Greater Wellington Regional Council

Transcription
Hearing Stream One – General and Overarching

SUBMISSIONS
Proposed Change 1 to Regional Policy Statement
For Wellington Region

Hearing: Monday 26 June to Friday 30 June 2023

Location: Venue: Naumi Hotel, 213 Cuba Street, Te Aro, Wellington 6011

Hearing Panel: Commissioner Dhilum Nightingale (Chair)
Commissioner Craig Thompson (Chair)
Commissioner Glenice Paine
Commissioner Gillian Wratt
Commissioner Ina Kumeroa Kara-France

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Chair: Kia ora everyone. I would like to start today with a karakia.

Paine: Tēnā koe [00.08]. Tēnā koutou katoa, ngā mihi nui ki a koutou e tēnei wā. He karakia a whakatimatanga, Whaea? Kia ora.

Hill: [Karakia 00.20]

Chair: Kia ora. Ngā mihi nui. Tēnā koutou katoa. Nō he raka aku tipuna nō Poneke ahau [00.57]. Ki taki turanga au e noho ana, tōku toru aku tamariki, ko Dhilum Nightingale tōku ingoa. No reira, tēnā koutou, tēnā koutou, tēnā koutou kātoa.

Mōrena, good morning. My name is Dhilum Nightingale. I am a Barrister and an Independent Hearings Commissioner. I live in Taputeranga Island Bay, and Te Whanganui-a-Tara, Wellington.

Nau mai, haere mai. Ki te kaupapa [01.23] te rā.

It is a pleasure to welcome you all to the first day of the hearing of submissions on Proposed Change One to the Regional Policy Statement for the Wellington Region.

We will do some introductions shortly, but firstly I would like to mention some important health and safety information. Wharepaku, bathrooms, are down the

corridor the right. The lift is located along the hallway from the bathrooms, and the stairs are right outside the room. Please ensure personal items, bags, laptops, phones are secured and don't leave them unattended, because this is obviously a public venue. If the fire alarms sound please follow the instructions and directions of the hotel staff and wardens. Exit via the closest stairway, which is just outside here and assemble on the grass in front of Victoria University, on the corner of Dunlop Terrace and Vivienne Street, and don't enter the building again until the hotel staff give us the all clear. If you require assistance in an evacuation situation please advise the hearing advisors or a hotel staff member. In the event of an earthquake, drop-cover-hold, do not evacuate unless we are instructed to do so, and again follow the instructions of the staff. In the event of a tsunami, we have to go down the stairs and then up again to higher ground (stairs are down the hallway) and head up to the top floor of the hotel. I think that covers everything. Thank you.

Just a very brief overview of why we are all here today. The Wellington Regional Policy Statement identifies significant resource management issues for the reason and the objectives, policies and methods to address those issues.

The RPS implements national direction and in turn directs regional and district plans.

Proposed Change 1 to the RPS was publically notified on 19 August 2022 and addresses a range of important matters including: the impacts of climate change, degradation of freshwater in indigenous biodiversity, urban development capacity and the need for integrated management of these issues.

We acknowledge and thank everyone who has put in a lot of hard work over a long period of time on this change proposal, including preparing earlier drafts, consultation with partners and stakeholders, preparing supporting documents, s42A reports and evidence and legal submissions; and of course everyone who has read and engaged with the proposal and prepared submissions on it. This is your hearing. It is an opportunity for you to talk about the issues that are front and centre for you, and the changes you think are needed to achieve the sustainable management purpose of the RMA.

We are the independent hearing panels that will be hearing submissions and evidence, and making recommendations to Council on Proposed Change 1. I say panels because we are in fact comprised of two hearing panels, and will sit jointly for at least some of the hearing streams over the coming months.

I have been appointed by the Regional Council as Chair of the Part 1, Schedule 1 Panel (which is quite a mouthful). That refers to the standard process in Schedule 1 of the Resource Management Act (RMA) for preparing, changing and reviewing a Regional Policy Statement.

We will be considering provisions that do not relate to freshwater. The other panel is the freshwater hearings panel that has been convened under Part 4 of Schedule 1, to hear submissions on the freshwater provisions of Proposed Change 1.

I would like to invite the panel members to please introduce themselves and state all panels that they are part of – perhaps starting with Mātua Thompson.

Thompson: Tēnā koutou katoa. Thank you. I am Craig Thompson. I am Chair of the Freshwater Panel. I am a retired Environment judge. The panel consists of four of us and we will hear some of the issues together in the sense that it's not entirely clear in some areas just where the dividing line is between freshwater and also in general matters, but I am sure that's going to become more apparent as we move on. Thank you.

Paine: Tēnā koutou katoa [Māori 06.26]. My name is Glenice Paine. I am an Environment Court Commissioner. I come from a Resource Management and Conservation background. I have a special interest in biodiversity, bio-heritage and biosecurity. I'm on both the plan change for the RPS and for the freshwater panel as well. Kia ora.

Wratt: Kia koutou katoa. Ko Gillian Wratt toko ingoa**.** I am a freshwater Commissioner only, so I am just on the freshwater panel. I am from Wakatū/Whakatu, Nelson. My background is particularly in science and environmental management. I don't really consider myself an active scientist, but I have a background in involvement with organisations that do environmental, management and research. I was a previous Chief Executive of Cawthron Institute in Nelson, and prior to that Chief Executive of Antarctica New Zealand – the organisation that runs New Zealand's involvement on the ice. Besides being a freshwater Commissioner and a qualified RMA Commissioner, I have been on the EPA Board and had experience in a number of EEZ hearings as an EPA Board member. Kia ora.

Kara-France: Kia ora. [Māori 08.06 – 09.35] Ina Kumeroa Kara-France, Independent Commissioner for the RMA. I work for WSP as a [09.39] Senior Advisor. My focus is on cultural values and significance on sites for the engineers of our company. I am here representing both panels, freshwater and non-freshwater issues. Absolute honour to be here. Nō reira, tēnā koutou kātoa.

Chair: Ngā mihi nui, ki a koutou. I would like to acknowledge all the Commissioners and the vast experience and knowledge they bring to this hearing, and a special mihi to Mātua Thompson who will be known to many of you when he was sitting in the Environment Court.

As you heard, Commissioners Paine and Kara-France are members of both the P1S1 Panel and Freshwater Hearing Panel. The Regional Council appointed overlapping members to promote alignment and integration.

There are specific statutory requirements for each hearing process, which we will all be mindful of as we proceed through the hearings.

Before we get underway, just some general housekeeping points.

Hearings are being recorded and also being livestreamed. This ensures people who are not able to be present in the hearing room can listen and also speak to their submissions and give evidence. The recordings will ensure that we can pay

full attention to submitters and come back to listen to the audio recording or read the transcript if we need to.

Please speak into the microphones and say your name. If you are speaking on behalf of an organisation please also say their name. This will help for the transcripts and accessibility for some submitters.

As part of our role we are tasked with ensuring the hearing and consideration process is carried out in a way that is fair, effective and timely. It is important that everyone speaking can do so without interruption, so on this note, please turn off your cell phones or switch them to silent mode.

We will hear all submissions with an open mind and give each submission due consideration. There is some formality with these hearings, but we do want submitters to feel comfortable. As I said earlier, this is your hearing and we are here to listen to the points you wish to make about Proposed Change 1.

We will have pre-read all the submissions and evidence in advance of each hearing stream. If you are not presenting on a particular topic we assure you we will have read your submission and will be considering it very carefully.

Just a quick overview of the general format for each hearing stream:

Hearings will be held across seven streams, starting today with general and overarching matters. I will invite the S42A report writers to present the key matters in their reports and the panels will ask any questions. Then counsel for the Regional Council will present their legal submissions and answer any questions from the panels, and then we will move on to hearing from submitters.

Generally morning tea and afternoon tea will be fifteen minutes. We will try to fit these breaks in around submissions. The lunch break will be an hour; although you might have seen from the hearing schedule for this week that every day we are scheduled to sit for half a day.

In directions issues in a minute, we ask submitters to take no more than ten minutes for their presentations; but more time could be requested from the Hearing's advisor and accommodated where possible.

The Hearing Advisor will ring a bell when there is two minutes left of your allocated time slot, and then another bell at time. I would like to introduce the Hearing Advisors to you all – Whitney Niederndorf, and Jo Nixon are here to the right, and they are available to help with any practical issues relating to the hearing.

Before we begin, does anyone wish to raise any legal issues or procedural points? [Nil response] Panel is all okay? [Nil response] Thank you. That's the opening piece done.

I would to invite the S42A Report authors to present their reports. I will leave it to you as to who would like to go first.

Pascall: Kia ora. Tēnā koutou katoa Judge Thompson, Chair Nightingale and Hearing Commissioners. My name is Kate Pascall and I have prepared the S42A Overview Report for Proposed Change 1 to the Regional Policy Statement.

My qualifications are set out in my report. I am a Senior Planner with GHD Limited, and I have been contracted by Greater Wellington in the role of Programme Lead for Change 1 since October 2022.

My report sets out the background to Change 1 and the process that has been followed to date. I have not analysed submissions or made recommendations on relief sought by submitters. The purpose of my report is purely to provide the panels with the background to Change 1, the notification process and the process that will be followed for the hearings.

In terms of the background to Change 1, Change 1 has been prepared to respond to national direction within the context of broader Resource Management issues. As such, Change 1 addresses the key issues of a lack of urban development capacity in the Wellington region, degradation of freshwater in the region, loss and degradation of indigenous biodiversity and the impacts of climate change.

In response to these issues, Change 1 proposes amendments to the issues, objectives, policies, methods and related provisions of the operative RPS. This is a significant change to the RPS, being the first change since it was made operative in 2013.

The Council has developed a package of amendments to ensure this integrated approach; this includes introducing overarching issues and an associated objective, new and amended integrated management provisions, amendments to implement the National Policy Statement on freshwater management including the requirements relating to Te Mana o te Wai, amendments to implement the National Policy Statement on urban development, strengthening provisions relating to the identification and protection of indigenous ecosystems, amendments to some of the natural hazard provisions, and the introduction of a new chapter to address climate change.

In terms of consultation and engagement, in preparing Change 1 the Council took a partnership approach with the six mana whenua tangata whenua partners being Ngāti Kahungunu ki Wairarapa, Rangitāne o Wairarapa, Te Rūnanga o Toa Rangatira, Te Ātiawa ki Whakarongotai, Ngā Hapū o Otaki, and Taranaki Whānui through the Port Nicholson Block Settlement Trust. This included working with officers to discuss topics of interest to mana whenua and tangata whenua, repair and review drafting and ongoing contact and work with the partners. This engagement occurred in various ways and was dependent on the capacity and time available for the partners.

In addition to this, the Council engaged with territorial authorities, central government agencies and other stakeholders in the region through workshops and direct officer engagement with peers at territorial authorities in the region.

A pre-notification draft of Change 1 was also provided to mana whenua and tangata whenua, territorial authorities, central government agencies, Wellington

Water and others to seek feedback. This draft also met the requirements of the Wellington triannual agreement, which requires the Council to provide draft RPS changes to all local authorities for discussion and development, and to provide a timeframe of at least thirty (30) working days for local authorities to respond.

The feedback received through this engagement and consultation phase resulted in a number of amendments to Change 1 prior to its notification. The S32 Report provides a record of the feedback received on the draft and how officers responded to it.

As Chair Nightingale has noted, Change 1 was notified on 19 August 2022 and a total of 151 submissions were received. A summary of decisions requested was then notified on 5 December for further submissions.

Following notification of the summary, submitters made counsel aware of errors and omissions in the summary and counsel subsequently notified for addenda to ensure these errors and omissions were corrected; and invited further submissions on those corrected submissions points. A total of 31 further submissions were received.

Change 1 has been notified under 2 Planning Process, as has been noted, and the Change 1 document shows which provisions are part of the Freshwater Planning Instrument and subject to the Freshwater Planning Process through the use of the Freshwater Symbol.

My report sets out the key differences between the two processes.

The two hearing panels have been appointed to hear submissions to reflect the split process, as has already been outlined by Chair Nightingale.

There is overlap between the panels with Commissioners Paine and Kara-France appointed to both panels.

Some topics, such as climate change, are split across the two processes. For the purposes of the hearings process the Council has sought to keep topics together, rather than splitting topics between the two processes.

In terms of S42A Hearing Reports, the Council will prepare topic specific s42A Reports for each of the topics of Change 1. The hearing stream 1, Miss Jenkin to my left has prepared a report which covers submissions of a general nature applying across Change 1 in its entirety. Miss Jenkins will speak to this report shortly.

Thank you. I am happy to take any questions on the content of my report.

Chair: Kia ora. Thank you Ms Pascall.

Thompson: I confess, despite having been around Wellington for quite a while now, I have never heard of the Wellington Triannual Agreement before. Is that something

that we should know about, or is it simply a piece of the machinery to get things together?

Pascall: It's broader than this process. It's a governance agreement between the Regional Council and the Territorial Authorities, to my understanding. I believe Schedule 1 of the Act anticipates such an agreement being prepared and that consultation occurs in accordance with that agreement.

Thompson: Alright, if it turns up again we can ask. Thank you.

Paine: Good morning Miss Pascall. I'm not sure whether this appropriate, but no doubt you will tell me if you are the right person to be asking this question. I am just reading through the S32 Report. In paragraph 115, on page-27, where you talk about extensive discussion and feedback shaped by many of the provisions, and for that reason both iwi, Wairarapa and Ngāti Kahungunu ki Wairarapa have indicated they will not provide formal feedback on the draft RPS Change 1. Is that still their stance?

Pascall: My understanding Commissioner Paine is that that was in relation to the pre-notification draft. They have made submissions on the notified version.

Paine: That's pre-notification. Thank you.

Just checking on that page, and I'm sure these have all been superseded by the submissions that we have received, but I thought it wouldn't hurt for me to check anyhow, it's about engagement in para 117 – engagement with Ngāti Toa. Was this done? It says, "Officers will engage with Ngāti Toa before the change is notified, to discuss points of submissions that were not fully incorporated."

Pascall: I don't know to hand whether that specific conversation was had. However, I know that the Council officers have ongoing discussions with Ngāti Toa on a broad range of issues. I can certainly find out if that specific conversation was had and come back to you.

Paine: Thank you. Last one, on para 118, when would you expect the Whaitua Kāpiti process to be completed?

Pascall: I understand it's recently started. I am not sure what the timeframe is for its completion. Again, I can certainly find that out for you.

Paine: Thank you. Thank you Madam Chair.

Wratt: Kia ora, thank you Madam Chair. Just a question on para 28 and engagement with the farming reference group. The comment in your report is that that was focused on topics in Change 1 of most relevant to the rural and farming communities, including feedback in relation to agricultural emissions, climate resilient communities, transport emissions and indigenous ecosystems. I'm interested that there's no mention of freshwater on that.

Paine: Again that's something I would need to go back to the wider team and understand if that specific topic was discussed and if not why not.

Wratt: Thanks.

Chair: Commissioner Kara-France?

Kara-France: No.

Chair: Thank you Miss Pascall. At para 34 of your report, you say that Change 1 partially gives effect to the RMA national direction and anticipates forthcoming national direction. I just have a couple of questions on that. Some submitters say that Proposed Change 1 is jumping the gun by implementing national direction before it is finalised, in particular the draft NPS on indigenous biodiversity. Neo Leaf and others say that this should wait until the full review of the RPS, which is scheduled for next year. Why do you think it's important that draft national direction is addressed in this Change Proposal?

Pascall: That's possibly better answered by the S42A Report author for that topic. However, I consider that it's important that the RPS is at least cognisant of that draft direction. Whether or not that should be fully incorporated is up for debate in my opinion. But, in terms of why it was included in this process, I think that's probably better placed for that S42A Report author to answer.

Chair: Just related to that, I just wanted to understand, you say Change 1 gives effect or partially gives effect to RMA national direction. Various changes came into the NPS or Freshwater management in February 2023. This change proposal does not attempt to implement any of those, is that right?

Pascall: That's correct because this change was notified prior to those amendments coming into effect.

Chair: This might be a question I ask Ms Jenkin, but I just want to confirm my understanding that a lot of those changes set out direction for the Regional Plan in any event; rather than being specific matters that need to be addressed in an RPS. We will come back to that.

Chair: In para 53 of your report, you say, "Some provisions are notified as both Freshwater Planning Process and First Schedule Provisions." I just want to really understand how these are identified in the Change Proposal. As Commissioner Thompson said, there may yet be some movement between the processes that is yet to come. But, if you don't mind turning to page-11 of Proposed Change 1, which is Table 1A, this table, the top right hand corner has both the Freshwater symbol and P1S1, which suggests or indicates that provisions that are stated here will be allocated across both processes.
I had initially understood that the policies for each objective… so, where an objective has been categorised as Freshwater, that the policies for that objective would also be categorised as Freshwater. But, on closer look, I think that's actually not the case because, for example, Policies 56, 57 and 58 are allocated as P1S1, and yet the objective looks to be a Freshwater objective.

Are you able to just take me through that and also explain where would be the main source of truth for the Council's allocation? Is it the appendix at the back of the 32 Report?

Pascall: Certainly the S32 Report appendix provides that justification. As I was not involved in the allocation of provisions, Ms Zollner to my right may be better placed to answer that question, if that would be of help.

Chair: Maybe when you come to present your evidence that would be great, thank you. I think it's really important to understand and be really clear on what that allocation is. It's important for submitters and important for us as we are going through and considering the provisions.

There's a similar example, which we don't need to look at now, but just noting on Table 8A, on page-70 of the Change Proposal, where Objective 21 is marked as P1S1 but some of the policies are marked as Freshwater Planning. Just want to understand exactly where counsel says that they fit. Thank you.

This is just a very minor point and I think it's just a small clarification. Para 63 in the table, this is of your report, Hearing Stream 3 Climate Change is allocated as an FPP process, but I understand it's both.

Pascall: Yes, apologies. That is an error. It should state both.

Chair: That's all our questions I think. Unless there is anything else, thank you very much for your report.

Ms Jenkin.

Jenkin: Tēnā tātou katoa, Mātua Thompson, Chair Nightingale and Hearing Panel Commissioners. Ko Sarah Jenkin tōku ingoa. I am the author of the General Submission, S42A Report for Hearing Stream 1. My qualifications and experience are set out in that report. I am a Technical Director at GHD and I have been contracted by the Council since March 2023.

The scope of my report was submission points that applied to the entire plan change, rather than being directly related to a specific provisions and/or topic. Submissions and further submissions on specific topics, chapters and/or provisions will be addressed by the respective topic leads in their S42A Reports and Hearing Streams.

The general submission points are being considered in one of three ways: through the Freshwater Planning Process, through the Part 1 Schedule 1 Process, or through both processes. My accept/reject table attached to my S42A Report included a column which identified which submission points were being addressed, via which process.

The Council received 131 submissions points and a 110 further submission points on general submissions topic. I recommended one change, or one amendment to Change 1 in response, to shift the location of the definitions

appendix towards the front of the RPS in accord with the National Planning Standard Requirements.

My approach to analysing and making recommendations on the relief sought in relation to the relevant submission points was informed by the Summary of Submissions Process. This process resulted in the identification of a significant number of what I called summary statements, where a submitter had provided a summary of their detailed submission points.

Through the Summary of Submissions process these were identified separately from the detailed relief sought. I reviewed all the detailed submissions and relief sought to confirm there was nothing new raised in those summary statements. On that basis, the relief sought would be addressed in the relevant topic specific S42A Report.

To avoid pre-supposing the outcome of that topic specific assessment, I noted the submission points as no decision required.

I identified a number of submissions that were in my opinion out of scope of Change 1, as they were not on the Change 1 provisions. This included submissions on District Plan matters, the school curriculum and the Building Code, and provisions which weren't notified as part of Change 1.

I consider general submission points on a sub-set of definitions. Under the Freshwater Planning Process those definitions were Metropolitan Centre zone, relevant residential zone, rural areas, Tier 1 urban environment and urban environment. Under the Part 1 Schedule 1 process there were requests for new definitions of partnership and ancestral land; and the notified definitions of domestic fires, regional form, and small scale in relation to electricity.

I recommended the proposed definitions remain as notified. I recommend that a definition of partnership was included, but I consider this should be developed with mana whenua, tangata whenua.

I recommended that the need for a definition of ancestral land be discussed with mana whenua, tangata whenua, and developed with them if it was determined that it was required.

There were seven key issues arising from the general submissions. The allocation of provisions between the Freshwater Planning and the Part 1 Schedule 1 process.

A number of submitters considered there were too many provisions that had been categorised as Freshwater Planning Instruments, and that Council had erred in applying the direction in High Court Otago Regional Council decision.

I was not involved in the categorisation of provisions, but I reviewed the process and considered that Council officers had made a thorough evaluation, which Council then approved and notified. I did not address whether provisions should be re-categorised in my S42A Report, and if so how; and legal submissions have addressed how this might occur if deemed necessary.

The second issue was around providing for mana whenua in the RPS. Muaūpoko Tribal Authority is seeking acknowledgement through the RPS of their connection to Te Whanganui-a-Tara; and this includes formal recognition of Muaūpoko as mana whenua with connections in the Wellington region.

This position is supported by Rangitāne o Wairarapa, and opposed by Ngāti Toa Rangatira and Atiawa ki Whakarongotai.

I did not make a recommendation on the relief sought, as this would require detailed evidence from the submitters, which was not available at the time of writing my S42A Report. Additionally, I also considered that making a recommendation was outside my area of expertise.

The third issue related to the scope of Change 1. The relief sought ranged from support for the scope as notified, requests to withdraw much of Change 1, to restrict the scope to implementing the NPS-UD only, or expanding it to give effect to the NPS for freshwater, for highly productive land the exposure draft of the Indigenous Biodiversity NPS.

