider additional clauses also need to be inserted to appropriately link to Sections 3.22(1) and 3.24(1) of the NPS-FM (February 2023).

10.0 Policy 41

- 10.1 The Section 42A author has provided various recommended various changes to Policy 41, including:
- Amending the heading of the policy to:

²⁰ Paragraphs 692 and 694 of the Section 42A Report

Policy 41: Managing ~~Controlling~~ ~~Minimising~~ the effects of earthworks and vegetation clearance ~~disturbance~~ – consideration

- 10.2 I support the changes made to the policy heading which aligns with the suggested wording provided in Winstone’s submission point²¹.
- 10.3 I generally support the other changes made to the policy which improve its coherency and clarity. I note that clause (c) requires that where suspended sediment limits have been set in a regional plan, and the activity cannot meet those limits, that discharges to water bodies are avoided. While I understand and agree with the intent of this clause, I note that the direction currently relates to an action (discharge) rather than an effect. This is inconsistent with the RMA which is effects-based, and in particular the controls on discharges to water in s 107 of the RMA. The wording of this clause would effectively prohibit any discharge, including those that are localised, temporary and minor where adverse effects to the water body are able to be avoided. I suggest that clause (c) is amended to relate to adverse effects of discharges and to account for a reasonable mixing zone:

where suspended sediment limits have been set in a regional plan, and the activity cannot meet those limits, avoiding the adverse effects of discharges to water bodies after reasonable mixing, and to land where it may enter a waterbody.

11.0 Conclusion

- 11.1 It is apparent that the section 42 authors officer has invested considerable time and energy in the preparation of the s.42A reports for this Hearing Stream 5 – Freshwater. Further I recognise some matters sought as relief in Winstone’s submission have been recommended to be accepted by the author.
- 11.2 However, I consider that there are still significant and outstanding issues in relation to the proposed Freshwater / Te Mana o te Wai provisions addressed in this Hearing Stream that relate primarily to the overall lack of consistency with the NPS-FM – February 2023. It is hoped the commentary in my evidence will assist the Hearings Panel in

²¹ Submission point [162.015]

understanding and addressing these outstanding issues as raised in Winstones submission, in making your determinations.



Catherine Clarke

Dated 3 November 2023

Appendix 1: Proposed amendments to provisions

NOTE: Mark ups are applied to the s 42A recommended version of Plan Change 1. Additions are shown as underlined and deletions are shown as ~~strike through~~.

Amend Objective 12:

Objective 12 – Te Mana o te Wai in the Wellington Region

The Region's waterbodies and freshwater ecosystems are returned to a healthy state and the ongoing management of land and water:

- a) Restores the mana of water and its fundamental role in providing for the current and future health and wellbeing of the environment and the community
- b) ~~Protects~~ Maintain waterbodies and freshwater ecosystems from further degradation, and improve waterbodies and freshwater ecosystems where degraded
- c) Incorporates and protects mātauranga Māori, in partnership with mana whenua/tangata whenua
- d) Recognises the individual natural characteristics and processes of waterbodies
- e) Re-establishes mana whenua/tangata whenua connections with freshwater
- f) Provides for the ability of mana whenua/tangata whenua to safely undertake their cultural and spiritual practices associated with freshwater, including mahinga kai
- g) Includes mana whenua/tangata whenua in decision-making in relation to the Region's waterbodies
- h) Applies the Te Mana o te Wai hierarchy of obligations by prioritising:
 - i. First, the health and wellbeing of waterbodies and freshwater ecosystems,
 - ii. Second, the health needs of people
 - iii. Third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future.

