

## Hearing Stream 2 (Objectives and ecosystem health and water quality policies) – M Downing, counsel for Forest & Bird – SPEAKING NOTES – 10 April 2025

1. Forest & Bird’s concerns are narrowing following Rebuttal Evidence of Mary O’Callahan on behalf of WRC dated 28 March 2025. However, some outstanding issues remain which are addressed in this presentation.

### **‘Deteriorated’ vs ‘degraded’**

2. “Degraded” is the appropriate term to use. Addressed by Ms Dowse’s planning evidence.
3. The definition of “degraded” is not exclusive to an FMU or part of an FMU to which a target attributes state applies and extends to include an FMU or part of the FMU that is less able to provide for “any value described in Appendix 1A **or any other value identified for it under the NOF**” (NPSFM 1.4(c)).
4. The use of “degraded” gives effect to NPSFM Policy 5. Policy 5 is non-exhaustive: 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.
5. Policy 5 is that regional plans cannot provide for any more degradation in the health and wellbeing of water bodies and freshwater ecosystems. The National Objectives Framework is a key, but not sole, vehicle to achieve this.

### **Objectives WH.01**

6. The Rebuttal Evidence recommends introducing the qualifier “to the extent practicable” in the first bullet. The change results in inconsistency with Objective 12(d)<sup>1</sup> and Policy 18(h)<sup>2</sup> of the Regional Policy Statement for the Wellington Region – which are free from such qualification.
7. The qualification added to the third bullet is also problematic “support the presence, abundance, survival and recovery of At-Risk and Threatened species and taonga species where naturally present in those environments”. For example, if a water body is able to support the last refuge of an At-Risk and Threatened species that is not naturally present its health should still be maintained – the NPSFM does not preclude this.

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<sup>1</sup> Referred at paragraph [12] of Forest & Bird’s legal submissions dated 21 March 2025 : Objective 12(d): The mana of the Region’s waterbodies and freshwater ecosystems is restored and protected by ongoing management of land and water that: recognises and provides for the **individual natural characteristics** and processes of waterbodies **including their natural form**, and their associated ecosystems

<sup>2</sup> Policy 18(h): Regional plans shall include policies, rules and/or methods that give effect to Te Mana o te Wai, and in doing so maintain and improve the health and wellbeing of water bodies and freshwater ecosystem health, including by: retaining natural features – such as pools, runs, riffles, **and the river’s natural form** to maintain in-stream habitat diversity.

## **Objectives WH.O10 and P.O7**

8. Forest & Bird is pleased to see interim targets recommended in Objectives WH.O10 and P.O7. However, some problematic elements of the redrafting are noted. The redrafted Objectives leave room for future debate and may lead to unintended outcomes which do not achieve the NPSFM objective, e.g.:
- a. “no deteriorating trend is sought by 2030” – the language is no longer directive. To “seek” no deterioration provides less certainty than to direct that “there is no further decline”.
  - b. “the state of that attribute must be improved by 50% of the overall improvement” – the reference to “overall improvement” is unclear. It could be read as enabling some parts of a part FMU to decline if other parts are improved. This is the “unders and overs” approach which Judge Thompson’s division of the Environment Court in *Ngāti Kahungunu v Hawke’s Bay Regional Council*<sup>3</sup> found was legally incorrect. An “unders and overs” approach could result in “a more degraded and unacceptable water outcome.”<sup>4</sup> For example, it does not address localised effects and is a poor way to manage cumulative adverse effects of multiple activities. Chapter 3.4 of the GWRPS states that the Region’s range of uses and values “leads to multiple pressures on the quantity and quality of the fresh water which can cumulatively impact on the availability and value of the resource for use”. It is also unclear how “overall” improvement would be monitored.
  - c. The “note” provides more than guidance. The “note” contains substantive material which may need to go into the body of the objective itself. Otherwise, it may open debate as to whether it must be complied with.

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<sup>3</sup> [2015] NZEnvC 50 at [56]: “A significant matter in Change 5 is that it requires maintenance of the overall quality of freshwater within the whole of the Hawkes Bay region - cf Objective A2 of the NPSFM. This is said by the Council to allow for (indeed to mandate) an unders and overs approach. Questions of Mr Ide confirmed that an *unders and overs* approach was the intent of the new objective and that it means that deterioration of the quality of water in one area or waterbody could be tolerated, so long as there is a matching (at least) improvement in quality somewhere else. We have difficulty in seeing how such an approach can be consistent with the unqualified function imposed on regional councils by s30(1)(c)(ii) of ... *the maintenance and enhancement of the quality of water in water bodies* ...”

<sup>4</sup> At [64]