I recommended that the scope remains as notified.

There were a number of submission points relating to general drafting matters. Drafting of specific provisions will be addressed by the topic specific authors.

The relief sought related to moving definitions, the use of plain language and matters of grammar, readability and interpretation. I agreed with submitters about the use of plain language and the need for a grammar proofread and that definitions should be relocated. Matters of readability and interpretation have been considered in relation to individual objectives, policies and methods.

The appropriateness of planned provisions was another issue and much of that related to scope, or would be assessed by the topic specific authors. Those general provisions were really the chapters around the policies, the allocation of responsibilities, methods and results.

A number of submitters raised concerns about implementation of Change 1, and my understanding from Council is that they will work with the region's Territorial Authorities to implement the provisions.

The final issue was whether engagement was sufficient and this related purely to membership of the greater Wellington farming reference group, which is as I understand managed outside the RPS Process.

Before I conclude, I did want to draw the Panel's attention to two corrections in my S42A Report. The first is in paragraph 128 on page-24 in the last sentence where 'consent' should be replaced with 'content' – a spelling error there, my apologies.

Then the second correction in the table below, paragraph 141 on page-27. In the first column, second row, there is an 'm'. It should read NPS-FM.

Thank you. I am available to answer any questions from the panels.

Paine: Ms Jenkin, I only have one. It's clarification more than anything else. In your paragraph 86, on page-15, in your last sentence, you say, "In that event a hearing panel may wish to reconsider their decision on these definitions." I was just curious to see what you meant by that?

Jenkins: I had considered in my report definitions that hadn't had submissions from anybody else. But, what I recognised in writing my report is, that even though there hadn't been submissions those definitions are relevant to provisions that may have had submissions on them. So, whilst I had recommended a particular course of action, once the hearing panel had considered submissions on those specific provisions, you may take a different tack than I had recommended.

So, really I was drawing your attention to the fact that you may need to do it twice, or you may want to delay making a decision on that sub-set, or making a recommendation on that sub-set of definitions, until you had heard the specific provisions to which they related.

Paine: That makes it quite clear, because I thought, 'I haven't made any decisions yet.' Thank you Ms Jenkins. Thank you Madam Chair.

Thompson: Thank you very much. That's a very useful report.

Wratt: Thank you Ms Jenkins for that thorough presentation. Just a question around your comment on your consideration of the submissions and how they should be allocated between the Freshwater Process and the P1S1 Process. You did explain that, but just to make sure that I am clear about that, you had the comment there that you recommend rejecting. In paragraph 106, you recommend rejecting all submissions seeking amendments to the allocation of provisions to the Freshwater Planning Process. I guess we have already addressed that as a significant issue raised by submitters.

Then you say, "I have not addressed legal issues associated with the allocation of provisions between the FPP and the S1P1 Process, as this is a legal matter and a matter for the Hearing Panel to determine.

So, what I am hearing from you is that your assessment was very much looking at the process that the Council had gone through, and your recommendation is based on the fact that you consider that to be a very thorough robust process, rather than consideration of the specific legal outcomes, I guess in particular around the ORC court case. Is that a correct interpretation of what you were saying?

Jenkin: Yes, that is correct. We have Ms Zollner here and she prepared a statement of evidence addressing that process in more detail. I was not involved in the categorisation process myself. That occurred before I was brought on by the Council. I very much looked at the process and was satisfied that they had gone through a thorough process to evaluate.

I believe the legal submissions from DLA have addressed the legal mechanisms around the categorisation process.

Wratt: One other question. In relation to the scope of the Plan Change Document, do you have any views in terms of how we should be taking account of the exposure draft of the NPS Indigenous Biodiversity?

Jenkin: In my view it is a draft. In my opinion, I can only comment in so far as it relates to the general submissions. Like Ms Pascall, I think the detail is a matter as it relates to individual provisions, is a matter for that S42A Report writer. It is an exposure draft; and so it is a signal, but it is nothing more than that. As I have mentioned in my report, we don't know the timing that that may be gazetted. We don't know if it will be gazetted. I have been advised that if it were to be gazetted during this process, there could either be a variation or it would be addressed in the relevant S42A Report.

Chair: Ms Jenkin, in para 10 of your report, and this might just be a small correction, but you can confirm, you say, "Recommend possible amendments to Change 1 in response to those submissions, although in this case there are none." Just to confirm though, there is the change in light of the National Planning Standards, the RPA structure standards. So, you're recommending that change, that the definitions be moved higher up into the RPS?

Jenkin: That is correct. Thank you for pointing out that correction.

Chair: No problem, I just wanted to be sure I understood that.

This is a very technical point and I don't think it's a big deal, but your report is a S32AA because of that change you are recommending. But, my understanding of implementing the National Planning Standards is that where a change is required to implement a mandatory direction under s58(i)(ii) – and forgive me, this is a very technical point – and where it's implementing a mandatory direction, then I'm not actually sure a further evaluation report is required.

You don't have to answer that now. There's probably no harm if your report constitutes a S32AA, but my understanding of s58(i)(ii) is that it's a response to a mandatory direction in the National Planning Standards that a further evaluation is not needed.

Jenkin: If I could come back to you on that one. There is no separate S32AA evaluation for my report regardless. It's incorporated within.

Chair: Incorporated within, yes.

I did have a question as well on the exposure draft of the NPS-IB, but you have answered that, so that's fine.

Just one last question. This might actually be something that I might ask counsel as well. In paragraph 105, you say at the end there, this is talking about policy Freshwater 3, which has been identified as a Freshwater Planning Provision,

because it refers to considering the effects on Freshwater of subdivision use and development, however it also includes a coastal marine area.

I was scratching my head a bit about this. I am aware the definition of 'Freshwater' in the Resource Management Act means all water except coastal water; however, the NPS on Freshwater Management explicitly says that effects on the receiving environment which may include coastal water is relevant.

Just wondering if you had any views in particular where there's a provision that deals with coastal matters as well as Freshwater, as to how that would be addressed by the panels.

Jenkin: I'm probably not the right person to answer that. I think Ms Zollner would be able to answer that question since she was involved in that process, of going through and categorising the provisions. I very much drew on the conversations that I'd had and the S32 report in terms of that aspect of my S42A Report.

Chair: That's fine thank you. I have one more.

Various submitters, including the Aggregate and Quarry Association are requesting relief regarding more expressed recognition of minerals and aggregate extraction. I think you refer to this in a few places, around paragraph 140 and 141 of your report. I just want to understand… actually it's 145, if you are recommending that the relief that they are seeking is rejected because it's out of scope, or because mineral extraction and aggregate extraction is already provided for in the [51.35] of RPS.

Jenkin: I'm recommending that it's rejected because it's out of scope of this plan change. I have acknowledged in my S42A Report that changes will need to be made in the future in response to national direction. It's just not been included as part of Change 1.

Chair: Thank you. I'm aware at para 146 you also talk about how those provisions in national direction that set up a consenting pathway, I think if I understand correctly, you're saying that those are issues that are more relevant to a regional plan, rather than the RPS?

Jenkin: Certainly in terms of clause 3.22 of the NPS Freshwater Management that relates to requiring an amendment to the Regional Plan, so the proposed Natural Resources Plan.

In 146 I think really the point that I was making there is that decision-makers are required when considering Resource Consents to have regard to National Policy Statements. Also, there is an existing regional consenting pathway through the NES, National Environmental Standard for Freshwater management as well.

Chair: I think also the NPS on highly productive land.

Jenkin: Yes. I think MFE has recognised that there is a transitional period. They do have an implementation guide that provides some advice around how to manage that transitional period.

Chair: In para 151, just a quick question on the National Planning Standards. The change that you're recommending to move the definitions are higher up to follow the structure in, I think, Standard 2 of the National Planning Standards, have you considered whether there are any other changes that are needed to the RPS as a result of the National Planning Standards? Or, have you just considered the location of the definitions?

Jenkin: I solely considered the location of the definitions, because that was the relief sought by that particular submission point. I didn't have any other submission points within the scope of my S42A Report that related to the National Planning Standards.

Chair: In para 158, the Porirua City Council – and actually this goes a little bit to Mātua Thompson's earlier question, about the triennial agreement and the consultation undertaken, that they have raised or made quite a strong submission saying that they don't support Proposed Change 1 on quite a few aspects. In para 158 you refer to them saying that there's been a lack of supporting evaluation information… lack of evidence base to support the approach taken to most of the topics, is I think the point they make in their submission, and that the S32 Evaluation Report does not adequately assess cost benefits.

Certainly, when they do present we can ask them more information about those concerns, but in your view do you think that the S32 Report does provide a robust evidence base?

Jenkin: That question is a little hard for me to answer because of the scope of my S42A Report. I appreciate that it perhaps sounds like I'm kind of punting away these questions to the topic specific S42A authors, because I didn't deal with any specific provisions. I wasn't looking at the S32 Evaluation from that perspective.

These two particular points are summary statements, so they have been included in the scope of my report. But, on reading the detailed submission, it was apparent they had also made detailed points around that as well. I was challenged by whether I address these matters, but then presupposed the outcome of further evaluation by other authors. At one point I did think I would in effect end up being the S42A Report author for the entire plan change, because where did you draw a boundary. So, I chose to draw that boundary there, which does meant that I am then suggesting that for some of those questions, those topic specific authors will be better placed than I am to answer that question.

Chair: This definitely is the last one. At para 30, you refer, as part of the relevant Statutory framework to s61 of the RMA. I am just interested in that section that says the Regional Council shall have regard to (and there's a list of things) including management plans and strategies prepared under other Acts.

The S32 Report lists quite a few documents on both pages 37 and 42. Do you know that this is the list of the management plan strategies that the Regional Council had regard to when preparing post Change 1?

Jenkin: No, I'm afraid I don't know the answer to that question, but I can go away and find that out.

Just to clarify, that was page-37 and 42 of the S32 Report?

Chair: Yes thank you. In particular, I'm interested in understanding the status of the Wellington Regional Growth framework, the future development strategy, and the Wellington Regional Housing and Business Development Capacity Assessment.

I understand that at least some of those documents are currently being reviewed by the Wellington Regional Leadership Committee. They will be relevant in terms of considering urban capacity and intensification direction. I am just keen to know what status they're at and how they were considered when developing the Proposed Change 1.

Jenkin: I have been advised that matter will be addressed in the urban development topic. Knowing that, would you still like me to come back on that question, or would you like to wait until that Hearing Stream?

Chair: I wouldn't mind getting my head around that before that Hearing Stream begins. If it's more appropriate to pass it onto the S32A author for that topic, or maybe Miss [01.01.33] will look into that.

Thanks very much.

We are just at 10.30 and I wonder if it is a good time to take a short break. We will come back at 10.45. Thanks very much.

[Break taken 01.01.55].

[Session Resumes 01.01.57]

Chair: Kia ora everyone. Welcome back. Just a very quick point just to note: the Hearing Advisors have asked for the transcript if the panel can say their names before they ask a question so it's clear who is speaking. Just letting you know. That seems a bit strange but it's for the purpose of the transcript.

Also, my apologies: I meant in the introduction to invite any Regional Council staff that are present today, if they would like to introduce themselves and mention the particular areas that they have been working on for Change 1. I know we do have a few officials in the room today. I'm sorry, I meant to do that earlier. If that's okay, if we could just do that now, just so then we all know who is here.

I'm not sure which order we will take that in.

GWRC Staff: Kia ora koutou. Ko [01.03.16] tōku ingoa. I am a S42 author for the climate change [01.03.20] solutions and climate resilience topic; and also joint author on the climate change provisions, and also the S42A author for the indigenous side of [01.03.33].

GWRC Staff: Kia ora koutou, ko Natasha [01.03.40] tōku ingoa. Kaitiaki o tina [01.03.43]. My name is Natasha [01.03.44] and I am a Team Leader in Policy.

GWRC Staff: Kia ora koutou. I am Mike Watts and I am also a Team Leader in Policy.

GWRC Staff: Kia ora tātou, Pauline Hiller [01.04.00]. I am a Principal Advisor Māori and I could [01.04.06] that background information.

Chair: Great. Thank you. I would like to invite Ms Zollner to talk to your rebuttal evidence please.

Zollner: Thank you. Tēnā koutou Mātua Thompson, Chair Nightingale and Hearing Panel Commissioners. Ko Mika Helena Turner tōku ingoa [01.04.36]. I am also the S42A author for the open development and regional form chapter, or co-authoring that report.

I have prepared evidence outlining the process undertaken by Council to categorise provisions into the Freshwater Planning Instrument which forms a part of Change 1. This process applied S80A and the 2022 Otago Regional Policy Statement High Court Decision in the context of the Change 1 provisions.

My evidence responds to the issues raised in respect of categorisation of provisions in a general sense. It does not respond specifically to concerns raised by submitters regarding the categorisation of particular provisions.

Council set up an approach for categorising provisions prior to the Otago High Court Decision, which is summarised in paragraphs 12 to 15 of my evidence. Following the decisions release, Council reviewed this approach and applied the tests for inclusion in a Freshwater Planning Instrument from the decision through a structured process. These tests were: giving effect to parts of the NPS-FM that regular activities because of their impact on freshwater quality or quantity; or being related directly, i.e. clearly connected to matters that will impact on freshwater quality or quantity.

Of note is that provisions were not split such that only some parts of a provision were included in the Freshwater Planning Instrument. It was considered by officers that this approach would lead to absurd or unworkable outcomes.

Therefore, if any part of a provision met the test for inclusion in a Freshwater Planning Instrument, the whole provision was included in the Freshwater Planning Instrument.

The process outlined in my evidence prepared counsel on the 18th of August 2022, to approve the public notification of those parts of Change 1 indicated with a freshwater symbol as a Freshwater Planning Instrument, and the remaining provisions proceeded through the Standard Schedule 1 Process.

Thank you. I am happy to take questions. I might just respond to a couple of points that have been raised so far, is that's alright.

I guess maybe as an initial for information for the Panel, the Change 1 document itself does represent the scope of the Freshwater Planning Instrument, just to respond to that question. However, because the tables are a little bit unique, as

Chair Nightingale has pointed out, for the avoidance of doubt, in Appendix E, Table E3 does list every single provision and the process that it is going through. If there is any uncertainty that is the point of reference.

In terms of some of the other questions raised around that, I might just explain how those tables are meant to kind of function in Change 1, or in the RPS more generally. Those tables are the only place in Change 1 where the objectives are shown. They are kind of intended to show how the policies and methods contributing to those objectives map across the whole document – recognising that it is a very integrated document. You might have policies and methods from a different chapter contributing to an objective in the Indigenous Ecosystems Chapter for example.

In the way that the assessment was done, which is outlined in my evidence, each provision was assessed independently. Therefore, if an objective was determined to be in the Freshwater Planning Instrument, it could not be assumed that all policies and all methods contributing to that objective were also in the Freshwater Planning Instrument. Each provision was assessed independently.

Again, I just want to point out that because the document is so integrated, you will see some tables have a lot of different policies contributing to one objective across a number of topics.

Hopefully that explains a little bit.

I might also just quickly explain those two tables in particular, Tables 1A and 8A. In paragraph 28 of Appendix E of the S32 Report, those two tables are mentioned specifically. They are quite unique in that they are provisions in themselves intended to show how the provisions relate to each other; but, those two tables in particular, 1A and 8A contain objectives both in the Freshwater Planning Instrument and not in the Freshwater Planning Instrument.
Paragraph 28 explains that they are there for going through both processes to support the objectives going through both processes. However, the Freshwater Panel will consider the table with respect to the Freshwater Objectives. So, they kind of are to be considered under both processes, but they can clearly be split by the objectives, if that makes sense.

Happy to elaborate if that is a little bit confusing.

In that sense, they're going through both processes, but it's really just to recognise that the objectives are only shown in those tables and therefore the table needs to be considered with the relevant objectives.

I will just reiterate that the assessment was done at a provision level, and that is why objectives and policies that are related to each other are possibly going through different processes in some instances.

The second thing I just wanted to respond to is the question of coastal provisions. Again, this comes down to what I have outlined in paragraphs 12 to 15 of my evidence, where the approach was taken that if any part of a provision met the

test, then the whole provision went through the Freshwater Planning Process, or went into FPI.

If we look at, for example, Policy FW3, which is the one that Chair Nightingale has raised, if you look at the clauses within that, there is no clause that only relates to coastal water or sea water. There is clause (g) – and just for reference, this is on page-116 and 117 of Change 1 document. On balance if you look at that policy, there are clearly many parts within that policy that meet the test for freshwater. There would be, from a policy perspective, two ways to address the fact that coastal water is included in there. You could take out any reference to coastal marine when it was being drafted, which would require a duplication of that policy entirely as it relates to coastal water; or, you could put just clause (g) and any other clauses that are deemed to relate to coastal water through a different planning process.

As I have explained, we decided not to go down that approach because you would end up with different parts of one provision going through different processes.

Hopefully that just explains, I guess, the reality of if any part meets the test then that whole provision goes through.

Hopefully that responds to questions raised so far, but happy to take any other ones.

I will just quickly add to that, that from a legal perspective Ms Anderson can respond.

Chair: That was very clear. I don't have any questions. Do any of the other Panel Members have any questions for Ms Zollner? Yes, Commissioner Wratt.

Wratt: Just clarifying, and maybe I should know this, but there are a few provisions which are allocated both Freshwater Planning Process and P1S1. You're saying that if any part of an objective met the criteria for Freshwater Planning Process then it went into the Freshwater Planning Process. Could that not have been both Freshwater Planning and P1S1?

Zollner: Just to clarify: the only two provisions that are going through both are those two tables that I was discussing, Table 1A and Table 8A. Officers did consider the scenario of whether a provision could go through both. It was determined that that would kind of leave to unworkable outcomes where you would have recommendations that could be different on the same provision made ultimately, and that you might need, for example, a kind of broken up provision based on the changes that had been made, or the recommendations made in the freshwater process and then in the standard process.

There was a decision not to put provisions through both processes, unless it couldn't be avoided. With Table 1A and Table 8A they are very unique in the sense that they pretty much just show the objectives and the policies, and they will go through both processes, but only to the extent that they relate to the Freshwater Provisions, or the Schedule 1 Provisions.

I think it's probably easier to maybe just talk through an example.

If we go to Table 1A.

Wratt: This is Table 1A in the Plan Change document?

Zollner: Yes, page-11 of the Plan Change document.

Table 1A is marked as being both Freshwater and Part 1 Schedule 1. You can see objective CC1 is a Freshwater Provision and it has policies and methods contributing to that objective. The Freshwater Panel can consider Objective CC1 in terms of how it is shown to relate to other provisions, which is kind of the function that the table has – it's to show the policy cascade. That section of the table is Freshwater.

If we move down to page-13, Objective CC2 is not in the Freshwater Planning Instrument, so that part of the table will be considered by Part 1 Schedule 1.

At no point is one part of the table being considered by both panels, if that makes sense.

Wratt: If we go back to Objective CC1 and you look across at the methods, we've got Method UD2, Future Development Strategy. That surely is a P1S1.

Zollner: Again, the table is just to show how the provisions relate to each other. Each provision is independently also included elsewhere in the Plan Change document, and noted as being either within or not within the Freshwater Planning Instrument.

This table's objective is to show the integration between chapters and the policy cascade of methods then policies, and then objectives, in terms of responding to the regionally significant issues.

It's a standalone provision and it is about relationships between provisions. It also happens to be the only place where the objectives are shown, which is why they have their symbols.

Wratt: When you look at well-functioning urban environments in rural areas as one of the objectives, and it's only got freshwater next to it, I'm still struggling with why is that identified just as a freshwater objective?

I don't disagree that there are freshwater aspects in it, but also it's not just freshwater. The way it's presented here seems to me to imply it is.

Am I getting that wrong?

Zollner: You're correct in that the whole objective is in the Freshwater Planning Instrument. We didn't go down the approach of taking a specific clause and saying that is in a separate process; so, for example, taking one of those clauses

and saying it's going through Part 1 Schedule 1. Each provision has been assessed at the provision level.

I think somewhere in my evidence I say that S80A refers to parts of instruments and not parts of provisions. A part of an instrument is a provision, in the approach that's been taken, and provisions have not been split.

Wratt: You noted the complexity if you have both, but considering that we are sitting here together with the two panels, is that not a way of proceeding, having those provisions considered by both panels?

Zollner: I think ultimately that's my understanding of what has been proposed by Ms Anderson. In my view, I think a provision, when notified, it needs to be clear whether it's in or out of the Freshwater Planning Instrument, and that's what Change 1 sought to demonstrate.

Going forward, I think the proposed solution for both panels to consider all provisions is quite sensible from my perspective.

Wratt: Thank you.

Chair: Ms Zollner, your Appendix A at the back of your evidence is very helpful and clearly shows that of the various options that the Council thought it could take, it went with Option 3.

You have written in that table 'High Court Decision Holistic – Recommended'. Because we have the benefit now of Justice Nation's decision, in that case, are you of the view that this categorisation that the Council has taken is in accordance with that decision, even though the categorisation happened before the decision was issued?

Zollner: Yes. Just to clarify: there was a process undertaken to do some assessment prior to the decision. When that decision came out the reallocation was repeated entirely. It was applied entirely after the decision's release. But, yes.

Chair: And, the Council formerly adopted that didn't they?

Zollner: Yes, on the 18th of August they agreed to notify the Freshwater Planning Instrument.

Chair: Thank you. I don't think we have any other questions. Thanks very much for your evidence.

I know Ms Jenkin already has presented the S42A Report, but you have also prepared a statement of rebuttal evidence. Did any Panel Members have any questions for Ms Jenkin about the rebuttal evidence, or have we covered that?

