

NRP PC1 – HS3 Day 4

Greater Wellington Regional Council

HEARING STREAM 3

Day 4

Rural Land Use, Forestry and Vegetation Clearance, and Earthworks Version 4

Date: Thursday 29th of May 2025

Hearing Stream: Three

Venue: Greater Wellington Regional Council Chambers
100 Cuba Street, Te Aro, Wellington

Hearing Panel: Dhilum Nightingale (Chair)
Sharon McGarry (Deputy Chair)
Gillian Wratt
Sarah Stevenson
Puawai Kake

[NRP PC1 – HS3 Day 4 – Part 1]

[Begins 00.50.00]

- 1
2 Chair: Mōrena everyone. We'll begin Day 4 of Hearing Stream 3 with karakia.
3
4 Ruddock: *Whakataka te hau ki te uru*
5 *Whakataka te hau ki te tonga*
6 *Kia mākinakina ki uta*
7 *Kia mātaratara ki tai*
8 *E hī ake ana te atakura*
9 *He tio, he huka, he hau hū*
10 *Haumi e, hui e! TĀIKI E!*
11
12 Chair: Good morning everyone. Apologies for the slightly late start.
13
14 We are the hearing panels that are hearing submitters this week on the Hearing
15 Stream 3 provisions – forestry, vegetation clearance, earthworks and rural land
16 use provisions of Proposed Change 1.
17 We'll do some very brief introductions and then we will welcome our first
18 submitter from Upper Hutt City Council.
19

- 20 Ko Dhilum Nightingale tōku ingoa. I'm a Barrister and I have practiced as a
 21 lawyer for about 25 years in Te Whanganui-a-Tara Wellington. I am chairing
 22 both the freshwater panel and the Part 1 Schedule 1 panel.
 23
- 24 I will pass over to Commissioner McGarry.
- 25
- 26 McGarry: Mōrena, my name is Sharon McGarry. I'm an Independent Commissioner based
 27 out of Ōtautahi Christchurch.
 28
- 29 Kake: Ata mārie. Ko Puawai Kake ahau. He uri nō Ngāpuhi me Te Roroa. I am an
 30 Independent Commissioner and Planner from Tai Tokerau Northland.
 31
- 32 Wratt: Mōrena, I am Gillian Wratt. I am an Independent Commissioner based in
 33 Whakatū Nelson.
 34
- 35 Stevenson: Ata mārie. I'm Sarah Stevenson an Independent Planner and Commissioner
 36 based here in Te Whanganui-a-Tara Wellington.
 37
- 38 Chair: I will pass over to the Council team for introductions.
 39
- 40 Ruddock: Tēnā koutou katoa. Ko Josh Ruddock ahau. Hearing Advisor for Greater
 41 Wellington Regional Council.
 42
- 43 Vivian: Mōrena koutou, Alisha Vivian. Reporting Officer for the earthworks topic.
 44 Senior Policy Advisor here at Greater Wellington.
 45
- 46 Will: Kia ora. Will [52.18] Team Leader, Greater Wellington Policy.
 47
- 48 Chair: Thank you. It looks like we have the Council's Technical Lead Dr Michael Greer
 49 online as well, and Mr Watson will be joining us.
 50
- 51 Mr Ruddock did you want to talk about the microphones?
 52
- 53 Ruddock: Just regarding the speaking process for today, if all speakers could introduce
 54 their name before each instance of speaking for transcription purposes. Those
 55 online will have their camera and microphone unlocked during their speaking
 56 session. So currently we had the Upper Hutt City Council speaking and their
 57 cameras and microphones are now unlocked.
 58
- 59 A final matter is the timing bell. I will indicate certain time periods using this
 60 bell. One ring indicates there are ten minutes left, two rings indicate that the
 61 submitter's timeslot has ended, although the Panel may choose to continue with
 62 questions as suitable. Thank you.
 63
- 64 Chair: Good morning Ms Rushmere and Ms Nes. Welcome. Kia ora. Sorry to keep you
 65 waiting. We'll make sure we give you your full hearing slot. Thank you very
 66 much for your two evidence statements and also for your speaking notes Ms
 67 Nes. We have read those, so feel free to take those as read. We will pass over to
 68 you for how you would like to present to us.
 69
- 70 Nes: Mōrena koutou. Ko Gabriella Nes. I am the Senior Policy Planner at Upper Hutt
 71 City Council.

72
73 Chair: Sorry Ms Nes, we're just having some sound issues – just one minute [54.35].
74 [00.55.00]
75 [Attempt to resolve sound issues]
76
77 Ruddock: Just going to close this meeting and restart it to see if that will help.
78
79 Nes: Sounds good.
80
81 Chair: Now we are ready Ms Nes. Over to you.
82
83 Nes: Kia ora. Mōrena koutou. Gabriella Nes. I am a Senior Policy Planner at the
84 Upper Hutt City Council. I am here with my colleague, who I will let introduce
85 herself.
86
87 I will just begin with that I have been connected in and listening a little bit over
88 the last couple of days, but obviously hadn't had the opportunity to listen in on
89 it all.
90
91 On my end I have not really had too much beyond my evidence, so I will hand
92 over to Sue who has provided her speaking notes.
93
94 Rushmere: Mōrena. Ko Suzanne Rushmere tōku ingoa. I'm a Principal Advisor in the
95 Operations Team at Upper Hutt City Council. If it suits the Panel I will just
96 take my speaking notes as read, except that there is a couple of things I would
97 like to pick up, and that's that obviously the main area of concern for me is with
98 regards to Rules WH.R23 and R.23A.
99
100 I have also got a point of clarification in respect of my speaking notes for Policy
101 WH.P29.
102
103 I just wanted to clarify in that regard that the air of not concern but of feedback
104 I guess from me is that there's a section of that policy, particularly in sub-clause
105 (a) that refers to undertaking earthworks in accordance with the Greater
106 Wellington Regional Council Erosion and Sediment Control Guidelines.
107
108 I just note that there's not a similar standard I guess in policies WH.R23 and
109 R23A which I think would be useful. So that's a point of clarity around WH.P29.
110
111 Just in terms of my speaking notes on WH.P30 I remain concerned that that
112 policy does read more like a rule and I note that much of that policy is repeated
113 in Rule WH.R24.
114
115 Then just in terms of my speaking notes on WH.P31 I just wanted to clarify that
116 when I said my opinion on Policy WH.P29 it does read more like a rule. That
117 should be part of WH.P29A. It reads more like a standard, so apologies – missed
118 typing on my part.
119
120 Other than that I will just take the rest as read. Thank you.
121
122 Nes: Happy to open it up to the panel for any questions. That's our intro.
123

- 124 Chair: Thank you very much. Could you talk a little bit more about the relationship
125 between Rule 23 and 23A?
126
- 127 Rushmere: The submission from Upper Hutt was originally concerned that with the change
128 of the definition to earthworks it removed some of the exclusions in respect of
129 the maintenance from a pair of network utilities. I note that through the s42A
130 Report that Ms Vivian has sought to address that by introducing Rule WH.R23A
131 which I was supportive of in my evidence, because it does provide the ability
132 for network utilities to undertake works in respect of maintenance and repair.
133
- 134 However, through the rebuttal evidence there is a new clause (d) proposed for
135 that Rule 23 and that states that for network utility operators the area of
136 earthworks does not exceed 3000 metres squared for work being undertaken at
137 any particular location or work site.
138
- 139 Effectively my concern is that you've got a 3000 limit under (d) for 23, but under
140 23A there is no such limit. So when obviously considering a consent and any
141 relevant rules in the plan those two rules appear to conflict with each other.
142
- 143 Chair: I think the reporting officer is of the view that the two are read together – so an
144 activity could meet the permitted activity conditions under either rule. Why I say
145 that is because when a question about geo tech bores came up I think in response
146 to Wellington Water, I think the officer noted that that activity would be
147 permitted under Rule 23.
148
- 149 I might just ask Ms Vivian has any comment on that relationship between the
150 two. Am I understanding that correctly, that the activities could be permitted
151 under either?
152
- 153 Vivian: Sorry, I'm a little bit confused about the question. Yes, I guess if the question is
154 whether you do need to be permitted under both activities and meet the
155 requirements of both of those rules, then no you could be permitted under either
156 one and have them undertaken as a permitted activity. I hope that answers your
157 question.
158
- 159 Chair: It's just Ms Rushmere's point about there being a potential conflict, so if you
160 were say permitted under the network utility operated 3000 square metre
161 standard under 23. Could that raise a conflict with the activity you're trying to
162 do in terms of not being permitted under 23A?
163
- 164 Vivian: My intention behind that drafting is that almost operates in a cascade, although
165 I know that this plan isn't written like that. If you're permitted under that rule
166 and you're undertaking an activity in accordance with that rule then no you're
167 not subject to that 3000 square metre limit in the other rule.
168
- 169 Nes: [01.05.05] Commissioner, if I may: that may be able to just really easily fixed with an
170 exclusion in 23A which says "earthworks except for those being undertaken
171 under 23A... sorry, in 23 excluding earthworks under 23A just so that perhaps
172 down the line a processing planner is ensuring that those two permitted activity
173 rules don't need to be considered together, and the tests under those don't need
174 to be considered in addition to each other.
175

- 176 Rushmere: If I may: I actually proposed that exclusion in my speaking notes. That was
 177 hopefully dealing with and addressing the issue that there is that potential
 178 conflict when you have to consider all relevant rules in a plan as part of a
 179 consenting process.
- 180
 181 Chair: Thank you, that's clear.
 182
 183 Yesterday we were discussing the possibility of amending that clause (d) so that
 184 if work is occurring on the same site but different projects within a twelve month
 185 period, as long as the works and one project were stabilised then you could carry
 186 out earthworks that exceed that 3000 square limit. I don't think we got to the
 187 point of actually looking at precise wording, but we were certainly discussing
 188 that with Wellington Water.
 189
 190 Any views on that? So making sure that the work has been stabilised, so that
 191 there was no uncontrolled sediment runoff before beginning where you want to
 192 work elsewhere on a property but exceed the 3000 metres?
 193
- 194 Rushmere: It was certainly an issue that I raised in my evidence that it was unclear what the
 195 word "property" was in respect of network utility, because obviously it doesn't
 196 have a parcel. So I was supportive of some clarification in terms of that
 197 definitely.
 198
 199 Again in my speaking notes I've suggested some proposed amendments that
 200 would support that in Rule 23A but without linking that to the 3000 square
 201 metres and making that issue that I've just been talking about - in respect of the
 202 consents needing to consider all relevant rules problem.
 203
 204 I think supportive of the clarification. I did in my speaking notes seek some
 205 further clarification in that regard. If you bear with me for one second I will jump
 206 to that now.
 207
 208 One of the issues we've got is obviously we've got roads where they cross
 209 administrative boundaries, so I wonder whether there's use in having a definition
 210 of what worksite and location means, just so that it could provide some further
 211 clarity in that respect.
 212
 213 I guess what I'm seeking is the amendment I proposed in my speaking notes, or
 214 similar wording, plus a definition of worksite and location.
 215
- 216 McGarry: I guess I just want to understand a little bit more why you seem to be suggesting
 217 adding the amendments to (c) and the officer has got a new (d) that separates
 218 that out from property. I'm just wanting to understand whether you would
 219 support, just as the Chair was talking about (d), if it was worded slightly
 220 differently, and to put in the proviso "unless the location or worksite stabilisation
 221 has been completed."
 222 [01.10.00]
- 223 Rushmere: Sorry, apologies. Yes. I think that would be helpful. For us it's about ensuring
 224 that we understand what that means in the context of network utilities for that
 225 area. But, yes, if we are able to stabilise and move on and therefore exceed that
 226 3000 square metres I'd be supportive of that.
 227

- 228 McGarry: There was no reason that you particularly wanted to combine the clauses, and
 229 that you would be happy to have the network utility operators in a separate clause
 230 to achieve that?
 231
- 232 Rushmere: I would be happy to be in a separate clause. I think the concern was that because
 233 it was written as it was that then that provided that complex... I think if the
 234 wording was such that there was an exclusion and it didn't provide that conflict
 235 with 23A then I would be comfortable with that.
 236
- 237 McGarry: Thank you.
 238
- 239 Kake: I'm just wondering in your speaking notes Ms Rushmere if you could just talk
 240 about WH.R2A again and Rule 22A. You struck out "minor" and I just
 241 wondered if you could elaborate on that a little bit because we've had some other
 242 commentary around that this week.
 243
- 244 Rushmere: Of course. My concern with the word "minor" is that it can be quite subjective.
 245 What I am nervous of is that that 3000 square limit in Rule 23 will be used as a
 246 proxy to determine what "minor" will be.
 247
- 248 My understanding from the Natural Resources Plan, or the operative Natural
 249 Resources Plan exclusion in the definition o
 250
- 251 In the Natural Resources Plan the definition of earthworks excludes earthworks
 252 or certain activities associated with infrastructure. It doesn't say that those are
 253 minor. I am nervous that an interpreting plan that a consenting process might
 254 use that 3000 square metres as a proxy for minor where no minor threshold is
 255 set, or whether interpretation of "minor" can be subjective.
 256
- 257 Kake: Have you considered another word in replacement of "minor" acknowledging
 258 that there will be works associated with infrastructure that won't necessarily be
 259 as extensive as other earthworks? Have you had any other thought about another
 260 term?
 261
- 262 Rushmere: I haven't considered another term. The way that the rule is currently written
 263 there doesn't appear to be a threshold associated with 23A and therefore I am
 264 not sure whether the word "minor" is required at all, or an alternative is required
 265 at all.
- 266 Kake: Thank you.
 267
- 268 McGarry: Two questions about WH.R22A or 23A. Ms Horrox is concerned on behalf of
 269 Wellington Water for the five metre limit in terms of within a surface water
 270 body. We're just trying to understand exactly what their concern is, because it
 271 seems to have come from the NRP anyway.
 272
- 273 Is that why you haven't raised it as a concern Ms Rushmere.
 274
- 275 Rushmere: I guess there's a couple of things. Obviously it's in the existing Natural
 276 Resources Plan but also I don't consider that's within scope of the original
 277 submission from Upper Hutt City Council.
 278

- 279 McGarry: Just one other on the same clause. It's got "six months for stabilisation after
280 completion of works," and I asked the officer whether that seemed a little bit too
281 generous after completion of the works. She is of the view that she is going to
282 talk to some more people, but she thought that probably was a bit generous.
283
- 284 Have you got any view on that from a practical perspective?
285 [01.15.02]
- 286 Rushmere: I don't I'm afraid but I can certainly check in with the infrastructure team and
287 provide some written feedback if that's helpful.
288
- 289 McGarry: That would be helpful. We just want to make sure from a practical sense that it's
290 a good number. Thank you.
291
- 292 Chair: I've been looking a bit more at that five metre provision "vegetation clearance
293 shall not occur within five metres of a surface waterbody in the operative plan"
294 and I know Ms Vivian that I think you're going to bring across that wording in
295 Rule 23, those exceptions into the infrastructure specific provision.
296
- 297 Looking at those exceptions there's the culverts which we've already talked
298 about, but there's also new structures – and structures is defined very broadly. I
299 guess I'm just interested in your views. I don't know if Ms Rushmere or Ms Nes
300 have any comments on what wouldn't be covered, so what would trigger that
301 five metre consent requirement.
302
- 303 Vivian: I think that was my [01.16.48] is I struggled to identify works by these submitters
304 that would not be covered by those rules, other than what was discussed
305 yesterday where for example a pipeline was being replaced that literally ran
306 linear to a stream, which in that case if it's going for a certain length and it is
307 within five metres proximity to a stream then maybe it shouldn't be committed.
308
- 309 Chair: Thank you. That's very helpful. No pressure because I know this wasn't a
310 submission point, but from an operational perspective any comment on that five
311 metre surface waterbody provision – Ms Rushmere?
312
- 313 Rushmere: To be honest I haven't considered that, but again if you like I can go back to the
314 infrastructure team and provide some commentary from them as part of some
315 written response afterwards.
- 316 Chair: Thank you for the suggestion. I sort of feel that maybe that's not necessarily fair.
317 It hasn't been a specific submission point. I think Ms Vivian has confirmed the
318 exceptions to that do seem quite broad.
319
- 320 Kake: I just pick up on what you said about the erosion and sediment control guidelines
321 needing to be in the rule. Can you elaborate on that and then maybe Ms Vivian
322 can respond about whether that is currently in the NRP.
323
- 324 Rushmere: Of course. I guess from my perspective it would just be useful to have that
325 standard in a permitted activity rule. If you're going to have that in a policy it
326 seems to be useful back that up with a standard and a rule that gives effect to
327 that policy.
328
- 329 Vivian: I have no concerns with the rule referencing in accordance with the erosion
330 sediment and control guidelines.

331
332 Chair: There is no problem with that being certain enough for plan users though, if it's
333 saying you're permitted if you comply with these guidelines. Do you think that
334 meets a level of specificity required for a permitted activity rule?
335
336 Vivian: I think in combination with the other requirements of that rule yes. Where I
337 would be concerned is if the requirements suggested by Ms Foster were deleted
338 and then that wouldn't be enough. It's just in accordance with the guidelines.
339 [01.20.00]
340 Chair: That stabilising after works provision and the five metres?
341
342 Thank you very, very much for your clear submission notes. Sorry, I think I
343 started out by referring to the speaker notes of Ms Nes. Sorry about that. We do
344 have your speaking notes Ms Rushmere. Thank you very much. Really helpful
345 and very constructive and useful comments. Thank you.
346
347 Nes: Thank you.
348
349 Rushmere: Thank you.
350
351 Chair: I'm sure we will hear from you in Hearing Stream 4.
352
353 Rushmere: Quite possibly.
354
355 Nes: Ka kite.
356
357 Chair: We have the team from Wellington International Airport. Welcome. Do we have
358 someone online as well?
359
360 Kia ora Ms O'Sullivan. Just checking that you can hear us okay. We had some
361 sound issues earlier.
362
363 O'Sullivan: I can hear you, can you hear me?
364
365 Chair: Yes we can. Great. It is a little bit quiet Mr Ruddock.
366 O'Sullivan: I'll turn my microphone up as well.
367
368 Chair: Kia ora. Would you like some quick introductions from us, or are you
369 comfortable that you know who we are? Some quick introductions.
370
371 Ko Dhilum Nightingale tōku ingoa. Chairing both panels.
372
373 McGarry: Mōrena. Sharon McGarry.
374
375 Kake: Ata mārie. Puawai Kake, Independent Planner and Commissioner.
376
377 Wratt: Mōrena. Gillian Wratt. Independent Commissioner based in Whakatū Nelson.
378
379 Stevenson: Ata mārie. I'm Sarah Stevenson an Independent Planner and Commissioner
380 based here in Te Whanganui-a-Tara Wellington. Thank you.
381

382 Chair: Thanks very much. Before we start, there were a few small amendments that
383 were tabled on the 27th of May. I don't know if you've seen those yet. They have
384 been put up on the website. Appreciate moving quite quickly. There may not be
385 anything too relevant for the Airport's relief anyway, but just so you know those
386 have been tabled.

387
388 We'll hand over to you. We have pre-read the evidence and the legal
389 submissions.

390
391 Dewar: Good morning. I'm here with Ms Lester from the Airport and Ms O'Sullivan is
392 online, as you can see her.

393
394 Ms Lester and I have been involved in the mediations for the RPS this and last
395 week, so we are a wee bit behind. Forgive us if there's been a bit of a case of
396 Chinese whispers and we haven't got the right end of the stick or it's been lost
397 in the interpretation of it.

398
399 I propose in those circumstances that Ms Lester has just got some brief
400 comments to make that reinforce parts of her evidence, based on what we
401 understand the ongoing issues are. Then Ms O'Sullivan has prepared a summary
402 document for you, but again that is based on the information that we have.

403
404 There was a wee bit of a mix-up with dates on supplementary evidence. It says
405 it's dated such-and-such a date, but the date on the front cover is saying it's the
406 same date as the original and it just arms in the air to see which version it is. So
407 we are not sure we quite know where we are at the moment, but I am sure it will
408 come out in the wash.

409
410 I suppose from my legal perspective, before you might have any questions from
411 me, is really just some overall comments. Reading these provisions as a whole
412 there seems to be a disconnect between the chapeau and headings of the policies
413 versus the rules. In my submission the chapeau of the policy should be driving
414 the rules, not the other way around.

415
416 There should be more of a focus I suppose on the Council's duties, i.e. the
417 discharge as opposed to land-use, so that we try and stay as far away from
418 duplication and inefficiencies with what the District Council is doing and from
419 the Airport's perspective because it runs it show, if you like, via designations.
420 So the land-use component of what it does has been decided and under obviously
421 the designation process so it has conditions – lots and lots of conditions to deal
422 with that.

423 [01.25.20]
424 My concern, and particularly when of course your land use duties and abilities
425 to put land use rules in place are quite circumscribed, and I suppose all I'm
426 asking you is to bear that in mind when we are looking at this final suite and that
427 same issue will arise for our next hearing stream.

428
429 I think there's also a consistency between referring to coastal waters versus the
430 CMA. There seems to be a mismatch of where those two terms are used – so
431 that's another. The planners have been really focused on the nuts and bolts and
432 nitty-gritty of these provisions and I have probably looked at it more of an

433 overview perspective and that's what I've picked up – so if you could make a
434 note of that.

435
436 I think the only other thing that I would like to reinforce is that so far as the
437 Airport is concerned, I'm not aware of any evidence that there is any concern or
438 any environmental effects, adverse or otherwise, as a result of sediment
439 discharge from construction or stormwater. You will have read in the evidence
440 that the Airport does have a stormwater consent, and they have monitored, as far
441 as I'm aware, stormwater for many, many years and there is no concern about
442 that.

443
444 I gather from the s.32 analysis is that there was obviously an issue in Porirua
445 with sediment and going into the harbour, and that's been translated to
446 Wellington where there might be sediment. But, at Wellington Airport it is
447 engineered fill which is obviously gravels and its sand. It's on the flat so there's
448 no hill discharge as well. So please bear that in mind, that there isn't a problem
449 to fix here and that is reflected in the evidence that we have provided to you and
450 the rules that we have suggested.

451
452 There is just one other housekeeping issue that I have, which is relevant to this
453 hearing and to the next hearing, is that it would be really helpful to have a proper
454 contents page for this plan change, and it would be really helpful to have this
455 plan change in amongst the rest of the NRP.

456
457 We have asked for this before. It has become very apparent to me and to other
458 practitioners when we've been doing the RPS mediations how confusing and
459 inefficient it is when people are shuffling between documents and you cannot
460 see the big picture, especially when things are online. We can't print out these
461 documents willy-nilly because they do change. It is just so very important in this
462 digital world, and it is so much easier in this digital world to shove things into a
463 document which shows the big picture.

464
465 My plea is please can you ask the Council to do that before we all go around the
466 bend.

467
468 My final comment is that obviously there are some changes in the wind that
469 you've told me about and you've discussed with the s42A Report officer, and I
470 think some of the submitters, especially for the RSI group, have suggested that
471 it might be helpful to have conferencing. If that doesn't occur, in my submission
472 it is very important that at least before the Council's right of reply that submitters
473 have a chance to see what the Council officer has come up with overall, and that
474 we can have another opportunity to at least provide written comments. I think
475 we all bring different perspectives and layers of information to what is really a
476 very operational issue for RSI and councils and everyone else. It does need
477 people on the ground who deal with this on a day-to-day basis, like Ms Lester
478 who has to apply for a consent every time as to how these provisions in fact
479 work in practice, and what the potential effects are, if there are any at all.

480 [01.30.25]

481
482 With that in mind I'm happy to answer any questions that you might have with
483 my very, very general legal submissions that I filed, otherwise I'll go straight
484 through to Ms Lester.