Amend Policy 18:

Policy 18: ~~Protecting~~ Maintaining and ~~enhancing~~ improving the health and wellbeing of water bodies and freshwater ecosystem health-regional plans

Regional plans shall include policies, rules and/or methods that give effect to Te Mana o te Wai, and in doing so ~~protect~~ maintain and ~~enhance~~ improve the health and wellbeing of water bodies and

freshwater ecosystem health, including by:

- (b) actively involving mana whenua / tangata whenua in freshwater management (including decision-making processes),
- (ba) identifying and providing for Māori freshwater values,
- (bb) adopting an integrated approach, ki uta ki tai, that recognises the interconnectedness of the whole environment to ensure that ecological health of freshwater is managed using an integrated, ecosystem wide approach
- (bc) incorporating the use of mātauranga Māori to protect and restore ecosystem health,
- (c) ensuring there is no further loss of extent of natural inland wetlands and coastal wetlands, their values are protected, and their *restoration* is promoted;
- (ca) Despite clause (c), an activity may result in the loss of extent or values of natural inland wetlands where the regional council is satisfied that:
 - (i) the activity is necessary for the purpose of quarrying activities; and
 - (ii) the extraction of the aggregate will provide significant national or regional benefits; and
 - (iii) there is a functional need for the activity to be done in that location; and
 - (iv) the effects of the activity will be managed through applying the effects management hierarchy.
- (cb) Despite clause (c), an activity may result in the loss of extent or values of natural inland wetlands where the regional council is satisfied that:
 - (iv) the activity is necessary for the purpose of constructing or operating a new or existing landfill or cleanfill; and
 - (E) the landfill or cleanfill will provide significant national or regional benefits; or
 - (F) is required to support urban development; or
 - (G) is required to support the extraction of aggregates; or
 - (H) is required to support the extraction of minerals and
 - (v) there is no practicable alternative in the Wellington region, or every other practicable alternative location in the region would have equal or greater adverse effects on a natural inland wetland; and
 - (vi) the effects of the activity will be managed through the effects management hierarchy.
- (cc) **Comment:** Suggest inclusion of Policy directives for all other activities provided with a consenting pathway in Section 3.22 of the NPS-FM (February 2023)- or alternatively the

- inclusion of proposed Policy 18A – Beneficial use detailed below.
- (e) avoiding the loss of river extent and values to the extent practicable
 - (ea) The loss of river extent and values is avoided, unless the council is satisfied that:
 - (i) There is a functional need for the activity in that location; and
 - (ii) the effects of the activity are managed by applying the effects management hierarchy.
 - (f) protecting the significant values of outstanding water bodies
 - (g) protecting the habitats of indigenous freshwater species;
 - (ga) protecting the habitat of trout and salmon, insofar as this is consistent with clause (g).
 - (i) retaining natural features – such as pools, runs, riffles, and the river’s natural form to maintain in-stream habitat diversity;
 - (j) retaining natural flow regimes – such as flushing flows;
 - (k) protecting and reinstating riparian habitat;
 - (l) promoting the installation of off-line water storage;
 - (m) measuring and evaluating water takes;
 - ~~(n) avoiding the reclamation, piping, straightening or concrete lining of rivers unless:~~
 - ~~(i) there is a functional need for the activity in that location;~~
 - ~~and~~
 - ~~(ii) the effects of the activity are managed by applying the effects management hierarchy~~
 - (o) restricting stock access to estuaries, rivers, lakes and wetland;
 - (p) restricting the diversion of water into or from wetlands – unless the diversion is necessary to restore the hydrological variation to the wetland;
 - (q) restricting the removal or destruction of indigenous plants in wetlands and lakes; and
 - (r) restoring and maintaining fish passage where appropriate.

Insert new Policy 18A:

Policy 18A: Beneficial use

Regional plans shall include policies, rules and/or methods that recognise and provide for the use and development of water and

waterbodies for activities that provide cultural, social and activity benefit, and in particular where an activity:

- (a) Has a functional need for that location,
- (b) Provide for local or regional or national benefit, and
- (c) The effects of the activity are managed by applying the effects management hierarchy.

Comment: The inclusion of suggested new policy 18A – Beneficial use is an alternative suggestion to the proposed amendments to Policy 18 including the suggested new clauses (ca) and (cb) etc.

Amend Policy 40:

Policy 40: ~~Maintaining~~ ~~Protecting and improving~~ ~~enhancing~~ the health and well-being of water bodies and freshwater ecosystems – consideration.