Commissioner Wratt?

Wratt: No, I don't think so, thank you.

Chair: Ms Jenkin, just in para 10 of your rebuttal evidence, having considered the evidence of Ms Zollner, and also the legal submissions I think of various parties, you say that in your view it's difficult for the panels to determine at this point whether a provision meets the criteria to be a Freshwater Provision, or whether it should be considered by the P1S1 process, and that really that should be determined after hearing submissions within each hearing stream. Just to confirm that I have understood that correctly.

We have this initial categorisation of provisions, but are you suggesting now having heard various submitters and counsel commenting on this point, that really that the confirmation of allocation should happen at the end of each hearing stream?

Jenkin: Yes. The legal submissions from Ms Anderson deal with this from a process perspective. I think really the point that I am raising here is, if the Panel agrees with those submitters who are saying that too many provisions have been categorised within the Freshwater Planning Instrument, then applying your minds to that question I think needs to occur after hearing the topic specific provisions.

Chair: At paragraph 20, you talk there about suggestions that the Council should wait until the NPS-IB is confirmed, and that you disagree with that approach. There is no certainty that NPS will be gazetted, or when that will occur; and you say future changes may be required to the RPS to give effect to the relevant requirements of the NPS-IB.

I guess it's just the nature of this world that there is continual updates and continual new national direction. I guess we could end up waiting indefinitely. Is that sort of what you're saying; that there comes a point where you just need to get on with it?

Jenkin: In response to the evidence from Mr Heffernan, yes I think the Hearing Panels have in front of them a notified Change 1. Those submitters who are coming at this matter from an aggregate, quarrying and processing perspective are seeking that provisions in national direction are incorporated into that. But, the national direction itself has different timeframes; so it's either not requiring it right now, or in the case of the NPS-IB we have a signal in a draft, but we don't actually know if that's what is going to be gazetted, or if even the NPS-IB is gazetted at all. It has been hanging around for quite some time.

Yes, to that question, I think the issue is what applies now, and the timeframes that apply now. As I said in my S42A Report, the advice that I have had from counsel officers is should that NPS-IB be gazetted during this particular Change 1 Process then it may require a variation, or it can be addressed through the relevant S42A Report.

Wratt: Can I just explore that? Just exploring that not so much around the NPS-IB, but the MPS-FM. This may be a question you want to refer to our legal counsel, but the 2023 amendments to the MPS-FM do include criteria and provisions around quarrying?

Jenkin: Clause 3.22 specifically, but that actually directs a change to the Regional Plan; so the proposed Natural Resources Plan, which I understand would be addressed through a future variation to that document. I think as my colleague Ms Pascall mentioned, this plan change was notified before those changes to the National Policy Statement were made.

Wratt: I guess one of my questions is, what is our scope in terms of a change to a National Policy Statement, which is now in effect, but has come into effect since the plan change was notified?

Jenkin: I think I would just refer to Ms Anderson's advice in that regard.

Wratt: You can come back to it later.

Anderson: You're talking about a scenario in a NPS where the provisions come into effect since the Regional Policy Statement was notified. In theory, it's a relevant provision to consider as part of the NPS, but the question is what can you do about it, because you still have to have scope, based on the scope of the change itself and scope of submissions?

It may be that a submitter has asked for something that anticipated this was coming into force and can be considered by the panel, but you are then still going to have to consider the issue about whether it's within scope of Change 1 itself. I will get into that in a wee bit more detail on scope as we talk through the legal submissions.

Wratt: Thank you.

Chair: Thank you Ms Anderson. Just on that point, the Freshwater Panel isn't as limited by scope as the P1S1 Panel?

Anderson: That's correct. The Freshwater Panel is still limited by scope of the change itself, but they are not limited by scope of submissions as long as the issue is raised at the hearing.

Wratt: Does that include an issue raised by the Panel, or does it have to be an issue that is actually raised by submitters?

Anderson: In my submission it could be either because it just says in the Act 'raised at the hearing'. So, someone raises it. I guess it's in a public forum and that gives people a chance to comment on it. I have assumed that is the rationale for that.

Wratt: Thanks.

Chair: Thank you very much. "

We will move onto counsel for the Council.

Anderson: Thank you. Tēnā koutou katoa, ko Kerry Anderson, toko ingoa. [Māori 01.30.50]. Good morning everyone. Ms Anderson from DLA Piper. I am a partner there in the Environment Planning and Natural Resources team.

I also have with me today, just so you can see their faces, Mrs **Manaha** [01.31.06] and Ms Rodgers up the back. Throughout the hearing there will be one of the three of us here doing legal submissions. We are just all here today to introduce ourselves.

Hopefully you will have two sets of submissions filed from DLA Piper – one which I have called the initial legal submissions filed on the 8th of June, which dealt with issues around scope, the Freshwater Planning Process and the statutory tests for a change to a Regional Policy Statement.

Then in response to the legal submissions and evidence filed on behalf of submitters, obviously the categorisation of provisions came through as a key issue, so there were reply submissions filed just in relation to that topic dated 21 June.

Just talking through briefly the topics covered there in the legal submissions, the statutory tests issue, and those statutory tests are set out in sections 59 to 62 of the RMA and then in Appendix A to the initial submissions. I have gone through, I guess, how the case law describes those tests and amended it to make it Regional Policy Statement specific, because most of the Case Law is on Plan Change; so every time a Plan Change is mentioned it now refers to Regional Policy Statement. So, that's what Appendix A is.

I wasn't going to go through them in detail because I imagine you are quite familiar with them and will come back to them as you go through the process, but I did just want to note the submission at paragraph 14 of the initial legal submissions which is the fact there were some amendments to the RMA at the end of November last year, and the transitional provisions says you determine this change as if those changes had not been made; so it's that version of the RMA we are applying to Change 1, and that really has the main affect in relation to s61, because it added in two new considerations for a Regional Policy Statement.

The second issue dealt with in those submissions is scope, and as we just talked about it, it's always helpful to remember there's two issues relating to scope: (1) scope of the change itself, as in what's in the envelope that was on the table really that was up for change; and then scope of submissions meaning, the Panel in a first schedule sense is restrained by what people ask for in their submissions.

So, depending what you're looking at, both of those could be relevant and the legal test for those is set out at paragraphs 25 to 29 of the legal submissions, and no doubt will be addressed as we go through the topic specific reports if there's an issue.

The key differences we already talked about it's that scope of Change 1 applies for both the Freshwater and the First Schedule Panel. Scope of Submissions only applies to the First Schedule Panel. That was as we talked about, that the Freshwater Panel has a wider jurisdiction to consider matters outside scope of submissions if it's raised at the hearing.

Then the final issue dealt with in those initial submissions was the categorisation of provisions to either Freshwater Planning Instrument or the First Schedule part of the plan change. That's really what the reply submissions get into in some detail.

I suppose I did want to start by just checking you all have a copy of the Otago Regional Council case. I do have copies if you need one, but I think Forest & Bird have filed it with their legal submissions, so I assumed that you had one.

In terms of that categorisation thing, I think it's best probably to start at s80A of the RMA itself, as really the definitive section, and that's set out at paragraph 15 of the initial submissions, if you happen to have those open.

That pretty much provides that the parts of the change that are for the purpose of giving effect to the NPS for Freshwater are part of the Planning Instrument, or if the part of the Plan Change relates to Freshwater. So, there are two limbs in that test in s80A.

The section also requires the Regional Council to prepare the Freshwater Planning Instrument and the Regional Council to decide whether only parts of it should be Freshwater and parts of it not.

I think this is important, because it's an issue we have touched on already this morning. When you look at the words of s80A, it is about parts of the instrument. It's not talking about parts of the provision. When you read that section, the instrument is defined as the change itself.

So, in my submission I would say that section doesn't allow you to divide up provisions, which I would say creates a bit of an artificial outcome. It allows you to divide up parts of the change itself, and the way that's been applied here is that part of the instrument, that has been divided into Freshwater or not, are individual provisions and hence the individual provision assessment by the Regional Council.

Secondly, I think it's important to have a thorough read of the Otago Regional Council case. We've probably all read it at least once and then gone back and read it again. I do think it's important because it's relied on heavily by submitters. It is obviously the only case law we have at the moment on these provisions and it is clearly relevant. But, we still have to think about the context of that case, and how it may be similar or different to what we are looking at here in a Wellington sense.

The three key differences, I think, when you are thinking about that case are: first of all, it was obviously declaration proceedings in the High Court and they were deciding on matters of law, not doing a merits assessment. The court was pretty clear about that. It did not want to do a merits assessment and did not see its role to do that. Its role, I think, as set out at paragraph 178, was to decide if there were any errors of law and if so remit it back to the Regional Council to reconsider.

Also in that case, the Court was dealing with whether the whole RPS was a Freshwater Planning Instrument, and in my submission that does mean you do need to read similar conclusions quite carefully, because it's quite a different context from what we are talking about here, where a number of provisions are the Freshwater Planning Instrument and not the whole RPS.

I guess an example I might give you from that case is paragraph 158, where the Court is talking about Te Mana o te Wai and [01.38.25] Tukutai, and how that doesn't allow a whole RPS to go through a Freshwater Planning Process.

In my submission that's not saying those concepts don't allow integrated provisions at all, but they are certainly saying you can't put a whole RPS through based on the fact of integrated provision writing.

Then I would say, unlike Change 1 here in the Wellington Region, in the Otago case there does not appear to have been that provision-by-provision assessment that's occurred here.

So, that's not saying at all it's not relevant. It's just saying have a think when you're reading those provisions that the different context the High Court was thinking about.

In my initial submissions that were filed, I've set out what I would say are the key tests to be taken from that case at paragraphs 17 to 19. In my submission, those are the tests that Ms Zollner referred to and that Regional Council applied to the Freshwater Planning Instrument after that decision came out.

In terms of the procedural issue that inevitably arises when you start talking about whether something is correctly in the Freshwater Provision Instrument or not, the reply submissions had set out what my submission was about the process that allowed you to deal with that. Effectively set out at paragraph 6 of those submissions is that you determine these submissions about the right category or not, like any other submission you've got in front of you, and make a recommendation to the Council on whether you think that is correct or not, or amendments are required; and that's effectively the process that I have set out.

I didn't have anything more to say by way of summary, but I imagine there might be some questions.

Chair: Thank you Ms Anderson for those submissions.

Just on the allocation point, I'm still thinking in my head about how the Panels should address a provision that deals with the coastal marine environment. We've heard that splitting it could be artificial and lead to the loss of integration, but do you think there is any jurisdiction issue if the Freshwater Panel was to consider a provision that dealt with impacts say in the CMA?

Anderson: I think that depends what you decide relates to Freshwater needs. That's the phrase used in s80A. That's a relatively wide phrase that requires some connection between the two things; so that would be my first point.

I also think there's a real practicality layer that has to get added over the top here, and one of the principles of statutory interpretation is where there is not a clear answer you interpret it to try and avoid an absurd outcome. I guess in this scenario I would say you end up, whether it's absurd or impractical, with a scenario where you end up with multiple duplicate provisions in a plan, which I don't think is a good outcome either when you have the same provision repeated for Freshwater potentially air, land, CMA. You end up with a pretty clunky instrument all round. I would say that's what that wording in s80A is designed to overcome, where it allowed parts of instruments being provisions, and not parts of provisions.

I think you do have to look at that closely because the RMA does use the word 'provisions' in other places – s32 for example. It clearly chose to use Instrument there for a reason and I would submit that what allows you to put a provision through the Freshwater Planning Process when the provision relates to Freshwater, but it might not solely relate to Freshwater.

Wratt: Do you have any comment on putting a provision through both Panels? I guess that's essentially what you're suggesting isn't it?

Anderson: It's probably not really. I'm actually saying you put the ones that as long as they relate to Freshwater, but they might have a First Schedule aspect to them, I would say they still go through the Freshwater Planning Process and not both.

I think it is quite difficult, the 'both' issue, and that's why I guess you've got the two tables that are a 'both' provision. I would say that's because they're really directing traffic, in terms of telling you where things sit within the RPS, rather than being a substantive profession that is directing you to do something. It's really showing you how the provisions work together.

I think as you pointed out, the left-hand column had the objective as a Freshwater Provision, but the columns as you go across the page don't identify which ones are Freshwater and which are not, because the individual provisions do that as you follow.

It's a long way of saying those tables have gone through as both, because they do cover both types of provisions, but the table doesn't dictate what provision it is. It's is dictated by the provisions itself.

Wratt: If the provision goes through the Freshwater process and there is some P1S1 within it, does that not then cause a problem with potential legal appeals because the P1S1 appeal process… that's contradictory and I'm not sure if you can see what I'm getting at. The broader appeal process doesn't apply?

Anderson: I think no matter how you look at s80A there are difficulties with it. I guess when I was looking at it, there will be scenarios where these Freshwater Panels are sitting on their own and aren't sitting like you are here, as a Freshwater and a First Schedule Panel, where you have probably a little bit more of a luxury, I would say, to move it around. If you were sitting solely as a Freshwater Panel, you would have to make those decisions without being able to say, "It's partly Schedule 1 and we can deal with them together."

I do think the substantive provisions have to sit in one box or the other.

Just while I'm on that topic, there is also a practical reason for that, which you raised yourself, that if you don't identify which box they fit in, it will create confusion on appeal right fronts. Because if you are saying they sit in both, you then end up with a bit of an issue at the end of the process because the appeal rights are different.

Chair: I would just like to ask another question related to the coastal water issue. The NPS-FM clearly applies to Freshwater receiving environments, which could include coastal water. I think that's clear in the application provision of the NPS. The definition of receiving environment as well in that NPS says that the receiving environment includes water bodies and the coastal marine area, including estuaries.

I guess my question just goes to the point you were making about the context of the High Court's decision and the questions that were asked to look at. In paragraph 202 of their decision, which you set out at para 19 of, I think, your first legal submissions, the Court says, "The Regional Council (which is Otago in that case) will also have to satisfy itself that the parts are not concerned with sea water."

Just any thoughts there about whether there was something specific to that declaration proceeding context that they were looking at there – when the aim of a Freshwater Planning Instrument is to give effect to the NPS-FM, and the NPS-FM clearly looks to manage effects on receiving environments which includes coastal water.

Anderson: I have to say, when you read that case, you find somewhat different conclusions in different places when you join it together. I would also say it tends to focus more on the NPS limb than relates to Freshwater limb; because they are two different alternative tests within that section.

So, yes, you're right, at paragraph 202 there it does talk about not being concerned with sea water – and I think it's talking about 2(b) at that point, which is actually the NPS limb. Whereas, if you would think about it logically, the NPS limb is actually the one that probably would bring in some consideration of coastal water because it does attempt to regulate that to a degree.

I'm looking at paragraph 202 of the decision. It starts talking about 2(b) limb. I am just double-checking I have got that around the right way. Sorry, I've actually got the limbs around the wrong way. That does make more sense.

So, 202 is referring to the 'relates to Freshwater' limb, as I understand it, which is of course constrained to Freshwater. I would say the NPS limb, as in you're giving effect to the NPS-FM is wider, albeit it, I'm not sure that the High Court necessarily found that. They had constrained it to quality and quantity of Freshwater.

Chair: If we could follow that on by looking at Policy 40 just as an example. I'm sorry, I haven't taken a note of what page of the Change Document that is in. Maybe Ms Jenkin or Ms Pascall might be able to find it.

Policy 40 was a particular example that jumped out at me.

Jenkin: Page-139 of the document both in the pdf and in the hard copy.

Chair: Thank you Ms Jenkin.

Just to help us really get our heads around the practical way in which we are to look at a provision like this, Policy 40 which is on page-139 of the Change Document, 'Protecting and Enhancing the Health and Wellbeing of Water Bodies and Freshwater Ecosystems' is the heading of the policy.

It talks in clause (b) about when considering an application for regional consent it's a direction for a Regional Council. Particular regard shall be given to water quality in the coastal marine area is to be managed in a way that protects and enhances the wellbeing of water bodies and marine ecosystems.

How would you suggest the two Panels should practically approach that provision?

Anderson: In terms of which box it sits in?

Chair: Yes.

Anderson: Sorry, I was just checking the definition of 'water body'.

Water body is defined to not include the coastal marine area in the operative RPS. But, putting that to one side, I think you really just come back to that issue of whether you can deal with a provision as a whole, as a Freshwater Planning Instrument or not, and that takes you directly back to that conversation about parts of an instrument.

If you can deal with provisions as a part of an instrument then as long as their purpose includes relating to Freshwater that is fine. If you decide it means something else then you are going to have a bit more of a challenge in terms of deciding how you deal with that.

Chair: And, if they relate to both, then, if I understood you correctly, I think you're recommending that they would be considered by the Freshwater Panel?

Anderson: I think that's right. Just let me check.

Wratt: Somewhere in the submissions there is certainly comment that the P1S1 Process should take precedence.

Anderson: There was a submission, I think, that you started on the assumption that everything is a Schedule 1 and then you go from there and move things into the Freshwater Planning Instrument. I think that was based on something that was said in the Otago Regional Council case.

I guess I would say that I am not convinced that the outcome is any different where you start from, as long as you are turning your mind to, 'Does this provision relate to Freshwater?' If the answer is yes, it doesn't really matter whether you started thinking it should be Freshwater or not, or whether you started at the First Schedule.

I think, if it relates to Freshwater it's been put in that box. As far as the Notified Policy Statement is concerned, I think s80A allows you to do that.

Wratt: Which brings us back to the question of 'What does relates to Freshwater mean?'

Anderson: That's right. There is some Case Law on that. Then, not wanting to confuse it further, it seems the High Court did actually take that further by adding the words directly in there, which is not in s80A.

I think pretty much all the Case Law tells you, when you look at words like, 'relate to' or 'directly relates to' is that there has to be a connection between the two. If it's directly related, it has to be a little bit more than oblique, is probably as much as the Case Law helps you on that front. It's a very broad descriptor.

In one school of thought, anything that happens in Freshwater is probably going to affect the coast anyway as it flows out into the coast.

Wratt: You could also argue if the quality of the freshwater is maintained then you shouldn't need to worry about what's happening out on the coast.

Anderson: That's probably for someone in a different area of expertise than me, but that seems logical.

Wratt: That's my science brain, not my legal brain. Perhaps a bit simplistic.

Chair: Section 80A, which you set out in para 15, s80(3) refers to the Council being satisfied about the parts of the Instrument being in one or the other. I think either Ms Jenkin or Ms Pascall had referred to that in their report, about really it being up to the Council to make that determination.

I just want to confirm my understanding that the Panel actually has clear jurisdiction to do this shift and re-categorisation on the basis of submissions; although the Freshwater Panel isn't constrained on scope of submissions.

I just want to check those words 'however is the Council is satisfied' that you don't see that raising any jurisdiction issue for the Panel in moving provisions between the two categories.

Anderson: No, I don't see any issue and I guess that's for two reasons. First of all, you aren't making a decision on the re-categorisation, you're making a recommendation to the Council who ultimately makes the decisions. I don't see that as a jurisdiction issue.

But, also, this sub-section (3) is really talking about what the Council must do when it notified it's Freshwater Planning Instrument. That's not saying that no-one can ever change that, because otherwise you wouldn't have appeal rights where others could make different decisions.

So, that's just saying at the time, it's notified Council has to be satisfied it's a Freshwater Provision and you are now reconsidering that as part of submissions made and can make recommendations on that issue.

Chair: Thank you, that's very clear.

The question on the statutory framework, at para 14 of your first submissions, you talk about the amendments to the RMA which came into effect in November 2022 and that they don't apply to Proposed Change 1.

I understand that the repeal of s104E, which talks about climate change effects is not relevant to our consideration of Proposed Change 1; and the same goes for s61(2)(c) which states that when preparing or changing an RPS a Regional Council must have regard to any Emissions Reduction Plan and National Adaptation Plan.

Anderson: That's right.

Chair: Those provisions came into force, I think, on 30 November 2022. It was initially going to be earlier and then that was delayed.

Those two documents, the NAP and the Emissions Reduction Plan are referred to in the S32 Report on page-37.

Again, just a question on jurisdiction. As I understand it, we are not required to consider whether the Council has had regard to those documents, but are we able to do so if we consider that appropriate?

Anderson: In terms of s61, there is no mandatory requirement to consider the ERP or the NAP, because you read s61 as if that's not there. But, I think you can consider it in terms of s32 if you think it's relevant to the assessment under there. It doesn't make climate change irrelevant. I mean, there are other reasons that you're considering it, such as effects, Part 2, and all those other reasons. There is no specific mandatory requirement to consider those two plans for the purposes of Change 1. But, I think you can consider them as a s32 supporting analysis, if you think they are relevant to that.

Chair: I guess I just want to be clear on what the hook is. Of course s7(i) which talks about having particular regard to the effects of climate change, that was not impacted at all by those amendments.

Anderson: Correct.

Chair: That is still very relevant to this process.

I earlier asked I think Ms Pascall about some documents that are referred to in the s32, including Wellington Regional Housing Business Development Capacity Assessment, the Future Development Strategy, and the Wellington Regional Growth Framework.

Again, I'm just interested about where those fit in, in terms of the statutory tests. Have you got any comments on that?

Anderson: So, now you're testing my knowledge on how all of those documents were made. Looking at s61(2) and you identified it earlier, they would come in under 'Management Plans and Strategies Prepared under Other Acts'.

You would have to look at each of those documents and determine what they were prepared under. In terms of things like the Future Development Strategy, which is prepared under the RMA, I would say the FDS is a plan prepared in accordance with the RMA, so would come in there.