- 485 McGarry: Just in terms of your comments about the chapeau of the policies and the
486 disconnect with the rules, we have talked to the officers about that, particularly
487 in the earthworks section. Ms Vivian is going to go away and look at that and
488 see if there is some simplification that could happen. She agreed that the point
489 was to try and avoid direct discharges to surface waterbodies without going
490 through some kind of a treatment first, and obviously then minimising effects
491 from the discharge, from treatment devices.
492
493 I haven't really got a question for you. Just hearing what you're saying, that you
494 do want to be involved in the conversation and it might be one area that once Ms
495 Vivian has gone away and done a little bit of a rewriting of the policies, and
496 maybe putting some of what you see as more standards into the rules, I assume
497 that you would like the opportunity to be able to comment on that reworded
498 provision. That's what I'm hearing.
499
- 500 Dewar: Yes. We all are aware that through these processes – and we are very aware
501 having thirty-plus people in a mediation room – that drafting by committee is
502 dangerous. Sometimes it's just that overview at the end of that, that can be quite
503 helpful and make the plan less messy.
504
- 505 Chair: Ms Dewar, I see on the hearing website for Hearing Stream 3 under the Notice
506 of Hearing in S42A Reports, there is an online version of this, which is a track-
507 changed version of the PC1 provisions into the operative plan. It says updated
508 22 May 2025, so I think it does include at least the rebuttal provisions that the
509 officers have supported.
510
511 We will talk to the Council and see if we can get this even further updated
512 following the hearing, and it will then need to include the right of reply versions
513 as well. I think Ms Vivian wants to comment.
514
- 515 Vivian: I think the one that you're looking at online is a version of the PC1 provisions
516 updated with rebuttal. I think what has been sought by Wellington Airport is a
517 version of it merged with the existing NRP provisions, which is something that
518 we have talked about as a team and is in the works but it's not available yet.
519
- 520 Dewar: That's what I was after, and making sure that the indexes are linkable. Now the
521 index is linkable. Whereas when it first got out it was just a raw document and
522 you had to search every time you wanted to find something. It was incredibly
523 frustrating. It made making submissions so much harder and unnecessarily so.
524
525 So completely understand, but it would be good to get the whole thing, so we
526 can see the whole thing.
527
- 528 Chair: Thank you. Noted. I think is it over to you Ms Lester.
529 [01.35.00]
- 530 Lester: Mōrena. I just wanted to reiterate a few bits and pieces that were in my evidence
531 about the importance of the airport in terms of its regionally insignificant
532 infrastructure and lifeline utility things that were outlined in my evidence for
533 Hearing Stream 2 and attached to my Hearing Stream 3 evidence.
534

535 The Airport's main role is to ensure the safety and efficiency of the operation of
536 Aircraft. We therefore need to be able to have earthworks needed to be enabled
537 all year around – so the winter works provisions are quite a risk for us.
538

539 However, the Airport operations we are very low risk in terms of sedimentation.
540 In section 7 of my evidence you will see a whole overview of our whole
541 construction management requirements and our civil aviation requirements in
542 relation to foreign object debris. We can't have any debris – any bits of earth or
543 any extra bits around the airport at all. They do not mix with aircraft engines.
544

545 All our sediment control plans need to be extremely robust and able to handle
546 significant rainfall events – whether this is summer or winter.
547

548 Our sediment control plans do not change between summer and winter. They are
549 of the same standard.
550

551 As Ms Dewar outlined before, the ground conditions of the airport are not like
552 Plimmerton Farm. We are flat and we have no large escarpments. We're
553 comprised of engineered fill, so that the aircraft can actually land safely, which
554 is quite deep, which is asphalt, concrete pavement. It's less susceptible to any
555 erosion. In other areas we've got sand.
556

557 The process for winter works adds significant risks, costs and timeframes. In my
558 paragraphs 8.11 it leads to uncertainty for no apparent justification. It is really
559 difficult to plan large infrastructure projects around not being able to do any
560 groundworks for a third of the year, plus stabilisation timeframes. We cannot
561 hold contractors for that amount of period of time, waiting for them to be able
562 to start again.
563

564 The timing of going through the winter works permit process with Greater
565 Wellington can be difficult on a project, especially one that carries over a few
566 years. We need to lodge documentation a month out from the winter works
567 period starting. Schedules can change really quickly for different reasons and by
568 the time the winter works period actually comes around other things change.
569

570 There is no certainty in terms of when the officers respond to our winter works
571 approvals and if this is not done in a timely manner it really interrupts the
572 timeframe for any project.
573

574 I've outlined in my evidence some specific examples of how the winter works
575 provisions have worked prior to PC1 and after PC1. Both have been problematic.
576

577 Just to note further – in our seawall renewal project, that you're probably all
578 aware that we are going through at the moment in terms of consenting, if we
579 take into consideration the winter works period on this and the lifecycle of little
580 Blue Penguins, we would only have two or three months of an entire year that
581 we can actually undertake work. That would mean that a project that we would
582 envisage to be three years could take up to fifteen years.
583

584 That's all I have to say. If you have any questions please let me know.
585

- 586 Chair: Ms Lester, at paragraph 8.7 of your evidence, where you give the example of it
587 being inefficient to have to apply for consent for small works such as a
588 replacement of lightbulbs – are you saying there that they may not be captured
589 by the definition of permitted earthworks that are permitted because they could
590 form part of a works on your site that could exceed that 3000 square metre cap?
- 591 [01.40.20]
592 Lester: Yes. After PC1 and we had earthworks on our site, one project was in excess of
593 3000 square metres, so that meant anything after that required resource consent
594 for earthworks. I believe that's changed a bit now, or it will be.
595
- 596 Chair: Would you be comfortable if the existing work on the site was stabilised? I
597 appreciate what you're saying about there being minimal sediment discharges
598 anyway because of typography and other things.
599
- 600 Would you be comfortable provided that any works were stabilised fully before
601 the next project on the site started? Would that give you more comfort about the
602 3000 metre cap?
603
- 604 Lester: We have to take maintenance throughout the year. Sometimes it's within a very
605 quick timeframe. If we have a big project say at one end of the airport, for
606 example a hillock was removed not too long ago, and then we need maintenance
607 around the apron area for example, I'm not sure that stabilising necessarily the
608 earthworks that are happening at this end should affect what's going on at the
609 other end of the Airport. We're a big site.
610
- 611 In terms of effects, sediment effects and lack of sediment effects, as what I've
612 outlined, I'm not sure if that's... we're pretty stabilised most of the time anyway.
613 A lot of our works we have to undertake overnight and then it's refilled the next
614 day so a plane can come in.
615
- 616 Chair: A couple of comments on that. The hillock, if that's to do with the golf-course
617 area, there is obviously some steeper terrain there. I can't remember what day it
618 was, maybe it was the second day, the officer talked about managing sediment
619 from infrastructure works, and was that these provisions are of course all aimed
620 at giving effect to the NPS-FM and the sediment targets. Actually I think it might
621 have been Dr Greer.
622
- 623 Saying that, where activities need to be managed to minimise sediment
624 discharges, it doesn't matter that they're necessarily occurring on the same site
625 and at different areas of the site. They still need to be managed.
626
- 627 Commissioner McGarry has just asked a question. So the Airport wouldn't meet
628 the definition of network utility operator?
629
- 630 Lester: Yes it does.
631
- 632 Chair: Just wondering if you would actually even come into the rebuttal provision there.
633
- 634 Any other questions from Ms Lester?
635
- 636 McGarry: Ms Lester, does the Airport currently hold any consents for the whole site, like
637 a global type consent, instead of trying to fit the framework around a specific

638 site. I accept everything that you say, that you are a bit of a unicorn. Do you
639 have consents for these types of work?

640
641 Lester: We have started preparing a site-wide earthworks consent, but we are just
642 waiting for the shakeout of these particular provisions before we lodge or not
643 lodge that. We have a site-wide storm water discharge consent and we have a
644 site-wide which is under the District Plan but it's a contaminated land
645 management framework, which adds another dimension to this as well. The
646 Airport is on contaminated land. We have a Land Management Plan to deal with
647 that. So all our earthworks have to be in accordance with that as well. We've
648 just got extra layers of control at the Airport.

649 [01.45.20]
650 McGarry: The other thing I'm interested in is the wording of this – the one that's the
651 general rule as a property, the one that's proposed for the network utility operator
652 says "one particular location or worksite".

653
654 From what you've said to me, it sounds like one end of the airport to the other
655 would be different worksites and not one particular location; so obviously that
656 wouldn't trigger the "unless stabilised". Does that give you any level of comfort?

657
658 Lester: It does.

659
660 Vivian: If I could just jump in, just for Ms Lester's sake. I think also some of the
661 activities that you've described are also now permitted under that 22A, 23A and
662 that's because it includes the repair or maintenance of existing roads and tracks,
663 airfield runways, taxi-ways and parking aprons for aircraft. So that would
664 actually provide for a significant number of activities that the airport undertake,
665 and that includes the activities described like the lampposts and replacement of
666 those things.

667
668 I think works outside of what is described in that exception, for example the
669 hillock, those kind of activities exceed that 3000 square metre perimeter anyway,
670 and are in my opinion considered larger projects, which consideration can be
671 given to what can be undertaken during that winter period.

672
673 Again I guess I just want to reinforce the fact that there is that winter works
674 approval process, and it's not to say that for example with the seawall, because
675 you have to obtain resource consent you are only going to be limited to working
676 within three months of the year.

677
678 During that consenting process it's important to think about Porirua nesting
679 periods and the winter works and negotiate and figure out what the best
680 outcomes for the environment are going to be. It's not going to be just that you
681 can't do it during nesting, you can't do it during the winter period and it's going
682 to take you another ten years.

683
684 When you're actually in the consenting process I don't think that's necessarily
685 realistic.

686
687 Dewar: I think if I could respond to that from a legal perspective. That's all very fine,
688 but obviously at the moment you would have to get rid of your non-complying

689 activity status, and you would have to get rid of your policies that give effect to
690 that non-complying. So that takes it one step in the right direction.

691
692 I think what Ms Lester is trying to say is that the Airport is a big place and some
693 projects seem enormous to maybe the man on the bus, but they are not enormous
694 from the Airport's perspective – they're operational things that happen all the
695 time, for which there are no effects. So why have a control?

696
697 If the Council could put to any evidence that there has been an effect, or there's
698 been some problem with result of what's been happening for years and years
699 and years then by all means control it.

700
701 But, we're dealing with an entity that's been around for a very long time that
702 does this all the time, so why change the rules to make it more difficult?

703
704 McGarry: In terms of policies WH.P29 and P.27, the officer has put an exclusion in for
705 quarrying, and since the hearing has also put an exclusion in for renewable
706 energy generation activities in recognition of the NPS. We have explored
707 whether it should provide for RSI as well, and Ms Vivian was of the view that
708 most RSI activities were covered by the permitted activity rule, which she's just
709 pointed out the particular ones for aircraft and things.

710
711 Then she said that if they fall outside of those permitted activity rules, those
712 exemptions, they've come from the NRP anyway and anything else should be
713 planned and applied for.

714 [01.50.00]
715 I guess listening to what you're saying, you're saying you're different to other
716 RSI again. Would one of the solutions be if we accepted what you're saying that
717 you are different, would one of the options be to add you into that exception?

718
719 Dewar: Yes and we have discussed that. I think that that is an option. We have provided
720 you with the evidence, with the special management of the Airport property, and
721 it is quite different to any other RSI because of those particular operational
722 elements that we're all grateful for.

723
724 So yes that would be one option.

725
726 McGarry: Obviously the one for REG is quite wide because of the NPS. What you're
727 saying really is for operational and maintenance of the airports?

728
729 Dewar: Yes. And, of course the NPS doesn't deal with the coastal environment to the
730 same extent as it does for freshwater. I think in my legal submissions I pointed
731 out that the suite beforehand didn't even account for the New Zealand Coastal
732 Policy Statement and the reasonable mixing concept out of that document.

733
734 I don't think doing that that you're going to in any way conflict with your
735 obligations to meet the intent of the New Zealand Coastal Policy Statement.

736
737 McGarry: Just double-checking again: you're not looking for development or construction
738 projects in that, you're looking for the operation and maintenance of the
739 Airport's operations – I mean in that policy, that excluding from the winter shut-
740 down period?

- 741
742 Dewar: That's P.29?
743
- 744 McGarry: That's right. There's a new (e) there. Sorry, you're a bit behind the ball there.
745 There's a new (e) there and you've probably seen that, and then it says "except
746 where the earthworks are for quarrying activities" and now we've actually added
747 REG in there as well. REG is the use, development, operation and maintenance
748 of REG, because of the NPS wording.
749
- 750 It seems your evidence is now saying that your everyday operations,
751 maintenance activities where you just have to respond quickly.
752
- 753 Dewar: It's larger construction projects as well. As I noted before the geology of the site
754 and the requirements that we have under the Civil Aviation Authority, anywhere
755 on our site we have to control the foreign object debris which includes any dust,
756 sediment or anything like that.
757
- 758 Underlying of our main site where the aircraft are at the moment is all engineered
759 fill. Anywhere that we are moving into, for example the golf-course which we
760 have major information requirements in terms of earthworks under our
761 designation anyway, it still has to be controlled in just the same way.
762
- 763 Sediment control plans have to be exactly the same for winter as they are in
764 summer and vice-versa – they're as good as each other or better, because of the
765 requirements we have under the Civil Aviation Regulations.
766
- 767 Chair: I was actually going to ask if you had an issue with the word "minimising". I
768 don't know maybe if this a good time to jump into Ms O'Sullivan's evidence
769 because she might be covering that.
770
- 771 Dewar: She may do. Minimising obviously was discussed a lot at the previous NRP
772 mediations [01.53.59]. I think the definition is still the same. The Airport was
773 part of that.
774
- 775 We'll pass over to Ms O'Sullivan.
776
- 777 O'Sullivan: Mōrena. Before I start I did send to Mr Ruddock a copy of my notes I am going
778 to speak to this morning. Have you guys been provided with a copy of those?
779 I'm going to talk through them anyway, so if you haven't read them that's fine.
780
- 781 Chair: Thank you.
782
- 783 O'Sullivan: You have got a copy though?
784
- 785 Chair: Yes we do thanks.
786
- 787 O'Sullivan: Mōrena. My name is Kirsty O'Sullivan. My experience and qualifications and
788 commitment to comply with the Environment Court's Code of Conduct for
789 Expert Witnesses is set out in my evidence in chief.
790 [01.55.00]

791 Before I start, I do want to acknowledge the effort Ms Vivian has made to try
792 and resolve the matters raised by the various submitters through this process to
793 date.

794
795 To assist the Panel attached is Appendix A as a table which compares the relief
796 set out in my evidence in chief and Ms Vivian's position as of the 27th of May
797 2025. So I have seen those provisions that were mentioned earlier.

798
799 I have also made brief bullet point notes regarding key points of difference and
800 where they remain. I will run through those with you, but in summary they
801 generally relate to the consenting pathway for regionally significant
802 infrastructure, winter earthworks provisions and the management of discharges
803 to the coastal environment.

804
805 While there is general alignment in principle with the remaining matters raised
806 in my evidence in chief, there are differences in the drafting approach. I also
807 understand, having listened to parts of Council's opening on Tuesday afternoon,
808 that there are likely to be further recommended changes to a number of the
809 provisions in light of questions raised by the Panel.

810 As the Panel is aware, when drafting policies and rules words matter, as to
811 shades of meaning, and I would therefore welcome the opportunity to provide
812 further comment on any changes put forward by Ms Vivian, and/or potentially
813 conference on them so the Panel has a clear document and position statement
814 from all the planning experts on the final drafting put forward.

815
816 I won't comment on that any further because Ms Dewar has discussed that with
817 you as well.

818
819 If you could go to Appendix A of my table, I will just run through brief
820 comments with respect to each policy. I'm happy to take questions as I go, if
821 that's the most logical way to do it, or at the end.

822
823 With respect to Policy WH.P29, Ms Vivian has recommended adopting some of
824 my recommendations with respect to (a) and (b). I just want to note that there
825 were some questions around Ms Vivian's amendments to paragraph (b) I think
826 during the Council opening, which were a result of my recommendation and that
827 of Ms Hepplethwaite as well.

828
829 Just with respect to that one, I acknowledge where it refers to "limiting the
830 amount of land disturbed" that may not be read as particularly constraining on
831 its face, but when coupled with the directive winter works provisions I am
832 concerned about how those aspects would be interpreted, implied and read
833 together. So that's part of the rationale for wanting that wording to the extent
834 practicable.

835
836 Ms Vivian does not recommend accepting my recommended amendments with
837 respect to clauses (d), (e) and (f) and broadly notes that earthworks associated
838 with RSI pose no less a risk to the environment than other projects of similar
839 scale and complexity and therefore should be subject to the same policy and rule
840 framework.

841

842 With respect to clause (d) Ms Vivian is of the view that unnecessary control
843 measures are unlikely to be imposed on earthwork sites. While that may be the
844 intent, clause (d) in my view reads like erosion and sediment control measures
845 are an absolute requirement.

846
847 In my experience, when it comes to consenting, policies are read as they are
848 written and any shades of meaning can be lost if not expressly stated.

849
850 Based on LIM-A which seeks for sediment and erosion control measures to be
851 commensurate with the nature and scale of an activity, it is feasible that there
852 will be circumstances where no erosion or sediment control measures are
853 required.

854
855 My recommended inclusion of the term “or necessary” is therefore trying to
856 reduce any potential conflict between clause (a) and (b) should there be a
857 scenario where erosion and sediment control measures are not required.

858
859 With respect to clause (e) I maintain the position in my evidence in chief, that
860 the LIM has the potential to unduly constrain RSI, which due to the nature and
861 the scale of the works cannot practicably avoid winter earthworks.

862
863 I understand that Ms Vivian considers that there is a clear consenting pathway
864 provided for large infrastructure activities to undertake winter earthworks and
865 that earthworks associated with RSI pose no lesser risk than other activities.

866
867 In response to this I make two key points. RSI and their associated activities are
868 provided with an entirely different policy context in the RPS and the NRP when
869 compared to other forms of development, including recognition of the social,
870 economic, cultural and environmental benefits that RSI provides to the wider
871 community – and I have just referenced some of the key objectives and policies
872 there.

873 [02.00.00]
874 There are also complex timing and cost considerations that need to be taken into
875 consideration for large scale infrastructure projects, regardless of whether they
876 relate to new or existing infrastructure.

877
878 In the particular context of the Airport, winter works are simply unavoidable –
879 and I will just refer you to Ms Lester’s evidence in some of those discussions
880 that we’ve already had this morning.

881
882 I am not suggesting that RSI should be given a free ride. The policy and
883 consenting pathway just needs to reflect the practical realities of undertaking
884 large scale infrastructure projects that need to balance various constraints – and
885 that’s hence the inclusion of my recommended paragraph (f).

886
887 Furthermore, in the Wellington Airport context, due to the need to manage bird
888 strike, biosecurity risks and FOD risks, while applied stringent sediment and
889 erosion control measures year round, they do not differentiate between seasons.

890
891 A point I think Ms Dewar had made as well is that whilst my evidence does refer
892 to RSI the framework could be narrowed obviously to just refer to the Airport

- 893 to avoid any concerns that the drafting may open the floodgates I guess. That's
894 just a point I would like to note.
895
- 896 Would you like me to keep going, or would you like me answer any questions
897 on this policy?
898
- 899 Chair: Thank you. I will just see if anyone has any questions on Policy 29.
900
- 901 Wratt: Thank you Ms O'Sullivan. I am just wondering if your proposed clause (f) would
902 still be required if the suggestion was picked up on adding Wellington Airport
903 into clause (e) as has been suggested earlier.
904
- 905 O'Sullivan: No, I don't think it would. I think that would address it because that clause is
906 really trying to achieve that balance and recognition that for winter earthworks
907 there may be other things that need to be considered.
908
- 909 Wratt: I'll just check. So you're saying that (e) is really only related to winter
910 earthworks, which is true; and that (f) has a broader context. Thank you.
911
- 912 Chair: I was wondering about whether that policy support is there in the RPS, but these
913 are possibly the provisions that are being mediated at the moment, so might not
914 be settled yet.
915
- 916 Dewar: The RSI provisions are settled and Objective 10 is to enable and protect RSI, so
917 it's quite strong.
918
- 919 Chair: And, recognising it's constraints of...
920
- 921 Dewar: There are other policies depending on where you are in the document. We are
922 not dealing with that certainly not at the mediations we have just been to.
923
- 924 Chair: Thanks Ms O'Sullivan. We're clear on the relief you're seeing for 29. Thanks.
925
- 926 O'Sullivan: Apologies. I am conscious of time.
927
- 928 In respect to Policy 30, Ms Vivian has recommended rejecting my amendments
929 to Policy WH.P30, however she has acknowledged in her rebuttal that
930 "turbidity" is not an appropriate measure to be used in coastal waters.
931
- 932 I understand that this was discussed during the Council opening, and there was
933 some acknowledgement of the difficulty that even a TSS measure presents, as
934 recommended in Ms Vivian's rebuttal.
935
- 936 I was not clear where the Council landed on this matter, but I think they were
937 going to go away and do some more work.
938
- 939 I'm obviously not qualified to speak on the acceptability of the measures used
940 in the policy. What I do wish to note is that the NRP includes a number of general
941 coastal management conditions – and I've got a reference to the section of the
942 NRP there – that apply to all activities within the CMA. This includes
943 discharges.
944
- [02.05.00]

945 The clause - I won't read it out, but you can see it there in italics.
 946
 947 The types of maintenance works being undertaken by WIAL within the CMA
 948 are likely to meet these thresholds and would thus be a permitted activity. The
 949 measures also allow for visual inspections to be made.
 950
 951 If such affects are acceptable within the CMA, being the receiving environment,
 952 it seems somewhat unusual that the land proportion of any works would apply a
 953 different standard to those that apply within the CMA itself as the receiving
 954 environment.
 955
 956 I therefore question whether there is merit seeking to align the existing elements
 957 that apply within section 562, which is those coastal management conditions, as
 958 an alternative to the relief that I originally sought within my evidence in chief.
 959 If there is no questions on that I can keep going.
 960
 961 Chair: Sorry Ms O'Sullivan, I'm not sure I fully understand. I'm just looking at your
 962 purple track-changes on P.30. The discharge of sediment talking about areas
 963 greater than 3000 square metres other than associated with RSI; but then further
 964 down you say "except this clause doesn't apply to the discharge of sediment
 965 associated with RSI."
 966
 967 So that's limited to where the discharge is to coastal water?
 968
 969 O'Sullivan: Yes. I probably should have made that clearer. That first sentence, the Airport
 970 does not discharge to any fresh waterbodies. It's right at the coast. Then all of
 971 the stormwater that it does capture or any sediment that would get into a
 972 stormwater system goes to the coast.
 973
 974 So I'm not particularly concerned with the freshwater provisions from the
 975 Airport's perspective. If you ignore the purple at the start of clause (b) it is really
 976 the stuff at the bottom that's relating to the coast.
 977
 978 The coast is different. As Ms Dewar said, you've got the NZCPS that comes into
 979 play as well. So it's trying to balance the NPS-FM and the NZCPS.
 980
 981 There could be an alternative way of dealing with that and the drafting of Ms
 982 Vivian, and clause (a)(ii) starts to head down that path. But, as I noted, there
 983 seems to be a little bit more work that needs to be done there, so I'm not sure
 984 whether that alternative drafting works in practice. I have suggested to maybe
 985 look to what is enabled within the coastal marine area already and that might
 986 provide some guidance to what is already acceptable and works in practice.
 987
 988 Vivian: Mr Greer might have some further comment on this, but just in regards to the
 989 coastal policy statement and those coastal provisions, I think the important thing
 990 to recognise here is that a lot of the sediment that's coming from earthwork sites
 991 is completely different soil types I guess than those that are managed in the
 992 coastal provisions, which is sand. The coastal provisions are aimed at managing
 993 sand, but I guess operates differently within coastal waters than sediment that
 994 may potentially be coming from earthwork sites.
 995

- 996 O'Sullivan: If I can respond, I think Ms Lester commented on the fact that again the Airport
 997 is a bit of a unicorn. I think Commissioner McGarry used that word. I quite like
 998 that. It is a bit of a unicorn. The site is primarily engineered fill and where it isn't
 999 engineer filled it is former sand dunes, so that includes up around the golf-
 1000 course. It is dealing with sand because this is a reclaimed site that was previously
 1001 coastline.
 1002
- 1003 I guess that further emphasises why it might be appropriate to have a special
 1004 carve-out for the Airport.
 1005
- 1006 McGarry: With Ms Vivian we discussed a lot of the problems with this policy as it is, with
 1007 NTU and how difficult it is, but just focusing on the clause (ii) would you be
 1008 comfortable with something along the lines of "in coastal waters not resulting
 1009 in any colour change in the receiving waters after there's unreasonable mixing."
 1010 So getting away from visual clarity altogether and just conspicuous colour
 1011 change.
 1012
- 1013 O'Sullivan: Yes, and I think that point with the zone of reasonable mixing is really important
 1014 given that in the coastal environment it can be quite turbid just on a day-to-day
 1015 basis based on the weather conditions. That would help address that.
 1016 [02.10.00]
- 1017 Chair: Does that take us to Rule 23? We're very happy to take a shorter morning tea
 1018 adjournment.
 1019
- 1020 O'Sullivan: Can probably fast-track even more than what I have got here, because things
 1021 have moved along quite a lot with that 3000 square metre area. I support that
 1022 change that has been proposed. I do prefer the drafting of Ms Hepplethwaite for
 1023 that particular matter, and I've got that in the last bullet point.
 1024
- 1025 Then the second bullet point, just kind of further reiterates why having that 3000
 1026 metre approach is necessary for the airport. I think originally it referred to per
 1027 property. The definition of property includes contiguous land.
 1028
- 1029 The Airport seawall, or the land that the seawall is on and the adjacent areas are
 1030 owned by the Council and that applies to the whole coastline. So that land is all
 1031 contiguous. So there are administrative difficulties with applying that rule for
 1032 example for the seawall. That's just one example.
 1033
- 1034 In short I like where this is going but I do prefer Ms Hepplethwaite's drafting.
 1035
- 1036 One other matter that I picked up this morning when I was just reviewing
 1037 everything before the hearing, if I may as well, is under clause (c)(b) – it does
 1038 say erosion and sediment control measures shall be used to prevent a discharge
 1039 of sediment. In my experience sediment erosion control matters typically treat
 1040 and retain some of that sediment but it doesn't prevent it. It's a very, very high
 1041 bar so I think some alternative wording like "minimise" or similar would be
 1042 better than prevent.
 1043
- 1044 McGarry: Could it be to "prevent untreated" or "uncontrolled" – probably "untreated" is a
 1045 better word – discharges. It's really just trying to avoid those direct discharges
 1046 without any kind of sediment control device.
 1047

- 1048 O'Sullivan: Yes it could be. I would need to think about that there are situations where you
1049 don't need a sediment erosion control device from a practical perspective –
1050 although that's a Policy isn't it.
1051
- 1052 Dewar: Perhaps if I could just interrupt there. That can be a wee bit tricky again at the
1053 seawall interface where you've got land and the coast. You're right there. Often
1054 the Airport does have to maintain seawall after-storm events. It has to. So, we
1055 just have to have some kind of regime there, that is able to be managed and
1056 undertaken.
1057
- 1058 O'Sullivan: I do come to that when I talk about the subsequent set of rules.
1059 If there are no more questions I will move onto the next rule.
1060
- 1061 Just back to Rule WH.R23A, this is that new infrastructure rule. I support the
1062 inclusion of the new infrastructure specific rule. It does address a lot of those
1063 issues that have been raised by various submitters around the adoption of the
1064 New Zealand Planning Standard definition of earthworks.
1065
- 1066 Based on her rebuttal evidence, the only outstanding matter and point of
1067 difference relates to reasonably discreet and minor matters, including the Rule
1068 heading and reference to maintenance of seawall.
1069
- 1070 In my view use of the word "minor" within the rule creates a disconnect between
1071 the title and the chapeau itself. Reference to "minor" is also subjective.
1072 Pavement replacement works for example are minor in their effect, but not
1073 necessarily minor in their scale.
1074 [02.15.00]
- 1075 With respect to the inclusion of the seawall within this Rule I am really agnostic
1076 about where any ability to maintain the seawall itself sits within the rules, noting
1077 that 23A and 23 are almost identical.
1078
- 1079 With respect to clause (d) which is one of the erosion sediment control measures,
1080 while I support the trajectory of the amendments, the clause to the extent
1081 practicable is still necessary given the wind and wave environment surrounding
1082 the Wellington International Airport.
1083
- 1084 That is, at the seawall for example, it's difficult to employ effective erosion
1085 sediment control measures as they will likely be blown away, and the effects of
1086 installation of something comprehensive for a minor maintenance piece of work
1087 will likely outweigh the benefits of a short burst of a discharge that after
1088 reasonable mixing would not present any particular issues.
1089
- 1090 I acknowledge that my drafting, if that statement is included, could potentially
1091 open the floodgates, and therefore would be happy to consider some additional
1092 wording that made that specific to the Airport and the seawalls. I note this
1093 change would need to be made to Rule WH.R3 if that's where the seawall
1094 maintenance provisions often really end up being captured.
1095
- 1096 I also understand that based on Greater Wellington's opening Ms Vivian is going
1097 to reconsider the chapeau of some of the policies and I think Commissioner
1098 McGarry you mentioned that earlier as well, and just again reiterating that
1099 careful consideration of the chapeau of the policies and the rules necessary in

- 1100 my view to ensure consistent use of terminology and that the rules are seeking
1101 to achieve the policy directives and not the other way around.
1102
- 1103 I might keep going with the rules and then we could do all the questions maybe
1104 at the end, or I can take them as we go.
1105
- 1106 McGarry: The seawall, is there not already a rule in the coastal rule that covers the seawall?
1107
- 1108 O'Sullivan: Yes.
1109 McGarry: I guess it's the boundary of the CMA.
1110
- 1111 O'Sullivan: Correct, it's the boundary. That's the difficulty, is the landward portion.
1112
1113 Maintenance works are currently permitted under those rules subject to
1114 conditions, but the Airport can readily meet those and I just wouldn't want to
1115 see a scenario whereby the landward portion of the works is actually the thing
1116 that's triggering consent and holding up the ability for the Airport to do those
1117 maintenance works in an efficient manner, particularly after storm events.
1118
- 1119 Chair: Ms O'Sullivan, is your proposed (f) needed – the discharges, in accordance with
1120 the existing stormwater discharge, wouldn't that just be the case anyway.
1121
- 1122 O'Sullivan: I haven't pushed that point here. I had a further look at the global stormwater
1123 discharge permit and also the global or contaminated land permit again. They
1124 don't deal with construction phase discharges.
1125
1126 As you will hear during the stormwater hearing next week, even though there is
1127 a stormwater discharge permit for the site the Regional Council has pulled the
1128 Airport up for land use components of rules. So, for example, in this scenario
1129 where it says earthworks and the associated discharges, whilst this relates to
1130 stormwater it kind of gives you a bit of a flavour.
1131
1132 The discharge permit side is consented but the land use component wasn't, so
1133 they got tripped up and required resource consent. So I was just trying to make
1134 sure that it was really explicit, but in any case it doesn't relate to this hearing
1135 because the Airport doesn't actually have the global permit to address that, and
1136 if it did it would be under this rule framework.
1137
- 1138 McGarry: You're (c) words there "including associated seawalls". Would that perhaps be
1139 clear if it was including the landward portion of associated seawalls?
1140
- 1141 O'Sullivan: That is a good point. Yes.
1142
- 1143 Chair: Ms O'Sullivan I am now getting a bit more conscious of time and have
1144 submitters waiting after the break. Do you think that you've got much more to
1145 talk us through?
1146 [02.20.05]
- 1147 O'Sullivan: No. I think if I just skim to R24. I think we have already discussed the winter
1148 works and how that feeds through some of those policies. We've already talked
1149 about the policy context being different for RSI versus other forms of
1150 development. Ms Lester has already spoken about the airport being different and
1151 applying management controls consistently throughout the year.