When considering an application for a regional resource consent, the regional council must give effect to *Te Mana o te Wai* and in doing so must have particular regard to:

- (a) managing water quality, flows and water levels and aquatic habitats of ~~surface~~ water bodies in a way that maintains ~~protects~~ and improves ~~enhances~~ the health and well-being of waterbodies and the health and wellbeing of freshwater ecosystems;
- (b) managing freshwater quality in a way that maintains ~~protects~~ and improves ~~enhances~~ the health and well-being of receiving environments.
- I providing for mana whenua / tangata whenua values, including mahinga kai;
- (ca) partnering with mana whenua/tangata whenul(e) maintaining ~~maintaining~~ or enhancing the ecological functions of riparian margins;
- (f) minimising the effect of proposals ~~such as gravel extraction, exploratory drilling, flood protection and works in the beds of lakes and rivers~~ on groundwater recharge areas that are connected to surface water bodies;
- (g) maintaining ~~maintaining~~ or enhancing the amenity and recreational values of rivers and lakes, including those with significant values listed in Table 15 of Appendix 1;
- (h) protecting the values of rivers and lakes that have significant indigenous ecosystems and habitats with significant indigenous biodiversity values as identified in Table 16 of Appendix 1;
- (i) maintaining ~~maintaining~~ natural flow regimes required to

- support aquatic *ecosystem health*;
- (j) maintaining ~~maintaining~~ or enhancing space for rivers to undertake their natural processes;
 - (k) maintaining ~~maintaining~~ fish passage;
 - (l) protecting and reinstating riparian habitat, in particular riparian habitat that is important for fish spawning;
 - (m) restricting stock access to estuaries rivers, lakes and wetlands; and
 - (n) avoiding the removal or destruction of indigenous wetland plants in *wetlands*.
 - (o) avoiding the loss of river extent or values, to the extent practicable
 - (oa) Despite clause (o), an activity may result in the loss of loss of extent of natural inland wetlands where the regional council is satisfied that:
 - (i) the activity is necessary for the purpose of quarrying activities;
and
 - (ii) the extraction of the aggregate will provide significant national or regional benefits; and
 - (iii) there is a functional need for the activity to be done in that location; and
 - (iv) the effects of the activity will be managed through applying the effects management hierarchy;
 - (ob) Despite clause (o), an activity may result in the loss of extent of natural inland wetlands where the regional council is satisfied that:
 - (vii) the activity is necessary for the purpose of constructing or operating a new or existing landfill or cleanfill; and
 - (I) the landfill or cleanfill will provide significant national or regional benefits; or
 - (J) is required to support urban development; or
 - (K) is required to support the extraction of aggregates; or
 - (L) is required to support the extraction of minerals and
 - (viii) there is no practicable alternative in the Wellington region, or every other practicable alternative location in the region would have equal or greater adverse effects on a natural inland wetland; and
 - (ix) the effects of the activity will be managed through the effects management hierarchy.
 - (oc) **Comment:** Suggest inclusion of Policy directives for all other activities provided with a consenting pathway in Section 3.22 of the NPS-FM (February 2023).
 - (p) ensuring there is no further loss of extent of natural inland wetlands, and their values are protected.

- (pa) The loss of river extent and values is avoided, unless the council is satisfied that:
- (i) There is a functional need for the activity in that location; and
 - (ii) the effects of the activity are managed by applying the effects management hierarchy.
- (q) protecting the habitat of indigenous freshwater species
- (r) protecting the habitat of trout and salmon, insofar as this is consistent with clause (q).

Amend Policy 41:

Policy 41: Managing the effects of earthworks and vegetation clearance– consideration

When considering an application for a regional resource consent for *earthworks* or *vegetation clearance* particular regard shall be given to:

- (a) the extent to which the activity *minimises* erosion;
- (b) the extent to which the activity will achieve any relevant environmental outcomes and target attribute states set for the FMU or part-FMU;
- (c) where suspended sediment limits have been set in a regional plan, and the activity cannot meet those limits, avoiding the adverse effects of discharges to water bodies after reasonable mixing, and to land where it may enter a waterbody;
- (c) in the absence of environmental outcomes, target attribute states, or limits for suspended sediment for the relevant FMU or part-FMU, the extent to which silt and sediment runoff into water, or onto or into land that may enter water, will be *minimised*.

