

**Before a Panel of Independent Hearing Commissioners
At Wellington**

**I mua ngā Kaikōmihana Whakawā Motuheke
Ki Te Whanganui-a-tara**

**In the matter of Proposed Change 1 to the Natural Resource Plan for
the Wellington Region**

**Topic Hearing Stream 2: Objectives and Ecosystem Health
Policies**

**Legal submissions for Wellington City
Council**

14 March 2025



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Legal submissions for Wellington City Council

1 Summary of WCC's position

- 1.1 Wellington City Council (**WCC**) submits that the most appropriate way to address the non-achievability and unaffordability of the notified Target Attribute States (**TAS**) and Coastal Water Objectives is to adopt a 2060 timeframe. Reducing the TAS does not address the fundamental problem of the unrealistic and unachievable timeframe and lacks an adequate evidence base in terms of s 32 of the RMA.
- 1.2 Given the position of the s 42A reporting officer, and for the reasons explained in Mr Jeffries' evidence, WCC will address the greenfield/prohibited activity issue at a later hearing stream.

2 Legal framework

RMA

- 2.1 The purpose of a regional plan is to assist a regional council to carry out any of its functions in order to achieve the purpose of the RMA.¹ Under s 66, the Council must change any regional plan in accordance with, relevantly:
- (a) its obligation (if any) to prepare an evaluation report in accordance with section 32; and
 - (b) its obligation to have particular regard to an evaluation report prepared in accordance with section 32; and
 - (c) a national policy statement, a New Zealand coastal policy statement, and a national planning standard; and
 - (d) any regulations.

¹ RMA, s 63(1).

- 2.2 Section 32 of the RMA sets out the requirements for preparing evaluation reports. The purpose of s 32 evaluation reports is to provide the evidence base supporting a proposed policy statement or plan and is a matter that the local authority must have regard to.²
- 2.3 The section 32 report must:
- (a) examine the extent to which the objectives of the proposal being evaluated are the most appropriate way to achieve the purpose of the RMA;
 - (b) examine whether the provisions in the proposal are the most appropriate way to achieve the objectives by identifying other reasonably practicable options for achieving the objectives and assessing the efficiency and effectiveness of the proposed provisions in achieving the objectives.
- 2.4 The efficiency and effectiveness of the proposed provisions in achieving the objectives must be considered by assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, and quantifying them if practicable.
- 2.5 The s 32 evaluation report must contain a level of detail that corresponds to the scale and significance of the effects anticipated from the implementation of the proposal.
- 2.6 The Environment Court recently provided the following summary of considerations for assessment of plan changes:³

[29] In summary, therefore, the relevant statutory requirements for the plan change provisions include:

- “(e) whether they are designed to accord with and assist the Council to carry out its functions for the purpose of giving effect to the RMA;

² RMA, Schedule 1, cl 5(1).

³ *Middle Hill Limited v Auckland Council* [2022] NZEnvC 162. This summary is considered helpful even though the Judge reached an incorrect conclusion about the extent to which the NPS-UD applied to the decision-making. The Judge incorrectly followed the Environment Court’s decision in *Eden-Epsom Residential Protection Society Inc v Auckland Council* [2021] NZEnvC 82, which was later overturned by the High Court on the basis that the Environment Court had misinterpreted the NPS-UD (*Southern Cross Healthcare Ltd v Eden Epsom Residential Protection Society Inc* [2023] NZHC 948).

- (f) whether they accord with Part 2 of the RMA;
- (g) whether they give effect to the regional policy statement;
- (h) whether they give effect to a national policy statement;
- (i) whether they have regard to [relevant strategies prepared under another Act]; and
- (j) whether the rules have regard to the actual or potential effects on the environment including, in particular, any adverse effects.

[30] Under s 32 of the Act we must also consider whether the provisions are the most appropriate way to achieve the purpose of the plan change and the objectives of the [proposed plan change] by:

- (a) identifying other reasonably practicable options for achieving the objectives; and
- (b) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:
 - i. identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for:
 - economic growth that are anticipated to be provided or reduced; and
 - employment that are anticipated to be provided or reduced; and
 - ii. if practicable, quantifying the benefits and costs; and
 - iii. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.

[Footnotes omitted.]

NPS-FM

2.7 The National Policy Statement for Freshwater Management (**NPS-FM**) came into force in September 2020. It is based around a fundamental concept of *Te Mana o te Wai*, which recognises that protecting the health of freshwater protects the health and well-being of the wider environment.