- 1152
1153 I just did want to note that Ms Vivian has acknowledged in the second to last
1154 bullet point the difficulties with using those different measures. So, if the policy
1155 has changed obviously the rule will need to change and that hasn't come through
1156 here yet.
1157
1158 I think that's probably the key points.
1159 Chair: Thank you very much. We'll just see if there's any final questions.
1160
1161 Kake: Just a comment, not a question. The topic of earthworks obviously being a big
1162 one and the shutdown period, is something we're definitely hearing. I think it's
1163 just good to hear that the Airport is considering what are storm events outside of
1164 those winter months because we know that there's more storm events happening
1165 outside of winter. Thank you.
1166
1167 Chair: Thank you very much. Your Appendix is really helpful in terms of consolidating
1168 the Airport's remaining relief. We'll be closely looking at that in our
1169 deliberations. Thank you as well to Ms Dewar and Ms Lester. Thanks very
1170 much. We will look forward to seeing you all in Hearing Stream 4, and I think
1171 you said next week, but I certainly hope that it's not next week.
1172
1173 O'Sullivan: No, it is not next week. Apologies.
1174
1175 Chair: We'll look forward to seeing you then. Thank you. Bye.
1176
1177 We will take our break now and take just slightly over fifteen minutes. We'll
1178 come back at 11.30am.
1179
1180 [Morning Break – 02.22.25]
1181 [Hearing Resumes – 02.40.00]
1182
1183 Chair: Kia ora. We're back after the morning tea adjournment. We welcome
1184 Wellington City Council. Welcome. Please come and take a seat. I think you
1185 were here earlier but we'll just do some very brief introductions. Welcome to
1186 Hearing Stream 3 Hearing.
1187
1188 Ko Dhilum Nightingale tōku ingoa. I'm chairing the Freshwater Panel and the
1189 Part 1 Schedule 1 Panel and live in Te Whanganui-a-Tara in Island Bay.
1190
1191 McGarry: Mōrena, Sharon McGarry, Independent Hearing Commissioner based in
1192 Ōtautahi Christchurch.
1193
1194 Kake: Ata mārie. Puawai Kake a Planner and Independent Commissioner from
1195 Northland, Tai Tokerau.
1196
1197 Wratt: Mōrena, Gillian Wratt. Independent Commissioner based in Whakatū Nelson.
1198
1199 Stevenson: Ngā mihi nui. I'm Sarah Stevenson an Independent Planner and Commissioner
1200 based here in Te Whanganui-a-Tara Wellington.
1201
1202 Chair: There is also Ms Vivian, the Reporting Officer for the earthworks topic here.
1203

1204 Ms Freeman we have your statement of evidence and we also have your
1205 speaking notes, but we'll pass over to you for introductions. Thank you. Feel
1206 free to take your evidence as read.
1207

1208 Freeman: Kia ora. I'm Marcella Freeman. I'm a Planning Advisor at Wellington City
1209 Council. This is Adam [02.43.17] and he is my Team Leader.
1210

1211 Adam: Just to clarify, I haven't provided expert evidence. I am more here in a
1212 supporting capacity for Ms Freeman.
1213

1214 Freeman: I have read the Code of Conduct for expert witnesses set out in the Environment
1215 Court's Practice Note 2023. I have complied with the Code of Conduct in
1216 preparing my evidence and will continue to comply with it while giving
1217 evidence before the Hearing Panel today.
1218

1219 I addressed two key matters in my evidence which are fairly inter-related. If
1220 you've got my speaking notes you can probably see that – the first being the
1221 minor sediment discharge provisions and then also a little bit of a duplication
1222 thing that I saw as well.
1223

1224 Then another matter which arose from the officer rebuttal, which I think Upper
1225 Hutt covered. I briefly watched them – so that conflict between WH.R23(d) and
1226 WH.R23(h).
1227

1228 I will start off with the minor sediment discharge provisions. My evidence would
1229 have laid out that it's impossible to ensure that no sediment will leave the site or
1230 enter a water flow body even with implementation of sediment control measures
1231 – so rainfall being a clear example of this.
1232

1233 The reporting officer recommended some amendments to that in the rebuttal,
1234 and I encourage the Panel to accept those recommendations.
1235 [02.45.00]

1236 The next point that I made was around the duplications. The Wellington City
1237 District Plan permits earthworks up to 250 square metres without requiring
1238 erosion and sediment control measures. The Wellington City earthwork
1239 provisions work to recognise the benefits of urban development by enabling low
1240 risk activities and avoiding unnecessary regulation, as well as ensuring efficient
1241 use of monitoring resources and aligning with central government direction to
1242 support small-scale residential developments such as the upcoming granny flats
1243 provisions.
1244

1245 Wellington City Council's original submission on WH.R23 and WH.23A saw
1246 amendments to only require erosion and sediment control measures where
1247 earthworks exceeded 250 square metres and this was a position that I supported
1248 in my evidence.
1249

1250 Making this amendment to the NRP would align the approach to the two
1251 planning documents and support achieving the benefits enabled in the
1252 Wellington City District Plan.
1253

1254 In her rebuttal Ms Vivian disagrees with my position and considers earthworks
1255 under 250 square metres should still have controls in place, and that there isn't
1256 a duplication across planning documents.

1257
1258 So I can understand the view can be reached that there is no duplication between
1259 the District Plan and Regional Plan for this activity given that the Regional Plan
1260 requires sediment mitigation measures while the District Plan does not. So
1261 perhaps the issue is better described as challenging what is considered to be a
1262 level of unworkable and maybe unnecessary regulation.

1263
1264 So I do agree that sediment discharges can have a negative environmental
1265 outcome on freshwater bodies, but those really depend on the scale of the
1266 discharge and the receiving environment it ends up in.

1267
1268 For small-scale earthworks, such as those under 250 square metres, I consider
1269 that requiring sediment mitigation measures to be problematic for the same
1270 reasons that we do not require it in the Wellington City District Plan.

1271
1272 If discharge does occur from minor earthworks it will result in a comparatively
1273 low-level effect. So for small-scale earthworks I consider this to be an acceptable
1274 environmental effect, especially compared to other sources of contamination
1275 such as cross-connections between storm and wastewater pipes and wastewater
1276 leakage.

1277
1278 The level at which the regulation is set needs to be considered alongside other
1279 outcomes both the Regional Council and Territorial Authorities are required to
1280 achieve, such as requirements under the NPS-UD and MDRS.

1281
1282 Small-scale, low-risk earthworks in Wellington's urban environment are more
1283 appropriately managed by TAs through their district plans. It is highly likely that
1284 people doing small scale earthworks permitted in the District Plan will not be
1285 aware or even consider that they are required to have compliance with the NPR
1286 rules.

1287
1288 Wellington City Council does not provide advice, and it is not in a place to give
1289 direction to the community on regional rules; so I sort of question what steps the
1290 Regional Council will take to educate the public on the proposed permitted
1291 activity requirements if they are confirmed in this form.

1292
1293 The broad application of sediment mitigation measures makes the NRP overly
1294 burdensome. Under the proposed NRP, any activity beyond what is excluded in
1295 the earthworks definition requires sediment mitigation requirements to be
1296 installed at cost to communities with limited benefit.

1297
1298 The exclusions in the definition to date for common urban development
1299 activities which do not require mitigation measures are very limited to digging
1300 holes for fence posts and gardening. There are however many other activities
1301 which have a similar level of effect that are not identified as an exception to the
1302 definition which could have a similar effect. These include activities such as
1303 digging holes for deck posts, letter boxes, fire pits, regrading a patio area, or
1304 levelling ground for a shed, greenhouses or garages.

1305

1306 I am not suggesting that they be added and recognise that the City Council
 1307 submission does not provide scope to do that, but instead identify that they are
 1308 other potentially deserving exceptions for which a balance of protecting
 1309 freshwater and enabling urban development needs to be found.
 1310
 1311 Thus, the benefit of introducing a minimum size threshold to provide a clearer,
 1312 more consistent approach and avoid unintentionally capturing minor, low-risk
 1313 earthworks.
 1314 [02.50.10]
 1315 The broad application of the rule to small-scale earthworks raises concerns
 1316 around enforceability and monitoring capacity to ensure the requirements of the
 1317 permitted activity rule are met.
 1318
 1319 The next point was around the conflict between WH.R23(d) and WH.R23A(h).
 1320 They were as a result of the reporting officer's rebuttal amendments, the conflict
 1321 being that imposing a 3000 square metre cap and then also permitting
 1322 unspecified scale of road resealing.
 1323
 1324 When I read it there was two potential interpretations and I wasn't sure how to
 1325 read it – the first one being that a road resealing over 3000 square metres is still
 1326 permitted under R23A, or it breaches the general size limit and therefore requires
 1327 resource consent under R23(d).
 1328
 1329 This requires some clarification. I am also not quite sure why the utility operators
 1330 are addressed in Rule 23 at all, rather than under the rule 23A.
 1331
 1332 I suggest that network utility operators are removed from rule WH.R23 and
 1333 instead are addressed solely under rule WH-R23A.
 1334
 1335 In conclusion, provisions for minor sediment discharges need to strike a balance,
 1336 recognising environmental risks, but also what is practical, cost effective and
 1337 reasonable to be able to be monitored.
 1338
 1339 The present approach means that applicants may be required to meet
 1340 requirements and obtain consents from both Greater Wellington Regional
 1341 Council and Wellington City Council creating a duplicated effort, adding costs
 1342 and confusion, especially for straightforward, small-scale projects.
 1343
 1344 For ease of understanding I also recommend tidying up of the conflict as well.
 1345
 1346 I will open up to questions.
 1347
 1348 Chair: Thanks very much. That was very clear. You have raised some points that I think
 1349 some of the other utility operators haven't raised. Thank you.
 1350
 1351 McGarry: The District Plan permitted activity rule for the 250 square metres, are there any
 1352 standards attached to that? I'm thinking about any restrictions within the
 1353 distance of a waterway or anything like that.
 1354
 1355 Freeman: Sorry I didn't quite catch that.
 1356

- 1357 McGarry: You said permits earthworks up to 250 square metres. Are there standards
1358 attached to that? For example, restrictions with distance of a waterbody.
1359
- 1360 Freeman: The standards that apply – so cut height in build depth; consisting slope angle;
1361 and then also transport of cut or filled materials.
1362
1363 Dust management, site reinstatement, height of structures, cut in height, filled
1364 depth associated with construction or maintenance of tracks in the general rural
1365 zones.
1366
1367 Then earthworks in coastal and riparian margins.
1368
- 1369 McGarry: Are riparian margins defined in the Wellington plan?
1370
- 1371 Freeman: Yes. Was it 10 metres either side?
1372 [02.55.00]
- 1373 McGarry: I was going to ask, but I think you have just answered the question, whether that
1374 250 square metres is only appropriate in the urban type context. This Court
1375 doesn't distinguish but it sounds like...
1376
- 1377 Freeman: Under our District Plan it's for all zones.
1378
- 1379 Vivian: Commissioners, if I could make a comment. I think one of the proposed changes
1380 suggested by earlier submitters by putting in accordance with the Erosion
1381 Sediment Control Guidelines, into that rule where it was suggested to say or
1382 necessary, that would potentially address some of these concerns regarding
1383 installing erosion sediment control measures for no reason at all, because the
1384 rule requires it.
1385
1386 If it's in accordance with the Erosion Sediment Control Guidelines that does
1387 provide guidance about if you have an entirely flat site what may be required in
1388 those instances. For example, a silt fence on a certain boundary on slope and
1389 things like that. So it does take into consideration sites where it may not be
1390 appropriate, or may not be required to have extensive measures in place.
1391
- 1392 Chair: I take the point you make about scale and there perhaps in your view being
1393 conflict or regulation at the regional level that's not required at the district. I get
1394 the point, but the regional plan of course has to give effect to the NPS-FM and
1395 also the RPS.
1396
1397 There's no requirement to necessarily look at what's happening at the District
1398 Plan level. The officer's view which is supported by technical evidence the
1399 Council has presented is that earthworks of any scale can have environment
1400 effects, sediment discharges and other effects that need to be managed. That is
1401 directed by the NPS-FM.
1402
1403 I do understand the point that you're making about scale.
1404
1405 The point about the relationship between the two, R.23 and R.23A, we looked
1406 at this right at the beginning of the day and I thought I understood it. But, now
1407 you've raised this point about whether clause (d) should more appropriately be

- 1408 located into 23A and that is a point that we will ask Ms Vivian to come back to
1409 us on in the right of reply.
1410
- 1411 I think you do make the point very clearly that if that cap, the 3000 square metre
1412 limit... sorry, I will go back.
1413
- 1414 I had understood that an infrastructure provider, a network [02.59.02] operator,
1415 activities could be permitted under either 23 or 23A, but you've made the point
1416 very well about what happens if you breach that 3000 metre cap could you
1417 actually then try to argue 'no' and you're still permitted under 23A. I think that's
1418 the point you're making. It's that relationship between the two and I think we do
1419 probably need possibly some more refinement to make that clear.
1420
- 1421 Vivian: Commissioner I'm happy to comment on that now.
1422
- 1423 Chair: Sure.
1424
- 1425 Vivian: I think what would potentially fix this issue, for starters I think that minor
1426 earthworks associated with infrastructure rule should be read first. If you're
1427 permitted under that rule then there is no need to assess your activity under that
1428 capsule permitted activity earthworks rule. I don't know if that's entirely clear.
1429 [03.00.00]
- 1430 Wording could be inserted into the permitted activity rule to exclude works that
1431 meet the criteria of 22 and 23A. In regards to clause (d), I think that still is
1432 appropriate to be with in the capsule rule that is for those works being undertaken
1433 by network utility operators that don't meet that minor earthworks rule that may
1434 be required to do works in different locations; that they don't want accumulative
1435 area to be pushing them into that trigger point for a resource consent.
1436
- 1437 It was intended upon drafting that there was no area limit on the minor
1438 infrastructure rule and I did put some thought into that.
1439
- 1440 When looking at those works, in my opinion, even if they were to trigger the
1441 3000 square metres, for example repair, sealing or resealing or a road for park
1442 or driveway, those works they're limited to repair and resealing - to a level of
1443 disturbance of soil is limited. It doesn't cover upgrades. It doesn't cover
1444 significant cuts or new areas of roading. It was thought about.
1445
- 1446 Kake: I don't know if you did catch Upper Hutt City Council just this morning, who
1447 have also just asked us to consider deletion of the word "minor" in R23A and
1448 R22A. Have you got any thoughts on the deletion of that word?
1449
- 1450 Freeman: I do agree with their point that it was a built difficult to understand what "minor"
1451 meant but we didn't submit on it so I don't have anything.
1452
- 1453 Kake: Is it defined under the District Plan, Wellington's at all?
1454
- 1455 Adam: The word "minor" earthworks?
1456
- 1457 Kake: Minor earthworks, yeah.
1458

- 1459 Freeman: I think that's sort of what the 250 square metres is referring to, the "minor". It's
1460 just specifying what that is.
1461
- 1462 Kake: I suppose I'm interested in your comment then at paragraph 16 around what
1463 small scale earthworks might be in the urban area. That 250 square metre scale
1464 I suppose is that what you're alluding to, in terms of a small scale activity for
1465 earthworks.
1466
- 1467 Chair: Ms Freeman you've mentioned some activities in paragraph 19 – digging holes
1468 for deep posts and letterboxes and so on. I was looking at Proposed Rule 23 and
1469 the definition of earthworks, or rather the list of exclusions of activities that are
1470 not earthworks. I think you're right with a lot of those – they're perhaps
1471 unintentionally captured. There's an exception for domestic gardening and
1472 digging holes for pipes and that sort of thing.
1473
- 1474 Ms Vivian is that unintentional?
1475
- 1476 [03.05.00]
1477 Vivian: I don't necessarily think it's unintentional. I think my thoughts were that it could
1478 be covered off by that permitted activity rule. Hearing the concerns raised about
1479 the implementation of erosion sediment controls and whether that's appropriate
1480 or not on all sites, I guess those activities still could be captured by that permitted
1481 activity rule with amendments to that clause regarding wording either in
1482 accordance through the Erosion Sediment & Control Guidelines or where
1483 necessary.
1484
- 1485 I think I would just need to go back and check that the Erosion Sediment Control
1486 Guidelines are as specific as I hope they are in regards to small earthwork sites
1487 like that, and directive in terms of where it is actually appropriate to not have
1488 controls if necessary. I just need to go and refresh what the guidelines say in that
1489 case.
1490
- 1491 It's my intent that those sorts of activities should easily fall under that permitted
1492 activity rule.
1493
- 1494 Just adding to that, I think some of my thoughts going through that process of
1495 drafting that rule is we run into the issue of how far do we go by putting
1496 exceptions into that rule?
1497
- 1497 Chair: So just being clear to understand – those examples wouldn't exceed the 3000
1498 square metres per property and provided they weren't within five metres etc.
1499 although there may be some specific exemptions in the NRP that exist already.
1500 Anyway, provided that you don't trigger any of these exceedances and you come
1501 within the permitted activity.
1502
- 1503 Vivian: Correct.
1504
- 1505 Chair: Ms Freeman, does the address the concerns that you had about this unintentional
1506 capturing of activities?
1507
- 1507 Freeman: To a degree. I just feel like there's going to be a lot of activities in grey areas
1508 that people aren't going to be aware that they need sediment mitigation, or even
1509 know what sediment mitigation measures are – people who might not go ahead
1510 and read a plan like this, and then unintentionally break the rules.

- 1511
1512 Chair: A lot of these are already in the operative NRP. It's a perennial issue isn't it –
1513 people understanding planning rules.
1514
- 1515 Vivian: I hear you, but I think that could be an issue relevant to many things – people
1516 not understanding requirements. On the other side, the issue with providing a
1517 square metreage of permitted activity allowance, that doesn't determine volume.
1518 Given for example Te Whanganui-a-Tara, there's so many steep areas where
1519 250 square metres could be a massive cut to build one property; and to allow for
1520 potentially no erosion sediment and control measures to be installed while that
1521 cut was untaken poses a massive risk.
1522
- 1523 Chair: Ms Vivian, in that example though it would still be permitted provided the
1524 earthworks were stabilised in six months. That's still of that scale that you just
1525 mentioned. It would still fall within the permitted activity rule.
1526
- 1527 Vivian: Correct. Even works that included say 2000 square metres that involved a
1528 significant volume of cut from a site, if they had the appropriate erosion
1529 sediment control measures in place the guidelines are written in a way in which
1530 those effects can be managed.
1531
- 1532 Chair: Thank you very much for presenting to us today. We really appreciate your
1533 submission. We'll take your point for further consideration. Thank you.
1534
- 1535 We welcome Civil Contractors New Zealand. Kia ora. Welcome. We have a
1536 thirty minute speaking session with you today.
1537 [03.10.00]
- 1538 May: Good afternoon. I'm Fraser May. I'm from Civil Contractors New Zealand and
1539 I'm the Communications and Advocacy Manager. With me today I have
1540 Marianne Archer who is the Director of Goodman Contractors.
1541
- 1542 CCNZ is a not-for-profit national business association. For just a bit of context
1543 – more than 800 companies responsible for constructing and maintaining the
1544 countries horizontal infrastructure networks, for instance roads, bridges, water
1545 networks and that sort of thing.
1546
- 1547 Just a little bit more on Goodmans – they're a CCNZ member that specialises in
1548 heavy earthmoving, employing over 200 staff. They're responsible for a
1549 significant amount of earthworks across the lower North Island. Goodman's
1550 have been operating since 1963. They were the first contractors to work
1551 according to the GWC Guidelines, on a job in [03.11.07] and they were the first
1552 with Horizon Guidelines on the job in Palmerston North. Their photos are still
1553 throughout the guidelines.
1554
- 1555 I've got a bit of context.
1556
- 1557 I need to apologise. It might be a little bit unusual and I hope you can bear with
1558 it. Neither of us have ever presented in this context before. I'll apologise in
1559 advance for that. Feel free to rein us in if we go wildly off.
1560
- 1561 It's actually quite unusual for us to be here because there's been some really
1562 significant impacts on the industry from the implementation of PC1.

1563
1564 Further to our written submissions I've got some handouts there for you. I've
1565 tried to be specific about what rules we're looking at and why we think they
1566 need to be amended, or where they need to be amended.

1567
1568 Our feedback should be read specifically around Appendix 4, which is
1569 recommended amendments to provisions and s32AA evaluation for earthworks.
1570 I might be hopping around some of the different rules within that throughout the
1571 presentation.

1572
1573 I hope it's okay if we can give you some industry context, because that's what I
1574 would really like to do today, is to illustrate some of the impacts and then come
1575 back to it. That should give you an idea of why we think the way we do.

1576
1577 My background, I'm not an environmental scientist, and I'm not an experienced
1578 lawyer or anything along those lines. I'm a communications and engagement
1579 person. It's my job to talk to our members, understand what they think, write that
1580 down and try and communicate that to others.

1581
1582 I've worked with Marianne and several of our other members across the region.
1583 In our presentation we're going to cover a summary of the changes. It's covered
1584 off in the handout what we're going to be covering.

1585
1586 We're here to talk about good soil management. It's kind of by chance that we
1587 participated at all, but I'm really glad that we did. Reading the officer's report
1588 and some of the provisions made, I think we're heading in the right direction
1589 from where we originally landed, but still a bit of work to do from our
1590 perspective.

1591
1592 Civil Contractors business is to construct infrastructure and for that to happen
1593 earth's got to be moved. A lot of the time they're working for a client that has
1594 been through the consenting process and it's their job to do the physical works.

1595
1596 The most major issue for us is actually the hard shutdown of winter earthworks.
1597 It's has a massive impact on our industry. It's meant that it's reduced our ability
1598 to retain staff and it's actually reduced the ability of some owners to stay in
1599 business.

1600
1601 We've had some pretty significant impacts and there's another one which is
1602 around the increase cost that is coming from the provisions. We've had one
1603 example provided by a member that's seen probably half a million dollars of
1604 cost escalation for one project for the shutdown alone over an earthworks site. I
1605 probably should have tabled that as evidence, which I didn't. I can submit
1606 anything along those lines. Just let me know what you need, to give you, and we
1607 can follow that up after if that's okay.

1608
1609 The site was already controlled in accordance with an Erosion Sediment Control
1610 Plan that was already approved by GWRC. That cost will be required every
1611 winter until the job is finished in 2027. A lot of clients don't understand the
1612 costs. They don't want to pay them. There are some comparable situations across
1613 many of our members. The clients sometimes will refuse to pay for winter

1614 stabilisation works and the contractor sometimes over-carries that cost or the
1615 risk of compliance – it's passed to the contractor which is not a great outcome.

1616 [03.15.00]

1617 These businesses could instead be actively managing sediment on site. We've
1618 got good management practices. One of the handouts I've given you is the Civil
1619 Contractors Environmental Guide which I think working in conjunction with the
1620 Greater Wellington Sediment Control Guidelines those should be appropriate
1621 controls for sediment on worksites when you've got a professional contractor
1622 working for you.

1623
1624 I guess my key point we want to raise, I know that in the latest version the winter
1625 earthworks shutdown has been significantly dialled back, but I've got a few
1626 questions actually around how that's managed, and I will come to that and the
1627 specific points on the rules and policies.

1628
1629 Another impact I want to raise is workforce retention. If we've got a four month
1630 gap where people aren't able to work onsite we're just not sure how we're
1631 supposed to retain staff to be able to do those works, or retain the businesses to
1632 do those works, to have the capacity to work on the infrastructure networks. We
1633 are really struggling with that at the moment. We've got skilled machine
1634 operators that we're not going to have anymore because they don't have work
1635 for those four months, and we can't work in a seasonal cycle like that. It's not
1636 the way things work – causing some real pain.

1637
1638 That's part of the reason why Marianne has come along with me to talk about
1639 some of the business impacts. Take it away Marianne.

1640
1641 Archer: Thanks. We're just bring a practical lens to the implementation I guess.

1642
1643 This year has hit particular hard. We've got 88 surplus staff through four months
1644 with no work. Our workforce is over 200. We've got to find. We pride ourselves
1645 on feeding families and we don't want to let them go due to upcoming works.
1646 We're paying them and that's cost us an additional \$3.6m to keep our company
1647 running.

1648
1649 Sediment does increase on wet days but it can be controlled. Equally sediment
1650 doesn't just come from earthwork sites. The earthwork sites are heavily
1651 controlled and the controls under the approved ESEPs are built to one in twenty,
1652 or up to one in thirty year events.

1653
1654 A lot of the weather events are actually happening outside of the winter months.
1655 The winter definition, we question the relevance.

1656 Civil Contractors are the ones performing the earth stabilisation, yet despite
1657 being expects in implementing we feel that we stumble across the policy
1658 changes. I'm not sure how that can be improved. That might be something for
1659 CCNZ to take up.

1660
1661 We like having a voice and we feel that a collaborative approach is much better,
1662 which is why we are here.

1663
1664 In terms of the implementation a big issue at the moment that we're finding –
1665 because we feel that it ran out very quickly – is we have to stabilise the site, even

1666 if there's potential for winter works before the 1st of June. We're getting visited
1667 late May to make the decision.

1668
1669 As of today, which is the 29th of May, we are still waiting for a decision on two
1670 sites of whether we've got winter works. This may seem arbitrary but this leave
1671 the contractor in a state of limbo. Then on the 1st of June when we get the
1672 notification, or whenever we get that, we're scrambling to find work for our staff
1673 with very little lead time.

1674
1675 We also have a four week period for redundancy, so it leaves us in a difficult
1676 position.

1677
1678 Just out of all of this, whatever is implemented (and I applaud the changes that
1679 have already come in on what we were submitting – I think that was really good)
1680 we just believe that in the implementation process there needs to be better
1681 collaboration between those doing the work and Greater Wellington. I don't
1682 mean to disrespect anyone. That's not what this is about. It's just how we are
1683 impacted.