Amend definition of 'vegetation clearance':

Vegetation clearance: The clearance or destruction of woody vegetation (exotic or native) by mechanical or chemical means, including felling vegetation, spraying of vegetation by hand or aerial means, hand clearance, and the burning of vegetation.

Vegetation clearance does not include:

- (a) any vegetation clearance, tree removal, or trimming of vegetation associated with the Electricity (Hazards from Trees) Regulations 2003, and-or

- (b) any vegetation clearance or vegetation disturbance covered by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017, ~~and or~~
- (c) any vegetation clearance associated with the repair and maintenance of existing roads and tracks, ~~and or~~
- (d) the removal of an individual shrub or tree or a standalone clump of trees or shrubs no larger than 20m².

Insert new definition of 'aquatic offset':

Aquatic offset:
As defined in the National Policy Statement for Freshwater Management.
means a measurable conservation outcome resulting from actions that are intended to:

- (a) redress any more than minor residual adverse effects on a wetland or river after all appropriate avoidance, minimisation, and remediation, measures have been sequentially applied; and
- (b) achieve no net loss, and preferably a net gain, in the extent and values of the wetland or river, where:
 - (i) no net loss means that the measurable positive effects of actions match any loss of extent or values over space and time, taking into account the type and location of the wetland or river; and
 - (ii) net gain means that the measurable positive effects of actions exceed the point of no net loss.

Insert new definition of 'aquatic compensation':

Aquatic compensation:
As defined in the National Policy Statement for Freshwater Management.
means a conservation outcome resulting from actions that are intended to compensate for any more than minor residual adverse effects on a wetland or river after all appropriate avoidance, minimisation, remediation, and aquatic offset measures have been sequentially applied.

Appendix 2

Referenced policies of the National Policy Statement for Freshwater Management (February 2023)

Policy 5: Freshwater is managed (including through a National Objectives Framework) to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.

Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.

Policy 7: The loss of river extent and values is avoided to the extent practicable.

Policy 8: The significant values of outstanding water bodies are protected.

Policy 9: The habitats of indigenous freshwater species are protected.

Appendix 3: Policy LF–FW–P9 of the Proposed Otago Regional Policy Statement

NOTE: The Panel should note these provisions (below) from the proposed Otago Regional Policy Statement, do pre-date the February 2023 amendments to the NPS – FM. Therefore, do not reference the updated consenting pathway provided for quarrying and cleanfilling and the other activities, included in the NPS-FM, February 2023 amendment.

Policy LF–FW–P9: Protecting natural wetlands

Protect *natural wetlands* by:

1. avoiding a reduction in their values or extent unless:
 - a. the *loss of values* or extent arises from:
 - i. the customary harvest of food or resources undertaken in accordance with tikaka Māori, restoration activities;
 - ii. scientific research;
 - iii. the sustainable harvest of sphagnum moss;
 - iv. the construction or maintenance of *wetland utility structures*;
 - v. the maintenance of operation of *specific infrastructure*, or *other infrastructure*,
 - vi. *natural hazard works*, or
 - b. the Regional Council is satisfied that:
 - i. the activity is necessary for the construction or upgrade of *specified infrastructure*,
 - ii. the *specified infrastructure* will provide significant national or regional benefits,
 - iii. there is a *functional need* for the *specified infrastructure* in that location,
 - iv. the *effects* of the activity on indigenous *biodiversity* are managed by applying either ECO–P3 or ECO–P6 (whichever is applicable), and
 - v. the other *effects* of the activity (excluding those managed under (1)(b)(iv)) are managed by applying the *effects management hierarchy*, and
2. not granting resource consents for activities under (1)(b) unless the Regional Council is satisfied that:
 - a. the application demonstrates how each step of the *effects management hierarchies* in (1)(b)(iv) and (1)(b)(v) will be applied to the *loss of values* or extent of the *natural wetland*, and
 - b. any consent is granted subject to conditions that apply the *effects management hierarchies* in (1)(b)(iv) and (1)(b)(v).