There was a number of plans and strategies referred to on those pages and I am not necessarily sure how they are all made, but I guess that's the test. I think Ms Jenkin was going to come back with basically a list of those, and whether the Regional Council was saying they meet that s61(2) requirement.

It's slightly different isn't it, because we don't have any other relevant matter catch-all for a RPS change like you do for resource consents. The list of mandatory matters is in s61 and the Case Law listed Appendix A should also cover those. They still have to fit within that more general description.

We will put that on the list to respond to each of those plans and strategies listed in the S32 Report.

Chair: Your reply submissions… and I know we have talked a lot about this categorisation, but there was a point in para 12 of your second submissions, in the second sentence, that the Panel can make recommendations as to the categorisation on the basis of submissions received, and then the Council can decide to accept or reject those recommendations.

It's just a question of, I'm just wondering if there is a potential issue of scope here. Can a re-categorisation happen if a submitter has not requested that a Freshwater Planning Provision become a First Schedule Provision and vice-versa?

Anderson: I think the short answer is yes if you are recommending that a Freshwater Provision should be re-categorised to First Schedule. I am not actually aware anyone is asking for it going the other way – First Schedule to Freshwater. Because you are sitting as a Freshwater Hearings Panel making recommendations on the Freshwater Planning Instrument that's in front of you, which I guess it is as notified at the moment, so I don't see there being an issue with making a recommendation on that issue whether there is a submission or not because of that clause 49 of the First Schedule – which is just the one that says you are not limited to scope of submissions, yes.

Chair: Potentially could be a problem moving the other way, but as you say, I don't recall anyone asking for a provision that's been tagged for Freshwater to move into.

Anderson: That's right.

Chair: Thanks very much. Allen?

Allen: Kia ora koutou, ko David Allen ahau. Well, actually nearly 'Good afternoon'. Just at the end of the morning Panel and Commissioners, and also just pointing out you have already heard from Pauline Hill. She did provide a Memorandum in response and all the questions as well.

The legal submissions are very succinct in terms of what I will be talking to. Solely those circulated on 8 June regarding providing for tāngata whenua, mana whenua in Proposed Plan Change 1.

I don't propose to read those submissions in full. I do point out though at paragraph 4 the limitation. The submissions were filed before the chance for evidence in any legal submissions from other parties. No such evidence or submissions has been received by the Panel, however mana whenua are down to speak later, and iwi are down to speak later in the week so you will hear from them directly.

Therefore at the moment we don't have any evidence or anything factual that I can comment on beyond the submission that you are all well aware of.

In relation to the structure, there's just a brief discussion on scope there in terms of engagement and the ability and the need for the Panel to engage on these issues. Then there is a suggested approach split between the submitters general concern or argument about its connection to Te Whanganui-a-Tara, and then also in relation to Te Mana o te Wai under the NPS which relates to the Freshwater Panel.

There is a brief two paragraphs at the end about the TPK website, and there is more information provided in the documentation from Pauline Hill on that website. Happy to answer any questions that the Panel may have at this early stage on those matters.

Chair: Thank you.

Kara-France: I initially asked from the Hearing Officers for evidence in regards to statutory obligations and statutory acknowledgements for iwi and mana whenua in the region. Do we have that on file please? How many are there and where are they?

Hill: That's part of the Memo that I have provided. There are a lot and therefore for the four who have settled there is quite a lot. I have actually provided links if you want that level of detail. I wasn't sure what detail you would require.

Kara-France: Thank you. Thank you for your response whaea Pauline.

The level of detail which is important is for the region itself, highlighting mana whenua and iwi statutory obligations and statutory acknowledgements apply to those Treaty settlements. I would recommend that to view the entirety for the Wellington Region please, and that would also include any iwi Environmental Management Plans registered with the Council please. How many are there?

Hill: I've provided links to those as well. Of the four mana whenua partners, I think there are three.

Allen: Commissioner, have you got the Memo in front of you?

Kara-France: I do.

Hill: Page-25.

Kara-France: The reason for my questions for citing that evidence is really to have an understanding of the recognition and acknowledgements to iwi and mana whenua within the region, and to also have them acknowledged. Kia ora.

Chair: Thank you Mr Allen for your submissions.
I have a question. You have noted that some provisions refer to tangata whenua or mana whenua. There are also some provisions that refer to iwi authorities and the definition of iwi authority is not limited to mana whenua and tangata whenua. I think it picks up the definition in the Act. An iwi authority means the authority which represents an iwi and which is recognised by that iwi as having authority to do so.

For example, page-69 of the Change Document, chapter 3.8, issue 1. I appreciate we are not specifically looking at that provision as part of this hearing stream, but that provision talks about the regionally significant issues and issues of significance to the Wellington Region's iwi authorities for natural hazards, and it goes on to list those.

That is something that I will raise with the S42A Report writer in that hearing stream, but in your view, how would that expression of the issue apply? That's not limited to mana whenua and tangata whenua on my reading.

Allen: Commissioner, page-69? Yes.

Chair: It applies more broadly.

Allen: You're right. That's different from this stream that we are talking about at the moment. Obviously the wording is different, as you have pointed out, and there might want to be a discussion about consistency of language through the document at that time, and that would be a matter that would be discussed with the S42A Report author at that time. The words do matter.

Chair: That sort of structure comes up, I think, in a few places in the RPS, whereas as you have pointed out, other provisions referred to are more specific.

Thank you.

I am just checking whether I wanted to ask anything else. I think your submissions are clear. Thank you.

Allen: Thank you.

Chair: Is there anything else? We're good?

That actually bring us to the end of today. Thank you very much for being here and participating. I think we can wrap up the day with a karakia.

Hill: [inaudible 02.19.37] I am happy to close it now, however that means tomorrow and every day we will need to open and close. I'm just checking if you want to stay with the schedule, or do you want to do it on a daily basis?

Paine: Kia ora whaea. Thank you for that. I think the Panel has had a discussion and I think the overall consensus is that they would like for it to be done each day. Thank you. Would you like to do that whaea?

Hill: Do you want to?

Paine: No.

Hill: Ka pai. Kia ora. [Karakia 02.20.22] He mihi whakamutunga ki a tātou katoa [02.20.25] karakia whakamutunga.

Kia tau te manaakitanga [02.20.30]
Ki runga ki tēnā ki tēnā o tātau
[02.20.33] kihi kihi [Māori]
Kia toi te mana toi te [Māori] toi te whenua
Kia tūturu whakamaua
Kia tina! TINA!
Haumi ē, Hui ē, TĀIKI Ē!

Kia ora.

[End of recording 02.20.48]

Hearing Stream One – General and Overarching – Day Two

Greater Wellington Regional Council

Hearing Stream One – General and Overarching – Day Two

SUBMISSIONS
Proposed Change 1 to Regional Policy Statement
For Wellington Region

Date:	Wednesday 28th June 2023
Hearing Stream:	One
Location:	Venue: Naumi Hotel, 213 Cuba Street, Te Aro, Wellington 6011
Hearing Panel:	Commissioner Dhilum Nightingale (Chair) Commissioner Craig Thompson (Chair) Commissioner Glenice Paine Commissioner Gillian Wratt Commissioner Ina Kumeroa Kara-France

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Chair: Tēnā koutou katoa. Mōrena. Good morning everyone. My name is Dhilum Nightingale. I am a Barrister and Independent Hearings Commissioner and the Chair of the Part 1 Schedule 1 Panel.

Welcome to Day 2 of hearings on Submissions on Proposed Change 1 to the Regional Policy Statement for the Wellington Region.

We will start with a karakia.

Admin: [Karakia]

Chair: Just some brief health and safety messages, especially for those who weren't here on the first day, on Monday. The wharepaku are down the corridor and to the right. There's a small foyer and then you turn left – it's marked there. The stairs are just out that door. The lift is located further along the hallway from the bathrooms. If the fire alarms sound please follow the instructions and directions of the hotel staff. The assembly point is outside, so exit the stairway and there's an assembly point out there on the corner of Dunlop Street and Vivienne Street. Please don't re-enter the building until the all clear is given. If you need assistance please let Ms Middendorf or Ms Nixon, the hearing advisors know. In the event of an earthquake drop-cover-hold. Do not evacuate unless we are instructed to do so, and again follow the instructions of hotel staff. In the event of a tsunami we will move to higher ground, so down the stairs and then back up the other stairway, is that right?

Admin: Stairway down the hallway.

Chair: Stairway down the hallway and up to the top of the hotel.

Nau mai haere mai, ki te kaupapa ō te rā. Welcome. We are the independent hearing panels that will be hearing submissions and evidence and making recommendations to counsel on Proposed Change 1.

We are two panels and are sitting jointly for this week, for Hearing Stream 1, which is general and overarching matters and we will continue to sit jointly for at least some of the remaining six hearing streams.

As I said, I have been appointed as Chair of the Part 1 Schedule 1 Panel, and we are basically making recommendations on provisions that do not relate to freshwater in Proposed Change 1. The other panel is the Freshwater Hearings Panel that has been convened under Part 4 of Schedule 1 to hear submissions on Freshwater provisions.

I would like to invite the panel members to please introduce themselves, perhaps starting with Mātua Thompson, who will be known to many of you.

Thompson: Tēnā koutou kotoa. I am Craig Thompson. I am the Chair of the Freshwater Panel. Thank you.

Kara-France: Tēnā koutou kotoa. Ko Ina Kumeroa Kara-France toko ingoa. Ko Waikato-Tainui, ko Ngāti Kahungunu, ko Ngāti Tūwharetoa, ko te Atahaunui-a-Paparangi, ko Ngā Rauru, i ngā iwi. Kia ora tātou.

Ina Kara-France, Independent Commissioner. Kia ora.

Wratt: Kia ora koutou kotoa. Ko Gillian Wratt toko ingoa. I'm Gillian Wratt. I am a Freshwater Panel Commissioner based in Whakatu, Nelson. Kia ora everybody.

Paine: Tēnā koutou katoa. Ko Glenice Paine toko ingoa, ko Te Atiawa, ko Ngāi Tahu ōku iwi, nō Waikato ahau.

I am Glenice Paine and I am an Environment Court Commissioner. I sit on both the Freshwater Panel and the Plan Change Panel. Kia ora.

Chair: Ngā mihi nui. I would like to acknowledge all of the Commissioners and the experience and knowledge they bring to this hearing. Commissioners Paine and Kara-France are members of both the P1S1 and Freshwater Hearing Panel. Mātua Thompson and Commissioner Wratt are also members of the Freshwater Hearing Panel.

The Regional Council appointed overlapping members to promote alignment and integration of provisions. There are specific statutory requirements for each hearing process and we will be mindful of those as we proceed through the hearings.

Hearing Stream One – General and Overarching – Day Two

Just some very brief housekeeping matters:

Hearings are being recorded and being livestreamed. Please speak into the microphones and say your name. Actually, that's a reminder for the Panel Members to do the same, as that is helpful for the transcript.

On Monday, we heard presentations from Council officers and the S42 Report writers for Hearing Stream 1. We heard legal submissions from Miss Anderson and Mr Allen for Council. We were not in session yesterday.

Today and for the remainder of the week we will hear from submitters.

This is really your hearing and we thank you for engaging with the Change Proposal and your considered views on it.

We have read all of your submissions and any evidence you have presented in advance, so do invite you to share the key points you wish to make, and to leave plenty of time for questions. We will listen with an open mind and ask questions of clarification.

We are required to ensure the hearing runs efficiently and that everyone who wishes to present can be heard. Therefore we have asked in a Minute that you please to keep to a ten minute time limit, unless you have asked in advance for an extension and that has been granted.

We have been able to accommodate all extension requests for Hearing Stream 1, but this is unlikely to be the case for the larger hearing streams like climate change and urban.

To help keep things on track the hearing advisors, Ms Middendorf and Ms Nixon, will ring a bell when you have two minutes left of your allocated timeslot, and a further bell will ring at time.

I would just like to make a comment about scope.

Submission points have been allocated into specific hearing streams. For this current session we are hearing submission points relating to general and overarching matters only.

We have read Council's reports and evidence on this topic and heard their presentations on Monday.

We have not yet received Council reports or evidence on climate change, urban, freshwater, biodiversity or other topics. Speaking for myself at least, I have not yet fully engaged on the Change 1 Provisions relating to these topics. Therefore we strongly encourage submitters to talk only to their submission points that relate to the current hearing stream. We appreciate that it may be inconvenient to have to present more than once, but we may not be able to fully absorb important points you wish to make about topics that are outside the scope of the current hearing stream.

You can present remotely. Please see the Hearing Advisors if you would like any support with this.

Finally, just please turn cell phones off or to silent mode. Also, just a note, even if you are not presenting at a hearing stream, we have definitely read your submission and will be considering it carefully.

Today we are hearing from three submitters – Dairy NZ, Porirua City Council and the Wairarapa Water Users Society. Dr Kerkin also had a submission point allocated to this hearing stream, but has advised that she won't be presenting today but will be returning at a future hearing stream to talk to her submission.

Given that there are three submitters, we will probably just sit right through without a break. Let's see how we go.

Are there any legal or procedural issues anyone would like to raise before we start? Panel is all okay? Thank you.

I would like to invite Dairy NZ if they are present. Thank you. Kia ora. Welcome.

Dairy NZ

Singh: Tēnā koutou. My name is Anna Singh. I am a Senior Regional Policy Advisor for Dairy NZ. Thank you for the opportunity to speak to the general and overarching matters of Dairy NZ submission on Proposed Change 1. I will take our submission as read and use this time to expand on our submission points in relation to the following: why the scope of PC1 should focus solely on those changes required to implement the NPS Urban Development, our concerns with PC1 including biodiversity and mitigation of agricultural greenhouse gas emissions and our concerns relating to lack of engagement with rural communities over the provisions relating to Te Mana o te Wai.

We recognise Council will be required to give effect to the NPS Urban Development within set timeframes. We also acknowledge why an integrated approach to addressing resource management issues, resulting from Urban Development should be considered at the same time.

We recognise climate change and biodiversity will be addressed specifically in later hearing streams.

Our concerns relate to the scope of PC1 extending beyond matters directly relating to the implementation of Urban Development.

In summary, our concerns are:

PC1 preceding national frameworks relating to the management of agricultural greenhouse gas emissions and biodiversity; the resulting inability to appropriately assess the need for and cost in benefits relating from provisions on greenhouse gas emissions and biodiversity through Proposed PC1; and the lack of engagement with rural communities in relation to Te Mana o te Wai, as it applies to water bodies and freshwater ecosystems in the region.

In summary, we do not believe PC1 can properly consider the costs, benefits, or optimal Regional Council functions in the management of agricultural greenhouse gas emissions, or indigenous biodiversity when the frameworks for managing these matters are not yet set at a national level.

PC1 proposes objectives and policies which consider climate change. These include provisions seeking the mitigation of agricultural greenhouse gas emissions through Policy CC5 and CC13.

As the Panel will be aware, the National Emissions Reduction Plan proposes to address greenhouse gas emissions through several mechanisms, including a yet to be established framework for the pricing of agricultural emissions, and methods to support transition to lower emissions, land uses and systems. These actions are still being developed.

As a result we do not know what these national frameworks will require of farmers, the mechanisms that will be put in place for reductions and agricultural greenhouse gas emissions and the extent of the reductions that will result; and how the provisions proposed through PC1 may support or conflict with these national frameworks.

With that in mind, we do not consider Council can properly fulfil its obligations under s32 of the RMA to examine whether or not they are the most appropriate way to achieve the objectives of the RPS, or identify and assess benefits and costs of the proposed provisions.

We will expand on our concerns in relation to the s32 assessment of provisions relating to climate change in Hearing Stream 3.

We have similar concerns in relation to the management of indigenous biodiversity in rural areas of the region, given the National Policy Statement for indigenous biodiversity has not yet been gazetted.

We acknowledge some components of PC1 seek to support primary production in adapting to climate change and encouraging biodiversity and enhancement. We acknowledge and welcome this intent to work with farmers, however, we believe it is important that these national frameworks in place prior to the issues being addressed through the RPS. As a result, we believe these matters should not be addressed through PC1; rather they should be addressed through future plan changes.

PC1 seeks to insert a Te Mana o te Wai objective in to the RPS. Dairy NZ is concerned at the lack of engagement in relation to this objective; specifically whether there has been sufficient effort to consult with the region's rural communities.
Clause 3.2 of the NPS-FM requires Regional Councils to consult with both tangata whenua and communities to determine how Te Mana o te Wai applies to water bodies and freshwater ecosystems in the region.

The question of whether consultation has been sufficient or not is addressed through S42A General Submissions Report, where the author noted that targeted

consultation was undertaken, and that the extent of consultation is a matter for Council.

While there has been discussion with the Greater Wellington Farming Reference Group, we do not consider this represents sufficient consultation with the regional rural communities, particularly given the potential impacts of freshwater related regulations on the primary sector in specific rural communities and economies.

While the dairy farming sector represents only 0.2 percent of the Wellington Regional GDP in 2019, the dairy sector has a more considerable contribution to the rural areas of the region – particularly South Wairarapa, Carterton and Masterton.

The South Wairarapa economy is more heavily dependent on agriculture. The primary sector makes up 22.8 percent of the local economy and dairy farming makes up 6.4 percent of this.

Reports by local government commissioned recognise these distinctions and the importance of similarities and socio economic characteristics as a key component for defining communities. This has not been reflected in the community consultation.

Other regions are putting significant effort into engagements with specific communities in their work to translate Te Mana o te Wai, and how this concept applies to water bodies and freshwater ecosystems in those regions.

We ask the Hearing Panel to consider whether provisions relating to Te Mana o te Wai reflect sufficient community feedback – particularly from communities with significant contributions from farming.

In conclusion, we ask that matters relating to freshwater, biodiversity and climate change are removed from the scope of PC1 and addressed through further plan changes. Once a national framework for the pricing of agricultural emissions has been developed and implemented, the National Policy Statement for indigenous biodiversity has been gazetted, and further consultation with rural communities has occurred in relation to provisions on Te Mana o te Wai as it applies to water bodies and freshwater ecosystems in the region.

Thank you for the opportunity to be heard today. We would appreciate any questions you may have.

Chair: Kia ora. Thanks very much for your submission Ms Singh.

Any questions from the team?

Ms Singh, I know that Dairy NZ will be coming back and talking at other hearing streams, and that's great, we look forward to your presentation on the specific topics.

Just some general points.

As I understand it, you're saying that Proposed Change 1 should focus on implementing the NPS-UD and not the NPS-FM. Are you aware that the NPS-FM requires a Freshwater Planning Instrument to be notified by the end of December next year?

Singh: Mm-hm.

Chair: Is it your point that this should happen in line with the proposed plan changes to the NRP?

Singh: Yes. Our understanding is that there will be further requirement changes to the RPS and that the provisions relating to freshwater could occur alongside those changes, to allow time for community consultation.

Chair: The Regional Council hasn't notified any proposed changes to the Natural Resources Plan has it?

Singh: I don't have information on that.

Chair: No problem. I wasn't aware of any. I think one of the S42A writers said on Monday, or at least it was in the report, this idea of how long can we keep continuing to kick the can down the road? There's a point, and actually I think this is a comment I made, that isn't there a point that we just have to get on and get things underway?

You also comment about the use of the streamlined Freshwater Planning Process being inappropriate for much of Proposed Change 1. We heard quite a lot about that on Monday. I am not sure if you were able to tune into any of the hearing.

There is lengthy discussion in the legal submissions and also rebuttal evidence of Ms Zollner for the Council on this point.

What we heard was that the panels are not restricted in the categorisation that occurred with PC1 was notified. This issue has come up in submissions and it is one that we are able to consider. But, probably the appropriate place to do that and to recommend any movement between the FHP and P1S1, or vice-versa, is once we have heard submissions in the topic specific streams.

I am sure you will address any re-categorisation that you think is needed in those specific hearing streams. We've certainly heard a lot about that on Monday.

Thank you for the point about agricultural submissions. As I understand it, the point you are making is that the Regional Council might have jumped the gun in progressing with that ahead of the government's pricing proposal. We would really like to hear more about that point in the climate change stream.

I am also interested: Ms Anderson for the Council, in her submissions, when she talked about the statutory framework (I think it's s62 of the Act and the transitional provisions will be covered in her submissions) Ms Anderson's view was that the requirement in the Act have regard to emissions reduction plan…

national reduction plan. Sorry, I might have got my terms mixed up there. That requirement, even though that came into force in November last year, the operation of the transitional provisions mean that there isn't a mandatory 'have regard to' requirement for the Panel. So, you might also be interested in reading what Ms Anderson said about that point.

You say, just above the table in the submission, that PC1 leans on a very wide translation of what constitutes provisions relating to freshwater. I get your point there and we will hear a lot more about this allocation issue.

I guess one of the things that I am thinking about is that we still need to look at things in an integrated way, and in fact we are required to do that by the Act.

Te Mana o te Wai itself is a concept that refers to… while it says, "fundamental importance of water" it also says there is a need to recognise that protecting the health of freshwater, the Māori of wai, protects the health and wellbeing of the wider environment.

It's very difficult to look at freshwater as an isolated issue in the absence of all the other things that impact the quality of water, receiving environments.

So, yes, again, we would really welcome any thoughts you have on that. If your primary point is that this should be restricted to Urban Development, again is it actually possible to remove freshwater considerations from that – given that we are required to consider integrated management of natural and physical resources.

In your table, where you say that Dairy NZ is concerned at the significant lack of robust analysis under s32," again that's a really important point and we would welcome hearing more about that in the topic streams.

Singh: It is our intention to provide more information on that.

Chair: Then otherwise I think I'm probably straying too far into other parts of your submissions. I will stop there.

Thank you very much again.