1684
1685 So, involved in start-up meetings, proactive monthly walk-arounds, more
1686 options for stabilisation – because currently hay, our farmer's stock food, is the
1687 main source of stabilisation, and **polymers** [03.19.50] aren't considered. I know
1688 that's getting into details but that's what we need.

1689
1690 We need seminars and education in this implementation process – so whatever
1691 comes from this, this has got to be part of it.

1692 [03.20.00]

1693 And, I feel we need annual engagement with CCNZ who are the predominant
1694 advocacy for contractors such as us.

1695
1696 Better response time. Late consenting – I will just give this example: we had
1697 four jobs start mid-February to March this year. This year was particularly bad.
1698 We never had that before. Normally we're consented for start in October. We
1699 were expected to do a season's work with a shutdown on the 31st of May. Not
1700 only did that impact our income and we're heading into a hard winter closedown
1701 on most jobs, it's all compounded with the current economy.

1702
1703 As I say, I like where it was heading – Fraser will get specific on the points that
1704 we're referencing.

1705
1706 Where blatant disregard for regulation is evident I absolutely chase that up. I
1707 think we need to work more on the enabling and collaboration.

1708
1709 May: Before I get to the specifics, we're asking really to perhaps reducing some of the
1710 complexity. It may have use for other entities or organisations, but for
1711 contractors we struggle to really engage with the rules. We would like to see
1712 them be simpler and actually a lot more of what's in the rules to sit within the
1713 guidelines. It would be great, because then there's all the liaison process with
1714 the industry. We get tested, people know that it's coming, people know that it's
1715 fit for purpose and they've got the chance to say, "I'm sorry, this isn't practical
1716 because I can't implement it in my business for this reason."

1717

1718 The way that the process is happening with a lot of that information sitting in
1719 the rules at the moment is making it really hard for contractors.

1720
1721 I'm just going to go through to some of the specifics. We've got sediment control
1722 guidelines. I think perhaps some more of it could sit in there, rather than in the
1723 rules and then it doesn't take us two years to change something if there is an
1724 issue just specifically.

1725
1726 Looking at Policies WH.P29, P.P27 and WH.P30 and P.P28 which is the same
1727 text – there's still mention of this winter shutdown of earthworks. It's not
1728 tolerable for our industry. We won't have an earthmoving industry if this winter
1729 earthworks shutdown continues to happen. We think it's completely arbitrary
1730 with it being the winter months, especially when some of the other months are
1731 rainier. If you look at a sand site for instance, if it rains then that's great dust
1732 control and it's not actually going to create a sediment issue in a lot of the
1733 waterways. So why have a four month shutdown. We struggle to see.

1734
1735 Instead we would like good soil management and good sediment control
1736 prioritised onsite. We can do that. We've got some guidance there if you look at
1737 the Civil Contractors Environmental Guide, and if you look at the GWSE
1738 Guidelines we would love to be able to work and provide work for staff
1739 throughout those months, and we're finding it very, very difficult to do that at
1740 the moment.

1741
1742 Ideally the change we're looking for is point (e) to be deleted in WH.P29 and
1743 P.P27, WH.P30 and P.P28, because it's not workable for us.

1744
1745 There's another implication here, which is the statement around minimising
1746 works. We don't think that should be the intent here. It shouldn't be about
1747 minimising work for contractors. They need to work. They've got business.
1748 They've got staff that are working for them and they need to work. Minimising
1749 any adverse effects resulting from the works perhaps.

1750
1751 If it's not acceptable to delete point (e) there, the alternate change might be
1752 minimising any adverse effects resulting from works between 1 June and 30
1753 September.

1754
1755 That suggestion is documented in the handout that we've given.
1756 Next just quickly is WH.P30, WH.R24 and P.R23 – discharge standard for
1757 earthwork sites.

1758
1759 It's great that we've moved to NPU. I've met up with some suppliers around the
1760 watering plant for example and they've told us that it's really good. In fact, our
1761 members have said it's really good to have a target there because they can work
1762 to that, and they can provide solutions for that. NPU is appropriate for
1763 Wellington. It may not be for some regions where there's high tannin in the
1764 water, but NPU is seen as an appropriate control and that's what people use for
1765 good practice at the moment, so people understand it.

1766 [03.25.15]

1767 We did wonder if part A, the artificial watercourse for that should end after
1768 artificial watercourse; because we've already got processes for management
1769 under the Sediment Control Guidelines. Is it workable to have a rule that's that's

1770 complicated in terms of point (i) and point (ii) in there, because (b) which just
 1771 saying, “apply the sediment control guidelines.”
 1772
 1773 I mean, if a site is well-managed and complying with those guidelines surely it
 1774 should meet the require standards for sediment run-off. It's just another point I
 1775 would like considered.
 1776
 1777 Just to reiterate around P.20 – the removal of policies P.29 and WH.P31 for
 1778 winter shutdown of earthworks. We wholeheartedly endorse that. We have read
 1779 the officer’s reasoning and great that you’ve look at it that way. There’s been a
 1780 massive impact on us and it needs to go as soon as possible. We can’t live with
 1781 it.
 1782
 1783 That’s probably the main kicker for us there.
 1784
 1785 That’s probably the crux of our issues and where we are at. Hopefully I have left
 1786 enough time for some questions and very much welcome those.
 1787
 1788 Chair: Thank you very much. Really appreciate your presentation. If this really is the
 1789 first time you’re presenting at a Council hearing then it's been really valuable. I
 1790 encourage you to present again. It's really useful to get the on-the-ground
 1791 perspectives that you bring. Thank you.
 1792
 1793 I’m interested in the winter shutdown clause. We’ve heard that it's not that it's a
 1794 straight “no works are to occur”, but instead it's a process of discussion, seeing
 1795 if things can be staged, seeing what works can actually happen that are going to
 1796 have less effects so could be accommodated.
 1797
 1798 But, you’re saying that it has been interpreted as an automatic closedown
 1799 between June to the end of September?
 1800
 1801 Archer: I think that in a lot of the consents that we were issued throughout this period, it
 1802 had a shutdown in that consent. Now, a couple of the consents we’ve got that
 1803 went through the fast-track process they’ve allowed it. It's fabulous that it's back
 1804 to discretionary activity. But, I just think there was a misinterpretation for a
 1805 period and now what we are seeing on the ground it's an approach that is looking
 1806 for... there hasn’t been proactive monitoring up to that point, and then we’re
 1807 being assessed as to whether the site can stay open, and it's really late and the
 1808 relationship hasn’t been built. The decision is almost made.
 1809
 1810 It feels like it's a harsh platform at the moment. I don’t know how else to put
 1811 that. I really like it being pulled back to discretionary activity, that’s fabulous. I
 1812 think it's just the runout of how that is applied needs to filter through.
 1813
 1814 May: I might just build on that a little bit as well. It probably comes back to that point
 1815 around minimising works. I think Greater Wellington staff may read from that
 1816 wording that they are to minimise works.
 1817
 1818 I’m not sure if that’s what’s happened. That’s just a wild guess I suppose. When
 1819 we have got that kind of relationship emphasis there, if we’re working together
 1820 to minimise the adverse effects of the works, that’s great. If we’re working to

- 1821 minimise works then that's adversarial immediately. I hope that helps makes
1822 sense.
- 1823 [03.30.10]
1824 Wratt: Thank you for your explanations. It is really useful for us to hear that practical
1825 on the ground impacts of what is being proposed.
1826
- 1827 You probably won't have caught up with it, but Ms Foster presenting for
1828 Meridian yesterday she proposed a rewording of that clause (e) in WH.P29.
1829 You've requested deleting the minimising works in the closedown period and
1830 replacing that with "ensuring appropriate management and mitigation measures
1831 are in place to manage earthworks during heavy and prolonged rainfall events,
1832 including during the period 1st June to 30th September."
1833
- 1834 Would that sort of wording sit comfortably with you?
1835
- 1836 Archer: I think that would be a lot clearer for everyone, so yes I think that would be
1837 better.
1838
- 1839 May: I guess as Marianne noted before, there are one in twenty year and one in thirty
1840 year plans that could be put in place for some of that. We are working with the
1841 large end of earthworks here I suppose.
1842
- 1843 "From any earthworks," as well – that's possibly an issue as well. The
1844 complexity of planning for a small earthworks I might endure that. I think it
1845 seems appropriate.
1846
- 1847 Wratt: It doesn't say it has to be a complicated plan, it just says "enduring appropriate
1848 management and mitigation measures."
1849
- 1850 May: Good to think about as well. Some guidance might help, whether it's from
1851 [03.31.59]. Thank you.
1852
- 1853 Wratt: Thank you for this. It's great to see. Thank you.
1854
- 1855 Chair: The alternative wording you've suggested about minimising any adverse effects
1856 resulting from works, I do wonder if that is in fact the intention but the wording
1857 is as you say minimising works. If works were to not have adverse effects in
1858 terms of sediment discharges is it your view and perhaps actually even your
1859 experience in the small period where we've had the non-complying rule apply,
1860 that the focus has been on the works rather than the potential impact of the
1861 works?
1862
- 1863 Archer: Yes, I would say that's true. I think there was a notable change this year to any
1864 other years. We can only really put it down to this in the background. I don't
1865 know what else has driven it.
1866
- 1867 May: Absolutely. I would agree with that. That's an appropriate focus isn't it. The
1868 focus should be on the effects and the environmental protections, not so much
1869 on whether the works happen or not if we've got good plans, good processes and
1870 good soil [03.33.42]. Everyone can support that. We should be doing that. It's
1871 about how we do that well and I think that needs some genuine attention. Thank
1872 you.

1873
 1874 Vivian: There's a few points I want to touch on. First of all this has been super valuable
 1875 because the way I read things obviously isn't how people on the ground read
 1876 things, important things you mentioned.
 1877
 1878 I think what's just been brought to my attention is that the insertion of (e) into
 1879 policies P.29 and P.27, that clause came over obviously from the winter works
 1880 policies that were deleted. It should only be relevant to bulk earthwork sites
 1881 exceeding 3000 square metres. That winter shutdown period isn't relevant for
 1882 all earthwork sites. Those that can meet the permitted activity standards are not
 1883 required to minimise works during that closedown period. I think that's
 1884 important to note there.
 1885
 1886 The other thing that I would like to acknowledge is what's gone on in the past
 1887 twelve months, and provide a little bit of context for that.
 1888 [03.35.00]
 1889 I think one of the issues that has resulted in holdups is (a) acknowledging that
 1890 our winter works process isn't perfect and it changes every year. It has changed
 1891 quite dramatically over the past couple of years each year, which isn't helpful
 1892 for contractors, especially when this shouldn't be their core focus coming into
 1893 the winter period.
 1894
 1895 Particularly since the notification of PC1, we have to apply the rules as is. If
 1896 planners at the time haven't sought for a consent as a non-complying activity
 1897 conditions do get placed on those earthworks consents that require a shutdown.
 1898 Quite often there's no provision put into those consenting conditions for people
 1899 to apply for winter works approvals because they've applied under that restricted
 1900 discretionary rule where there's no earthworks to occur during that period.
 1901
 1902 I think while not entirely helpful now, but things have changed since then, and
 1903 our regulatory team are having more in...
 1904
 1905 [End of recording 03.36.02]
 [NRP PC1 – HS3 Day 4 – Part 2]
 1906
 1907 Vivian: ... depth discussions with planners at the time to make sure they're aware of
 1908 what they are signing up to, and making sure that when they sign up we'll agree
 1909 to those conditions of consent and they understand the effect for those
 1910 contractors is that they're not going be able to operate during that period, or they
 1911 need to apply as a non-complying activity.
 1912
 1913 I don't think that was necessarily very clear at notification and so there's lots of
 1914 consents that have been issued with that clear shutdown period on it.
 1915
 1916 The consents have now gone off to contractors who have to comply with those
 1917 conditions and the communications haven't been passed through.
 1918
 1919 So as a result, there's actually a number of consents being sought this year during
 1920 the winter period just for earthworks; new resource consents just for earthworks
 1921 on those sites to occur during the winter period. Because they haven't even got
 1922 the ability to apply for a 127 because it would change the activity status.
 1923

- 1924 It has been messy and I acknowledged that. It hasn't been straight forward at all.
1925
- 1926 I think there is work to be done in the implementation space for works that may
1927 be able to be undertaken during winter and the process of obtaining those winter
1928 works ESCPs.
1929
- 1930 McGarry: I just want to understand the resource consents that you apply for and you talked
1931 about a fast-track. They are site specific, jobs specific, or do you have the ability
1932 to have as a company a sort of global consent path now or even in the future
1933 where you could perhaps... it's a bit like being a trusted company isn't it; you
1934 have your consent and then it could be applied at multiple sites, but it all comes
1935 back to you at the end of the day. So there's probably a couple of questions in
1936 there. If you could just explain a bit more about your consents now.
1937
- 1938 Archer: It's very rare for a contracting company to be the applicator, or applying for the
1939 consent (I don't know if that's a word). We are involved later.
1940
- 1941 My understanding, the one that went through the fast track, it's site specific but
1942 it's a large site so it covers. Although there will be other consents required for it,
1943 there is this global consent that as was referred to does cover the enabling of
1944 winter works. So, that is really good.
1945
- 1946 I guess the impacts have hit hard this year and there's reasons as pointed out. I
1947 think it's heading in the right direction but we are at a point where we are at that
1948 crisis point, by everything that's happened.
1949
- 1950 Kake: I don't know if this is a question or a comment, but I can see that I suppose in
1951 your company you're quite a responsible contractor and you've got things in
1952 place – sediment control plans and the guidelines which are really helpful.
1953
- 1954 I suppose what we have heard through this week and through the previous
1955 hearings, the environmental effects on waterbodies from particular activities,
1956 and I'm just wondering how civil contractors really as an advocacy group works
1957 with contractors from small scale to larger bigger scale projects, to help bring
1958 them up-to-speed. The guidelines are really helpful but how does it work on the
1959 ground?
1960
- 1961 Fraser: I'll start off on that one and you might want to come back to some details. We
1962 share information with our members and also work to look at what good industry
1963 practice is and what the right controls are, and then test that across a whole range
1964 of our members. Our membership ranges from Fletchers and Downers and heads
1965 down to a small earth moving contractor that might have an excavator and an
1966 earth moving truck, so quite broad.
1967
- 1968 The idea is to make good guidance that's clear enough for the whole range. Often
1969 if a company has a regional environmental manager, which most of the large
1970 companies will, around managing those processes, that's put into place.
1971
- 1972 We do play a role in that and we probably need to engage more with the
1973 organisations like GWRC, so that we can come up with what they could (as
1974 Marianne was saying actually before) so that we can make sure that that good
1975 guidance is there.

1976 [00.05.00]
 1977
 1978 I think part of the issue here is the interpretation. If you have to guess – and I
 1979 think you said actually when it first came out and everyone at work was
 1980 interpreting it – it was total shutdown because everyone had to reinterpret what
 1981 was going on, and they would always take the most risk averse interpretation.
 1982
 1983 So part of it is in getting the settings right, but part of that is also getting the
 1984 controls right and ensuring that people are complying.
 1985
 1986 I think it's always going to be a work in progress and we have a big role to play
 1987 there.
 1988
 1989 Anything you would like to add Marianne?
 1990 Archer: CCNZ, we're a member company and have been for years, they provide
 1991 simplified guidance, if you like, to cover that range of membership. Because if
 1992 you look at the bigger companies, they like you say are responsible. They
 1993 employ the experts. They know. So it's all about economies of scale.
 1994
 1995 I really feel going forward that that engagement between GWRC, CCNZ and
 1996 that interaction with members is key and ongoing. Building relationships and
 1997 getting it run out better, I really feel that is the way we should go and that would
 1998 improve it.
 1999
 2000 Fraser: One more point that's not directly related to that is around the role of earthworks.
 2001 Earthworks can generate sediment. So can a field if there is very heavy rainfall.
 2002 So can a bush track. So can your neighbour's yard. I guess that's probably a little
 2003 bit different from that point we were just covering off there, but earthworks are
 2004 not the only generator of sediment here.
 2005
 2006 I meant to make that point earlier, so I just wanted to get in before the end of the
 2007 hearing. Thank you.
 2008
 2009 Vivian: I completely agree with Marianne that more work needs to be done in that space
 2010 post consenting, especially given the handover between quite often a planner
 2011 and then handing over to a contractor.
 2012
 2013 I think there are standard conditions in place that have been put in place to try
 2014 and provide for that, especially things like site audits and pre-app meetings.
 2015 More work probably needs to be done in that space.
 2016
 2017 I think there is a case of resourcing and in the likes of great contractors some of
 2018 those conditions are met over the phone, because there's less concern for
 2019 example, and so I think there's probably an appearance of less people on the
 2020 ground in terms of as Marianne was talking about this period before winter, and
 2021 "We don't see anyone. There's no engagement."
 2022
 2023 I recognise that and I think there probably needs to be some comms there
 2024 between monitoring officers and their sites where they may have no concerns,
 2025 but that doesn't mean radio silence and maybe there needs to be increased
 2026 communication to say, "Hi. Still on the site. We know that you're operating in a
 2027 good space. There is this winter period coming up. How can we ensure that either

2028 guys are prepared for shutdown or assist you in your winter works approval
 2029 process.”

2030

2031 Chair: Thank you. We are out of time but it does sound Ms Vivian like there might be
 2032 some messages that we might take from these conversations back to the
 2033 regulatory and compliance team as well.
 2034

2035 Just to acknowledge that it's more than difficulties isn't it. The issues that the
 2036 notified provisions in particular have caused for you and your members. Thank
 2037 you for acknowledging that things are moving towards a more workable track.
 2038 These provisions continue to have effect until the Council finally makes its
 2039 decisions, but it does sound like there might be some space and opportunity for
 2040 some more conversations and things with the regulatory team and through Ms
 2041 Vivian.
 2042

2043 Thank you very much. We do encourage you to come back at another
 2044 opportunity.
 2045

2046 Fraser: Thank you. It's been really good. Part of the issue is us not participating in the
 2047 past I guess.
 2048

2049 One more thing: should we be providing any further evidence to this? I do have
 2050 some examples and we weren't quite sure how to put them – specific cases. Is
 2051 that something that will be helpful or should we just provide more?
 2052

2053 Chair: We think what you have said so far has been very, very clear. We really
 2054 appreciate also the book that you have left here, which has lots of images about
 2055 the best practice, techniques and things like that for managing sediment.
 2056

2057 If we do think some more information would be helpful we'll come back to you,
 2058 but I think what you have presented so far has been really useful and clear.
 2059 [00.10.00]

2060 Fraser: Thank you for taking the time with us.
 2061

2062 Chair: Kia ora. I think we are up to Ms Coughlan and Fish & Game. Are you online Ms
 2063 Coughlan. Kia ora.
 2064

2065 Coughlan: Hello I am. Can you hear me?
 2066

2067 Chair: Sorry, we are just running a few minutes over, but we are very happy to go
 2068 slightly into the break. We'll make sure that you have your full speaking slot.
 2069 Would you like us to do some quick introductions?
 2070

2071 Coughlan: If you would like.
 2072

2073 Chair: Sure. We'll just quickly whip through.
 2074

2075 Dhilum Nightingale chairing the hearings today.
 2076

2077 McGarry: Sharon McGarry.
 2078

2079 Kake: Puawai Kake.

2080
2081 Wratt: Kia ora Gillian Wratt.
2082
2083 Stevenson: Kia ano Sarah Stevenson.
2084
2085 Chair: We have the reporting officers in the room here as well, Ms Vivian and Mr
2086 Watson. I think Dr Greer is also online.
2087
2088 Ms Coughlan we have your evidence statement and your speaking notes. Thank
2089 you very much for providing those. We'll pass over to you.
2090
2091 Coughlan: Nice to be here. Thank you for the time. I have changed my speaking notes
2092 slightly. I've had a few days extra to go over it. I will send the new ones along
2093 when I finish here. Nothing substantially has changed.
2094
2095 I'm Amy Coughlan. I'm the Resource Officer for Wellington Fish & Game.
2096 Wellington Fish & Game Council continues the support the unchanged
2097 objectives, policies and rules which were supported in the draft.
2098
2099 Changes to extend the timeframes to make targets less stringent is generally not
2100 supported, obviously it does depend – we want to achieve wai ora by the 2100
2101 mark.
2102
2103 I will just quickly zip through the policies that I think, as I said, had them written
2104 out in the original thing.
2105
2106 Under rural land use activities: Method M44 will remain in support of this. We
2107 think that all of the things that have been added to it will actually assist in
2108 enhancing the health of waterbodies over time and we appreciate those
2109 additions.
2110
2111 In Policy P.P21 we don't support the removal of mention of capping nitrogen
2112 discharge. We feel it's important to have a sinking cap on nitrogen discharge into
2113 water bodies, where dissolved inorganic nitrogen or nitrate exceeds the target
2114 attribute states or which have increasing levels of nitrogen. I think it's vital to
2115 bring about reductions rather than maintain the status quo or allowing nutrient
2116 levels to increase with an intensification or land use change, or climate change
2117 (which I haven't put in there but it's important).
2118
2119 In clause (c) (ii) now states nitrogen discharge risk does not increase over time
2120 but keeps it as minimised. Still suggests [12.56] holding pattern, but on further
2121 reading (and this is different to the speaking notes I have) I see the purpose in
2122 clearly stating no further degradation, so I support this clause as it is written
2123 here.
2124
2125 Clause D seeks to investigate the effect of pastoral or horticultural land use and
2126 apply methods to reduce any significant effects identified. It sounds good, but
2127 I'm a bit concerned that the conditions of consent normally seek to reduce any
2128 effects deemed more than minor; so looking to only focus on significant effects
2129 might weaken consents or might cause confusion into the future.
2130

2131 Policy P.P22 and Policy WH.P23 I felt these were much the same, so I have
 2132 combined them here. We support the changes to these policies as follows:
 2133 removing “on land with high risk of erosion”; removing reference to high and
 2134 highest risk mapping; and requiring Farm Environment Plans for any erosion
 2135 risk land, and requiring erosion risk treatment plans identify priority erosion
 2136 treatment land and include actions to deliver appropriate treatment by 2040.
 2137

2138 The WH.P23 rebuttal report also changes mention of visual clarity to suspended
 2139 fine sediment throughout, which we support for ease and clarity.
 2140

2141 Policy P.P23 and WH.P24 – this is similar to what I just said in the beginning of
 2142 my introduction. These policies do now have extended deadlines. While we did
 2143 feel a delay in progressing these plans is less than ideal, it's understood that the
 2144 extended deadline is likely necessary, and is also in line with our original
 2145 submission which requested ensuring resourcing for Farm Environment Plans to
 2146 help ensure their effectiveness and to prevent them from becoming a check-box
 2147 exercise.
 2148

2149 To expand slightly, the rebuttal evidence suggested an extension for dates to
 2150 develop the programme to [14.43] and to develop background information and
 2151 tools. This is for to the best of my knowledge from reading it through quite
 2152 quickly. An estimate of 40 properties in the Porirua catchment and 90 properties
 2153 in the Wellington catchment.
 2154

2155 As other whaitua are likely to have more properties requiring the Farm
 2156 Environment Plans, it will likely become increasingly important to have enough
 2157 staff, financial resourcing and to have a streamlined progress in place to allow
 2158 for rapid specific and focused production of effective Farm Environment Plans
 2159 into the future.
 2160

[00.15.10]

2161 We support the Farm Environment Plans and continue to request their inclusion,
 2162 again reiterating the need to ensure they are resourced appropriately, given
 2163 clarity and stringency appropriate to allow step wise improvement and
 2164 minimising inputs of nitrogen, phosphorus, sediment and E.coli into freshwater.
 2165

2166 Policy P.25 and WH.P25, we support the changes as written.
 2167

2168 Policy WH.P21 we support the addition of managing discharges of sediment and
 2169 requiring progressive treatment of priority erosion land. We do not support
 2170 removing the mention of capping nitrogen, phosphorous, sediment and E.coli
 2171 discharges as we discussed previously in P21, or of excluding stock only from
 2172 waterbodies over one metre wide.
 2173

2174 Smaller streams, including those under one metre wide, make up a high
 2175 percentage of waterbodies in most catchments with high pollutant inputs where
 2176 not fenced off from stock or protected from bank and hill erosion.
 2177

2178 It has been demonstrated that small streams account for an average of 77 percent
 2179 of the national nutrient load of total river catchments. Research also states that
 2180 while urban and mining streams are typically of the lowest ecological health in
 2181 New Zealand, a far greater total length of streams in pastoral agricultural land

2182 are moderately to severely impacted due to sediment pathogens and nutrients
2183 draining from waters both directly and via diffuse pathways.

2184
2185 We just want to make sure that we are not going backwards by allowing stock
2186 access to these smaller waterways, even though obviously there are issues
2187 around it, but there are progressive technologies to make sure that stock stay out
2188 of them where possible.

2189
2190 In Policy WH.P22, we do feel that requesting reduction in nitrogen discharge to
2191 the extent reasonable and practicable in waterbodies is unlikely to achieve the
2192 measures of improvement required. This policy should be strengthened with
2193 time-bound and measurable actions to return degraded waterways in a stepwise
2194 fashion to the state of health and wellbeing.

2195
2196 In response to further changes, Wellington Fish & Game do support removing
2197 mention of large rural properties, as smaller properties also contribute
2198 cumulative impacts into freshwater. However, as in Policy P.21 above we do not
2199 support removing capping, and overall do not feel this policy has been
2200 strengthened in a way that clarifies that reasonably practical indicates using all
2201 methods feasible.

2202 Policy WH.P26 – the changes in the wording of this policy away from
2203 ‘restricting’ livestock access to ‘reducing’ livestock access, and away from any
2204 river in the Makarā and Mangaroa catchments where the baseline state for the
2205 relevant part FMS is below the national bottom line for visual clarity to only
2206 those rivers greater than 1m in width is of concern.

2207
2208 The original policy, which we supported, did not specify river width, which was
2209 important. As said above and prior the majority of sediment and pollutant input
2210 occurs in small waterways.

2211
2212 Excluding these from fencing, or any other relevant and effective method of
2213 stock exclusion, commits to maintaining pollution at a similar or increasing rate
2214 if stocking rates increase, or if stock are more frequently located by these
2215 waterbodies, or climate changes dictate.

2216
2217 The change of wording could prove improvement. ‘Restrict’ implies imposing
2218 limitations or conditions, whereas ‘reduce’ suggests lowering or diminishment
2219 of something. It could be argued that ‘restricting’ livestock strategies could
2220 include prohibiting stock from accessing flowing waterbodies, which would
2221 improve water clarity, or at least minimise and prevent some stock, whereas
2222 reducing ‘reducing’ livestock access, however, may suggest a more lenient
2223 approach - one more open to confusion and interpretation.

2224
2225 Policy WH.P27, we support the changes as written in the reports.

2226
2227 Moving onto the forestry section, Policy WH.P2. We notice many suggested
2228 changes throughout the rebuttal evidence which may appear to weaken the
2229 original protective framework of the policy, which we supported in our original
2230 submission.