- 2.8 Consistently with that, the single objective of the NPS-FM is to ensure that natural and physical resources are managed in a way that prioritises:
- (a) first, the health and well-being of water bodies and freshwater ecosystems;
 - (b) second, the health needs of people (such as drinking water);
 - (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.
- 2.9 While the NPS-FM sets those priorities, it does not make any relevant changes to the evidence base required to undertake a plan change. Section 32 continues to apply on its terms.
- 2.10 Clause 3.11 of the NPS-FM requires every regional council to set TASs for all attributes the regional council has identified for a value (as defined in Appendix 1A) in order to achieve the environmental outcomes sought for that value (see cls 3.9-3.11).
- 2.11 A TAS must be set at or above the baseline state of that attribute. This should prevent further degradation of freshwater.
- 2.12 Under cl 3.11(5), every TAS must specify a timeframe for achieving the TAS. The timeframes may be of any length or period, but if they are “long term” they must include interim TASs set for intervals of not more than 10 years to be used to assess progress towards achieving the TAS in the long term (cl 3.11(6)(a)).
- 2.13 Importantly, a regional council must ensure that TASs are set in such a way that they *will achieve* the environmental outcomes for the relevant values. Achievability is therefore a mandatory constraint on the setting of TASs in the plan.

3 2040 is an unrealistic and unachievable timeframe

- 3.1 As notified, Objective WH.O2 had a 2040 timeframe. WCC requested that this be made a 2060 timeframe. The approach of the Council's s 42A reporting officer is encapsulated in this paragraph:

177. WCC [S33.024] and WWL [S151.055] seek a longer timeframe to 2060 in this objective as they consider there is insufficient time to achieve the required outcomes and to fit with council long term plans (LTPs) and financing for

three waters networks. I agree that it is important that the objectives are set to be achievable in terms of the actions required, but consider it is preferable to adjust the level of expected improvement where objectives are too onerous than to allow more time. Extending the timeframe comes with it, a risk of delayed action. This is discussed further in relation to submissions on WH.O9 later in my report at section 3.14. Accordingly, I recommend rejecting these submissions.

3.2 This approach reveals two flaws:

- (a) First, achievability is considered important. That understates its significance. Achievability is more than just important – it is a mandatory constraint.
- (b) Second, associated with that, the officer prefers to address achievability by reducing the TAS rather than to allow more time. This is because of the “risk of delayed action” with a longer timeframe. The risk of delayed action is merely asserted. There is no evidence cited to support the existence of the risk or demonstrate its relevance.

3.3 Further, the NPS-FM already has an in-built approach to ensure that progress is consistent towards long term TASs. That includes the setting of interim TASs of no more than 10 years.

3.4 The NPS-FM does not define a long term timeframe, though a ‘long-term vision’ is based on a 30 year timeframe. While the Council agrees with the s 42A reporting officer that a 2040 timeframe probably qualifies as a medium term timeframe, it considers that a 2060 timeframe is a long term one. Adopting a 2060 timeframe would therefore require the adoption of interim TASs under cl 3.11(6). Regrettably, however, identifying the various options for interim TASs, and preparing an evidence base for them will have to occur. Not having done so is not a reason to reduce the TASs and retain a 2040 timeframe instead.

4 Flaws in GWRC’s evidence base


4.1 The evidence of Joe Jeffries identifies a number of difficulties with the s 32 evaluation report that have not been rectified in the s 42A report. It follows that there are problems with the evidence base supporting the proposed plan provisions. These points can be summarised as follows:

- (a) Section 32 requires an identification of the reasonably practicable options for achieving the objectives of the plan change. It is highly questionable that adopting a 2040 timeframe is in fact a reasonably practicable option given the evidence that a 2040 timeframe is unaffordable and unachievable (addressed further below), but assuming for the moment that it is, the s 32 evaluation report is required to assess both options. Which of the options it assesses, however, is difficult to discern. Mr Jeffries understands that the s 32 evaluation was drafted assuming a 2060 timeframe but that the notified version of the plan adopted a 2040 timeframe at the direction of the Council. If so, the s 32 evaluation did not properly support this aspect of the notified plan. This is not corrected through the s 42A report and subsequent s 32AA evaluations.
- (b) These failures are odd given the need for the evaluation to correspond to the scale and significance of the effects of the proposal. Given Mr Walker's economic evidence as to the cost of implementing the proposed provisions, an assessment of a number of different timeframes – and not just 2040 and 2060 – could have been expected.
- (c) The s 32 evaluation report (and s 32AA evaluation) recognise the economic evidence suggesting that the outcomes are unaffordable and impossible to achieve by 2040. In recommending reducing the TASs to accommodate this, rather than amending the timeframe, there is no real attempt to grapple with the other options or the costs and benefits associated with each one.
- (d) The economic evidence of Mr Walker does not state whether he considers the costs to achieve the reduced TASs to be affordable or achievable. He addresses the costs to achieve the NPS-FM minimum required improvement targets. He does not appear to state his opinion on achievability for these targets, but based on the analysis in Mr Jeffries' evidence, and in reliance on the evidence of Mr O'Neill, the step-change required for rates and market capacity is scarcely more affordable than for the notified TASs. By contrast, using a 2040 timeframe produces a 21% rates step change requirement compared to a 9% step change for 2060.

5 Conclusion

5.1 The issues highlighted by Mr Jeffries and Mr O'Neill and in these submissions put the Hearing Panel in a difficult position. WCC submits that in the circumstances the appropriate course is to adopt an achievable timeframe of 2060, and to request that more work is completed to provide a sufficient evidential basis to identify suitable interim TASs

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