Singh: Thank you. Thank you for those questions. We'll make sure that those points are covered in our further statements.

Chair: Thank you. Sorry, just looking at my notes here, just when I was thinking about that point about separating urban from water, and is that separating actually possible, there are many examples in Proposed Change 1. I just quickly pulled out Objective 22, which is about Urban Development, and which you are saying is very appropriate to be considered as part of PC1. But, in Objective 2 there are lots of references to prioritising the protection enhancement of the quality and quantity of freshwater.

When we start looking at that and how the RPS is to direct lower order instruments on those points, we do end up really with a Freshwater Planning

Instrument that is seeking to provide for Te Mana o te Wai. It is difficult, but we would really like to hear your thoughts about that.

Kia ora. Thank you.

Singh: Thank you.

Chair: Commissioner Kara-France?

Kara-France: Kia ora. Commissioner Kara-France. Just in relation to consultation which you have raised.

You have raised the issue concerning consultation with rural communities, and yet in your table you suggest and highlight Chapter 3 Freshwater, Chapter Introduction – delete changes and addresses issues through full review of the RPS. You have noted the engagement with tangata whenua.

Just for clarification of consultation with rural communities, who do you mean by the rural communities please?

Singh: I think in this instance we are looking at the communities and from the Dairy NZ perspective, the farming communities contribute to those; taking considerable effort to provide consultation that is suitable for those communities in those areas, and speak to the issues that would concern them.

Kara-France: Just another question please, just in regards to those rural communities to be consulted to.

You have mentioned quite often in your submission here a reference to tangata whenua concerning Te Mana o te Wai. Is tāngata whenua also your rural communities, is that what you are saying?

Singh: Yes, I believe so. The requirement is to consult with tangata whenua and communities, so I feel like there's a wider scope there as well.

Kara-France: Just so I can have an understanding in terms of the opposition to some factors, you mention quite a number of times relating to tangata whenua and Te Mana o te Wai. Are you proposing to have your contributing regional communities contribute in that consultation process concerning Te Mana o te Wai with collaboration and partnership with tangata whenua?

Singh: My understanding would be that would be at the discretion of Council. I guess as long as efforts were made to ensure that those impacted by the policies in communities were informed and involved in consultation, but we have no view on how that should be undertaken.

Kara-France: Kia ora. Thank you.

Chair: Thank you Ms Singh. I don't think there is any more questions.

Singh: Thank you for the opportunity.

Porirua City Council

Chair: Kia ora Porirua City Council. Welcome.

I just want to check we have all of the material you have provided. We have your opening legal submissions and evidence statement of Mr Rachlin, is that correct?

Viskovic: Yes that's correct.

Chair: I think we also have a summary statement from you as well.

Viskovic: Yes, you should have summary statements from both myself and from Mr Rachlin as well.

Chair: Thank you. Please go ahead.

Viskovic: Mōrena koutou, Katherine Viskovic toko ingoa. I am appearing today as counsel for Porirua City Council and I am accompanied by Mr Michael Rachlin who is a Principal Policy Planner at the Council.

Thank you for your clarification that you have read our legal submissions and all of the evidence. I just wish to touch on a number of key points this morning.

As the Panel will be aware, the Council along with other territorial authorities in the region is required to give effect to the RPS through its District Plan. The Council also has a range of other statutory obligations that it must also meet. These obligations arise not only under the Resource Management Act, but also from other legislation and in particular the Local Government Act.

For context, and just as explained in my submissions as well, I note that the Council has recently completed the hearings on its proposed District Plan and its Intensification Planning Instrument. It is awaiting decisions and recommendations on both of those.

The Council's key interest in the Change 1 Process is to ensure that the provisions are drafted in a way that it can continue to meet its statutory obligations. It generally supports the intent of Change 1 and the overall direction of travel.
It agrees that the topic's Change 1 addresses important resource matters within the Wellington Region.

However, as raised in its submission, the Council considers that a number of the Change 1 Provisions could be expressed more clearly. This specific provisions that the Council considers could be improved will be considered in later hearing streams, and the Council intends to file further evidence as appropriate through this process.

At this stage the Council wishes to highlight that it is keen to work with the Regional Council to address the issues raised in its submission, and to improve

the provisions so there is clarity as to how they should be given effect to in the Council's District Plan.

There were a couple of legal issues that were raised in my submissions, which I will address briefly now, and then I will hand over to Mr Rachlin. Then we were proposing that perhaps we could run through both of our summaries and then take questions from the Panel jointly.

The key issue from the Council's perspective raised in this Hearing Stream relates to the Regional Council's jurisdiction to direct amendments to District Plans through the RPS.

Change 1 proposes to include policies in the RPS to direct councils to amend their District Plans, including by a certain date – in particular the 30th of June 2025.

While the Council accepts that a Regional Policy Statement can require territorial authorities to amend their District Plan, it is respectfully submitted that there are limits to that power.

In my submission a Regional Policy Statement cannot require a District Plan to regular matters that sit outside its functions, which is set out in s.31 of the Resource Management Act, unless it has transferred those powers in accordance with s.33 of the Resource Management Act.

It is also submitted that it cannot specify a deadline or date by which amendments to a District Plan must be made, and that is detailed in my legal submissions as to why.

The Council has also raised a question as to the status of Objective A in the Regional Policy Statement. This is addressed in some detail in Mr Rachlin's evidence, and we are aware that Objective A is being considered as part of Hearing Stream 2 and we will be filing further evidence on that, in accordance with the deadline this Friday.

I will now hand over to Mr Rachlin.

Rachlin: Thank you Chair and members of the two Hearing Panels. My intent is to read through my summary and then we can move to questions.
My name is Michael Rachlin and I am a Principal Policy Planner employed by the PCC (Porirua City Council).

For Hearing Stream 1 (HS1) I have produced a brief statement of planning evidence in support of a number of general submission points which was intended to provide an overview on some of the main thematic concerns of PCC in relation to Change 1.

Overall, I support the direction of travel being promoted by Change 1 but consider that further clarification is required within the proposed provisions to ensure that the outcomes sought by the Regional Council are achieved.

The matters I raised in my evidence were at a high level given my understanding of the matters that were to be considered to be included within the scope of HS1. Subsequent to filing my evidence, the s42A report for HS2 has been released.

I have read that report and now understand that the status of Objective A relative to other topic based objectives will be addressed as part of that hearing.

I would also note that the s42A report for HS2 additionally appears to deal with two other matters I discuss in my statement of evidence. These being firstly:
• Whether any objective(s) are intended to have primacy over another. I have interpreted the s42A report for HS2 as confirming that all objectives are intended to be read together with primacy determined on a case by case basis as derived by context (para 115 of HS2 S42A report); and secondly
• That general submission points will be considered by other s42A reports (para 129 and para 149 of HS2 S42A report).

Given those matters will be considered in later hearing streams, I consider that the remaining issue raised in my evidence relates to the general "workability" of the Change 1 provisions.

In my evidence I have used two objectives and two policies as examples of where issues may arise with interpretation and application of some of the Change 1 provisions.

At a high level, I consider that the proposed provisions raise issues relating to:
- the risk of regulatory duplication between district and regional plans,
- whether the objectives are achievable within the scope of the RMA, and
- how district plans, will achieve the outcomes sought by Change 1.

This includes a lack of clarity resulting from the introduction of new methods and concepts that have not previously been considered within RMA processes, and the requirements to implement a number of the policies by 30 June 2025.

Finally, I also consider that the approach Change 1 takes to urban development does not fully give effect to the National Policy Statement for Urban Development.

In addition to the social, economic, and cultural wellbeing provided by urban development, I have also provided two examples of how I believe urban development can contribute to reducing emissions.

Although I acknowledge the need to manage adverse effects of urban development (as indeed from any development) on physical and natural resources, I consider it important that the positive effects of urban development are recognised and enabled.

Thank you.

Chair: Kia ora. Thanks very much for both your submissions, it was very clear.

I do have some questions, but just bear with me. I need to have a few monitors.

In your summary statement Mr Rachlin, thank you for acknowledging that there are certain points you have made in your statement of evidence that will be addressed in Hearing Stream 2. Please come back to those in that Stream, because even though I know you have talked to those points in your evidence statement here, just to make sure that we don't lose those important points you can restate them for Hearing Stream 2. As we progress through these hearings we are going to be absorbing a lot of information and it is really important that we don't lose things in between Hearing Streams. We will obviously try our very best not to do that. I just note that there are points you have made that have been allocated to Hearing Stream 2. It would be great to be able to focus on those in a couple of weeks when that Stream starts.

The s.32 Report does refer to some engagement with your Council. Were you involved with any of that Mr Rachlin?

Rachlin: I was involved in providing feedback on the draft. In terms of the workshops that's listed in there, I wasn't directly involved in those. I was working on the housing business development capacity assessment during that time, so they are not within my personal knowledge those workshops.

Chair: As I understand it, there was quite a short timeframe. Was it thirty days? I am not sure if that's 30 working days or 30 calendar days, where the draft was provided and all of the territorial authorities were given the opportunity to provide feedback?

Rachlin: I would have to double-check. It did certainly feel at the time quite an ask to respond in a timely manner, in a way as much as we could. I can't recall exactly how much time we had.

Chair: I have just found it now actually. It starts at the bottom of page-27 of s.32. Para 124 talks about Porirua City Council providing comments. I think a summary of those is captured in a table with incredibly small fine print at the back of the 32.

The s.32 report does say that most of Porirua City Council's comments provided helpful drafting suggestions.
I guess to me, reading that and reading your submission, it's clearly the Council's view that there are some significant issues here.

Rachlin: I suppose it goes back to interpretation. We provided the feedback. The authors to the RPS may feel they took that on-board and changed it. Whether that's correct or not has now come out in this process.

The only other comment I would make is, I took the opportunity just to remind myself of looking at what the other TA's have said as well – and were we an outlier? It did seem to me that there were some commonalities between us and other TA's – thinking of say Kāpiti and Upper Hutt, in terms of some of the concerns expressed.

Something has happened in that process. How it happened I don't know, but something has happened. Hopefully we will now engage in this process and we

can come forward with the amendments perhaps that we meant at the time, or which have been maybe misinterpreted in what we were seeking at that time.

Chair: It may be that some progress has been made from your perspective, but there is still some way to go.

That engagement, is that what is required by the Wellington Triennial Agreement? Did that follow the process in that document?

Rachlin: Unfortunately I am not familiar with the Wellington one. I have not looked at it myself. Whether it goes down to that level of detail; my experience from this it doesn't necessarily go down to that level of detail of who is engaged when, or which personnel actually sat around the table. You need to make sure you've got the right people sitting around.

My experience from when I used to do the Regional Council's job if I'm in Canterbury, was that was more around that the RPS would go through a certain process, engage with communities and stakeholders, but didn't necessarily drop down to that level of who is going to be sat in the room around the table, etc. I have to say I am not familiar with the Wellington Triennial.

Chair: In para 30 of your evidence statement, so not the summary, your main evidence statement – you comment there that Change 1 is negatively framed in relation to urban development and fails to recognise social economic and cultural wellbeing benefits of urban development.

I would be really interested in your views on whether the changes that the s.42A Report writer has recommended for Objective A, which we will be discussing in Hearing Stream 2; whether you still think the framing there is as you have said here "negatively framed". It looks like that report writer is recommending quite a few changes to that Objective A. We would really welcome your thoughts on those.

Rachlin: I would certainly agree. I think the s.42A for Hearing Stream 2 has certainly moved it in the right direction. Obviously, that is in one part of Change 1. It then has to see how that feeds through into the other processes, to make sure there's alignment of the positive effects throughout the chapters. Certainly I would agree that hearing report certainly has moved things on from when I drafted this.

Chair: Certainly being a resident of Te Whanganui-a-Tara and spending some time in Porirua, there is certainly plenty of positive things going on in the district. It would be good for the RPS if you're saying it's too negatively framed in relation to urban development; certainly aware driving around your district there is plenty of really positive changes happening.

Viskovic: I think the other arm to that is the obligation that the Regional Council has to give effect to the NPS Urban Development as well. From the Council's perspective, perhaps that hasn't quite been captured through this change. Not only Objective A as Mr Rachlin was saying; it's probably a broader issue than that. But, again, that will be addressed when we get into the later hearing streams and specific drafting of provisions through this process.

Chair: There are some points Mr Rachlin you make, around the s.42A Report writer for this hearing stream – her recommendation for Porirua City Council submission points. In para 47 of your evidence you disagree with the officer's recommendation and think that some of the submission points, it's more appropriate that be accepted in part given where the officer actually takes those points.

Is there a problem from your perspective that the officer has recorded that for those points her recommendation is 'no decision required'? Or, do you think there is actually a problem with that, and they should be changed to 'accept in part'?

Rachlin: The issue for me would be… and not necessarily the technicality of that. My concern was mainly that they don't get forgotten; that those overarching matters are taken through into subsequent streams. If there is a process by which that will happen, so record 'no decision now' but there's a process by which they will then be addressed as we going through the process, that's the outcome we are looking for, the outcome is making sure that we don't lose sight of those as we go along because we have recorded 'no decision at this point'.

I am open to however best achieves that.

The only other comment I would make is, some of the difficulty I had, for example I think I said in paragraph 48 I referred to another submission point, which is actually around the s.32, where the officer had recommended 'accept in part'. Because that submission point is not actually addressed in the body of the report, it is a little bit difficult to work out why is that an accepted part and others aren't? There's a little bit of difficulty from my point of view in understanding that, but I don't want to make that the issue. The issue is, let's make sure as we go through the process we're cognisant of the integration of and how these objectives work together as we go through the process.

Chair: Thank you very much. That might be something that maybe at the end of this hearing stream Ms Jenkin might be able to come back to. We might be able to get some comment on that.

Thank you very much. I do have some questions for Ms Viskovic, but we might just see if the other Commissioners have some questions for you. Thank you.

Wratt: Kia ora. Thank you for your presentation. I have a question around your concerns around the direction, that it's appropriate for there to be in the RPS coming from the Regional Council, in particular around the date requirements for presenting your District Plans. I am not sure whether that will come up later or not, but just in case I guess.

As I read it, and I'm not a planner, my background is actually in managing environmental science and organisations, but it's very dependent on how you interpret s.31 of the RMA.

As I read your evidence, and I think it goes to the legal evidence, your comment is very much driven by Case Law of other cases where that sort of situation has arisen. Am I interpreting that correctly?

Viskovic: My submissions do include a number of references to other cases where there has been direction made, or purported direction made. The issue that the Council has is that it considers that the discretion whether to notify a plan change should sit with the Council. There are other considerations that need to be had in making that decision, including financial considerations and so on.

So, the timing of when it notifies its plan change to give effect to the RPS direction in my submission should lie with the City Council. I have some concerns about how soon this date is as well, because it doesn't give the Council a lot of time presumably from when decisions are made – assuming some are appealed and how long that takes. I think it just locks into a process and then if it doesn't meet that date what that means from there for the District Plan and how it is to be interpreted. That raises some concerns for the Council as well.

The other thing that we have been considering is the myriad of national direction and other direction that the Council is also having to give effect to, and just trying to work this in with the various different work-streams and the fact that the Council has just completed its District Plan Review. I guess procedurally we're just trying to work out how this works and we do have some concerns about being locked into a date and fettering the Council's discretion as to when it should give effect to these provisions. There is no debate that it is required to.

Wratt: Thank you. Sorry, I should have said Commissioner Wratt for the purposes of the record.

So, what I'm hearing is, there are two aspects. One is the powers that the Regional Council has and the other is just the reasonable test of what is reasonable to expect a District Council to deliver into a timeframe.

Viskovic: I think that's a good summary.

Wratt: What does determine the timeframe that a Council has to deliver? What have you set aside? Any instructions or requirements from the Regional Council. What is it that would drive when you would have to bring in those plans and such like?

Viskovic: The Council has an obligation to give effect to the direction from the Regional Policy Statement. But, in terms of the decision-making that goes into when and how that occurs, I might hand that over to Mr Rachlin to answer.

Rachlin: That will be a matter of things such as resource and work programmes. I think I used the example in my statement of evidence of the work which is done in terms of significant indigenous biodiversity has taken a number of years to get the SNA (Significant Natural Areas) into the District Plan. They are in there. Obviously it's subject to decisions now from the Independent Panel.

The timeline for that goes back a little ways. I have been working on it since 2017. People before that were working on it, in terms of working with the communities or the various partners, etc. There is quite a process to get to the point where we are able to notify SNA's that cover 17 percent of Porirua's land area. We think that part of that is having the time to engage with all the relevant parties in quite an open and constructive way. Touch wood we may avoid some of the litigation that has plagued other Councils. We will have to wait and see.

That just gives, I suppose, a little snapshot of what it takes to give effect to the RPS. It is not something that can necessarily be done overnight. It can also involve costs for the Council and that needs to be budgeted. That's well above my pay-grade in terms of things like that. That will be for the Council to set. But, those are all the matters that will be go into this decision as to when and how we do it. And, part of the process will also be having just reviewed the District Plan, part of it will be going back to stop-gap what's missing and what needs to be targeted to give effect to Change 1 that's missing now.

So, there will be a number of processes (and I just heard the bell). The main point being that it's resourcing and that will be a matter for the Council. I couldn't sit here and say, "This is how it will happen."

Wratt: I don't think the bell is entitled to stop you if you are answering a questions from a Commissioner. Light relief, thank you Jo.

I guess the question in my head, and I certainly appreciate these are not easy processes, they take time, consultation takes time taking time working through into an approach and decisions that are workable is not an easy process.

If a District Council isn't progressing at an appropriate pace, I guess, what I am hearing you say it's not up to the Regional Council to be the policeman for the District Council. That's not their role. Their role is to set those broad policy guidelines. So, who does take you to task if you're not doing it?

Rachlin: I'm going to put a different lens on that. I think I mentioned my statement of qualifications, that I spent seven years working for Environment Canterbury in the District Plans Team. My function there was to work with the TA's to give effect to the RPS. So, there are a range of tools that Regional Councils can use to work with the TA's to get the RPS implemented in a timely manner.

Some of them were benign, as in you work with them; but sometimes when I was working in Environment Canterbury we used other methods, such as appeals on plan changes to try and drive the agenda; but always looking to try and work with the TA's in a manner that's constructive to get to that point. But, there are a range of tools that Regional Council can use to work with TA's to get to that point.

To some extent that's what has been happening with the Porirua District Plan; is that we have worked with a range of partners, including the Regional Council, to give effect to the RPS. There are a range of tools. It's not necessarily a case of policing it, because that assume that TA's need policing. I don't think that's the issue.

Wratt: Thank you for that. That's useful background for me. Thank you.

Chair: Just to follow on from that, you probably won't be aware when the Hearings Panel will come back with their decisions or recommendations on your PDP and IPI.

Viskovic: It's both.

Chair: They'll probably be during the course of these hearings and probably or possibly before the climate change and urban topics. Hard to know. Anyway, potentially soon.

Rachlin: The date that the Minister provided was the 23rd of August. Obviously we are still in the hands of the independent panel to get to that point. You're right: we will anticipate again decision/recommendations during the process of these hearings over the next little while. Obviously we'll have to wait to see what they are and where they take us.

Viskovic: That date relates to the Intensification Planning Instrument when the recommendations need to be made, and when the Council needs to make its final decision on that, and then for the balance of the plan the panel will be making decisions. But, there is no particular date that applies to the balance of the District Plan. But, as I understand it, the Panel is working towards its decisions and recommendations being integrated and coming out at the same time.

Chair: It would be really useful when you come back and present on other topics if you do have those decisions, it would be interesting to see. For example, I have just brought up Policy 23, which is one of these directions "By 30 June 2025 District Regional Plans shall identify and evaluate indigenous ecosystems and habitats with significant indigenous biodiversity values."

If the decision's version of your PDP, the work that you've done actually means that you can already tick that box, that would be useful to know. Or, would you think that you would actually need to notify a plan change to give effect to that provision if it ends being confirmed in the RPS? You mentioned biodiversity in particular. It could be that the City Council has already done a lot of the work that might be required.

Viskovic: Yes that is quite possible. It possibly also depends on where the provision that ends up being included in the RPS lands, in terms of what it says and whether the Council could say that yes, it has essentially already complied with that through its PDP process.

Chair: I have some questions for Ms Viskovic, but did anyone else want to talk? Commissioner Paine?

Paine: Good morning Mr Rachlin. I just want to follow on from the questions Chair Nightingale has been asking you and the answers that you have given about your interaction, the Porirua City Council's interaction with Greater Wellington. Notwithstanding the opportunities you have had to talk together about your

submissions and their response, I notice in both Ms Viskovic's speaking notes and yours, you talk about probably some more conversation or discussion is needed. Has that been raised? Has anybody said, "Maybe we should get together and talk about some of these things that have been raised in the s.32 or 42, the accept and reject tables?

Rachlin: Obviously when the submission was first put in there were some early conversations around the nature of it. Since then, if you like, the appearance process has taken over and we haven't been approached, that I'm aware of, with my knowledge, by Regional Council to sit outside of this process to look at some of these matters that we have raised.

I'm not aware of further conversations within that context having taken place. I think we have said that we are happy to have those conversations, but at this stage the hearing process seems to have taken over, so that's where the energy is being put.

Paine: This might be a question for you. Does the hearing process stop those further conversations happening?

Viskovic: No, I don't think that it does. However, the Council is intending to take the approach of providing drafting through its evidence that it presents to these panels. But, certainly the Council is open to discussing with the s.42A Report writers, or elaborating on any of its submission points.

Again, it possibly comes down to the logistics of how this will work and timeframes.

The engagement between the Councils, I think, can continue to occur. But, the most streamlined approach may be for the Council to present its proposed drafting in its evidence.