2231
2232 We do not support the change from minimising discharges in sediment to
2233 commercial forestry to managing those discharges. Sediment inputs from

2234 commercial forestry can be a significant risk, and as such, need to be actively
2235 reduced.

2236
2237 Also curious as to why identifying the highest erosion risk land on plantation
2238 forestry has been removed, when identification is vital to management and
2239 future planning?

2240
2241 In clause b) it is suggested that the risk of erosion from potential erosion risk
2242 land should be confirmed through forestry management plans. We agree that
2243 they should be confirmed and managed, but potentially the risk areas should be
2244 identified by the Regional Council and integrated into those management plans
2245 with mitigations as appropriate.

2246
2247 The concern there is around industry capture, I guess, is the phrase – the thinking
2248 that it should be controlled from a centralised location.

2249
2250 Clause c) states the need to avoid significant adverse effects and otherwise
2251 minimise adverse effects from discharges of sediment in water quality. It is very
2252 vital in fact to avoid significant adverse effects. However, less significant effects
2253 can cause environmental harm, and it is potentially appropriate to recommend
2254 utilising the effects management hierarchy here for ease of future consenting
2255 and management needs.

2256 [00.20.08]

2257 Where clause (d) (i) translates to more stringent conditions being set, it is
2258 supported by Fish & Game. It is important the conditions be set to avoid,
2259 mitigate and minimise sediment input from forestry at all lifecycle stages into
2260 freshwater, regardless of the receiving water quality state.

2261
2262 For clause (d) (ii) I actually don't know what this means for resource consent
2263 conditions, so I just thought I would ask what that would actually mean in
2264 practical terms. It may just be the way I'm reading it, but I can't quite make
2265 heads or tails of how this would be incorporated. So I would actually genuinely
2266 love to know.

2267
2268 We support cause d) iii) and support discouraging for commercial forestry on
2269 erosion prone land or land which as caused adverse effects on water quality due
2270 to plantation of forestry at any stage. Incentivising native perpetual forest in
2271 these areas is strongly supported.

2272
2273 Clause e) we do support. We think that's a really nicely written clause.

2274
2275 Clause f) discusses promoting and supporting indigenous forests. We also
2276 strongly support this clause where the practices and strategies are based on
2277 scientifically robust solutions. Research strongly backs it up. The importance of
2278 permanent non-harvested forest in the appropriate locations to increase climate
2279 resilience, reduce sediment and slash input and minimise landslides in slide or
2280 slump prone areas.

2281
2282 It is also important to note that replanting of pine in previously harvested areas
2283 increases the risks of landslides in those areas due to the height of the trees as
2284 opposed to the depth of the roots and slowly deteriorating root systems from the
2285 harvested trees and lack of canopy cover.

2286
2287 Sediment generation rates are also highest in areas with two to four year old
2288 plantings, so replacing harvested plantations with young trees in high risk areas
2289 is counterproductive to stabilising sediment.

2290
2291 Earthworks – and it was absolutely fascinating listening to that prior
2292 presentation. It was really good to see that side of it.

2293
2294 Policy WH.P29 kind of changes there from clause a) from requiring retention of
2295 uncontrolled soil to maximising the retention of disturbed soil. We are seeking
2296 slightly stronger measures to prevent earthworks contributing sediment into
2297 waterbodies. We don't feel that the erosion of sediment control guidelines is
2298 always sufficient to prevent sediment negatively impacting a stream health,
2299 because we have seen where it doesn't.

2300
2301 I feel that changing 'requiring' to 'maximising' weakens even those measures,
2302 and as such we don't support the change to this wording.

2303
2304 Clause e) discusses minimising works required during the close-down period.
2305 We broadly support and continue to support this clause. However, it is noted it
2306 now excludes quarrying activities in the use development operation and
2307 maintenance of renewable energy activities. These activities are important for
2308 communities and infrastructure, but it is uncertain why these activities have been
2309 singled out to continue with earthworks through this changeable and generally
2310 wet time of the year. And, if extra measures will be undertaken to ensure
2311 sediment from those works are remaining onsite and out of waterbodies.

2312
2313 Just going back to the previous thing, I would also think that that would be the
2314 negative impacts of those works, rather than the works themselves.

2315
2316 Policy WH.P30 – we had concerns that clause a) locks the ability into keep
2317 pouring sediment into already sediment laden rivers, so non-improvement in
2318 degraded waters and therefore not really in line with current national policy.
2319 Concerns have not been alleviated and it seems that these changes now allow
2320 further sediment pollution from earthworks into degraded coastal waterways as
2321 well, which also contradicts current national frameworks.

2322
2323 The rebuttal evidence further clarifies that discharges related to sediment over
2324 the big area measured there, 3000 metres square per property, in any consecutive
2325 twelve month period. I was just curious, will specifying the words "per property"
2326 here exclude "not property" so like subdivisions, flood control works and
2327 similar. Will those bigger earthworks fall under this definition, and if it does
2328 then we would oppose that change of phrasing? Do you think the clarity as
2329 requested to ensure that consents and management plans for earthworks over
2330 that size can easily create a to reduce sediment inputs into the waterways.

2331
2332 Policy WH.31, finally, we continue to support this policy as originally drafted.

2333
2334 I thank you for the opportunity to speak to our submission at this Hearing
2335 Stream.

2336
2337 Chair: Thank you very much. There was a lot there. You've given us a lot.

- 2338
2339 I wonder Commissioners if we go through in order that Ms Coughlan has
2340 presented her speaking notes, otherwise we might be jumping around a bit too
2341 much otherwise. Perhaps if we start with the rural land use provisions. I think
2342 Mr Willis is online as well.
- 2343 [00.25.05]
2344 Do we have any questions we would like to ask Ms Coughlan on those?
2345
- 2346 Wratt: A specific question around the comment I think you made in relation to
2347 exclusion of stock from waterways less than one metre. I think you made a
2348 comment about new ways of excluding stock. Certainly the costs of fencing off
2349 every stream less than one metre on a farm is a significant cost, and also a
2350 reduction in the productive usable area.
2351 Can you just expand a little bit on what you're referring to there?
2352
- 2353 Coughlan: There are new technologies coming out all the time and I am not privy to all of
2354 them unfortunately, but electric fencing is a cheap and portable way of making
2355 sure that they don't access even ephemeral streams, in the area that they are.
2356
2357 Actually, the whole concept of being excluded from things is kind of behind my
2358 concern around increase diffused discharges too through to the stocking rate.
2359 The two are linked and it's not a question I could tease out certainly by myself.
2360 But, there are more and more technologies coming. Even some plantings will
2361 exclude stock, but definitely more portable mobile. I think in the States (don't
2362 quote me) they've got little electric collars for the cows which would be super
2363 cute and also potentially cost exclusive for people here at this moment. But, the
2364 hope is that as things come out and become progressively more affordable and
2365 accessible here that those technologies are allowed to be taken up easily through
2366 legislation as well.
2367
- 2368 Wratt: Thank you.
2369
- 2370 Chair: Ms Coughlan, Policy P.22 and P.21 about nitrogen discharges, Fish & Game
2371 continue to support reference to capping nitrogen. The difficulties with
2372 measuring that in the absence of a reliable tool I think has been the primary
2373 driver for changing that now to a minimised diffuse discharges policy, rather
2374 than setting a cap.
2375
2376 If P.22 was to retain the words "capping diffuse discharges", how do you think
2377 that would work in practice in the absence of a nitrogen assessment tool?
2378
- 2379 Coughlan: I'm aware that the nitrogen assessment tool are being worked on as we speak,
2380 and that overseer is being overhauled – whether or not that becomes fully
2381 functional and when I'm not sure.
2382
2383 And, that there are certain other nitrogen score card risk assessments that are
2384 being developed through different councils around the country.
2385
2386 As long as those were made were transparent and open to everybody's scrutiny,
2387 so that we make sure they are effective, then those also would be potentially a
2388 viable way forward.
2389

2390 Failing that of course, looking at how much nitrogen is going onto the property
 2391 and making sure that those are reduced would probably be your quickest and
 2392 easiest way of capping some of that use. You can't cap a discharge without
 2393 monitoring, but you can cap an input which would in a certain period of time,
 2394 depending on how fast it's going through the soil and the ground water, have
 2395 some impact.

2396
 2397 I do feel that having some form of a number, method or ability to put that in,
 2398 should that come in, and incorporate that into the NRP could be very, very
 2399 helpful; whereas minimising it's very hard to say what it was, let alone what it's
 2400 been minimised to, and if that minimising was stringent enough to have any
 2401 actual impact on the environmental downstream health.

2402
 2403 Chair: Thank you very much, that's really useful and is obviously something that Mr
 2404 Willis will factor in the reply.

2405 [00.30.00]

2406 Can I just check the dates you mentioned? Policy P.23 changed deadline from
 2407 30 June 2027 to 31 March 2029. I thought the dates are the ones written in Table
 2408 8.6 – this is for the phase-in of the Farm Environment Plans. I thought there is
 2409 again two different dates for the phasing in. So either I have misunderstood
 2410 something or I am not sure.

2411
 2412 Mr Willis have I got the wrong end of the stick here? Ms Coughlan refers to
 2413 change at 31 March 2029, but the southwest coast rural streams for example the
 2414 phase-in is 30 December 2027.

2415
 2416 Willis: Commissioner, this is one of the issues I was going to come back on
 2417 substantively wasn't it, in relation to the dates of the stock exclusion. I've had a
 2418 provisional look at that. It would be quite heroic of me to suggest I could explain
 2419 that right now over this particular channel.

2420
 2421 It certainly is something I have been working on. I will get more comprehensive
 2422 advice to you. Unless I am mistaken on the issue, I was assuming it was the issue
 2423 we talked about on Monday, where you had a concern about the relationship
 2424 between the rule and the coming into date by which the farm plan is required;
 2425 and in relation to that with the requirement in Schedule 36. There's a series of
 2426 dates which we were trying to make sure aligned and worked.

2427
 2428 Chair: Thank you. We'll await your further advice on that.

2429
 2430 Willis: I could add one thing if it would be helpful, which is my view is they do work
 2431 but there is a difference in that if you don't require a freshwater farm plan then
 2432 you're required to achieve your stock exclusion by the 2028 date. If you have a
 2433 freshwater farm plan then you have until the 2030 date.

2434
 2435 There was logic to that, which was if you require a farm plan you've got a larger
 2436 property and larger properties will likely have longer lengths of stream to
 2437 potentially fence, or otherwise stock exclude, and therefore requiring a slightly
 2438 longer timeframe for those properties might be sensible. However, there is
 2439 another logic to say it would simpler for everyone perhaps if we had a single
 2440 date. So that's the issue I'm going to come back to you on.

2441

- 2442 Chair: Thanks very much. Ms Coughlan can I just check the changes you're seeking to
 2443 P.22 in your speaking notes, the second or third paragraph. You say,
 2444 "Wellington Fish & Game do support removing mention of large rural
 2445 properties." Is that "do not support removing" mention of large rural properties?
 2446
 2447 Could you just clarify?
 2448
- 2449 Coughlan: I do support removing it, because that opens it up to being able to scrutinise
 2450 appropriately everybody that needs to be – unless I read it wrong.
 2451
- 2452 Chair: Shall we turn to forestry and vegetation clearance?
 2453
- 2454 Kake: Kia ora. Thank you Ms Coughlan for your well-written notes. I'm obviously
 2455 interested I think in a few policies but in particular the one metre width and your
 2456 discussion around smaller streams being of importance in areas as well. I think
 2457 this is because it's picked up in Te Mahere Wai also in particular for mana
 2458 whenua and a number of these smaller streams still hold a significant level of
 2459 value to them.
 2460
 2461 I suppose the difficulty is, as we discussed, and you probably heard earlier this
 2462 week, the efficiency and the effectiveness I suppose of doing that one metre
 2463 planting, fencing, so on and so forth. This is something that Mr Willis has picked
 2464 up in his s32AA.
 2465 [00.35.02]
 2466 Assuming that farm plans will have some actions around protecting planting and
 2467 fencing around some of these streams, even if it goes to that one metre setback
 2468 area, would that be sufficient? So, if it is in a freshwater farm plan, that that one
 2469 metre fencing or planting activity occurs, would that help or suffice some of the
 2470 concerns from Fish & Game?
 2471
- 2472 Coughlan: Sorry, had a bit of a crackle in the connection there. I lost some of what you
 2473 were asking I'm sorry. Could you please repeat it?
 2474
- 2475 Kake: A bit long-winded. If there's an action in a Farm Environmental Plan that talks
 2476 about planting or fencing around streams that go up to that one metre setback
 2477 area, would that suffice? We are conscious that I suppose a number of these
 2478 streams, and in particular on large farms there's going to be a few, but that aside
 2479 I'm taking the point and I think you heard it, that a lot of these smaller streams
 2480 are of significance in particular to mana whenua, and it's indicated in Te Mahere
 2481 Wai.
 2482
 2483 So if that action is in a farm plan, would that suffice?
 2484
- 2485 Coughlan: Where I'm talking about the one metre isn't a one metre setback. It's actually the
 2486 width of the waterway itself. We have kind of industry standards: if it's deeper
 2487 than a red band and wide than a stride then it needs to be fenced. Unfortunately,
 2488 a huge percentage of our waterways come and go seasonally, and get larger and
 2489 smaller seasonally, and carry the majority of the nutrients and pollutants from
 2490 them. They area also everywhere. Obviously during different times of the year
 2491 would be tricky to fence off.
 2492

2493 It's still really important that most of them are though, even if that suddenly it's
 2494 winter and we've got a little riverlet running through the corner and we'll put an
 2495 electric fence and just make sure the stock can't get to it. Work like that if that
 2496 was through a farm plan I would think if there was enough of it and it was done
 2497 properly, would really make a big impact over time to how much sediment
 2498 pollutants were going into the water.

2499 If it was just that it had to be pulled back and is set back from the larger
 2500 waterways of one metre, of a metre setback riparian or fencing, it won't have
 2501 the same sort of impact as still those larger streams – even though they're still
 2502 quite small at that stage. You're still going to be missing out on a lot of smaller
 2503 waterbodies carrying (as research was saying) 77 percent of the inputs into the
 2504 freshwater coming through those waterways that are smaller than the one metre
 2505 width.

2506

2507 Does that make sense?

2508

2509 **Kake:** Yes it did. I'm just wondering if Mr Willis had any comment on that?

2510

2511 **Willis:** Thank you. I'm not sure I have too much to comment. It's a well-traversed
 2512 argument this one. It's been around the country. I think what we have tried to
 2513 create in the Freshwater Farm Plan approach is a degree of flexibility and degree
 2514 of discretion that's able to be exercised. If we had a particular risk to a particular
 2515 stream, if it was a high value stream for example, I could foresee that you might
 2516 have a CCCV, which talked about particular Māori iwi values in a particular
 2517 stream. If that was known about you would expect that that farm plan would
 2518 address that risk, whether it's one metre or less than one metre – particularly if
 2519 the risk is high.

2520

2521 For example, you might expect a greater degree of action through a farm plan if
 2522 there was planned to be break-feeding, or something where you've got a high
 2523 density of stock in a particular paddock with a stream of those sorts of values.

2524

2525 I guess all I can say is there is no prescription in the schedule as it stands at the
 2526 moment, but there is an expectation in the way that things are drafted that those
 2527 sorts of risk will be recognised and addressed on a case by case basis. But, it is
 2528 quite difficult to go from that to something that requires a broad scale protection
 2529 of all those streams, just because of the sheer number and literally hundreds of
 2530 thousands of kilometres, and in many cases what would be a very low risk given
 2531 (and we heard from some farmer yesterday didn't we) the density of stock and
 2532 on many streams the lack of likelihood that they would actually enter.

2533 [00.40.15]

2534 It is a very difficult issue and I think what we have tried to do is just simply
 2535 provide or enable the farm plan certifier to consider those risks and take
 2536 appropriate action.

2537

2538 **Chair:** Commissioners we probably only really have a few more minutes. Is there
 2539 anything on the forestry provisions, vegetation clearance or earthworks that you
 2540 would like to ask Ms Coughlan?

2541

2542 Ms Coughlan, I thank you for highlighting the interpretation issues you've raised
 2543 with Policy P.28. Having another read of them I think I understand the concerns
 2544 you've raised and we'll be asking Mr Watson to look at that in his reply.

2545
2546 Is there anything else on forestry?

2547
2548 Ms Coughlan, can I just check that I understand the concern you've raised –
2549 we've been referring to a bit colloquially as a ground-truthing through the Forest
2550 Management Plans. The point you make at the bottom of page-4 of your
2551 speaking notes, are you saying that it's enough if the erosion risk is recognised
2552 through the mapping, which is now through Maps 90 and 93, that they're
2553 potential erosion risk land. Are you saying that it's enough that it's done through
2554 that and you don't need the further confirmation through the forestry
2555 managements plans? Have I understood what you're saying there correctly?

2556
2557 Coughlan: I'm not sure. For me generally the more input the better and that way everybody
2558 knows when a T is crossed and the I's are dotted, so to speak. I do think the
2559 Forestry Management Plans are a really important tool. I do not have the
2560 background in how they are developed to know who does that, and where they're
2561 controlled by and who has the information to it, which is why I made the point
2562 of Regional Councils being involved. If you're already involved ignore that
2563 point. I just feel it's a really good idea to make sure that the overseeing of those
2564 maps is still identified and managed/monitored by yourselves, by the Regional
2565 Councils.

2566
2567 Chair: Thank you. Sorry, I had misunderstood what you said there, so thanks for
2568 clarifying that. I think there are various changes that's proposed to the current
2569 mapping that takes place, including more-finer contour maps and some other
2570 changes.

2571
2572 Is there anything else on forestry, otherwise we might see if there's anything on
2573 earthworks.

2574
2575 Kake: Just a quick question again Ms Coughlan thank you. The inclusion in WH.P30,
2576 I just wondered with the extra activities down the bottom on page-6, we've had
2577 a bit of discussion around this getting a little long-winded or a lot long-winded.

2578
2579 Subdivisions and flood control works – I take the point that there might be some
2580 activities that have been excluded. I wonder if Ms Vivian could perhaps just give
2581 us a bit of background or response to maybe why, or whether it's something that
2582 can be considered.

2583
2584 Vivian: The definition of property within the Natural Resources Plan does provide for
2585 some of those activities listed, including it says that in the case of land
2586 subdivided under [00.44.38] Act, a property is the whole of the land subject to
2587 the development or cross-lease." So it does cover things like subdivision.

2588
2589 In the case of flood control works, the definition doesn't necessarily provide for
2590 those works, however the definition does say any contiguous area, including
2591 adjacent land separated by a road or river held on one ownership, or multiple
2592 records of titles.

2593 [00.45.07]
2594 So it is a broad definition for the term property. I'm happy to go away and put
2595 some more thought into ensuring that it does cover the activities raise by Ms
2596 Coughlan.

- 2597
2598 Kake: Just a follow-up from that then. Ms Coughlan, you're understanding around
2599 flood control works, could you just give us an example of what you mean?
2600
- 2601 Coughlan: Any gabion basket, when you're putting the big stop-banks in and they're doing
2602 works on those so they don't erode. There's a whole bunch that involves a lot of
2603 big earthwork movements or potential for definite large sediment inputs into
2604 water. I just wanted to make sure that those were covered as well. I know they're
2605 covered in other places, but just making sure there's not a conflict here.
2606
- 2607 Kake: Ms Vivian is nodding to us. I think that means she might go away and have a
2608 think about it. Thank you.
2609
- 2610 Stevenson: Thanks Ms Coughlan for a really clear presentation. I am interested in the first
2611 paragraph of your subject matter on earthworks Policy WH.P29. You do support
2612 the retention of the wording minimise works required during the closedown
2613 period. We have heard from other submitters through the course of this week,
2614 particularly Meridian Energy and immediately prior to you Civil Contractors
2615 New Zealand. I guess the gist of their comments and the discussion with the
2616 Panel was that for an effects based approach that policy should focus on the
2617 effects of the activities and not the activities themselves. So just flagging that
2618 conversation has been had and we may well look at that wording.
2619
2620 What would your view be? Sorry to put you on the spot.
2621
- 2622 Coughlan: That's alright. I was fascinated listening to that previous presentation. I thought
2623 it was really interesting. I think they made a really good point too.
2624
2625 That would also kind of address the original one of why are some activities
2626 allowed to continue and others aren't? If those are being looked, as this is a
2627 particularly potentially dangerous time of year in terms of sediment input, and
2628 the effects are covered off, the adverse effects are minimised as much as
2629 practicable, I absolutely think that's the way to go, is to target the affects rather
2630 than the works.
2631
- 2632 Chair: Thank you. I think we are at time now. Thanks very much for presenting and for
2633 your speaking notes. You've given us, and I think the reporting officers, a lot of
2634 things to go away and think about some more, so thank you.
2635
2636 We'll take the break now and we will be back in 45 minutes at two o'clock.
2637
- 2638 [Lunch break – 48.20]
2639 [Hearing resumes – 01.46.45]
2640
- 2641 Chair: Good afternoon everyone. We are back for our afternoon session. We are
2642 welcoming Mr Cairns and the Wellington Branch of the New Zealand Farm &
2643 Forestry Association. Kia ora. Welcome. I know you have presented to us before
2644 Mr Cairns but we'll just do some very brief introductions.
2645
2646 Ko Dhilum Nightingale tōku ingoa. I'm a Barrister based in Wellington and am
2647 chairing the Freshwater Panel and the Part 1 Schedule 1 Panel.
2648 McGarry: Kia ora koutou. Sharon McGarry.

2649
 2650 Kake: Kia ora. Puawai Kake, Commissioner and Independent Planner.
 2651
 2652 Wratt: Kia ora. Gillian Wratt, Independent Commissioner based in Whakatū Nelson.
 2653
 2654 Stevenson: Kia ora. Sarah Stevenson, Independent Planner and Commissioner based here in
 2655 Te Whanganui-a-Tara Wellington.
 2656
 2657 Chair: Mr Cairns, just so you know I think we have all of the reporting officers as well
 2658 here with us for this topic. I know you're particularly interested in forestry and
 2659 Mr Watson is there.
 2660
 2661 I will just check that we have all of the things you've provided us. We have was
 2662 it a document for further submission? I think we've got that up on the screen.
 2663 Over to you. We encourage you to leave plenty of time for questions. We are
 2664 through with you until three o'clock. Great to get the presentation but please
 2665 leave time for questions. Thank you.
 2666
 2667 Cairns: My first slide there, provocatively perhaps, just shows [01.49.13] on flood
 2668 control in Hutt River. Sixteen kilometres of this river is groomed on a periodic
 2669 basis. I think what I am saying – all done, according to consent and so on I'm
 2670 sure that it has to be contributing to visual clarity issues at Hutt, Boulcott – which
 2671 is at the downstream end of that.
 2672
 2673 I will start with the rebuttal evidence. We are wishing to acknowledge and agree
 2674 with Mr Watson that the continuous cover in forestry category for harvest and
 2675 replanting should be controlled by the NES-CF, even at catchments where visual
 2676 clarity is not met, and that the five year trend data be used to assess rather than
 2677 the most recent monitoring record. That seems to have been clarified quite well.
 2678 [01.50.20]
 2679 I am still disagreeing with Dr Greer in respect of calculations for temperature
 2680 changes that affect the suspended climate sediment grade, for various reasons,
 2681 but Dr Greer has not addressed our argument about whether the target attribute
 2682 states set for Hutt Boulcott was reasonable.
 2683
 2684 I just note also in passing here that there seems to be a couple of divergent policy
 2685 directions as these hearings have shaped up. Mr Watson and Dr Greer seem to
 2686 be focusing about surficial erosion as the main contributor to total annual
 2687 sediment loads from steep land. However, the erosion susceptibility mapping
 2688 that we thought had been pretty much set aside has now re-emerged and that is
 2689 all about identifying the shallow land slide risk – so they're quite different
 2690 categories there. I'm not sure what to comment on the real risk of shallow land
 2691 slide there, but perhaps a lot of that argument is buried in the substantive
 2692 documents that we put in right at the start there, including from Dr Les Basher.
 2693
 2694 We have a multiple tier, if you like, level of positions, or fall-back positions shall
 2695 we say, and our first position really is to support the National Farm Forestry
 2696 Association. Mr Guttke behind me here, his submission referring to insufficient
 2697 stringency of the Plan Change 1 to override the NES commercial forestry. We
 2698 acknowledge that legislation does allow that to happen.
 2699

2700 I just want to comment here that basically I would have thought it was basic that
2701 the Greater Wellington need to demonstrate that exceptional circumstances exist
2702 in these two whaitua, compared to the general prevailing conditions; otherwise
2703 you will end up around the country with every District Council will override the
2704 NES-CF just to meet target attribute states that have applied universally around
2705 the country. There must be very many water catchment areas where target
2706 attribute states file on sediment.

2707
2708 I find it rather odd in some of the cleanest water in the country almost, in the
2709 Wellington areas, that this is set up as a reason to override the NES commercial
2710 forestry.

2711
2712 I won't dwell anymore on that one.

2713
2714 We thought rather than a discretionary controlled consent that a fall-back and
2715 intermediate position would be preferable for a lot of forest owners there because
2716 it gives them more certainty of the business prospects.

2717
2718 I have heard the arguments that the potentially high risk erosion [01.54.10] is
2719 the best data available, focused on surficial erosion – or that was the way the
2720 argument was presented at the time.

2721
2722 It is my understanding that control consent will still allow Greater Wellington
2723 to apply conditions that can be enforced, but that because consent must be given
2724 that would safeguard the business and supply train of continuity.

2725
2726 Also the low risk less steep sites perhaps where target attribute states are not
2727 met, are not actually saddled with unnecessary compliance costs. An
2728 increasingly important factor to consider.

2729 [01.55.00]

2730 In the speaker's notes there, there's some other bits under there. I won't droll on
2731 but they're there for you to read.

2732
2733 I will just move on.

2734
2735 We thought very hard about where we stood on restricted discretionary consent
2736 where target attribute state clarity fails. I think most of us acknowledge that the
2737 current system could do better for various reasons – some of which will be
2738 outlined by Sally Strang in the next session. We as an industry group think, and
2739 personally I think our branch agrees, that forestry interests need to be seen to
2740 improve in environmental performance – which we say has been improving over
2741 time. But, we still question whether addition regulation will actually deliver the
2742 sought after target attribute states for clarity.

2743
2744 We are still saying here that the costs of consenting and preparing packages to
2745 obtain consent are significant and will disproportionately affect smaller
2746 woodlots, smaller forests.

2747 The associated work that goes on with water plans and training methods, as in
2748 the speaker notes, is very important. Without that the whole thing falls over I
2749 think. As part of the water plans (and I'm not sure whether that's actually
2750 included there) but issues such as climate change affecting it's SFS targets and
2751 so on, climate change effects will be an important thing to review.

2752
 2753 As my following slides show I think temperature changes mean that a number
 2754 of target attribute states are not fairly set.
 2755
 2756 The preference to low risk activities defer to off-rate under NES-CF. There are
 2757 still lower risk activities within catchments where target VC fails on not close to
 2758 the waterways and so on. I think one of my following slides picks that up.
 2759
 2760 The rebuttal evidence I think has changed. Some of it is around. Dr Greer has
 2761 already picked up I think or addressed the issue about the most recent monitoring
 2762 record being used rather than the trend analysis and that one of the policies
 2763 should have been mentioning receiving bodies. I think that slide is possibly
 2764 already dealt with.
 2765
 2766 Picked up in the rebuttal evidence that the notes regarding Rule P.R19 and the
 2767 actual rule I think intended to refer to conditions where target attribute state VC
 2768 were not met, but in fact say they are met – so I am asking for clarification on
 2769 that.
 2770
 2771 This slide is a little bit hard to see there perhaps, but it's a small woodlot just up
 2772 the road from where I live – that is the orange lone land there is actually Upper
 2773 Hutt City Council has said is a 26 degree hazardous slope overlay, but does not
 2774 actually include any of the land mapped in the schedules here.
 2775
 2776 Just as an example, in quite small woodlots that perhaps should have been
 2777 harvested a year or two ago, low risk situation, and there will be many more of
 2778 these.
 2779
 2780 The costs I think the next speaker was going to address. The cost to prepare an
 2781 application for resource consent quoted to us by forestry management
 2782 companies is in the order of \$8,000 to \$9,000. You add in Greater Wellington's
 2783 administrative costs plus inspections and you are blowing up to \$15,000 to
 2784 \$20,000 to administer the harvest of this small block.
 2785 [02.00.05]
 2786 The increasing compliance costs and lack of scale make small scale forestry less
 2787 and less attractive to owners, and I'm suggesting that where emission trading
 2788 scheme's obligations allow changes in land use that pastoral farming or
 2789 subdivision to smaller residential blocks will prevail as being a more profitable
 2790 and less risky land use than forestry for woodlots.
 2791
 2792 Both of those land uses are more likely to produce sediment than forestry
 2793 operations in the long term. Both of those will produce more greenhouse gases.
 2794
 2795 Some of the small woodlots that I understand Mr Reardon is referring to coming
 2796 up to harvest in the next few years may not be replanted, because of regulatory
 2797 costs.
 2798
 2799 I want to introduce this re-litigating water quality issues, as I know Dr Greer and
 2800 some others have suggested that the opportunity has gone, to look at that, and it
 2801 should have been deal with in Stream 2.
 2802

2803 We have previously mentioned these issues in our initial evidence and in Stream
2804 2 and this seems to me to be a change in direction, a bit of zigzagging around,
2805 where suddenly the status of visual clarity at Boulcott, which I hadn't really
2806 considered before, could greatly affect everything upstream. And, that is my
2807 excuse for wanting to come back to re-litigate those issues. I hope the Panel will
2808 accept my further evidence in this matter.

2809
2810 I note in passing that the term 'visual clarity' has been replaced with 'suspended
2811 fine sediment' but I would like to point out that the whitua reports and the wai
2812 ora states the national bottom lines refer to 'visual clarity' (I think) and not to
2813 'suspended fine sediment' – which is really a surrogate measure of clarity.

2814
2815 So we have to be very careful how the target attribute states are defined there,
2816 because we went to a lot of trouble to understand the various laboratory
2817 measurements that may be used for suspended fine sediment, but came back I
2818 thought to putting a tape measure in the water and measuring the how far away
2819 you can see this black disc.

2820
2821 This is an introductory slide really on climate change, that I'm not [02.02.52].
2822 The bit on the right there is a fifteen year old sort of projections on what global
2823 climate was going to do and how climate change was accelerating the
2824 temperature increases under various scenarios. I guess we're not so much
2825 focused on global climate temperature changes but what's happening in the local
2826 Wellington Region.

2827
2828 The map in the middle there is from NIWA publically available off their website
2829 with colour maps of where temperatures were based. There's different time
2830 periods all over the place that we get this data from. That map refers to 1950 to
2831 2010, the average temperatures in the Greater Wellington area, at least our two
2832 whitua. Most of it is in the 11-12 degree range there.

2833
2834 Just refreshing what I'm sure you know, that the target attribute state visual
2835 clarity depends on the suspended fine sediment class, which is temperature
2836 dependent. A drop from Class 3 to Class 2 would reduce the target attribute state
2837 to either the greater in baseline values or the National Bottom Line of 0.93
2838 metres. It makes a big change in the baseline visual clarity distance.

2839
2840 The river classes, the SFS classes are referred to in the main Plan Change 1 relate
2841 to National Policy Statement Freshwater Management 2020, linked back to 1950
2842 to 1980 temperature data. I understand that Dr Greer has agreed that is the
2843 dataset that was used to support river classifications here.

2844 [02.05.00]

2845 I'm saying that since 1980, or since even the mid-point between there, there's
2846 been substantial increase in temperature until now.

2847
2848 I think I will probably flick through to the next slide.

2849
2850 There are already several streams and rivers in our two whitua that were based
2851 on suspended fine sediment Class 2 – Hulls Creek, **Waiwhetu** [02.05.40]
2852 Stream, and I think the one at Porirua, but with temperature change I was
2853 suggesting at the time I wrote this slide that there might be several others that
2854 would then slip into Class 2 because it's a very old dataset that's being used.

2855
2856 In response to Dr Greer I managed to find a better dataset with data that I could
2857 plot. This comes from Statistics New Zealand website who accessed it from
2858 NIWA. It's take 1950 to 2022 data, whereas the suspended fine sediment classes
2859 were set from 1950 to the 1980 dataset – so this is a longer dataset starting at the
2860 same time.

2861
2862 You get a bit of smoothing here. This is the mean of seven weather stations
2863 around New Zealand. I have just plotted that data on an annual basis. What they
2864 did was they took a reference point from 1961 to 1990 and plotted differences
2865 each year to that mean point there. I've put a line through there and you can see
2866 that the data is very noisy over time, even though we've smoothed data from
2867 seven weather stations.

2868
2869 There was a point about 1990 which was Mount Pinatubo going up which called
2870 cooled the climate a lots, so to take say the last thirty years alone you would be
2871 getting a much steeper slope because it's pulled down – the start of it was pulled
2872 down by Mount Pinatubo. So it's fairer to take a longer trend.

2873
2874 This is showing a 0.12 degree per decade change compared to the set that Dr
2875 Greer chose to use in the rebuttal evidence of only 0.09, so about thirty percent
2876 higher.

2877
2878 We can dwell on what the global averages was there.

2879
2880 Next paragraph down I've got a typo there if you're looking at my speaker notes
2881 – for Wellington rather than New Zealand. Wellington's national average
2882 temperature range change according to the Statistic New Zealand article.

2883
2884 There is other data around for the Wellington only over the 1972 to 2022 period
2885 – thirty years, and that gave a much higher 0.17 degrees per decade change. But,
2886 as I say, that data is noisy and I think this 52 year period here is a fair time period
2887 to use to project what the suspended fine sediment class should be.

2888
2889 I've got in my notes there, if you're going to use data here to project what
2890 temperature changes should be now, Dr Greer chose to start from 1980. In fact
2891 you've got to go from the mid-point of that dataset that was used by NIWA to
2892 calculate the long-term trend. The calculation should be from 1965 onwards and
2893 not from 1980 onwards.

2894
2895 If we just go to the next slide.

2896 [02.10.00]

2897 There's obviously four rivers there. The mean air temperatures of 1950 to 1980
2898 has been used in the National Policy Statement Freshwater Management Tables
2899 and what those were. We're looking at changes since that mid-range point,
2900 between 1950 and 1980. So calculated from 1965.

2901
2902 If you use Dr Greer's conservative rate change of 0.009 degrees per year, you
2903 still get both Makarā and Horokiri getting to above 12 degrees by now, by 2025.
2904 I have chosen to put in what it might be by 2040, being the time period which
2905 we are supposed to achieve our target attribute states. You can see the
2906 temperature has gone up more.

2907
2908 I'm suggesting that actually we should be using the higher rate of temperature
2909 change that I have calculated from the national weather data set that I have
2910 quoted on the previous slide. That's in the next two columns there, .0124 degrees
2911 per year, or .124 degrees per decade.
2912
2913 I guess unfortunately for my argument the Hutt Catchment and Mangaroa
2914 Catchments still doesn't rate 12 degrees but they come pretty close.
2915
2916 I think that's a strong case that both Horokiri and Makarā Streams are already
2917 above 12 degrees. There may well be other smaller streams in the lower altitude
2918 regions in the Hutt and Porirua areas that should also be re-categorised on that
2919 basis. They move to warm-wet rather than cold-wet suspended fine sediment
2920 category.
2921
2922 I think this is affecting clarity at Boulcott. This is a catchment that effectively
2923 has a great deal of impact on everything upstream.
2924
2925 My argument really is this monitoring station is very low down in the catchment
2926 and the suspended fine sediment class is not dependent on the position in the
2927 catchment, or vegetation cover, or the nature of the topsoil, but all of those
2928 actually have an effect on visual clarity.
2929
2930 Clarity at Boulcott is never going to be as good as it's forested tributaries. Dr
2931 Greer himself made a comment in one of his many papers there – he refers to
2932 suspended fine sediment accumulating downstream, and yes Dr Greer I agree
2933 with you that it can but it's not the only source of clarity issues.
2934
2935 We've got climate change higher and more frequent flood flows, which may not
2936 affect the median flow very much but will still bring more sediment down, and
2937 that's part of natural process as well as contributing from man-made sources.
2938
2939 The higher flows low in the catchment by definition will have more ability to
2940 disturb accumulated sediment so you should not expect clarity to be as good in
2941 the same river just where it has a higher flow rate lower down.
2942
2943 That slide there by the way is from Kennedy Good Bridge quite near the Boulcott
2944 sampling site. The flood that day was a mere 74 cubic metres per second.
2945 I took publically available data from the Greater Wellington website and
2946 calculated the rolling five year median values for clarity. Each of those data
2947 points is the previous five years median value there. You can see there is quite
2948 a lot of noise in that data and a big step around the 2016 area, which I find very
2949 curious and would love to have an explanation for that.
2950 [02.15.00]
2951 What this slide does show is in one year to the next, that five year rolling average
2952 changes quite a bit. Should Hutt or Boulcott ever achieve the 2.95 metres
2953 required for clarity it's going to hover around that zone and be in one five year
2954 period and out the next, and that makes it difficult for people submitting consents
2955 and so on to deal with.
2956
2957 The last point there is short of a few months of data, a few data points.
2958

2959 Looking at that, is the natural state for clarity actually achievable? I'm really
 2960 asking for the target attribute state for clarity at Boulcott to be reset. I think it's
 2961 set too high and it is very unlikely that Hutt Boulcott could ever reach the natural
 2962 state, Class 3 State A – that's SFS Class 3 State A. In the meantime the cost
 2963 burden and uncertainty of going to consent forest activities will carry on for a
 2964 long time.
 2965
 2966 Dr Greer made a comment that for Hutt Boulcott to achieve the natural state
 2967 effectively requires all the catchments upstream to return to natural state. A lot
 2968 of land use changes to urbanisation – we've got farming and forestry and so on,
 2969 which in a natural state upstream is not going to happen. That recent
 2970 performance of about 2.5 metres visual clarity I think is pretty good, considering
 2971 that forestry activities have been expanding in that time period. I didn't
 2972 emphasise there that forestry harvesting has been going up, not down, in the last
 2973 few years but yet clarity has been improving. Small block harvesting started in
 2974 earnest in about 2019. The wall of wood that everyone talked about, a lot of
 2975 blocks that came to be harvested much earlier.
 2976
 2977 We've got clarity improving and forestry harvesting improving at the same time.
 2978
 2979 Significant cost burden for gaining consents - multiple and separate consents
 2980 will be required over the last cycle of a forest. Costs incurred early on have to
 2981 be re-[02.18.11] until harvest. You carry those costs for thirty years.
 2982
 2983 Our primary submission requested that Hutt at Boulcott be reset based on its
 2984 baseline values, which are still substantially above the national bottom line and
 2985 reflect actually quite a high quality state of tributary rivers.
 2986
 2987 The summary is there. I think that's there for you to read. I don't need to go over
 2988 those. I think I need to stop there and give others enough time. Thank you.
 2989
 2990 McGarry: Thanks Mr Cairns. If it feels like there's a lack of questions you've been very
 2991 clear in what you've said to us today.
 2992
 2993 I just have one question for you, and that really is that what you're asking is that
 2994 the TAS be set at the current C band at Boulcott, is that what you're asking?
 2995 Cairns: I believe it's in Plan Change 1 initially as Class C but Dr Greer said it was
 2996 currently at B, so there might have been a change in the last couple of years.
 2997
 2998 McGarry: The baseline is set to that 2012-2017 period.
 2999 [02.20.00]
 3000 He has given us some data on where it is at currently from I think 2015 to 2019.
 3001 I think he has given us some updated data. But, it would be set against the
 3002 benchmark at the 2012-2017. So that is a C state. I just want to clarify what is
 3003 you're asking. Are you asking for it to be set at its current state, which is the C
 3004 in the table?
 3005
 3006 Cairns: Without fully knowing all the reasons why it's changed, I think we could live
 3007 with Class B.
 3008
 3009 McGarry: According to the tables that we've got for tracked change, that hasn't changed
 3010 through this process. It was C and trying to achieve. The current baseline is C

- 3011 and the state in the TAS is A. So you would like to see at worst from your
 3012 perspective that that be a state B?
- 3013
- 3014 Cairns: Yes.
- 3015
- 3016 Stevenson: Thank you Mr Cairns again for a really thorough presentation. Planner by trade
 3017 and training so I am interested in the activity status you've mentioned as being
 3018 your preference and second preference.
 3019
- 3020 Your second preference was controlled activity status?
- 3021
- 3022 Cairns: Yes, correct.
- 3023
- 3024 Stevenson: To explore that, what sorts of things do you think would need to be controlled
 3025 through a consent process? What would be reasonable to be controlled through
 3026 a consent process?
 3027
- 3028 Cairns: I think it's really about earthworks for forestry harvesting. I don't know if I
 3029 should be saying this, but in reality it's almost impossible to meet the current
 3030 standard of no worse after a [02.22.41] of reasonable mixing. If you've got a
 3031 mountain stream coming past your site and you're harvesting there, you can't in
 3032 fact meet that. It's already quite difficult.
 3033
- 3034 It's designed with salt traps, fences, hay bales and that sort of stuff and adopting
 3035 best practice guidelines that are already well-explained in the forest owner
 3036 manuals and so on. They were not all that explicit in the NES-CF.
 3037
- 3038 That's the sorts of controls I'm thinking would be relevant. These things can
 3039 change over time and through education.
 3040
- 3041 Stevenson: Yes, and through monitoring. Thank you. That's helpful, thanks.
 3042
- 3043 Wratt: You commented early in your presentation on concern about disproportionate
 3044 effects on small woodlot owners, but we heard from Mr Reardon that from his
 3045 work that what he is seeing is that poor practices are more often found with the
 3046 small woodlot owners. So, how do you line those two up?
 3047
- 3048 Cairns: I think there's a lack of education amongst contractors. It's pretty unusual for a
 3049 small woodlot owner to do their own harvesting. They're perhaps finding the
 3050 cheapest contractor to do the job. They're possibly operating by rules they
 3051 understood prior to any SPF or CF and what they can get away, because they're
 3052 all under financial pressure. No doubt the bigger forestry management
 3053 companies have more ability to influence the contractors they use if they want
 3054 repeat work and so on.
- 3055 [02.25.05]
- 3056 I do think that more frequent visits from Council is the way to work. I understand
 3057 Dr Sally Strang will be talking about this in the next session.
 3058
- 3059 There's several things there. The price margins have been very tight for both
 3060 contractors and forest owners. No forest owner wants to grow trees for thirty
 3061 plus years and make a loss on it. It might be the only opportunity they get so they're
 3062 under pressure.

- 3063
3064 Most of us want to do the right by the environment too.
3065
3066 I want to point out here (and I'm not quite sure where Mr Reardon gets his data
3067 from but I will have to accept it at face value) the wall of wood I thought was
3068 mostly gone; but to point out this is a long-term gain. If those small woodlots
3069 are not replanted and they go into pasture or something instead because it's not
3070 profitable and too difficult, I would reiterate that the environment is worse off
3071 in the long-term.
3072
- 3073 Wratt: Yes, but there was also a concern that if they aren't planted back in trees that
3074 there's land-banking and they just sit there, which is worse than them being
3075 converted back into pasture.
3076
- 3077 My concern is that the implication I'm taking from you is that small woodlots
3078 should be exempt. What I am hearing on the other side is that there needs to be
3079 controls over small woodlots because those are where a large percentage of
3080 problem is.
3081
- 3082 Cairns: I think on low risk sites, which would include some of the smaller woodlots –
3083 and we have different ideas on what's a small woodlot. Mr Reardon is talking
3084 up to 100 hectares being a small woodlot. That's enormous by farm forestry
3085 standards. I'm thinking there are a lot of harvests where one or two hectares get
3086 harvested and not a hundred hectares.
3087
- 3088 To me the small woodlot is less than four or ten hectares and not a hundred
3089 hectares. That's of course his data.
3090
- 3091 You have substantial costs setting up a harvest, dragging and bringing in heavy
3092 equipment and making skid sites and all those sort of things – consents and a lot
3093 of fixed costs.
3094
- 3095 I am not saying necessarily that small woodlots should be exempt because
3096 they're small, but those that are in low risk situations should be regarded as such,
3097 because this current plan where target attribute state is not met, the entire Hutt
3098 Valley, Akatarawas, [02.28.24] and Mangaroa are all captured and require
3099 consenting. Many of them I don't think are much of a risk at all.
3100
- 3101 Wratt: Thank you. That clarification certainly on what you're referring to as small
3102 woodlots is helpful. The focus here is forestry on high erosion risk and not on
3103 low risk. You would hope that the way that the provisions are drafted that those
3104 small woodlots on low risk land are not being captured. I guess that's the detail
3105 of the drafting.
3106
- 3107 Thank you for your response.
3108
- 3109 Watson: Can I just jump there with maybe a point of clarification?
3110
- 3111 The PC1 as notified required consents for all forestry as a controlled activity. It
3112 wasn't just focused on highest risk sites. There was a permitted activity rule
3113 focused on highest risk sites and that was I guess more of a long term rule I guess
3114 coming through from the RPS in terms of 'right tree, right place' and trying to

- 3115 progressively reduce or retire out plantation forestry on highest risk sites. I just
 3116 wanted to clarify that it's not just focused on high risk sites and that PC1 is
 3117 focused on all forestry sites where TAS aren't being met.
- 3118 [02.30.05]
- 3119 I guess scale is important. I've kind of addressed this over yesterday in terms of
 3120 I agree that not all forestry activity is going to have effects which require
 3121 regulation. It's just kind of working out what that magic number is or what those
 3122 restrictions might look like. I haven't been able to obtain any kind of technical
 3123 guidance around what that looks like.
- 3124
- 3125 Because something has lower risk doesn't mean it has no risk. A lot of risk sites
 3126 could have significant adverse effects if it's not managed appropriately.
- 3127
- 3128 McGarry: Not one for you Mr Cairns, but I would like to just hear from Dr Greer about
 3129 your idea of why it couldn't be Band B – now that we've clarified that. Are you
 3130 there Dr Greer? Could you enlighten us as to why the two band jump?
- 3131
- 3132 Greer: The target attribute states weren't set by scientists they were set by community
 3133 process. I guess my opinion on what the target should be is largely redundant
 3134 because it's a personal opinion. I have got no connection to the river. It's not
 3135 really my place to kind of argue what the TAS should be. I've done an
 3136 assessment of whether they're physically to achieve or not and Ms O'Callaghan
 3137 considered that in her amendments to Table 8.4. She didn't consider that the
 3138 difficulty in meeting the target attribute state justified changing it. That's pretty
 3139 much of the extent of what I can comment on whether a TAS should change or
 3140 not.
- 3141
- 3142 McGarry: Dr Greer, I just wondered if you could repeat – we asked the question and you
 3143 said something in response to Mr Cairns in particular, in regards to the discretion
 3144 of the Council to be able to change the class of a river.
- 3145 Greer: Yes, there's a number of reasons why the class shouldn't be changed from a
 3146 science perspective, but at the end of the day the NPS-FM defines the river
 3147 classes. It sets the version of the REC at which you need to determine what your
 3148 river class is. An FME actually can provide a map categorising which rivers
 3149 belong to which class. There's no discretion for the Council to reclassify a river
 3150 in the REC based on air temperature to generate a new class and therefore set
 3151 less stringent national bottom lines.
- 3152
- 3153 Even A Band things for the revised classes will allow for a significant
 3154 degradation from water quality, clearly showing that that sediment class is not
 3155 appropriate to those rivers.
- 3156
- 3157 McGarry: Mr Cairns, I just wanted you to be able to hear that from Dr Greer. We heard it
 3158 a couple of days ago. Have you got any response to either of those points – (1)
 3159 that it's not the science setting the band here, it's the WIP process and the
 3160 community, and it's a policy decision?
- 3161
- 3162 Cairns: I did ask Louise Askin who was the co-chair for the Wellington whitua group.
 3163 She thought they accepted technical advice from others as to what that targeted
 3164 attribute state should be at Boulcott. I doubt very much that they would be aware
 3165 that the finer points of where you are in the catchment and how that affected
 3166 what the class should be.

3167
 3168 I think they just accepted the advice that was given to them. That's my
 3169 impression.
 3170 [02.35.00]
 3171 Greer: Can I just jump in there quickly because I was the technical lead for the expert
 3172 panel for the whitua process, so I can actually provide an indication of the
 3173 extent of the actions that the committee knew were required to achieve that target
 3174 attribute state. It was the retirement of all Class 6E, 7E and 8E land and ten metre
 3175 riparian setbacks on all rivers below 15 degree slope.
 3176
 3177 The whitua committee were well aware of the extent of the actions that were
 3178 required to meet that TAS and chose it, still. Importantly as well, they knew that
 3179 was with a background increase in losses from climate change. So that was
 3180 factored into their decision.
 3181
 3182 McGarry: This is your speaking slot Mr Cairns. You get the last say.
 3183
 3184 Cairns: Obviously it's going to be very hard to change. I was hoping that water plans
 3185 would be able to address some of that that. That's the last thing I should say
 3186 then: is that that target attribute state has become weaponised for other land users
 3187 in the catchment, because I think it is set too high and other people are having
 3188 to pay the price.
 3189
 3190 Chair: Just reflecting on that, I think the latest advice we've had from Mr Blyth is that
 3191 sediment load reduction required there is less work to do, I think. We have
 3192 various tables that were given. They asked in our bundle of paper here.
 3193
 3194 We might make sure that you have seen this. It was tabled one day this week,
 3195 perhaps on Tuesday. It's showing for Boulcott that modelled sediment load
 3196 reduction required was six percent. Then based on the current is...
 3197
 3198 Watson: Can I jump in, I think I can clarify this?
 3199
 3200 Chair: Yes, sure.
 3201
 3202 Watson: I think the notified plan, the sediment load reduction based on the baseline state
 3203 was about 20 percent. Based on current state data it's closer to six percent within
 3204 the margin of error. It's based on more minor trend data, so from 2012 to 2024
 3205 the sediment load reduction required is only six percent, now based on current
 3206 state data.
 3207
 3208 Chair: Thank you Mr Watson. Yes.
 3209
 3210 Mr Cairns, that table is on the hearings web page isn't it, the one that Mr Blyth
 3211 and Mr Willis provided on day one.
 3212
 3213 Cairns: Thank you. I'll look for that.
 3214
 3215 Chair: Thank you very much Mr Cairns.
 3216
 3217 Mr Guttke and Ms Strang, and I think Mr Wyeth is online from New Zealand
 3218 Farmer Forestry Association. Hello, welcome.

3219
3220 Guttke: Good afternoon.
3221
3222 Strang: Good afternoon.
3223
3224 Guttke: You don't need to introduce yourselves.
3225
3226 Chair: Thank you. Good after Ms Strang.
3227
3228 Strang: Good afternoon.
3229
3230 Chair: Thank you for the summary statements. We have of course read your primary
3231 evidence as well.
3232
3233 Just to check we have everything – there's a summary statement from Mr Wyeth,
3234 from Ms Strong and Mr Guttke – you've got your presentation isn't it?
3235
3236 Guttke: Yes it's a Power Point.
3237
3238 Chair: Which is online on screen. Mr Roddick is there a presentative we need to pull
3239 up on screen.
3240 [02.40.00]
3241 We'll pass of to you to present your submission. Thanks.
3242
3243 Guttke: Let me give you a little bit of background about myself. My wife and I have
3244 owned a forestry block about 220 hectares since 1992. It's hill country near Te
3245 Horo. The Majority of the land is in regenerating bush but there are 80 percent
3246 of plantation forests – not just radiate pine but also a number of other species.
3247
3248 I have been through the whole life cycle of forestry starting with planting,
3249 releasing, pruning, thinning, earthworks, harvesting and replanting – and I'm
3250 glad it's done so far.
3251
3252 I was also involved in the development of the NES-PF and then CF and in the
3253 development of the Emissions Trading Scheme.
3254
3255 I am presenting on behalf of the Farm Forestry Association which represents
3256 small growers and has around 1200 members around the country.
3257
3258 I think the average size of forest that our members have would be around 20 to
3259 25 hectares or so.
3260
3261 This photo is really good to star the conversation because it shows the benefits
3262 of forestry. It was taken in 2004 by Horizons Regional Council. It shows how
3263 little scarring there is in the area where there is a forest and there are lots of
3264 similar photos around.
3265
3266 This photo maybe was in 500 metres as the crow flies with our forestry bock,
3267 farm land, and you can see the slight discolouration of the water at the bottom
3268 part of that photo. It was light drizzly rain and on the same day this is how the
3269 stream in our forest looked like – so crystal clear water and still light drizzly
3270 rain.

3271
 3272 Now today the trees would not be able to be planted as closer to the river edge,
 3273 but there are trade-offs. I have no issues with setbacks, but these trees also reduce
 3274 channel bank erosion because their root systems retain the soil. So, there is a
 3275 trade-off, but as I said the water anyway was crystal clear and I am proud of the
 3276 streams we have on our property.

3277
 3278 Let me start by talking about the NES-PF or CF. When the plan was published
 3279 it referred only to the NES-PF. The NES-CF came in three weeks later but it's
 3280 very different. I am giving you several examples here.

3281
 3282 The first is, there is a new Schedule 3 in the NES-CF that requires extensive
 3283 documentation and mapping for planting to replanting and that includes erosion
 3284 management plans. The requirements are so extensive that we are used to be
 3285 able to manage yourself. I couldn't do that anymore, so I have to now use the
 3286 surfaces of a forest management company and that increases a cost of planting
 3287 by about a \$1,000 from \$1,500 to \$2,500 per hectare.

3288
 3289 That is not insignificant because you have to carry this money forward until you
 3290 harvest, so the cost of capital compound over time.

3291
 3292 In Schedule 4, that's earthworks, there are additional requirements. Now we
 3293 whoever manages the earthworks, which is generally a forest management
 3294 company, needs to provide information on the estimated cut and fill volumes
 3295 down to each erosion susceptibility classification for that area. There was a
 3296 requirement to specify the designed rainfall event size in duration that was used
 3297 to design the sediment control measures. There are extensive slash management
 3298 conditions and of course permanent forestry is now included – but that has been
 3299 discussed previously, and I think that issue has been resolved.