Paine: I thank you for that. I have a couple of other questions Mr Rachlin but they were more I think for the Freshwater Stream. In your para 21 you talk about the mana whenua statements at the end of Objective 12. I will leave that for that Stream and those things relating to that.

Rachlin: I am conscious of what was mentioned earlier about the need to maybe keep comments to more general before we drop down. It's a little bit of trying to get that balance.

I suppose the point I was making is that the questions to be considered may be at that time about those statements, their purpose and role, and how they actually operate within the objective. Because it is the objective that's brought, that big [01.07.51] broader and it interconnects. I would probably suggest that's one for that when we start really needing to drop into the details of the Freshwater stage Hearing Stream 5 I think.

Paine: Yes, I have many of the same questions that you have, so looking forward to that. Thank you both. Thank you Madam Chair.

Kara-France: Kia ora Mr Rachlin, Commissioner Kara-France. I too had highlighted questions regarding the Freshwater issues highlighted in your submission, regarding mana whenua status and the statements made.

The question I put to you now in regards to a comment here, that the statements contained many objectives and policies within them, which would each need to be examined in terms of being measurable, achievable, realistic, relevant and effective, and within scope of the RMA.

The question that raised in my head was regarding your cultural advisory, concerning mātauranga Māori and te ao Māori perspectives as you were writing your submission. Did you take advice from your staff?

Rachlin: No. The part you have referenced there comes from the actual PCC Submission. I wasn't involved necessarily in the direct draft – the PCC Submission, on that element of it. Again, I couldn't say what they took into account etc. but I would say generally speaking, no, it probably would have just been more from planning, as in RMA planning lens of what process do we need to follow to make sure what goes into the RPS is actually something that's capable of being dealt with through the Low [01.09.49] Plans, Regional Plans and District Plans; is how do we frame that in such a way.

I think that's more the concern is, how can we frame it so we can go down to those low order plans? That's what a big part of the RPS is about, is guiding and directing what happens later on.

Kara-France: Thank you for that response.

Another question that comes to mind in regards to your consultation process with the Treaty partners, and the feedback, findings and responses to your development of your District Plan, are they at the table in decision-making, in that strategy process with you?

Rachlin: Sorry, I didn't quite catch that. Are they…

Kara-France: Are you Treaty partners at the table in consultation and decision-making with the Council in your development of your District Plans? It's just a highlighted questions leading into this statement that you made in your submission.

Rachlin: Certainly from early stages, in terms of some provisions, they were more or less the pen holders for us, and working on some of those chapters in the District Plan. That's not to say that Ngāti Toa are happy with one hundred percent of everything that's been done – I'm not going to sit here and say that's the case, but certainly been actively engaged in terms of some of the drafting, identifying the sites of significant, that process has very definitely been around the table. As I said for the some of the chapters, actually given us the wording to work with.

Kara-France: Thank you've actually answered my question. That actually doesn't show in the submission but now I do understand that it is there. Kia ora. Thank you.

Chair: Kia ora Ms Viskovic. Thank you very much for your legal submissions.

From para 4.11 you refer to some cases that talk about this issue of Council statutory discretion role being fettered. While it is now reasonably an old decision, but I think it is still good law in the Court of Appeal's case in Auckland Regional City Council and North Shore City Council, which I am sure you are very familiar with, it's quoted quite a bit. The court said there that a policy could be flexible, inflexible broad or narrow, and that while many people would prefer to take some discretion in implementing a policy, the Court said, "If applied remorselessly, that it would not cease to be a policy." So, they are saying that policies can be very specific and can be directive.

Do you think that requiring a plan change to be notified by a certain date oversteps that mark though?

Viskovic: I certainly agree with the proposition that policies can be highly directive. I think the issue with putting in place a date does take away the District Council's discretion as to when it implements the policies. The examples that are provided from the line of Case Law in 4.11 I think show that there's an uncomfortable fit between providing a date and fettering the Porirua City Council's discretion, in terms of it's decision-making about when it should notify a plan change.

For the reasons that I expressed earlier, I think there are some merit issues as well related to that. It is not clear to me the necessity for the date as well. It sort of almost implies a little bit of a lack of trust, although I'm sure that's not what was motivating it. But, I think that it does create a number of issues for the City Council.

As Mr Rachlin said, there are budgets and financial reasons for determining how and when the Council will notify a plan change. But, if it has other work streams and can combine plan changes together, I think there are really beneficial community outcomes as well, in terms of not wanting to overload communities with notification of constant changes to plans I think that is quite problematic from a procedural perspective.

Chair: We will certainly look at that and also what the s.32A justification is. I think it does talk about the driver behind that 2025 date in the specific Streams. Section 59 of the Act does state that a Regional Council can specify methods; obviously not rules but methods, to achieve policies.

I hear what you and Mr Rachlin have said about perhaps this being an unreasonable fetter on that.

Viskovic: I think the other thing is that the date is being included within the policies themselves, rather than in methods. As I have set out at paragraph 4.14 of my submissions, there is also the possibility that we could end up with technically not complying with the Regional Policy Statement as well, and therefore giving potential recourse back up to Part 2, because of that technical non-compliance, if it happens that a plan change hasn't been notified by a particular date. I think those are just the concerns that the Council has, as to how this will end up operating in practice if the date is included, and the myriad of reasons why that date may or may not be actually achievable to be met.

Chair: Does that go to the statement in *R J Davidson* about competently prepared?

Viskovic: Yes.

Chair: If the District Plan has not been notified by that date, and I want to say 30 January 2025, and sorry if I have got that wrong, but that date in 2025, if that hasn't been done by that date then Part 2 could be used to influence and outcome.

Viskovic: Yes, that is the concern that I have raised in that paragraph, in my submissions, correct.

Chair: The other case which I just thought I would mention, in case it might be useful when you present in some of the other topics was the Environment Court's decision in *Man O'War Station* where it referred to a previous decision in Wairoa Canal which said that an RPS can contain policies and methods that are directed to a particular end or outcome. But, certainly if there has been Case Law that talks specifically about there being a date by when a plan change needs to be notified, that would be really helpful to have that.

Viskovic: I think referring to outcomes it's not clear why the date is required to achieve the outcomes because the outcome should relate to the substance of the policy.

Chair: I am not sure if this is covered in your submissions but we heard quite a bit on Monday about this issue of moving provisions between the two processes, FHP and P1S1. Just wondering if you had any views on the Panel's ability to do that perhaps once we had heard submissions. Have you thought about whether there's any jurisdictional bar or any issues with the Panel re-categorising provisions between the processes.

Viskovic: It is not something that the Council has asked me to look at. The Council is, I think, neutral on where the provisions are allocated.

Rachlin: This submission doesn't look at that. We've taken a neutral stance on it.

Chair: If anyone was wondering why does it matter, I guess the biggest impact is there are very different appeal rights depending on which process a provision goes through.

Viskovic: The only thing that occurred to me is that if the reallocation occurs after the Hearing Panel has considered or has heard submissions on particular points how that would work if the correct Panel members weren't sitting in the room and considering each of the provisions. That procedurally would be my only question as to how it would work, if provisions were going to be reallocated after hearings had occurred.

That's probably more just something that occurred to me when you were speaking earlier, rather than something that Porirua has asked me to consider.

Chair: It's a good point. Certainly I'm the only person that's not on the Freshwater Panel. It could be that I end up sitting on more Panels than I had originally anticipated at the beginning of this process. We are yet to work that through.

Thank you. I think that was all the questions we had. Thank you so much for you submission. We really look forward to continuing to meet with you and hear from you again in the other Hearing Streams.

Viskovic: Thank you.

Wellington Water Users Society

Chair: Can we have submitter Wairarapa Water Users Society who have presented a further submission and would like to speak to that. I think they are presenting online. Kia ora. Welcome.

Please go ahead.

Water: Thanks for this opportunity to present. Just for a bit of background, my name is Geoff Copps and I am representing the Wairarapa Water Users Society. That organisation is a membership body with around sixty members who use water in a rural environment, predominantly irrigation to drive production. My connection to them is I provide management and advocacy support to them on a very part-time basis. Essentially, it is a volunteer organisation. Been in existence for around about twelve years and it has developed a pretty strong relationship with Greater Wellington.

We have been led to believe and we don't have any doubt about it, that we are considered a credible party to engage with on policy development; not necessarily the legal ins and outs of any regulatory regulations that are drafted, but more in a practical delivery and what practical impact would such a regulation have.

A lot of that respect is because we work on facts and science and want to avoid the emotion and hysteria that sometimes clouds these arguments.

Our original submission and the supporting submission focused on a common theme that the inclusion of the freshwater provisions in the review is unnecessary and places an unreasonable burden on organisations like Wairarapa Water Users.

I would just like to go through a bit of history to demonstrate the burden that we have tried to work within.

Over the last ten years, and particularly focused on the Ruāmahanga Catchment – that's where our members are and that's where our area of interest is, and it's probably got the longest history of this sort of process. It started off with the Whaitua process which involved four years of consultation, resulting in a Whaitua Implementation Plan which was adopted in 2018.

On that adoption, we had the development of the Wairarapa Water Resilience Strategy, which was driven principally by the volunteer members of the Wairarapa Water Users and that's also been adopted by Greater Wellington.

Through all of that process there was the Wakamaukau [01.27.24] Community Water Storage Project, which is now in a dormant state I guess you would describe it, which involved a lot of engagement again with the Regional Council and the proponents of the Community Water Storage.

Then the whole process through the proposed Natural Resources Plan which is now moving through into the actual Natural Resources Plan.

As a volunteer organisation we have been involved in all of these consultations, and on top of all of that, which we thought was unreasonable at the time. We have now got the Freshwater [01.28.08] and struggling to see how we can resource efficiently and provide our input that is value but is an enormous drain on time and so on for volunteers.

If we look a bit further out into the future, we see the update of the Natural Resources Plan in 2024/25 which will talk about the same things again. Then at a National level at some stage we will have a replacement for the RMA, proposed at the moment to be the Natural and Built Environment Act. We are involved in that as well.

I guess my emphasis is that all of these engagements are talking about the same water and the same geography, and accepting that there is regulation that is required, and that the Council doesn't necessarily have a lot of discretion.

The actual implementation of things such as the Whaitua Implementation Plan and the Resilience Strategy are sitting there waiting to be resourced, while all the resources are involved in the regulatory environment.

As I say, I do acknowledge that the Council doesn't create this framework, but it does have some discretion in some areas, and where it does have discretion it should consider the likes of Wairarapa Water Users as a volunteer organisation.

It is appropriate for me to thank the national organisations that represent components of the primary sector for the sharing of information insight. They obviously have a wider brief but also have resources that they can put into assessing the drafts that come out for consultation. They have been prepared to share that information with us, to keep us informed.

That's my main point. I was interested. I listened to the last submitter. I picked up some similar themes – the burden of consultation and input. That was coming from a City Council so I took some comfort from that. We aren't barking up the wrong tree I don't think.

That's the basis of my submission thank you.

Chair: Thank you very much Mr Copps. That was very clear.

Your further submission supports the submission points of Dairy NZ and Beef & Lamb NZ. For this Hearing Stream, I understand the main point is that Proposed Change 1 should give effect to the NPS on Urban Development and no more.

Copps: That's all.

Chair: Fully acknowledge all the consultation processes that the Society has been participating in and your input is so valued for all of those processes. Fully appreciate there is a lot of consultation demands especially on, I would say, volunteer society organisations like yours. Are you aware that the National Policy Statement on freshwater management requires the Regional Policy Statement to notify a Freshwater Planning Instrument by the end of next year that gives effect to the NPS?

Copps: Yes, I'm aware that there are future requirements. My understanding is that Change 1 of the RPS, as promoted, won't address in total that issue. They're still going to have to come back and we're going to have another discussion about the Natural Resources Plan and so on, and giving effect to the NPS Fresh Water, assuming that hasn't changed in the meantime after a chance of government; all of which is beyond the control of Regional Council.

I guess what I am suggesting is that the timeframes might be set by Central Government, but where there is discretion and I believe this is one instance where there is discretion, the Council could take the view that if these hearings run through the RPS Change 1, and I think the hearings run through until the next calendar year, once those hearings are over we'll be banging back straight into the Natural Resources Plan Hearings about the same water and the same place.

Chair: Are you able to collaborate with the likes of Diary NZ, Beef & Lamb NZ on these consultation processes?

Copps: Yes. The other parties that we maintain contact with are Federated Farmers and Irrigation NZ, and Horticulture NZ. I guess our members span all of those land use types – meat production, dairy production, horticulture production. The background is actually Wairarapa, but that's not today, that's not a live shot. It's not nearly as green as that.

We do rely on and have a good relationship with those national bodies, which to be fair we take a lot of the technical expertise that they have and try and weave into what we are trying to develop.

Chair: Those perspectives on the ground.

Copps: Yes.

Chair: Speaking of that, I was actually interested: how are you members finding things? What are the issues that are front and centre for them at the moment?

Copps: The speed of change, which is related to this regulatory environment and the consultation process; and having certainty which allows them to make investment decisions. I think the members fully accept that there is a general trend, not just through Greater Wellington or just in Wairarapa, that access to water may be constricted; so the drive for efficiency to ensure that you get the maximum bang for the amount of water that is allocated to you. While they have never wasted it, the focus needs to be on the efficient use, so it's the right amount of water, in the right place at the right time, and it's not irrigating just in case, it's because good science and technology has been used to identify the need.

I guess they are always subject to seasonal issues. There is much less irrigation happened over the last summer because it was wet; so they had a different set of issues this year. But, it is that certainty of the operating environment which allows good investment decisions.

Chair: Thanks very much. We do hope you will come back and present on some of the topic specific Streams that are of interest.

Copps: Yes. That's the plan.

Wratt: Kia Mr Copps, Commissioner Wratt here.

Just moving on from your comments about the pressures to respond to various processes and volunteer organisation in particular, but not just applying to volunteer organisations, I certainly hear what your concerns are.

My question is, if the Panel was to go back at the end of this process and make a recommendation to Greater Wellington Regional Council that they withdraw the Freshwater Provisions out of this Change 1, acknowledging that they have to notify – NPS Freshwater requires notification by end of 2024, end of next year, what would you be coming back and saying the process then needs to be to make it more manageable for your organisation sector submitters?

Copps: I think the ideal for us would be that between now and the end of 2024 we work together in workshops, engagements, consultations or whatever tools we might want to use, with a view to developing the Regional Council response to the NPS for freshwater.

At the moment we've got to deal with the RPS. Obviously when these hearings on Change 1 are over and you provide a recommendation to the Regional Council, my impression, and I'm not sure if it's been stated or it is just an impression, it will be the middle of 2024.

Wratt: That's correct.

Copps: That will just be recommendation and the Council will take some months to look at a recommendation and decide what they're going to do – accept all, part, or whatever. So, we'll end up at the end of 2024 under the current regime having an RPS consultation process and a Natural Resources Plan freshwater chapter consultation overlapping each other.

I think time has moved on far enough now that it's probably too late to take freshwater out of this. There may be some legal requirements that are around that, I'm unsure of all of that. But, it looks to us that we are going to be having these RPS Change 1 discussions and freshwater provisions in the Natural Resource Plan discussions at the same time, with the same people, about the same water in the same place.

Wratt: So, what you're really asking for is a very focused process looking at Freshwater requirements?

Copps: Yes.

Wratt: Pulling together those consultations around the NPS and the National Resources Plan around freshwater.

Copps: Yeah. I know, as I say, there may be prescribed processes to move those things through, but the more that it can all be combined so that we have one conversation about the same topic the better.

I know in some cases that sentiment is echoed by the national bodies who may well have technical expertise on staff, which is why they do comprehensive submissions, but they still want to have one conversation about the topic at the same time.

Wratt: Thank you for that. Appreciate your presentation to us today. Your concerns you've made quite clear, thank you. I think some good challenges for us and for the Regional Council in terms of how they manage a process which is manageable for the key stakeholders. Thank you very much.

Copps: Thank you very much for your time.

Thompson: Mr Copps, good morning. I'm Craig Thompson, Commissioner and Chair of the Freshwater Panel.

I have been listening obviously and I understand what you say. I'm wondering if you've been able to liaise in any way or at least read what Wairarapa Federated Farmers have had to say about things so far. Is there a point of commonality between your concerns and theirs?

Copps: Yes there is. Yes I have read their submissions and their input. I have had discussions with the submission writer, Ms [01.42.53]. We mostly agree. There are some issues where we either don't have an opinion because we have no knowledge on it. We don't have an opposite opinion on anything at all I don't think.

We fully acknowledge that we have common views about common interests.

Thompson: I just wanted to make sure there weren't any issues about you having one view and them another. Thank you for that. We shall see you later in the process no doubt. Thank you.

Copps: No doubt. Thank you.

Chair: Thanks very much.

Copps: Is that all the questions?

Chair: I think it is, thanks Mr Copps.

Copps: Thank you.

Chair: That's the end of the submitters scheduled for today. Is there anything else that we need to cover or are we all good?

[Closing karakia]

[End of recording 01.45.15]

Hearing Stream One – General and Overarching – Day Three

Greater Wellington Regional Council

Hearing Stream One – General and Overarching – Day Three

SUBMISSIONS
Proposed Change 1 to Regional Policy Statement
For Wellington Region

Date:	Thursday 29th June 2023
Hearing Stream:	One
Location:	Venue: Naumi Hotel, 213 Cuba Street, Te Aro, Wellington 6011
Hearing Panel:	Commissioner Dhilum Nightingale (Chair) Commissioner Craig Thompson (Chair) Commissioner Glenice Paine Commissioner Gillian Wratt Commissioner Ina Kumeroa Kara-France

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Chair: Mōrena. Welcome to Day 3 of Hearings on Proposed Change 1 for the Wellington Regional Council Regional Policy statement.

If we could all please stand for karakia.

Admin: [Karakia]

Chair: Ngā mihi nui Lisa.

Mōrena. Ko Dhilum Nightingale tōku ingoa. I am a Barrister and Independent Hearings Commissioner. I live in Te Whanganui-a-Tara, Wellington. Another beautiful day here.

Nau mai, haere mai, ki te kaupapa o te rā. It is a pleasure to welcome you to this third day. We will start with some brief health and safety messages.

The stairwell is just out the door there to the left. The wharepaku are out that door, down the corridor to the right. There is a small foyer and turn left. The lift is located further along the hallway from the bathrooms. If the fire alarms sound please follow the instructions of the hotel staff. The assembly point is outside on the grass in front of Victoria University. Please don't enter until we get the all-clear. Drop-cover-hold in an earthquake. In the event of a tsunami we will move to higher ground, up to the top of the hotel via the stairs.

We are the Independent Hearing Panels that will be hearing submissions and evidence on Proposed Change 1. We are two panels and are sitting jointly for this week, for Hearing Stream 1, which is general and overarching matters.

I have been appointed by the Regional Council as Chair of the Part 1 Schedule 1 Panel. Our remit is to consider and make recommendations on provisions in Proposed Change 1 that do not relate to freshwater.

The other panel is the Freshwater Hearings Panel that has been convened under Part 4 of Schedule 1 to hear submissions on the Freshwater provisions.

I would like to please invite the panel members to introduce themselves and state the panels or panel that they are part of. We will start with Mātua Thompson.

Thompson: I am Craig Thompson, retired Environment Judge. I am chairing the Freshwater Panel. Thank you.

Kara-France: Tēnā koutou katoa. Ko Ina Kumeroa Kara-France taku ingoa. Ko waka te Tainui, ko Ngāti Kahungunu, ko Ngāti Tūwharetoa, ko te Atiaunui-a-Paparangi, ko Ngā Rauru ngā iwi. Tēnā tātou katoa.

I am appointed to both freshwater and on-freshwater issues. Kia ora.

Wratt: Kia ora koutou katoa. Ko Gillian Wratt tōku ingoa.

I live in Whakatū, Nelson and I am on just the Freshwater Panel. Kia ora.

Paine: Tēnā koutou katoa. Ko Glenice Paine tāku ingoa, ko te Atiawa, ko Ngāi Tahu oku iwi, nō Picton ahau.

Good morning everyone. My name is Glenice Paine and I am an Environment Court Commissioner. I sit on both the Freshwater Panel and the Plan Change Panel. Kia ora.

Chair: Kia ora.

As you heard Commissioners Paine and Kara-France are members of both Panels. There are specific statutory requirements for each hearing process for the panels and we will be mindful of these as we progress through the hearings.

I would like to invite the Regional Council staff and officers who are in the room to kindly introduce themselves, so we know who is here.

Hickman: Kia ora koutou. Ko Matt Hickman tōku ingoa. I am the Environmental Policy Manager at Greater Wellington.

Jenkin: Tēnā koutou katoa. Ko Sarah Jenkin tōku ingoa. I am the Reporting Officer for Hearing Stream 1.

Chair: Also two extremely important people Ms Middendorf and Ms Nixon who are the Hearing Advisors. If anyone has any administrative matters that need attending to, please see either Ms Middendorf or Ms Nixon.

Just a few other quick housekeeping points.

Hearings are being recorded and also being livestreamed. Please speak into the microphones and say your name before you speak. That is a reminder for the panel as well. That is helpful for the transcript.

On Monday, we heard presentations from Council officers and the Regional Council's counsel yesterday. Today and tomorrow we will be hearing from submitters, talking to their points on this first Hearing Stream – general and overarching matters.

We are required to ensure the hearing runs efficiently and that everyone who wishes to present can be heard. Therefore, a bell will sound when there is five minutes left of your allocated hearing time and then another bell at time.

I do note that even if you do not present at this Hearing Stream, we assure you we have read your submissions and will be considering it carefully in our deliberations.