3300 [02.45.05]
 3301 One issue that is concerning me is that the NES-CF in the [02.45.10] that we're
 3302 discussing was not permitted to show that it can improve environmental
 3303 outcomes, because Plan Change 1 became effective on the 3rd of November.
 3304 Since then there are consents required for all these forestry activities. I am a little
 3305 bit surprised that no evidence has been presented, for example on any impacts
 3306 or benefits of water quality or sedimentation.

3307
 3308 Maybe that takes more time and I can accept that for these effects to come
 3309 through, but there should have been some information presented I believe on
 3310 how many consents have been issued that would not have been required under
 3311 the NES, and how many of those have different conditions from those that are
 3312 in the NES-CF to make something of permitted activity.

3313
 3314 Also, what changes have been made in terms of the staffing levels and expertise
 3315 and the enforcement team, because that has been central to Mr Pepperell's and
 3316 Mr Reardon's evidence. I think those are some of the key issues that will make
 3317 a difference.

3318
 3319 I think at this point I would like to hand over to Mr Wyeth to talk about
 3320 stringency and then you will be followed by Ms Strang who will talk about some
 3321 of the practical implications.
 3322

3323 Wyeth: Good afternoon Commissioners. Nice to be in front of you today and sorry I
3324 can't be there in person.

3325
3326 As you said you've got my summary statement. My plan is just to take you
3327 through some of the key points in that, but firstly before I do that I just want to
3328 acknowledge the work of Mr Watson as the reporting officer who in my opinion
3329 has recommended a number of notable improvements to the commercial forestry
3330 rules through this process.

3331
3332 Secondly, in response to the rebuttal legal submissions from Council, I want to
3333 confirm that the four steps of a test outlined in my primary evidence wasn't
3334 intended to represent the applicable legal framework. Rather these tests in my
3335 opinion of good planning practice when proposing more stringent rules over the
3336 NES based on the hierarchy of instruments under the RMA and good planning
3337 practice.

3338
3339 Outstanding Issue 1 in my evidence, it relates to the evidence and justification
3340 for more stringent rules to give effect to the NPS-FM. The first point I really
3341 want to make here is that there is no dispute that reduction in sediment is
3342 required when target attribute states are not met and in my view this provides
3343 jurisdiction for stringent rules under Regulation 6(1)(a) of the NES.

3344
3345 But, the main issue here for my perspective is the evidence that commercial
3346 forestry activities are resulting in target attribute states not being met. My
3347 understanding is that there is no specific evidence or modelling on this, but rather
3348 the need for stringency is based on more general evidence of sediment
3349 discharges from forest activities, particularly during the window of vulnerability
3350 post harvesting; an equity argument that sediment generating activities should
3351 be treated in a similar way – which I will talk to and discuss further; and an
3352 assumption that the NES-FM requires it's above those currently in place.

3353
3354 In this respect I would have expected to see more specific evidence on the
3355 contribution of forestry activities to target attribute states not being met, but at
3356 the same time I recognise that there are some tensions with the clear directions
3357 in the NPS-FM, particularly those relating to the use of best available
3358 information.

3359
3360 The second outstanding issue in my statement relates to evidence to demonstrate
3361 the NES-CF is inadequate to achieve target attribute states and that the PC1
3362 commercial forestry rules are more effective and efficient to achieve those
3363 objectives. This is the kind of key point from my perspective.

3364
3365 In summary it's my understanding that from a science perspective it is uncertain
3366 whether the PC commercial forestry rules, or the NES will contribute to target
3367 attribute states being met, or that one will be more effective at reducing sediment
3368 than the other.

3369
3370 From a technical forestry perspective there is disputed evidence between Ms
3371 Strang and Mr Reardon as to the effectiveness of the NES and with a greater
3372 regulation will lead to a better environment to outcomes. Ms Strang will talk to
3373 this in more detail.

3374

3375 From a planning perspective it appears that the effectiveness of the PC forestry
3376 rules over then yes seems to be based on assumption that restricted discretionary
3377 resource consent process will lead to better environmental outcomes.

3378 [02.50.00]

3379 I can appreciate the perspective to some extent in giving Council more ability to
3380 request changes to management plans and impose consent conditions, however
3381 this is heavily reliant on staff having the capability to understand good forestry
3382 practices on the ground.

3383
3384 I also reiterate the evidence of Ms Strang that from her experience greater
3385 regulation doesn't lead to better environmental outcomes; and in my view from
3386 the evidence presented it's quite unclear what additional requirements or
3387 improvements will be made through this process.

3388
3389 In my opinion the PC approach to commercial forestry should be based on a
3390 more fine graded evaluation of where there are shortcomings in the NES that
3391 warrant more stringency or additional conditions, rather than an assumption that
3392 a restricted discretionary consent process will lead to better outcomes.

3393
3394 A good example of this in my opinion is the more specific requirements of
3395 management plans, or some of the more restricted requirements of the
3396 management plans being recommended by the reporting officer and the non-
3397 regulatory methods which I generally support.

3398
3399 The last point I want to make is an equity based argument around the approach
3400 for PC1 to reduce sediment from rural land use activities. I guess the point I want
3401 to make here is that if we accept an equity argument, all rural activities should
3402 be playing their part to reduce sediment, and I would still expect to see an effects
3403 based approach where the stringent requirement should apply to the activities
3404 that generate the most sediment.

3405
3406 However, PC1 appeared to take the opposite approach whereby a more stringent
3407 regime is proposed for commercial forestry compared to pastoral farming, and
3408 this is despite all experts seeming to agree that the later delivers the highest
3409 sediment load.

3410
3411 The response to this issue seemed to be that forestry has its own NES and there's
3412 a need to go further. In my opinion, that's not really an appropriate response.
3413 From an effects based perspective a more stringent approach should target the
3414 activities that generate the most sediment and that should apply regardless of
3415 what the starting point is.

3416
3417 In summary, the jurisdiction for more stringent rules for commercial forestry to
3418 give effect to the NPS-FM is not in dispute. The key issue in my opinion is the
3419 evidence to demonstrate that the NES is inadequate; and what is the most
3420 effective and efficient way to manage sediment discharges from commercial
3421 forestry when target attribute states are not being met.

3422
3423 On the one hand restricted discretionary consent regime as proposed through
3424 PC1 and on the other hand is the NES with non-regulatory support to improve
3425 compliance monitoring and additional requirements or conditions when there is
3426 evidence to support it.

3427
 3428 In my opinion the latter is likely to be more effective and efficient for the reasons
 3429 outlined in my evidence.
 3430
 3431 Strang: Thanks for the opportunity to speak. I guess you have read my evidence and you
 3432 can see where I fit in. I don't work for a company that operates in the region but
 3433 I am chair of the Environment Committee for the Forest Owners Association
 3434 and Farm Forestry Association. That's my connection.
 3435
 3436 Yvonne asked that I present evidence on behalf of the Farm Forestry
 3437 Association.
 3438
 3439 You will see in my original evidence I've been asked particularly to comment
 3440 on the evidence of Mr Reardon and Mr Pepperell, that have been used to justify
 3441 greater stringency in the two whitua.
 3442
 3443 This summary kind of focuses just on the key points from that, but I've also
 3444 looked at and commented on the recommended amendments to the provisions
 3445 in the rebuttal evidence.
 3446
 3447 The first issue I raised was the importance of compliance monitoring. In the
 3448 evidence of Mr Pepperell in particular, but also Mr Reardon, it indicates that
 3449 until recently the level of forestry compliance monitoring was being relatively
 3450 low; and furthermore it's been focused primarily on consented activities, which
 3451 was somewhat of a surprise to me.
 3452
 3453 Having been involved in the working group that developed the NES I know that
 3454 certainly wasn't the case. An issue that came up through the development was
 3455 the barriers to undertaking monitoring of permitted activities, so we specifically
 3456 included provisions in the NES to address that, and I have listed those below –
 3457 the requirements noted by the Councils, the requirements by management plans,
 3458 and the ability to charge for monitoring of permitted activities which I believe
 3459 was a first under the RMA.
 3460
 3461 The intent was to remove those barriers to certainly allow for more permitted
 3462 monitoring to take place. It therefore surprised me that a Regional Council
 3463 would prioritise their monitoring to consented forestry activities.
 3464 [02.55.02]
 3465 The forestry company that I work for manages operations in those five regions
 3466 – Northland, Auckland, Waikato, Bay of Plenty and Horizons. I've said with the
 3467 possible exception of Horizons because I'm just not fully sure and I haven't
 3468 asked them, but all of the other councils they do not differentiate between
 3469 consented and permitted activities.
 3470
 3471 We've had a forestry forum in the Bay of Plenty and the Waikato by chance in
 3472 the last week, and I specifically asked the question and they said no. They used
 3473 the notification of information for permitted activities in order to triage
 3474 operations based on the level of risk, and they prioritised the monitoring from
 3475 that and consented and permitted activities all go into the same bucket. It's the
 3476 higher risk activities that receive the high level of monitoring, and that's exactly
 3477 what the NES-CF tools were designed for.
 3478

3479 In my role as Environment Manager for a forestry company I've had a lot of I
3480 I guess experience in influencing good outcomes from harvesting and earthworks
3481 contractors. In my experience the most effective way to achieve compliance is
3482 to spend time in the field interacting with the staff on the ground, providing
3483 training, mentoring, monitoring performance and holding operators to account
3484 when standards are not being met – and that's by monitoring.

3485
3486 Part of the justification for additional regulation appears to stem from the
3487 Council increasing the level of monitoring and discovering non-compliances are
3488 occurring. In my view that's somewhat inevitable if contractors have not been
3489 monitored regularly in the past, particularly if they were not operating under the
3490 umbrella of a large forestry management company with people like myself
3491 undertaking the monitoring.

3492
3493 In my experience non-compliance with existing rules is very rarely resolved by
3494 simply writing more rules. I can't emphasise that enough.

3495
3496 To the contrary, for people operating on the ground, the more complex and
3497 lengthy the rules become it can actually have the opposite outcome that
3498 operations have trouble interpreting and understanding what's required.

3499
3500 In that respect the NES-CF and prior to that PF has been a significant
3501 improvement in this respect, just through having one consistent set of rules, even
3502 though some of them are quite complex in their wording. Contractors and
3503 operation staff you have the same set of rules for all operations and can gain an
3504 understanding of them.

3505
3506 So rather than writing more rules, in my experience mentoring and monitoring
3507 is critical to ensure compliance and improve environmental outcomes.

3508
3509 Then in my primary evidence I did address the comments from Mr Reardon, Mr
3510 Pepperell and Mr Watson on the shortcomings that they saw with the NES, that
3511 they used to justify greater stringency and I have dealt with in more detail of that
3512 evidence.

3513
3514 Key issues that were raised were no-compliances with existing rules in the NES
3515 – so that is activities that should have had resource consent but the consents
3516 haven't been sought, and also activities not meeting permitted activity
3517 regulations. I guess that's my point: the only thing that will resolve that is
3518 monitoring enforcement.

3519
3520 Inclusion of text in the regulations of the NES-CF, such as wherever practicable
3521 and where it is unsafe to do so, and also kind of related to that challenges of
3522 balancing the conflict between environmental impacts and ensuring the health
3523 and safety of workers. There are situations where you are having to balance those
3524 two requirements.

3525
3526 As stated in my evidence, I do not believe that any of these issues is related to
3527 whether an activity operates under the NES-CF or a resource consent. No matter
3528 the regulatory regime monitoring will still be required to ensure compliance.
3529 Operators will be restricted to what can be practically achieved, and ensuring

3530 the safety of workers will still be an overriding requirement. This simply reflects
3531 the nature of forestry.

3532
3533 Then two further specific issues with the NES were raised. There was a detailed
3534 one from Mr Reardon in relation to whether the contour lines should be 20
3535 metres as in the NES, or five metres. I agree with him that five metres is more
3536 common and I have explained that in my evidence why it was set at 20. It was
3537 just that was the information that was publically available at that time for small
3538 operations.

3539 Provided the Regional Council could make that contour information available in
3540 a user friendly format that does make sense. So I think that one is resolved.

3541
3542 The second issue is probably a more material issue: is around requiring resource
3543 consents is, is the inability for councils to reject a management plan that is
3544 submitted.

3545
3546 The NES requires management plans to be provided on request; but provided
3547 the plan meets all the requirements of the NES schedule it can't be turned down.

[03.00.05]

3548
3549 The first qualifier on that is that the plan must meet the very detailed
3550 requirements in the schedules, and if the plan is seriously flawed it is
3551 questionable whether that would be the case.

3552
3553 As Yvonne mentioned, those schedules have become even more specific and
3554 detailed in the NES-CF version.

3555
3556 So if the plan did meet the schedule and the Council still had concerns, they
3557 could certainly raise those concerns for the operator submitting the plan, and if
3558 it were me, I would certainly caution that operation – that you've got significant
3559 concerns and you're going to prioritise that site for immediate and ongoing
3560 monitoring.

3561
3562 If it really were that flawed they most certainly wouldn't be able to meet all of
3563 the permitted activity conditions in the NES. So it could be dealt with through
3564 enforcement.

3565
3566 Also to the contrary, Council staff aren't harvest planners, so it may well be that
3567 they're wrong in their assessment and provided the contractor does a good job
3568 and maintains compliance they should be able to proceed.

3569
3570 In the regions of which I operate, I am not aware of any of our submitted plans
3571 having been turned down by a council or requested to be changed. That may
3572 reflect that I work for a big company with a high standard, I don't know, but
3573 they haven't asked for changes.

3574
3575 But, we certainly do on the ground, when operations are underway, discuss
3576 issues with compliance officers, and on occasions kind of tweak things to get a
3577 better outcome. That's just part of how we work. It's part of a constructive
3578 working relationship with the Council and I think that approach has been
3579 valuable to both ourselves and the Council.

3580

3581 Of note, none of the issues raised in the evidence of Mr Reardon or Mr Pepperell
3582 relate to the activities of afforestation replanting or mechanical land preparation
3583 which are also proposed to be restricted to discretionary activities.
3584

3585 To get an understanding of the activity status in other regions, I knew the status
3586 of the regions in which we operated and some of our neighbouring regions, but
3587 I canvassed the environment committee and produced a table which was useful
3588 to me, so I included it as an appendix because I thought it might be useful to you
3589 to see what is happening around the country in other regions.
3590

3591 As you can see from the table afforestation replanting, mechanical land prep are
3592 almost universally permitted around the country. The main outliers in this table
3593 are understandably Gisborne, but also the Marlborough Sounds where they have
3594 more comprehensive rules fully overriding the NES.
3595

3596 Other cases they mostly have the NES-CF rules apply but may have an
3597 additional requirement – some of which relate to water shortage and those types
3598 of things. Localised issues.
3599

3600 I hope that's helpful.
3601

3602 In relation to the proposed changes in the rebuttal evidence, it does propose a
3603 number of key changes and I agree that these are beneficial. I agree with the
3604 removal of the duplication of the full NES schedules in the plan. I covered that
3605 in my original evidence. To me that didn't make sense, and so now it's a different
3606 approach where the schedules are referred to with additions.
3607

3608 I agree it makes sense removing the requirement for continuous cover for
3609 forestry to be consented, given the obvious benefits of afforestation to reduce
3610 sediment. That seems very sensible.
3611

3612 Then under the new definition of Forestry Management Plans, it does include
3613 some very detailed and in my view impractical environments that I think do need
3614 to be looked at.
3615

3616 This is just a practical one: the requirement in clause 3 to not only identify but
3617 also photograph potential erosion risk land. A harvest stage plantation forestry
3618 will obviously have full canopy cover, so you won't be able to get drone footage
3619 and often there will be a big understory. So just getting photographs in the
3620 understory of a pine forest at the scale required is going to be tricky.
3621

3622 The new clause 4 appears to require a full detailed geological assessment
3623 potentially by a specialised geo technical engineer to identify erosion features at
3624 the required scale. I'm not sure if that was the intent, but it certainly goes well
3625 beyond what we would be required to do in a harvest plan in any other region.
3626

3627 Then the final one is the requirement in clause 5 to specify management
3628 strategies or practices for potential erosion prone land that will be implemented
3629 the manage the risk of sediment discharge, so that it is no greater than that
3630 expected from commercial forestry on land that is not potential erosion risk land.
3631

[03.05.04]

3632 So it's basically taken erodible hill country and harvesting in such a way that it
3633 replicates flatter low erosion prone country and I just do not know if that's (a)
3634 practically achievable, or (b) how you would demonstrate it for any land use.
3635

3636 That was my view.
3637

3638 Then the final one was clarification. It's that new explanatory text above the two
3639 rules, WH.20 and P.R19 about how the water quality monitoring results are
3640 proposed to feed into the consent status. It's now saying via publishing of water
3641 quality monitoring reports periodically, which I believe is going to be around
3642 every five years. So that's obviously a very significant improvement as
3643 compared to the activity status. When I first read the proposal I imagined it could
3644 change with every round of monthly monitoring. If the water quality was close
3645 to the TAS and you're bouncing around above and below your activity status
3646 would be doing the same. So now it would just be doing it every five years or
3647 so, but that is still very problematic in practice. You could imagine operations
3648 could be underway in a forest where the activity is permitted and then the new
3649 report is published and suddenly all those activities require resource consent;
3650 and so what do you then do with those harvesting contractors that are operating
3651 because it can take several months to prepare a consent application and get the
3652 consent granted.
3653

3654 I just don't believe that the industry could operate on such an uncertain regime.
3655

3656 By comparison when the NES-CF changes came in we were given a one year
3657 lead-in time for example. You just can't have operations starting and stopping
3658 like that.
3659

3660 I'm personally not aware of any other reason that ties forestry activity status to
3661 live water quality monitoring. I'm sure they don't. I'm not sure if there's any
3662 activities in other regions that are tied to live water quality monitoring results,
3663 but I could be wrong. Activity state is actually evolving and changing over time,
3664 as water quality changes.
3665

3666 The final comment was in relation to the consents provided in Appendix 3, to
3667 Shannon Watson's evidence. I assume you read those. There were four or five
3668 resource consents. I guess these are all consents for higher risk Electrical Safety
3669 Certificate zones. They all represent consents that are required under the NES.
3670

3671 I guess what struck me reading through them was that there is very little
3672 difference between the consents. There's a lot of duplication of the conditions
3673 and many of the conditions when you read them are just slightly reworded
3674 versions of regulations in the NES – the majority were. They were probably
3675 more clearly worded than NES because that was drafted by lawyers in the PCO
3676 office, but they have the same requirements.
3677

3678 So given the level of duplication I just question whether it's not possible for the
3679 Regional Council to identify. If they believe there are shortcomings in the NES
3680 that need to be filled, to do what other regions have done and write some
3681 additional permitted activity conditions that sit over and above the NES – to use
3682 a similar approach to the likes of Horizons have done with SMAs. That would
3683 be a far less bureaucratic process.

3684
 3685 There were no examples of afforestation replanting or mechanical land
 3686 preparation consents, but I would anticipate they would very quickly become
 3687 duplications of the same sets of conditions, and they're very straight forward
 3688 and low risk activities. It would be difficult in my view to write too many more
 3689 material conditions over and above what's already in the NES.

3690
 3691 I guess in conclusion my main impression from review of the original evidence
 3692 was that issues with compliance in the region have stemmed largely from the
 3693 lack of routine compliance monitoring of forestry activities, and in particular
 3694 permitted activities. The NES provides the Council with the necessary tool to
 3695 carry out that monitoring, which if implemented would certainly raise the level
 3696 of compliance.

3697
 3698 I remain of the opinion that the evidence provided does not justify overriding
 3699 the NES-CF in requiring a resource consent for all of the listed plantation
 3700 forestry activities.

3701
 3702 The proposed approach would make PC1 more stringent than almost any
 3703 regional plan in the country with the exception of Gisborne and the Marlborough
 3704 Sounds. This is particularly the case for afforestation, replanting and mechanical
 3705 land preparation which are very low risk activities and almost universally
 3706 permitted.

3707
 3708 In my view, the more effective use of the Council's resources would be to
 3709 increase engagement with the industry, implementing triaging system for
 3710 monitoring based on risk including both permitted and consented activities;
 3711 upskill Council monitoring staff; and increase the level of monitoring of forestry
 3712 activities across the board.

3713 [03.10.10]

3714 Thank you.

3715
 3716 Chair: Thanks very much. We will open up to questions from the Panel.

3717
 3718 Guttke: You may want to ask questions now, it's up to you.

3719
 3720 Chair: I'm just conscious our next speaker is scheduled for about seven minute's time.
 3721 Is there anything that you're really keen to talk to in the slides?

3722
 3723 Guttke: Yes there are some things that are really important. I can skip over some others.
 3724 It will take a little bit of time.

3725
 3726 One of the reasons for more stringency has been Mr Reardon's statement that
 3727 we can expect a 40 percent increase in harvesting. That was challenged by Ms
 3728 Strang in her evidence. It was neither addressed nor refuted.

3729
 3730 I did a little bit of analysis and work to try and understand how we arrived at
 3731 that conclusion. In the recent statistic in New Zealand called the NEFD, which
 3732 is a statistic on the area in exotic forest in New Zealand down to a regional level
 3733 and it shows for every five year grouping how many trees and hectares are in
 3734 this kind of compartment.

3735

3736 I looked at the numbers for Porirua City. Let me also say that's a Class 1 statistic,
3737 or geo 1 statistic, so that's the most accurate class of statistics we have in New
3738 Zealand. In the age classes that Mr Reardon used, the age from 26 to 40 years,
3739 for Porirua that statistic shows a total of 636 hectares.

3740
3741 Mr Reardon arrived at a number of 864 and he updated that on Friday, and I
3742 didn't have time to update my slide to 960. That's quite a big difference. The
3743 key difference between the two methods is Mr Reardon looked at satellite
3744 imagery. Satellite imagery is very accurate in determining the size and how
3745 many hectares are in forest, but it cannot differential whether that forest was
3746 planted with the intention of harvesting or whether it's permanent forest –
3747 continuous canopy forest it's called now.

3748
3749 Whereas the NEFD the statistic only captures information on forest blocks that
3750 have the intention of how they were planted was the intention of harvesting.

3751
3752 There is clearly a difference here and some of the difference will be due to
3753 talking with Mr Reardon including some of these permanent forests.

3754
3755 There is another key flaw I think in his analysis. I circled in the middle there the
3756 333 hectares that in the 31-35 year bracket. Mr Reardon said the last five years
3757 we harvested 600 hectares. These trees should have been harvested in the last
3758 five years, because that's the most economical time to harvest. So if you wind
3759 the clock back five years, he will have predicted we have 500 we have harvested,
3760 plus the 333 that for some reason were not harvested, and even the next 138
3761 hectares would have been in his fifteen year projection horizon. So that is more
3762 than 900 hectares. But, in reality that's what he would have calculated using his
3763 methodology. In reality we only harvested 500.

3764
3765 Why do we have this difference?

3766 [03.15.00]

3767 Well, sometimes harvest is a little bit slower than expected and give a bit of an
3768 overrun, and many people just decide not to harvest any more.

3769
3770 I have two direct neighbours in my block. One has 25 hectares and they were
3771 planted with the intention of harvesting. He has decided not ever to harvest there
3772 now in the 30 plus age bracket.

3773
3774 The next neighbour has seven hectares and they are just too uneconomic to be
3775 harvested. Can't be harvested. They are not in the ETS.

3776
3777 And I have 12 hectares that I have decided not to harvest because I make more
3778 money from selling the carbon credit that I generate, rather than from harvesting.
3779 So more and more people are doing that because the economics just don't stack
3780 up.

3781
3782 The next slide is taken straight from Mr Blyth's evidence. It shows the
3783 geographical area of the two whaitua. It is 131,000 hectares, or 132,000 hectares.

3784
3785 The area that does not require consent because the target attribute state has been
3786 met is 36,000, so the area where we need consent is calculated at 73 percent. Mr

3787 Watson questioned that but he didn't provide any explanation, so I think I will
3788 stick to the 73 percent.

3789
3790 If we assume that forestry is evenly distributed across the catchments then that
3791 means for three-quarters of all forestry activities consent will be required, and
3792 that's quite a lot.

3793
3794 There are big economic consequences of these consenting costs. I did a little
3795 survey of six forestry companies. I asked for the lowest cost of a consent and the
3796 highest cost of a consent. I asked for the total costs - Council costs, internal costs
3797 and external costs to these companies.

3798
3799 The lowest cost average was \$8,667 and the highest cost average was \$41,400.

3800
3801 I then did some modelling based on a ten hectare forest – a \$1,000 in rates, \$500
3802 insurance, \$800 per annum for forest management. I used the harvesting income
3803 of \$20,000 per hectare at age 27, land at no cost, and I didn't include the ETS
3804 because two-thirds of all forests are not in the ETS, and there were other issues
3805 with ETS.

3806
3807 These are really best case scenario assumptions - \$20,000 in income are very,
3808 very high. When I harvested 40 hectares about four years ago I got \$16,000 and
3809 since then log prices have declined on average and there is no likelihood that
3810 they will recover.

3811
3812 The interim rate of return that I calculated under the NES-PF is 4.5 percent
3813 roughly. When the NES-CF came in it dropped to 4.01 percent and that is the
3814 result of these increased planting and replanting requirements.

3815
3816 With Plan Change 1 where I need resource consents it would be 3.02 percent. I
3817 used \$8,000 per consent here. So at three percent you will ask who would invest
3818 in forestry and I can't give you an answer, because the only reason why people
3819 plant trees now are either because you have to – it's a pre '90 forest and you have
3820 to replant, or you have scale which means you have at least several hundred
3821 hectares and you manage to register the land in the Emissions Trading Scheme.

3822
3823 The Emissions Trading Scheme can make a difference. Again there are some
3824 downsides to that as well.

3825
3826 The last key point is probably the fact that Mr Watson was saying in his rebuttal
3827 that forestry owners only expected to provide information that they would have
3828 needed to provide anyway.

3829 [03.20.00]

3830 I know you have attempted that, and you have done a good job, but unfortunately
3831 there is some real tension here because Mr Pepperell and other people say we
3832 need to be able to have more information and we need to be able to make changes
3833 to the information that has been provided in terms of management plans. That
3834 means there is a lot more information that is required and then there will be some
3835 toing and froing. There is some real risks that costs will spiral and become
3836 unmanageable – especially when you have several experts involved in different
3837 subject matters and the experts don't agree and so on.

3838

3839 I have listed here some of the outstanding additional requirements that are
3840 required. It's quite a list.

3841
3842 The one that concerns me most is the geo technical assessment that's required
3843 when even one pixel – and that's a 5x5 metre area has been met as potentially
3844 erosion prone land.

3845
3846 That clause also covers agency in land – so land that is next to the site where I
3847 am going to harvest say. That could be on my neighbour's block, because most
3848 people want to harvest up to their boundary. How is that going to work?

3849
3850 This is taken from Council maps. It shows part of the Porirua catchment. You
3851 see two areas circled in red, two pixels and they might be 300 metres apart. You
3852 have a lot of understory. You have mature trees. You can't really see from one
3853 side to the other. So my reading of the condition here is that someone would
3854 physically need to make an assessment of each of these sites.