We will listen to all submitters with an open mind and ask questions of clarification.

Finally please if you can turn off your cell phones or switch them to silent mode.

Today's agenda we have five submitters presenting. Late yesterday afternoon we received legal submissions filed on behalf of Muaūpoko Tribal Authority. In this instance we were able to circulate those to the Panel and we were able to read those in advance. They are up on the website. Receiving material in accordance with the timetabling directions really does ensure that we can give full consideration to the matters. In this instance we were able to receive and consider those late submissions.

Are there any procedural points anyone would like to raise?

Nixon: We are just having some problems with the doors. We can get out. There are people on the outside. Just bear with us if there is any noise.

Chair: Thank you Ms Nixon.

No points that the Panel members would like to raise. Thank you.

I would like to please invite Royal Forest & Bird Protection Society of New Zealand if they are ready.
Nga mai haere mai. Kia ora Mr Anderson. We can't quite hear you. You're ready to go now. Thank you.

Royal Forest & Bird Protection Society of New Zealand

Anderson: I'm Peter Anderson, Lawyer for Forest & Bird. The submissions I am going to present today address only the issue of whether provisions are allocated to the Freshwater Planning Process or the Schedule 1 Process. I take it from what you have just said that you have read my submissions.

What I am going to do this morning is start by putting up s.80A which is the relevant section of the RMA, which talks about which provisions go where. Then I am going to talk about the Otago Regional Council and Forest & Bird case which is exactly on point here. Then I am going to refer through to the actual Plan Change 1 Provisions and identify what I think are some very clear mistakes in the allocation process to date. Then there are a couple of quite problematic issues, or at least one problematic issue. Then I am going to try and talk about where to from here.

What I am going to do now is I'm going to put up s.80A and I am going to share my screen to do that. Section 80A talks about when you can put a provision through the Freshwater Planning Process and when you can't put it through the Freshwater Planning Process. The key issue is whether the provision in question relates to the freshwater or not.

This exact issue arose in Otago when Otago Regional Council tried to put their entire Regional Policy Statement through the Freshwater Planning Process. That case has been referred to in our submissions and it's also been referred to in submissions by other parties. I thought I would just briefly give a bit of background to that case, because Forest & Bird was the respondent in it.

What happened was Forest & Bird became aware of the Regional Council's intention to put the RPS through the Freshwater Planning Process and we said to them, "You can't do that, that's not what s.80A provides for." They responded by saying, "Yes we can. We think we can if it's in accordance with s.80A." We said, "We are sure you can't," to which they responded, "We're sure we can."

So, we thought 'What's the best way to deal with this impasse?' What we didn't want to happen, and it's quite relevant for this case, is to go through the entire process of the RPS going through the Freshwater Planning Process, and us then saying, "You got it wrong, you used the wrong process, all your decisions are invalid," because if we were right about that then that would be back to square one.

So, we agreed with the Regional Council to seek a declaration as to how Section 80A applied and that got quite a bit of interest in the bottom of the South with quite a few relevant parties involved - Ngāi Tahu were involved, forestry companies, and MFE joined. The High Court's declaration on that, I think, answers pretty much all the questions that are relevant here.

What I am going to do is I'm going to share my screen for that case.

I have just highlighted some really key paragraphs which I think are the answer.

This is having traversed the issues the court said: "The National Freshwater Policy is concerned for the quality of freshwater and the effects on the receiving environment of freshwater on the whole of catchment basis. This does mean that any partner of the Regional Policy Statement concerned with the catchment or receiving environment will relate to freshwater for the purpose of s.80A; will only be to the extent that parts of the Proposed Regional Statement regulate activities in catchment or receiving environment, because of their effect on the quality or quantity of freshwater that polices or objectives for the catchment or receiving environment will relate to freshwater for the purposes of s.80A."

The court went on to say: "In accordance with section 80A(2)(b) there may potentially be other ways in which provisions and Proposed Regional Statements can qualify for [14.34] Freshwater Planning Instrument . For that, the ORC will have to satisfy itself that those parts relate directly to matters which will impact on the quality and quantity of freshwater including ground water, lakes, rivers and wetlands. The ORC will also have to satisfy itself that the parts are not concerned with sea water or a part of a proposed Regional coastal plan, or change of variation to that plan."

This is the important part, which is pretty much why we took the declaration, or we engaged in the declaration in the first place, was because we felt the issue of public participatory rights was critical.

The court said, "Consistent with the purpose of the Amendment Act and participatory rights under the RMA, in applying the s.80A, the starting point must be that all of the proposed Regional Policy Statement will be subject to the normal planning process set out in Part 1 of Schedule 1 of the RMA, or will only be those parts of the Proposed Regional Statement that directly relate to freshwater in the manner just discussed that can be part of a Freshwater Planning Instrument and so subject to the Freshwater Planning Process.

That is a reasonably comprehensive explanation of what is required.

The Court went on to say, "With such an approach the RC could not decide that because there was a provision that relates to freshwater within a specific chapter, the whole of that chapter should be treated as relating to freshwater. Conversely, there may be a chapter which to a significant extent relates to freshwater. That is likely to be true as to the chapter on land and water. Nevertheless, there may be policies, objectives or rules on a land and water chapter that do not relate to freshwater. Such parts of that chapter in terms of s.80A could not be treated as part of a Freshwater Planning Instrument.

I think relevantly for this setting as well: "The National Planning Standard requires that there be a chapter in a Proposed Regional Statement on urban form and development. In that chapter there may be objectives, policies or rules that are directly for the purpose of managing freshwater, or will only be those parts of the chapter on urban form and development that relate directly to freshwater management that can be part of the Freshwater Planning Instrument."

"Parts of a proposed Regional Policy Statement cannot be treated as parts of a Freshwater Planning Instrument simply because there is some connection to

freshwater through the concepts of Te Mana o te Wai and Ki Uta Ki Tai for the integrated management of natural and physical resources. To hold otherwise would be contrary to parliament's intention in s.80A, in part 4 of Schedule 1 to establish a dual planning process, where only parts of Regional Policy Statement directly relating to freshwater would be subject to the Freshwater Planning Process.

This does not mean that the fundamental concept of Te Mana o te Wai, Ki Uta Ki Tai, and integrated management of natural resources can be disregarded either from the planning process in Part 1 of Schedule 1 or in the Freshwater Planning Process. They will be fundamental to Regional Councils in formulation of proposed Regional Policy Statement and to the Environment Court where they might have to consider issues arising out of a Regional Policy Statement on appeal.

To extend that those principles are relevant to matters that are not part of the Freshwater Planning Process, those who consider such principles have not been adequately recognised by a Regional Council and have full rights of appeal in the Environment Court. The Court is a specialist tribunal well equipped to recognise the importance of integrated management of natural and physical resources and the fundamental concept of Te Mana o te Wai. Some others would not have such rights of appeal if the matters were subject to the Freshwater Planning Process.

I think that really answers the way in which you determine which bits relate to freshwater and which bits do not.

There's one other bit of the decision I want to quickly refer to, because that relates to the 'where to from here' bit of the exercise. I am just going to share the screen again and we will drop down a little bit to the 'where to from here question', which I think is a pretty important one in this case.

"The ORC will now have to reconsider." So, having made those observations and then finding the parts of the RPS did not relate to freshwater, the court then had work out what to do then.

The court said: "The ORC will now have to reconsider and decide which parts of the Proposed Regional Statement relate to freshwater for the purposes s.80A. Section 80A(3)(a) requires that those parts must be prepared in accordance with sub part 4 of part 5, and part 4 for Schedule 1 of the RMA.

Section 80A(a)(4) recognised the Regional Policy Statement requires the Regional Council to publicly notify the Freshwater Planning Instrument. The Freshwater Planning Process begins with such public notification, or public notification of the Freshwater Planning Instrument.
There has been no valid determination as to which parts post Regional Policy Statement are parts of Freshwater Planning Instrument; so there has been no notification of a Freshwater Planning Instrument to begin the Freshwater Planning Process set out in part 4 of Schedule 4.

Those parts of the proposed Regional Policy Statement will not be part of the Freshwater Planning Instrument, have been public notified and do not need to be re-notified. They have not been processed in accordance with the normal Part 1 Schedule 1 process because the ORC's decision to treat the whole of the proposed Regional Policy Statement has a Freshwater Planning Instrument, and because of the uncertainty associated with these proceedings.

The declaration it made was: "Following its determination as to that (so it required the determination of what was freshwater planning and what wasn't) the Otago Regional Council must continue with the preparation of those parts of the plan that are not part of the Freshwater Planning Instrument in accordance with the process set out in Part 1, Schedule 1 of the RMA.

I just want to comment on the end bit of that decision. We had submitted the opposite. We had submitted those bits that the Council decided were Freshwater Planning, that were related to freshwater could continue without public notification, and those bits that required a Schedule 1 process had to be re-notified. The Court determination is the opposite of that. That is what it is.

Where does that take us from here? I am slightly mindful of time, so I am going to share my screen and identify… let's just do a quick skate through some of the provisions to show why I think the Regional Council has not done the evaluation correctly.

I am just going to share Policy 23 of the proposed change. Can you see that?

Chair: Yes.

Anderson: Policy 23 has the nice freshwater symbol to the right which indicates it has been designated to the Freshwater Planning Process and it plainly should not have been. It does not relate to freshwater quality and quantity. It's just been wrongly allocated. I don't think there can really be a contest about that.

I note in the Regional Council's submissions (I didn't hear their presentation), in reading the submissions they said you can't make the assessment until after you have heard the evidence and I just think that's wrong. The Act doesn't anticipate a dual hearing process and at the end of it you decide which process that goes through. The decision about allocating has to be done at the start. I think for Policy 23 that is not related to freshwater and it cannot legally go through the Freshwater Planning Process.

I have a couple more that I could talk about. I'm not sure that there is a great deal of value in that because there are many provisions which have been incorrectly allocated in my view.

Let's go to the very next policy. There it is, Policy 24 with a nice freshwater logo to the right of it. That does not meet the criteria set up by the High Court. It doesn't relate to freshwater quality and quantity. It relates to provisions to protect certain conditions as part of [23.40]. That's is not [23.42].

I think there are a lot of policies that fall within this category; so what is required is a whole re-evaluation.

What I want to do now is I want to go to one of the provisions that is going to be problematic in this evaluation. This provision I think provides potentially the largest difficulty in resolving this issue.

What we have got is, "Protecting and enhancing the health and wellbeing of water bodies and freshwater ecosystems." It's got a freshwater logo next to it – (a) talks about water quality flows and water levels, and aquatic habitats. [Bell] That seems to fit within what the High Court refer to as appropriate Freshwater Planning Process; but then (b) is problematic because it says, [24.58] and water quality in the coastal marine area is managed in a way that protects and enhances the health and wellbeing of water [25.02] and the health and wellbeing of many ecosystems."

The difficulty here is you have got one provision and one bit of it must go through the Freshwater Planning Process and the other bit can't, according to what the High Court said.

This is, I think, the most problematic policy. I think most of the other ones maybe **more extreme.** [25.22].

The question then arises where to from here? I think it is evident that the Council has not done its job of assessing which goes to which process directly. It plainly doesn't appear it has even made its decision reflecting on the High Court decision; so my submission is that process has to be run through again.

Those provisions that have been notified and should properly have gone through the normal Part 1 Schedule 1 Process, I think the High Court's declaration would mean that it would be okay to continue those processes through that.

One thing I didn't say earlier on was that when the Otago Regional Council did their re-evaluation, almost all of the material, almost all of the provisions went through the standard Schedule 1 process. The number of provisions that went through the Freshwater Planning Process were very narrow. There were not very many of them, and they were in accordance with what the High Court had said – they were directly related to freshwater.

The difficulty is the High Court said that in relation to those provisions you have to start again. It is a different situation here because the panels are hearing it together – one freshwater one non-freshwater.

I think there's a real risk in relation to proceeding with the Freshwater Planning provisions in light of what the High Court said. As I said earlier, I am not quite sure that was the correct decision, but it is what the decision is, so it would be quite risky to do that.

In relation to Policy 40 there is no way of dealing with that other than re-notifying it and separating it correctly out into policy which relates to freshwater.

That is the simple reality of having that policy with the bits that relate to freshwater. I don't see any way around that.

Those are my submissions on the allocation of the matters. I am happy to take any questions on that. I haven't got the bell yet, so I think that's possibly a good thing. That's what I have to say.

Chair: Thank you very much Mr Anderson for your legal submissions. We do have some questions. I am just getting my notes together.

Mātua Thompson, would you like to go? Do you have any questions?

Thompson: Yes I would. Thank you for your submissions. We have of course recognised from what Forest & Bird have said together with a number of other submitters, that this is an issue that needs to be considered and resolved.

At paragraph 11 of Forest & Bird's submissions, there's a list that says: "Examples of chapters and provisions which do not qualify for the Freshwater Planning Process include but are not limited to," and then mentions some of the ones that you have just been talking about.

Do you know somewhere a list that contains all of the provisions that for instance Forest & Bird or another submitter would argue are not properly classified at the moment?

Anderson: It's interesting these matters – it's normally limited to things like indigenous biodiversity, coastal environment and things like that. There are some aspects of it where we don't really think it is our place to say whether they are related to freshwater or not. We haven't done a comprehensive list. The list is the ones that we think are important provisions that have been misallocated.

What the High Court said was, that it's the Council's job to go and make that assessment. In light of that observation from the High Court we have put up some which we think are wrong, but we don't plan that that's a comprehensive list.

Chair: Mr Anderson, given that the High Court was asked to look at this issue in the context of a declaration application, Forest & Bird's application, do you think that the panels in this context here can make recommendations as to how the provisions should be classified on the basis of submissions received? This point is obviously very fairly been raised in quite a few submissions, and provided both panels hear those submissions in the hearing stream in which submitters are seeking a re-categorisation; so provided that occurs, do you see any issues with the Panel making recommendations to the Regional Council?

Anderson: I think in relation to the matters that the Panel determines, the Panel chairman should make that assessment. In relation to the matters which it determines are not freshwater related and should go through the standard Part 1 Schedule 1 process. No I don't see an issue with that.

In relation to the matters that the Panel determines if there are any that are freshwater related and have been put through the Schedule 1 process, or mis-allocated, I think that is problematic, because of what the High Court said about it. That's the point I was making earlier on.

We submitted the opposite. We submitted that because you started off the process with a notification in that case under the Freshwater Planning Process, the provisions that would carry on would be the ones that have been notified under the Freshwater Planning Process and you wouldn't need to re-notify those. The court (and I don't really quite understand why) flipped it around and said those ones, even though they were notified as a Freshwater Planning Instrument and didn't contain the normal stuff that would be in the Schedule 1 Notice, they can carry on through a Schedule 1 process despite not being correctly notified.

That was what the High Court said. If I didn't have the High Court decision there, I would say it's open to the panel to make those assessments and make those recommendations. But, I think in relation to Policy 40 it is different. In relation to those ones where the whole provision has clearly been misallocated the answer is yes. But, that's not without risk because of what the High Court said in trying to understand that.

I hope that's a helpful answer.

In relation to Policy 40, I think that is really problematic. The issue that arises relates to appeal rights and that provision is both and neither. So, neither of the Panels can make a decision on it because it includes elements that it has no jurisdiction to make a decision on.

I have brought the provision up, because it's potentially the most difficult one that you have to deal with.

An appeal arises from the decision, whoever makes a decision on it. You can't have both panels making a decision because the appeal right has to go somewhere, and (a) is in my opinion correctly allocated as freshwater; and (b) [34.26] the High Court decision cannot be freshwater.

So, there's no ability, or neither Panel has jurisdiction in relation to this provision. That is why I think this is the most problematic one, because I don't see how the Freshwater Panel can make a decision on this, because it's outside its jurisdiction; and I don't see how the Schedule 1 Panel can make a decision on it because (a) must go through the freshwater because it relates to freshwater. That I think is where the risk-free approach is to rework that provision, so it's clearly freshwater or not and re-notify it.

Chair: Just on that point, s80A(2)(a) says an FPI means Regional Policy Statement for the purpose of giving effect to an NPS for freshwater management.

The NPS for freshwater management does require consideration of the receiving environment which includes the CMA, and I fully appreciate what the High Court was saying in its decision. I think it actually uses a word 'excluding sea water' or something like that; but that was in the context of a declaration where

Forest & Bird were saying that an FPI hadn't been properly notified. But, I am still wondering if s.80A does provide jurisdiction for a Freshwater Hearing Panel to consider provisions that deal with managing effects on the receiving environment including the CMA.

Anderson: I've put up the section of the decision that directly deals with that. I think what you're suggesting is directly contrary to what the High Court said, the last sentence. "Also will have to satisfy itself that parts are not concerned with sea water or are part of the proposed regional coastal plan.

The reason that the provision is so problematic is that it is concerned with sea water – it's water in the coastal marine area.

I think what you're saying, I understand that, but the outcome that you're promoting is one that is directly contrary to what the High Court said. If you go down that road and say this is the Freshwater Planning Process because of the receiving environment, in this case coastal, is something that the Freshwater Policy Statement managers would be making a decision that was directly contrary to what the High Court had said.

Chair: Thank you. Commissioner Wratt would like to ask a question.

Wratt: Could I just explore that a little more. It seems to me there is a difference between managing the quality of salt water/sea water, managing the coastal marine environment and managing the impact of freshwater on the coastal marine environment as the receiving environment.

The NPS-FM is very clear in paragraph 1.4 in the NPS it says, "The receiving environment includes but is not limited to any water body such as river, lake, wetland or aquifer and the coastal marine area including estuaries." That is repeated in Application 1.5, "The National Policy Statement applies to all freshwater… to receiving environments which may include estuaries in the wider coastal marine area."

So, if we go back to that Policy 40 that you have identified, if Clause (b) reads something like, "as a minimum impacts on water quality in the coastal marine area," what would be your reflection on that; so that we're not managing the water quality in the coastal marine area, but it's managing the freshwater quality in terms of impacting on the receiving environment.

Anderson: I think there is two issues with that. The first is what the High Court said, and that was why I started with that, for that to be [40.00] I said, would have to satisfy itself that those parts relate directly to matters that will impact on the quality and quantity of freshwater, including ground water, lakes, rivers and wetlands.

The provision you are talking about doesn't do that. Changing it in that way doesn't do that. It is still not related to the quality and quantity of freshwater. It's still related to coastal water.

The second point is who makes that decision? The 'provisionist' can't really set it as a freshwater provision. Who makes the decision on the bit that relates to salt

water? Does the freshwater panel because it's been allocated to freshwater panel – even though it's clearly not within their jurisdiction. So, you have the Schedule 1 Panel making a decision on part of a provision and it just becomes really messy.

I think the safest route to take is to amend that provision and re-notify it. Any other way is asking for trouble.

The problem is the same problem in Otago: you make this decision and because it's probably a contentious issue you will have parties on one side [41.13] and you just give the ammunition to say, "In addition to the merits there was no jurisdiction to make this decision because it fell outside this panel's jurisdiction. It was properly a freshwater decision."

I understand why that is an unpalatable answer, but I also think that is the reality of the situation.

Wratt: Thank you for that. I guess personally, and I obviously don't have a legal background, but I find that commentary a bit confusing because there are other parts (I don't have it in front of me) where the receiving environment is mentioned in the discussion in that High Court decision. It seems to be a little contradictory, but I also understand that it's not a freshwater process to manage the coastal marine environment. There is certainly a very clear message in the MPS-FM around receiving environments including coastal marine environment.

Anderson: That was a large part of the argument in front of the High Court.

The reason that the High Court made the decision it did was because the whole Freshwater Planning Process was aimed at managing to decline in freshwater quality and quantity. We didn't have Freshwater Planning Process brought into being to manage the impacts on coastal environment. There was a freshwater crisis in relation to quality and quantity in New Zealand's rivers and the Freshwater Planning Process was aimed at that.

What the High Court was effectively saying was, if you allow the Freshwater Planning Process to deal with more things that makes it less efficient because the panels won't be dealing with the things that the parliament intended to, which was the freshwater crisis.

If you have freshwater panels who have expertise in freshwater then managing coastal water then they've potentially gone outside their expertise.
I understand the point, which is that freshwater impacts in a lot of places. The purpose of the freshwater planning process was to manage the freshwater crisis, and that's what the High Court decided in limiting the Freshwater Planning Process as much as it did. That was the basis upon which it made that decision. To be fair, we argued that. That's what Forest & Bird argued, that the Freshwater Planning Process should be narrowed because of what its purpose was, and the exclusion of public participatory rights in relation to everything else.

Wratt: Thank you. I hear where you're coming from; I guess from a pragmatic science perspective which is where I come from – which is, if the quality of the

freshwater is good flowing into the estuary and marine environment then that shouldn't be a cause of concern. There will be other concerns.

I think we have explored that far enough for now thank you very much.

Chair: Thank you Mr Anderson, I think that was all the questions that we had. Thanks very much for attending today.

Do we have our next submitter, Ātiawa. Kia ora.

Ātiawa ki Whakarongatai Charitable Trust

Nau mai haere mai Ātiawa ki Whakarongatai Charitable Trust. Welcome. Thank you very much for your submission. We have read it and are very interested if you would like to provide a summary or take us to the key points. Thank you.

Baker: Tēnā tātou katoa. Ka tika me tuku ngā mihi ki a koutou te Poari, ki te whiwhi i ēnei kōrero mai i Te Ātiawa ki Whakarongotai, otirā, ki a koutou mai i Te Kaunihera, he mihi nunui ki a koutou mō tō koutou mahi, otirā, te ruma nei. Tēnā rā tātou katoa. Ka tū ake ahau hei māngai mō te iwi Te Ātiawa ki Whakarongotai i te rangi nei. Ko Kapakapanui te maunga, ko Waikanae te awa, ko Whakarongotai te marae. Whakawhiti atu ki te motu tapu o Kāpiti, ko Te Ātiawa ki Whakarongotai te iwi. Nō reira, tēnā rā tātou katoa.