3855
3856 If you look at some of the other forestry blocks where you have a myriad of
3857 these azure blue pixels. I have no idea what's required here. Does every one of
3858 these clearly geographically disconnected pixels has to be looked at, or can
3859 someone just make a general assessment and how would that work? Generally
3860 geo technical assessments are for a particular site and you need to do some
3861 drilling.

3862
3863 I think this is completely unpractical and there is no way of justification for this
3864 mapping either, because under the NES there is an erosion susceptibility
3865 classification and the main reason that was given in the section 32 assessment
3866 was that that assessment is not suitable for our region because it shows almost
3867 no areas that have a high risk of erosion, and so counter-commissioned and it's
3868 on experts to come up with a classification that was relative to other areas – not
3869 erosion that was a risk in absolute terms.

3870
3871 I think perhaps I have overlooked one item.

3872
3873 Chair: Sorry to interrupt Mr Guttke. Unfortunately we have gone over. I might just see
3874 if anyone has any question for you or Mr Wyeth on the screen.

3875
3876 I am interested in knowing if you have given some more thought to the one
3877 proposal is tied to permitted activity standards. Have you given some thought
3878 maybe Mr Wyeth to what the drafting of that might look like? I think you've
3879 suggested Horizon provisions might provide a starting point?

3880
3881 Strang: That was me. Jerome is the planning expert. Horizons is an example – I referred
3882 to it in my previous evidence. The NES provisions apply with the addition of
3883 these requirements. In their case it relates to NSA protection. The Council staff
3884 really felt that there was some particularly important clause to include like for
3885 example compliance with the industry practice guides. You could make that an
3886 additional permitted activity condition, and that would be a lot less resource
3887 required to manage the process and putting everything into restricted
3888 discretionary.

3889

- 3890 Wyeth: I guess just further to that, that was something that I supported through my
 3891 evidence, was adding in those additional requirements for management plans.
 3892 [03.25.05]
 3893 The first was around that extra level of detail around contour mapping, but also
 3894 identifying scheduled sites as per in the Wellington region. I think even bringing
 3895 in what Sally said there, around the use of best practice guidance, they seem like
 3896 good practical steps to address areas of concern about requiring restricted
 3897 discretionary consent for these activities.
 3898
- 3899 Chair: Thank you Mr Wyeth. We were talking about this in the break actually and we
 3900 were wondering if a plan user would have enough certainty and also a Council
 3901 Enforcement Officer, enough certainty that the permitted standards have been
 3902 met. If you're just really cross-referring to guidelines.
 3903
- 3904 Strang: The guidelines weren't intended to be regulations, but I am just noting that in
 3905 the resource consents they're being referred to as the conditions. That's why I
 3906 raised that one.
 3907
 3908 In my view the guidelines are a way of demonstrating best practice, so that when
 3909 people are judging related conditions in the NES to that topic, you look at the
 3910 guidelines and then you can demonstrate that you are meeting best practice.
 3911 They dovetail.
 3912
- 3913 Wratt: I think this is a question for you Ms Strang. You noted the NES-CF incorporated
 3914 no requirements to notify the Council, supply management plans and charges
 3915 for monitoring; and that then created a much better position in terms of holding
 3916 forestry owners to account.
 3917
 3918 One of the questions that I've heard and have in my mind is under the NES-CF
 3919 how is the forest owner held to account? How can the Council hold someone to
 3920 account under the NES-CF?
 3921
- 3922 Strang: Just exactly the same way as for a resource consent – undertaking monitoring,
 3923 identifying if it's in compliance, if it's not in compliance, giving you a non-
 3924 complying rating, and give you an opportunity to fix it. But, if it's beyond that
 3925 abatement notice enforcement orders and prosecutions. It's exactly the same.
 3926
 3927 I don't in my mind differentiate between operating under the NES regulations
 3928 or a resource consent when we undertake our activities. It's just a set of rules you
 3929 need to comply with.
 3930
 3931 I don't believe our compliance officers actually do. They just audit to the rules.
 3932
- 3933 Guttke: I have an example. When I harvested the forest manager was audited. There was
 3934 an abatement notice issued. It was withdrawn later on because the compliance
 3935 officer did not know that using a ford was a permitted activity under the NES at
 3936 the time. There was monitoring and there was an abatement notice issued, which
 3937 was withdrawn later on.
 3938
- 3939 Strang: Yeah, and I didn't see in the evidence any examples where there was something
 3940 that was non-compliant, but there was no NES-CF regulation that enabled the
 3941 Council to take action. There were no examples of that. They were more

- 3942 examples of just practical issues. As I said balancing safety and environment
 3943 outcomes, and that type of thing.
 3944
- 3945 McGarry: One of the things that we heard about the ability of a resource consent is the
 3946 ability to manage through the window of vulnerability after harvest, but that's
 3947 not enabled by the NES. For an example, they said a lot of woodlots the
 3948 landowner may choose not to replant and then they kind of just walk away from
 3949 the land and there's no ability there to make sure that the run-off from the site
 3950 continues to be go through sediment traps, or that the sediment traps are
 3951 maintained over time.
 3952
- 3953 I am interested in your view on how the Council would manage that period of
 3954 post-harvest.
 3955
- 3956 Strang: Jerome you're possibly best to comment on that. As far as I understand we are
 3957 operating under permitted activity in the Eastern Bay of Plenty which is orange
 3958 zoned, so higher risk than in the main what you're dealing with.
 3959
- 3960 I've always thought the period after harvest is part of the harvesting activity.
 3961 We're still monitored and if there's something non-compliant it would be raised.
 3962 It's still a forestry site. Jerome I don't know if you've got any comments on that.
 3963 [03.30.00]
 3964 I don't think it's different to a resource consent.
 3965
- 3966 Wyeth: The concern here is that following harvest they're just sort of walking away,
 3967 leaving and not replanting.
 3968
- 3969 Strang: I think they're saying following harvesting has finished and that's the end of it.
 3970 Whereas I would have thought that's an ongoing...
 3971
- 3972 Wyeth: Part of your harvest plan.
 3973
- 3974 Strang: Part of your harvesting.
 3975
- 3976 Wyeth: That's again where you might want to look at additional requirements to the
 3977 harvest plan requirements, rather than necessarily requiring consent for that
 3978 activity due to that potential risk.
 3979
- 3980 Strang: And, if the consent has people walking away and not replanting, I don't think
 3981 you resolve that by putting barriers in place of replanting do you?
 3982
- 3983 McGarry: That wasn't the point. The point was being able to manage sediment control
 3984 from the site in the window of vulnerability, which could be up to an eight year
 3985 if it wasn't replanted. It was extending that period and how management of the
 3986 site would need to carry on.
 3987
- 3988 Strang: As far as I understand, the activity of harvesting, the requirements don't stop at
 3989 the day the harvesting contractor moved out. You're still accountable. That's my
 3990 understanding of it.
 3991

- 3992 Then the window of vulnerability you should probably get advice from a
 3993 geologist but that is more related to very erosion prone geology. Gisborne
 3994 mudstone – in the grey whacky country it's not as much of an issue.
 3995
- 3996 Chair: Thank you. I think we could continue the discussion for much longer but I am
 3997 really sorry we do have Winstone Aggregates who are waiting. What you have
 3998 presented has been very useful and very comprehensive.
 3999
- 4000 I think Mr Watson wanted to say something.
 4001
- 4002 Watson: Just a couple of points. I will try and cover them off really quickly.
 4003
 4004 In terms of intent around this concern around geo technical kind of evidence or
 4005 expertise required as part of the forestry management plan process, that
 4006 definitely wasn't the expectation or the intent. It's just a simple kind of ground-
 4007 truthing exercise which I understand is probably something that should be
 4008 happening anyway as part of the harvest plan detail planning process; and it's
 4009 just kind of providing evidence that someone has visited the site. They've had a
 4010 look at what's there and are there any kind of areas of higher risk than others,
 4011 and what's the approach to manage those areas of higher risk? That was the
 4012 intent.
 4013
 4014 Then I guess in terms of the contrast to other regions, and consent requirements
 4015 and planned rules in other regions, there's a big timing issue here that we have
 4016 to appreciate. A lot of those regional plans being prepared prior to the NES. PC1
 4017 is the only plan change that's going through under the auspices of the NPS-FM
 4018 2020 and having to give effect to TAS. None of the other regional plans have
 4019 had to go through that process.
 4020
 4021 We have to be a little bit careful because we are not comparing apples with
 4022 apples here. Thank you.
 4023
- 4024 Chair: Thank you very much.
 4025
- 4026 Strang: Thank you.
 4027
- 4028 Chair: Is it Mr Horrell for Winstone Aggregates. Kia ora Mr Horrell. Thanks for your
 4029 patience. Sorry to keep you waiting. I hope you're not under any time pressures.
 4030
- 4031 Horrell: No I'm not. I appreciate having the last slot of the day. It was a risk.
 4032
- 4033 Chair: We have your speaking notes thank you. You acknowledge in there that a lot of
 4034 the relief that Winstone was seeking has now been supported by the officers.
 4035 Horrell: I do have some slightly updated versions. I hope you don't mind. I've printed
 4036 them off.
 4037
- 4038 Chair: Add them to our paper, that's fine.
 4039
- 4040 Horrell: They're mainly minor changes. I hadn't picked up that the rebuttal evidence had
 4041 included the updated provisions. I just wanted to account for those in my
 4042 suggested changes to ensure the Panel are looking to the most up-to-date.
 4043

[03.35.00]

- 4044 Chair: Thank you. Just checking also, would you like us to run through some
4045 introductions? Were you here when we...
4046
- 4047 Horrell: Yes if you could that would be appreciated.
4048
- 4049 Chair: Sure no problem.
4050
- 4051 Dhilum Nightingale, Barrister based in Wellington and chairing both panels.
4052
- 4053 McGarry: Hi I'm Sharon McGarry. I'm an Independent Hearings Commissioner based in
4054 Ōtautahi, Christchurch.
4055
- 4056 Kake: Kia ora. Puawai Kake. Independent Planner and Commissioner from Northland,
4057 Tai Tokerau.
4058
- 4059 Wratt: Kia ora. Gillian Wratt, Independent Commissioner based in Whakatū, Nelson.
4060
- 4061 Stevenson: Kia ora, Sarah Stevenson, Independent Planner and Commissioner based here in
4062 Te Whanganui-a-Tara, Wellington.
4063
- 4064 Horrell: Fantastic. I am Charles Horrell, a planner at Boffa Miskell and am here today to
4065 represent Winstone Aggregates. I might just take you through the speaking
4066 notes. I will start at 2.
4067
- 4068 To begin, I would like to acknowledge the Section 42A Report Authors and their
4069 efforts in meaningfully responding to matters raised in Winstone's submission
4070 and my evidence.
4071
- 4072 After reviewing the latest rebuttal evidence from the Reporting Officers, I note
4073 that many of the areas that remained in contention in preparing my evidence in
4074 chief have now been resolved.
4075
- 4076 Therefore, to assist the Panels today, I will largely limit my comments to the
4077 main outstanding matters in contention.
4078
- 4079 Starting with the Freshwater Planning Process with the allocation of provisions,
4080 Winstone had sought the provisions of Plan Change 1 are appropriately
4081 allocated, with the Freshwater Planning Process (FPP) only used where the
4082 provision meets the legal tests.
4083
- 4084 In my evidence in chief, I have considered the allocation of provisions for this
4085 hearing stream and largely agreed with the proposed allocation, with the
4086 exception of provisions relating to highest erosion risk land (woody vegetation).
4087
- 4088 I consider that those should be reallocated to the Part 1 Schedule 1 (P1S1)
4089 Process.
4090
- 4091 Mr Watson has considered my evidence, and his view remains that the allocation
4092 of those provisions is appropriate as Freshwater Planning Process. While I
4093 acknowledge Mr Watson's view, I note that no further specific consideration of
4094 the tests for allocation of those provisions to Freshwater Process has been
4095 undertaken.

4096
4097 In the absence of further reasons why the provisions remain FPP (including
4098 considering the legal tests set out in my evidence in chief) I retain my position
4099 that the provisions should be allocated to a P1S1 process for the reasons set out
4100 in paragraphs 5.5 - 5.11 of my evidence in chief.

4101
4102 Notwithstanding the difference in opinion for the allocation of the notified
4103 provisions, it would be useful for Mr Watson to further clarify his position on
4104 the allocation of the provisions as recommended.

4105
4106 As noted in my evidence in chief, if those provisions are now ‘coastal
4107 provisions’ – being that they relate to a potential discharge to coastal water –
4108 they must be allocated to the P1S1 process.

4109
4110 I may have interpreted Mr Watson’s response incorrectly, but it would appear
4111 that he agrees that the updates to Rules WH.R17 to WH.R19, and then also the
4112 Porirua Whaitua are similar rules. It means that they are now ‘coastal provisions’
4113 (given they adopt similar wording to R104 – R107 of the NRP). This being the
4114 case, it’s unclear why they would not be reallocated to a P1S1 process.

4115
4116 I will just clarify that there could be a difference in the allocation of the
4117 provisions as notified to “as recommend”, as notified they may be freshwater
4118 but if the Panel were to adopt the recommended amendments that may result in
4119 a consequential reallocation.

4120
4121 Moving into definitions: Winstone’s have sought that exemptions are included
4122 in the definition of ‘earthworks’ similar to what is included in the operative
4123 Natural Resources Plan.

4124
4125 In my evidence in chief, I supported Ms Vivian’s recommendation to include
4126 those relevant exemptions from the Operative Earthworks definition as a new
4127 permitted rule WH.R23A. However, as noted that the drafting indicated that all
4128 exemptions are as conjunctive – that being that they were ‘ands’ as opposed to
4129 ‘ors’. I see that Ms Vivian has now largely addressed this.

4130
4131 [03.40.00] While I would suggest a further update to clause (b) just to have all of those as
4132 ‘ors’, I consider the recommended changes to the rule ensures it operates as
4133 intended and would not be frustrated.

4134 Winstone had sought the inclusion of ‘significant mineral resources’ - a defined
4135 term derived from the Wellington Regional Policy Statement. In my evidence in
4136 chief, I noted that Ms Vivian had indicated rejection of this submission point. In
4137 Ms Vivian’s rebuttal evidence she clarified that the inclusion was rejected as it
4138 already exists in the Operative Natural Resources Plan.

4139
4140 Provided that definition can be relied upon for the other consequential relief
4141 Winstone’s (and that largely relates to stormwater provisions), I am satisfied that
4142 this matter does not need to be pursued further.

4143
4144 Policy WH.P25 and P.P24 which is “Managing rural land use,” Winstone had
4145 sought changes to those Policies to ensure reference to ‘rural land uses’ did not
4146 capture quarrying activities.

4147

4148 In my evidence in chief, I have supported Mr Willis's change to the Policies to
4149 include reference to 'primary production' rather than 'rural land uses' in
4150 response to Winstone's submission points.

4151
4152 Mr Willis has helpfully clarified that those policies are not intended to capture
4153 quarrying activities. However, I note that the definition of primary production
4154 would still inadvertently capture quarrying activities as a form of primary
4155 production.

4156
4157 To avoid misinterpretation and to ensure the policy meets its intent, I suggest
4158 that the reference is updated to 'land based primary production' – a term derived
4159 from the National Policy Statement for highly productive land and excludes
4160 quarrying activities.

4161
4162 I have shown those changes below in red, which is just at the bottom of
4163 paragraph 9.

4164
4165 Moving into Policies WH.P28 and P.P27, which is "Management of
4166 Earthworks", Winstone had sought changes to the policy direction to remove the
4167 winter earthworks close-down period requirement, noting the practical
4168 constraints for quarrying which requires year round earthworks.

4169
4170 In my evidence in chief, I have largely supported Ms Vivian's recommended
4171 changes to those Policies, and supported her recommended deletion of Policies
4172 WH.P31 and P.P29, which is the winter earthworks close-down policy.

4173
4174 However, I did seek that the inclusion of clause (e) in policies WH.P29 and
4175 P.P27 which relates to the winter earthworks close-down include an exemption
4176 for quarrying activities.

4177
4178 Ms Vivian has responded to this in her rebuttal evidence and agreed to the
4179 exemption.

4180
4181 I support the changes indicated by Ms Vivian in her rebuttal evidence, with the
4182 minor change to replace the 'and' with an 'or' just ensure that those two
4183 exemptions are differentiated from each other. I have shown that change again
4184 just with Ms Vivian's changes in green and my changes in red.

4185
4186 Policies WH.P30 and P.P28 "Discharge standard for earthworks" - Winstone
4187 had sought changes to those policies to remove some of the prescription in the
4188 rule and to allow for practical implementation.

4189
4190 In my evidence in chief, I have largely supported the changes recommended by
4191 Ms Vivian but had sought amendments to the policies to include reference to
4192 'suitably trained' for the competency of the individual monitoring sediment
4193 discharges in clause (c), and general changes to the chapeau of the policy to
4194 ensure it reads like a policy rather than a consent condition.

4195
4196 Ms Vivian has responded in her rebuttal evidence and recommended changes to
4197 satisfy those matters.

4198

4199 I therefore support the amended policies as drafted and consider it appropriately
4200 responds to Winstone’s relief.
4201
4202 To Rules WH.R24 and P.R23 which I s the earthworks restricted discretionary
4203 activity rule, Winstone’s had sought changed to those rules to remove the
4204 limitation on earthworks undertaken during the winter months.
4205
4206 In my evidence in chief, I have sought amendments to those rules to provide for
4207 Winstone’s relief by allowing an exemption to the winter earthworks period
4208 where the earthworks are associated with quarrying activities.
4209 [03.45.05]
4210 Those amendments included an exemption to both condition (b) and matter of
4211 discretion (8) – both of those rules.
4212
4213 Ms Vivian has considered those changes in her rebuttal evidence and agrees.
4214 While she has not provided the updated wording (but I think she actually did,
4215 but I hadn’t picked that up at the time), I understand that her intent is to adopt
4216 the similar wording proposed in my evidence.
4217
4218 To assist Ms Vivian and the Panel, I have shown suggested changes to condition
4219 (b) and matter of discretion (8) for those rules below which would capture
4220 Winstone’s relief, while ensuring consistency with the exemption proposed by
4221 Ms Vivian. So again it's a minor change to that (b) to have an ‘or’ and then
4222 ‘matter of discretion 8 to have similar wording that would still align with the
4223 condition.
4224
4225 Lastly, I would just like to note my ongoing support for recommendations by
4226 the Reporting Officers in their s42A Reports and rebuttal evidence that respond
4227 to Winstone’s relief, including: the deletion of the winter earthworks shutdown
4228 policies; the change to the activity status from non-complying to discretionary
4229 in Rules WH.R25 and P.R24; and the amendments to the Erosion Prone Land
4230 Rules to reflect the similar rules in the Operative Natural Resources Plan.
4231
4232 I would be happy to answer any questions the Panel.
4233 Stevenson: Thank you Mr Horrell. Very clear and very well stepped through. It has
4234 prompted a question in my mind probably more to Ms Vivian, because as you
4235 helpfully took us through the detailed wording of the exception for quarrying
4236 activities and renewable energy production etc. I am just wondering every place
4237 that phrase is in your amendment, I think there might be missing ‘or’ because it
4238 reads, at least in Mr Horrell’s evidence at the end of paragraph 10 – “except
4239 where the earthworks require for quarrying activities or the use, development
4240 and operation maintenance.” Should there be an ‘or’ between operation and
4241 maintenance?
4242
4243 Sorry, it's all the important things. Words are important.
4244
4245 Vivian: Yes.
4246
4247 Stevenson: Just so that it's not inadvertently requiring people to do all of them. Thank you.
4248

- 4249 Wratt: Just a quick one and it's another detail. I do notice that when you refer to
4250 quarrying you refer to quarrying activities, whereas in Ms Vivian's drafting she
4251 doesn't. Do you see that as significant, as important?
4252
- 4253 Horrell: I do. Yes, I guess this may come through in a separate hearing stream, but
4254 consequentially we will be seeking an addition of the definition of 'quarrying
4255 activities' which does make it clear what those activities are.
4256
4257 Quarrying at this stage, while it may ensure that we are still capturing that, it
4258 doesn't make it as clear as I guess the defined term which is from the National
4259 Planning Standards.
4260
- 4261 Kake: I'm just interested in your commentary around using the definition under the
4262 NPS for highly productive land and in particular those policies. The difficulty
4263 that we have to deal with I suppose and the Council, and everyone, is the
4264 different level of activities that impact on water quality.
4265
4266 The intent of the NPS for highly productive land is quite specific.
4267
- 4268 Horrell: Yes.
4269
- 4270 Kake: I'm interested in your view around the change in land use I suppose, and where
4271 intensification might occur in the rural zone.
4272 [03.50.05]
4273 I just wonder if you could just elaborate on that a little bit.
4274
- 4275 Horrell: I guess I'm not wedded to that wording. If there's another way of removing
4276 'quarrying' from that, that would be fine I guess. I guess the definition though
4277 would still capture all of the intended land uses, so it would capture the pastoral
4278 farming, forestry, horticulture and viticulture – it would be captured in the land-
4279 base.
4280
4281 I hadn't requested a consequential definition of land-based, just given I didn't
4282 think we had scope for that, given we didn't propose it. So, at this stage it would
4283 have to just be the reference to land-base, which would be enough for us to feel
4284 confident that we are not in there, given that is an understood term.
4285
4286 The alternative and I appreciate may be a little bit messy in the policy, 'primary
4287 production excluding quarrying activities'.
4288
- 4289 Chair: Just on Policy P.29 and P.27, we have been discussing as a result of another
4290 submission, amending the wording in (e) to focus on minimising adverse effects
4291 resulting from works, rather than minimising the works themselves.
4292
4293 I know that the officer is supporting an exemption for quarrying activities, but I
4294 am now sort of thinking in terms of best practice if that did change to an adverse
4295 effects provision we wouldn't want the quarrying activities to be discouraged
4296 from managing adverse effects during that 1 June to 30 September period.
4297
4298 I'm just wondering Ms Vivian, if that clause does change, if a better approach
4299 might be while everything in (a) to (d) would continue to apply to quarrying
4300 activities and anything else that goes in there.

- 4301
4302 I think the key point is we don't want them to be exempt from having to manage
4303 adverse effects during that winter close-down period.
4304
- 4305 Vivian: I do think that can be managed through the conditions of consent. I think that's
4306 something that would still be considered during the processing of that consent.
4307
- 4308 The matter of discretion duration, staging and timing of works would still apply.
4309 I know that when renewals or for new quarries go through a consenting process
4310 there's a pretty comprehensive Erosion Sediment Control Plan that needs to be
4311 provided during processing, or post consenting – it's much more comprehensive
4312 than a standard earthworks site, because of the fact that it's not a temporary
4313 worksite and it's consistently operating all year around.
4314
- 4315 Chair: Thank you. It might just need a bit more thought to the policy support for that
4316 RD activity that's all.
4317
- 4318 I know you might be thinking an exemption has been accepted, so the clause
4319 doesn't apply. I don't know if you have any comments on that.
4320
- 4321 Horrell: I would agree with Ms Vivian. Quarrying activities given they're established
4322 they put in place quite robust erosion sediment control measures year round. It
4323 doesn't change because of a month. They're always looking to minimise those
4324 adverse effects.
4325
- 4326 So while that reference might help, I guess our concern is that it might further
4327 emphasise needing to do more in winter which may not be practical.
4328 [03.55.00]
- 4329 I would agree if there was another way of referencing that. That may be
4330 achievable but I suppose the wording, if it was to minimise adverse effects
4331 during that period, it does still elevate that period as quarrying has to do more,
4332 which may not be practical to do so.
- 4333 Chair: The last one from me was just about the categorisation of provisions. Mr
4334 Watson, can you confirm the point that Mr Horrell makes about the
4335 categorisation of rules R.17 to R.19? I think if I remember rightly, your rebuttal
4336 evidence accepts that a couple of those rules that are cross-referred to in the
4337 operative plan are coastal.
4338
- 4339 Can you just explain what that means then for that suite, R.17 to R.19?
4340
- 4341 Watson: I probably need to confer with Ms Anderson around this, but my understanding
4342 was that the allocation of provisions is based on how they were notified. They
4343 were freshwater based rules as they were notified. They were very clearly
4344 focused on surface waterbody which excluded the coastal marine area.
4345
- 4346 Recommended amendments to pull it in – I think it's R.104 and R.106, which
4347 don't have a coastal icon in the NRP as it stands, but they do refer to the coastal
4348 marine area in the permitted activity conditions.
4349
- 4350 It doesn't allow works in the coastal marine area but the rule prevents effects on
4351 the coastal marine area, if that makes sense. It's kind of I guess some conflicting

- 4352 advice from those around me as to how far the scope of reference to coastal
4353 marine area takes and whether or not something is an FPP or needs to be P1S1.
4354
- 4355 I need to talk about that a bit further in consultation with Ms Anderson if that's
4356 okay.
4357
- 4358 Chair: So just looking at the bottom of paragraph 6 of Mr Horrell's speaking notes, we
4359 might just need to...
4360
- 4361 Watson: I guess to clarify, if the reference to coastal marine area means that something
4362 now becomes P1S1 then I agree that it should be P1S1. It's just a question as to
4363 how far that goes.
4364
- 4365 Chair: I think Mr Horrell if they are identified as coastal yes it is appropriate that they
4366 be allocated and we have the ability to recommend that to Council. Mr Watson
4367 is going to come back to us on is it sufficient if there's a cross-reference that
4368 that's enough to classify them as coastal.
4369
- 4370 Horrell: Yes, happy with that.
4371
- 4372 Chair: Thank you. The other issue Mr Watson that came up within the RPS is where
4373 you've sort of got a suite and you've got a couple of provisions in that that
4374 potentially have a separate appeal pathway than the others. That's also not idea.
4375
- 4376 Watson: Yes, I was grappling with that in relation to some of the submissions from Forest
4377 & Bird, on the provisions as notified, where they were requesting the coastal
4378 marine area be...
4379
- 4380 [End of recording 04.00.00]
4381 [NRP PC1 HS3 - Day 4 - Part 3]
4382
- 4383 Watson: ...added to the rules and how that would affect whether they were FPP or P1S1
4384 provisions in future and then you would have a situation where you might have
4385 a permitted activity rule that's down one pathway and the rest of the rule is under
4386 another one. I expect this is probably a similar situation.
4387
- 4388 Chair: Not an easy answer, but just I think we've got to continue to look at it.
4389
- 4390 Anyone have any questions? Thanks again. Thanks for coming along and
4391 presenting in person.
4392
- 4393 Horrell: Thank you.
4394
- 4395 Chair: That bring us to the end of the day. Thank you very much again to the reporting
4396 officers, to all submitters who have presented, people joining us online. Thank
4397 you as well Dr Greer for being available and helping with questions and of
4398 course all the Council staff working in the background. Thanks very much.
4399
- 4400 We'll end with karakia.
4401
- 4402 Ruddock: *Kia whakairia te tapu*
4403 *Kia wātea ai te ara*

4404 *Kia turuki whakataha ai*
4405 *Kia turuki whakataha ai*
4406 *Haumi e. Hui e. Tāiki e!*
4407
4408 [End of recording 01.35]
4409
4410