Thank you for the opportunity to come and speak with you today. I just started out by acknowledging the Panel and Council for their work and everybody here, to introduce us as Te Ātiawa ki Whakarongatai. My name is Mahinarangi Baker and I am a consultant for Te Ātiawa ki Whakarongatai. This is my colleague Claire Gibbs who has done much more of our work on this and so will quite likely be the person speaking to our submission through later hearings.

It was particularly important for me to come today to introduce who we are as an iwi, across the different matters that are covered by this particular Hearing Stream, to talk about what it is to provide for mana whenua, for our iwi, through the Regional Policy Statement, perhaps to make some comments on engagement and the sufficiency of that.

And, I guess now, because I probably can't help myself, just throwing some considerations in around the issue, I feel lucky to be honest, as I just sort of walked in on being made by counsel for Forest & Bird around the allocation of those matters between those two processes; whether those are going to be helpful comments or not I don't know.

I wanted to start by talking about… knowing that our submissions have been read I will try and avoid repeating those points, but just to make some really high level contextualising comments.

In providing for mana whenua in any of our planning you will have noted the submissions on the desire to do that under the framework of a Tiriti partnership with Council. I can speak about who we are as Te Ātiawa and what it is for us to exercise rangatiratanga as a right affirmed by Te Tiriti, but I think it is also

important to think about what we call the other house of that agreement, of that compact, being kāwanatanga, being the exercise of governance on behalf of all non-Māori who came to live in Aotearoa. Just in the way there there's a particular expression of Te Ātiawa's rangatiratanga, there has been a particular expression of kāwanatanga in the Wellington region that I think is helpful for any independent panel to just understand that context, and therefore what the expectation continues to be on the behalf of mana whenua and seeing partnership given effect through planning and the implementation of the plan.

I wanted to note today that Wellington Regional Council has I believe the oldest pan-iwi partnership in local government, going back more than thirty years now, in the form of a group that was called Aratahi. Over the years that relationship has matured to the point where our environment committee has fifty percent representation from iwi, and fifty percent from Council.

I am also the co-chair, the Taurite of our Kāpiti Freshwater Planning Committee which has fifty percent representation mana whenua, fifty percent Council appointed members. Those structures have been informed through what is referred as the Tiriti House Model which has been championed by Professor Whatarangi Winiata, and is a very simple but very effective framework to work towards ensuring that there is system partnership. By using the word systemic I mean not just having a seat in the decision-making aspect, in this case plan making, but in all aspects of the work in front of the kāwanatanga. That includes things like also being partnered in providing technical advice; also being partnered in drafting rights and having the pen in the hand and drafting policy; also being partnered in implementing; being partnered or having equity in resourcing.

Without wanting to criticise Council, in fact I am wanting to make these comments to highlight what the particular strength of the Wellington context has been in plan making.

I guess in moving through, the matters that will be heard, and in thinking about the way in which the plan will be implemented, there will continue to be an expectation that for example, if there are mātauranga Māori measures of wellbeing, if there are words like Te Mana o te Wai, or Ki Uta Ki Tai, those things cannot be drafted, they cannot be interpreted, they cannot be implemented without partnership.

So, I wanted to take the opportunity to say that.

Sort of tacitly to that point, just one particular thing I wanted to touch on, which is going to sound like a bit of a random jump, but in terms of the interpretation of different terms in the Regional Policy Statement and the definition of ancestral land, the s.42 Report noted that we have done work in the KCDC Plan Change 2 around how to define ancestral land. We have seen the report. A concern is noted that the definition that has been put forward is the view of only two of the region's iwi.

We just simply say we would agree with that being a concern, and we would be open to working with the other four iwi in the region to continue to better define

that. Obviously what's in the KCDC PC2 is a particular expression of our three iwi. We are hoping there is the ability to continue to partner with Council on those specific matters.

The other key issue is a complex one and it's a sensitive one; is to speak in response to the submissions from Muaūpoko. Again, you would have read our submission and you would know our position on this, which I think you could summarise as the common sense perspective that this is a historical association. I was just trying to think about what more would be helpful in this context today to explain that position. Something that came to mind for me was one of the aspects of our identity as Te Ātiawa is that we whakapapa to, we have heritage back in Taranaki. Our people left Taranaki and came and settled in the Kāpiti Coast area roughly between Pekapeka and through Paekākāriki. In that change, we do not have under tikanga, and under what I understand the Crown's legal framework would recognise, we do not have mana whenua in Taranaki. We have relationships in that area but we would not claim to have the status that we have in our tūrangawaewae, where we have ahikā back in Taranaki. It would be similar for Ngā Hapū in relation to going back to Raukawa up in Maungatautari in the Waikato Region and claiming that status there. That would not be consistent with tikanga Māori.

I don't know if in your own cultural background you could think of an analogy of going back to a place in your heritage where you have not retained that continual political right, and without going through a process to appropriately reclaim it, identify as having it. You may have your own analogy for that.

Also just to say I am very happy to be tested on this and to take questions on any of these points, including this one.

Another particular thing I wanted to respond to was the use in the submissions made by Muaūpoko that seem to centre on a map referred to as Te Kāhui Māngai, produced by Te Puni Kōkiri, the Ministry for Māori Development.

What was disappointing for me seeing that being in their submissions is I have pulled out, or my colleagues pulled out for us, there is a disclaimer to that map that has been cut off what was copy and pasted in. I'm going to read it.

"Users should note that descriptions of rohe, tribal areas, areas over which iwi exercise kaitiakitanga for the purposes of the Resource Management Act 1991 area a record of information supplied by representative Māori organisations and have not been edited or changed by Te Puni Kōkiri in any way."

I have in bold here: "Therefore their presence on this site does not imply endorsement or any statement about the accuracy of that information by Te Puni Kōkiri or the Crown. This information should not be construed as advice from the Crown, nor any Crown agency on which iwi authorities or hapū in a particular rohe should be consulted or engaged with on a particular matter."

I hope you understand why that was disappointing to see that that had been cut off what as copy and pasted in there. Essentially that disclaimer is saying accurately, this is a self-nominating map. I would suggest that's not something

that would be appropriate to use as evidence, particularly for something that is based on tikanga Māori.

It is Te Ātiawa's submission that there is no evidence to sustain their claim that they have mana whenua status in the region. It is also our submission that is inappropriate for that claim to be made when this issue is actually the subject of other proceedings. There are two active inquiries before the Waitangi Tribunal Muaūpoko have had their own inquiry into breaches of Te Tiriti o Waitangi. There is an active inquiry from Porirua ki Manawatu looking into Te Tiriti breaches in relation to Te Ātiawa and Ngāti Raukawa together. There is also, as you are probably aware, all around the country the court is hearing [59.36] claims, which is also where these matters are being heard.

So, with the greatest respect to this Panel, it is our submission that is inappropriate for the Panel to make any sort of investigation into an issue that is being heard elsewhere.

I think it also needs to be said, just so it is clear, it should be apparent to the Panel that a claim of mana whenua status here is obviously going to be used in those other related proceedings, and so for that reason it is inappropriate for the Panel to consider this.

When I look at the submissions, even from those in the community that are most distant from where our positions might sit on matters, in the interests of natural justice I understand that those valid, those are legitimate, and we are all here trying to grapple with complex issues that are deeply relevant to us as community members; and it doesn't sit comfortably that submissions would be made not on that basis but for other matters. I have to try and respectfully say that there is something disingenuous about that, that is uncomfortable for us as Te Ātiawa.

Te Ātiawa has one marae in our rohe. We have been continually active in any aspect of resource management I can think of. We have active kaitiaki on the ground. We are well represented in various aspects of resource management. When a whale strands on our beach we are typically the first there. When [01.01.44] are discovered, it's the Pākehā community that will contact us. And, that's what it is to be ahikā, to uphold kaitiakitanga.
There is no other group that resides in our rohe and who responds to those matters other than Te Ātiawa.

The last point I will say is I know that the Crown has to determine who it works with in a Te Tiriti context, but ultimately determining who has mana whenua is a tikanga Māori based matter that should be resolved through tikanga means. I also respectfully don't consider that this is that forum. That's probably all I need to say about that.

I did just have some really small comments to make the issue around whether engagement has been sufficient. I am probably going to struggle to be clear on that now that I have heard those arguments.

I just wanted to speak about ensuring, I guess that mana whenua generally, and obviously Te Ātiawa are able to engage in decision-making at the right level to the right extent.

Coming back to the matter that was being discussed by Forest & Bird, the allocation of provisions between these two processes, the position Te Ātiawa has been principally that we just cannot delay implementing these national directions any longer. That's kind of the fundamental principal that has informed our perspective. You may or may not be aware – if I just try and think about some of the things to contextualise the urgency of this – in recent summers we've had water temperature in the Waikanae River exceeding 27 degrees and our children messaging us as they are seeing dead fish just popping up through a river that is considered the best in the lower North Island.

Some of the factors behind that are lack of shade, flood protection management that hasn't provided for adequate quantity of water and flow through our river, and a bunch of other intersecting factors; but essentially a very unwell river particularly in the summer time.

We have no understanding of the extent to which ground water has been allocated in our rohe. The way in which Council's system in consenting water takes works is that we don't know how much there is to take. By far most the consents that are granted for water takes, there isn't a requirement for the volume that's taken to be monitored; so we just don't know how much water is there.

We do know that of we are measuring in our rohe and in the region that we are over-allocated in various areas. We now have very large scale retirement villages consented to take water in the emergency supply aquifer for the Kāpiti District. You can imagine that's quite perverse in the face of Te Mana o te Wai and a hierarchy that requires that water supply is prioritised over other consumptive uses.

It's very urgent for us to have Te Mana o te Wai in particular, and generally these national directions implemented in our rohe. That's to clarify that intent.

That being said, I'm hearing this and I guess I'm just thinking this is very complex. I don't envy the decision-making that you have in front of you, in terms of how to make sure that when all of this flows through to decision-making around consenting and allocation that things are clear. That's really what we want: that things are clear, and that we are not going to be held up debating the minutiae and losing the opportunity to actually implement what in my biased view is good policy for our people.

I will say I think Te Ātiawa has to go away and think about all of this more, hearing those details. The position in our submissions and further submissions have not been made in having read that High Court declaration. I was struggling to keep with understanding it being read to be perfectly honest. I would like to look at that more closely.

Whilst I support what is being said by the counsel of Forest & Bird and that this does have to be looked at more closely, it seems quite apparent, with a lot of

respect for my friend there were just some things in what he was saying I wanted to test, or was not clear on there.

The first was that policies in relation to indigenous biodiversity did not meet the criteria in that they didn't relate to freshwater quality or quantity. Indigenous biodiversity of fish is a compulsory value in the National Objectives Framework. I just wonder whether it was being considered that indigenous biodiversity is actually a component of freshwater quality that is important for ecosystem health. This isn't to oppose potentially what has been put by Forest & Bird, but just in the spirit of we have to be very clear about all of this.

Equally, on the point of the inclusion of the coastal marine area as a receiving environment, as I was listening and jotting down some thoughts, similarly to Commissioner Wratt I was thinking, the ability to actually understand what is freshwater quality is already in the current system facilitated by understanding what is happening in the CMA. For example, state of environment monitoring that we use in terms of understanding freshwater quality in the Wellington Region is done through the analysis of shellfish toxicity, which tells us the level of micro-organisms that are coming out of freshwater.

We also have in these inter-tidal areas the water recreational measures that are done to tell us about the health of freshwater. And, then perhaps from our perspective the most important thing of all is that mahinga kai, which is also a compulsory value of the National Objectives Framework of the NPS-FM, the NPS-FM simply provides a narrative for mahinga kai and devolves the work of developing attributes or means of measuring that to Māori appropriately. I can tell you that some of the ways in which we measure mahinga kai and which will inevitably be in - or it's already part of the way in which for example we would respond to a consent that has to address impacts to mahinga kai - includes mahinga kai health measures situated in the CMA.

I am giving you that off the top of my head, without having had the benefit to really go and think about that. That is all just to say that I think we need to think really closely about that.

What I am also struck by now, being actively in the committee in the Kāpiti Region, looking at how we would define Te Mana o te Wai, identifying our values and attributes in doing this whole cascade of the National Objectives Framework, is the risk in which that sits here in that we are giving what is our Treaty right and what is actually just necessary for the appropriate implementation of Te Mana o te Wai and NPS-FM, actively at the moment in this committee, and there are potentially decisions being made here that may not be contradictory, or they may not have the benefit of the advice that they actually need.

I am not saying that to suggest that we haven't been appropriately supported by Council in the way we should to engage in this forum; we have been to an extent, but not to the same extent that we are in that Freshwater Planning Committee.

I will be leaving today with my Te Ātiawa hat on and also with my co-chair hat on for our three iwi in the Kāpiti District, just to think about whether we need to

be elevating certain decisions we are making right now, input we are making right now into this forum. Or, is there a risk that the opportunity to do that to the extent we need to has been missed, or needs to be redone.

I apologise if that's not very clear, but that's just my reflection on hearing that; and again with sympathy for you in having to think through all of that as well.

I don't think there is anything more I need to repeat from our submissions. I am very happy to take any questions that you have. Kia ora.

Chair: Nga mihi nui Ms Baker, thank you very much for your very comprehensive submission. Do any of the other Commissioners have questions?

Paine: Tēnā koe Ms Baker. Thank you for your submission. It's really comprehensive. I should thank both you and Ms Gibbs.

I would like to just pick up on your last point you were talking about, about Te Mana o te Wai, and the reflections that are actually in the Plan Change document at the minute.

Te Ātiawa doesn't have one. This will come along later one would suspect and be put in the document. So, what's the consequences of that for you?

Baker: Also just to acknowledge our colleague Mel McCormack, who might even be listening right now, if I have the microphone close enough, with this work.

It is worth thinking about. We note what's proposed is essentially just the text from the NPS-FM itself. The reason why we didn't propose anything in our submission on the RPS is because we are so geared towards the process that we have via the Whaitua, which would be a chapter of the Regional Plan.

If I've got the time to explain, what's the process in that context for developing a Te Mana o te Wai statement? I'm not going to say how many hapū we have because they're quite dynamic, but we have got a good handful of hapū. We have a number of groups holding mana whakahaere, so we have Māori land owners, we have groups that have customary rights and we have marae. Te Ātiawa would never put forward something as significant as a Te Mana o te Wai statement including one that has to speak on mana whakahaere, which is the layers of rights and interests held by different groups within our rohe, without doing quite significant internal consultative work.

We then have an aspiration to develop Te Mana o te Wai statements as best as we can collectively as a confederation of three iwi. A little bit of history there: the settlement of our three iwi, Te Ātiawa, Ngāti Raukawa, which are represented in this context by Ngā Hapū Ōtaki and Ngāti Toa Rangatira, we settled in this area collectively, so on big matters we work collectively. We confederate. We have an aspiration to have a collective Te Mana o te Wai statement.

Then contrary to other Whaitua Freshwater Planning processes in the Wellington Region, we have an aspiration for Te Mana o te Wai to be truly bicultural and to

make those statements together as a community. Maybe we won't get there, I don't know yet. I think we actually have quite a good shot at this.

When I say active, we've had one meeting to decide the joint statement last month and we've got another next month; so we are right in the middle of this.

The process to get that type of agreement across multiple mana whakahaere within an iwi, multiple iwi within a confederation and everyone in the community, it's really intense; but in our view it is worth aspiring towards. I have contextualised that basically we have a progressive community, so there is a chance to do that.

Through the support that is provided for the RPS engagement that isn't enabling enough for that to happen, so we are having to do that work to develop that statement through our Whaitua process. We didn't feel that we were ready frankly, to put something into the RPS knowing that we had this other process on the horizon which is much better resourced, does the front-end work to try and put the right community people in front of us to get this agreement, rather than just leaving everything to further submissions and hearings and opposing. We are trying to follow a truly collaborative approach.

So, what are the implications of that? I can't see what we are going to propose as being inconsistent with what's proposed.

Paine: Maybe Ms Baker, I've led you off down the wrong track. I suppose I should ask really, is Te Ātiawa intending to present again to talk to their submissions in the Freshwater Stream of this process?

Baker: Yes.

Paine: Maybe we can explore those kind of details later when we meet again in that Freshwater process.

Baker: I guess we are just conscious that the timeframe of these processes hasn't provided that we can put our statement on the table so that it's the proposed Te Mana o te Wai statement.

I guess maybe it's about how limited will the RPS be, in that it is not going to be as directive, and it's not going to be as specific. I'm still thinking on that, whether we have lost anything there. Maybe other panel members have thoughts on that, I don't know.

Paine: The other thing that I wanted to traverse with you was Aratahi and the long association that the iwi have had with the Council.

When you were talking before about it's necessary for Te Ātiawa to be involved in the interpretation of all things Māori, if I could put it that way, it seems to me when you look at the partnership of Aratahi that's actually what it says, that you should be.

So, would you consider that when the Regional Plan was being developed with all these provisions that Aratahi was actually giving advice to the Council in what they should look like?

Baker: That's quite a fraught question actually. I'm trying to think what's relevant for this panel.

We actually ended up 'retiring' from Aratahi and walking out of that forum. Perhaps it's natural that things like a partnership mechanism that develops in a particular point in time, as the community matures and also as a statutory framework matures, those mechanisms start to not deliver what is needed in a newer context. It's over thirty years old and that forum was set up for the leadership – so effectively the governance of our iwi to be meeting with Council. It didn't have any powers within the Council structure, and it also started to be used to seek technical advice.

So, putting this really plainly, I might get a phone call at 7.30 from and uncle saying, "What do we think about policies on trade waste?" That was not reflective of a systemic partnership where we needed to have mana to mana governance sitting together having equity in terms of their access to advice and expertise that was also well-resourced.

Also, the partnership needs to have a side of power to it and not be advisory, not be lip-service. Once we left others left and that group no longer exists, but there are other mechanisms that are replacing that now; where I guess the partnership we are seeking, that's consistent with the Te Tiriti house model, is what this Freshwater Planning Committee I would reference this is a first little go at trying to do this. We have two groups of decision-makers, we have two groups of expertise.

Particularly under a framework like Te Mana o te Wai, Council will tell you themselves they don't have mātauranga Māori experts, or mahinga kai experts. That's our expertise to provide.
And, perhaps also just to say the Environment Committee of Regional Council kind of started this too, where they put the pen in our hands as technicians for iwi to draft planning with them.

I guess I'm saying there isn't just one space in which that partnership happens. There has to be all the components. There has to be a bureaucracy to our rangatiratanga, just as there's a bureaucracy for the Crown's power, for the Crown's kāwanatanga.

Paine: So, in this post-settlement era, the mechanisms are different?

Baker: Yeah, absolutely yeah.

Paine: My last question, and I suppose this may not be relevant now, when I looked at Aratahi the iwi describes themselves as tangata whenua, and the language that we are seeing in the Plan Change is mana whenua, tangata whenua. Have you got any comment on that?

Baker: You're picking all the really fraught questions this morning but that's fine. Gosh, being involved with the NPS-FM, this is partly why mana whakahaere is, I believe, in the NPS-FM.

We could talk about from a Te Ātiawa perspective. To be quite honest, I would be guessing, but I would say at the time when Aratahi started tangata whenua was the term. It was in the RMA. It then became apparent there was a need to kind of qualify what are the rights that are important here, and those are rights held by mana whenua.

When we identify as mana whenua we are wanting to be quite explicit about the fact that we hold rangatiratanga, which is customary right that has never been extinguished. It's roots are not in Te Tiriti, they're in tikanga Māori. The Treaty affirmed those rights. To be mana whenua you have to have ahikā and you have that right of rangatiratanga affirmed.

Mana whakahaere is a little different again in that it's saying within Te Ātiawa there are those that have a mandate to represent the rangatiratanga of Te Ātiawa, but there are also other rights holders that have particular interests.

As an iwi we could never go off and propose things in certain planning instruments that implications for Māori land owners and not have gone and spoken with and worked with those mana whakahaere; particularly because the Crown recognises their rights in other frameworks. Māori land owners have rights under [01.26.095], under the Public Works Act. So, being a good Māori planner means having to deal with all of those layers of rights and interests and hopefully being able to propose things that equitably reflects all of those layers of interests.

Paine: Thank you Ms Baker. Thank you Madam Chair.

Thompson: I think you have covered that. I look forward to hearing more from you when we get to Freshwater and the specific topic. Thank you.

Chair: Just one very small point from me. The comment you made about ancestral land, and that is referred to in Ms Jenkin's report, that comes up in s.6 of RMA as you will know. I think there is a policy in the Urban Form & Development provisions. It might be the first policy actually, Policy 1, which refers to ancestral land. Just wanted to draw that to your attention because it will be that Hearing Stream that we will be keen to hear your submission point on that, if you are able to present then. Kia ora. Thank you very much for your time.

Welcome Wellington International Airport.

Wellington International Airport

Chair: Good morning and thanks for your patience. We're just running slightly over. I think you were here when we gave the introductions, so you are aware of who we are. Over to you, thanks.

Dewar: Good morning, my name is Amanda Dewar and I am the counsel for Wellington International Airport Limited and I am here with Jo Lester who is the [01.28.45] planner.

I've obviously filed legal submissions. Our interest in this stream of the hearing is on the allocation issue. I have listened to the Council's counsel's submissions on Monday and obviously we were here with Mr Anderson's submission as well.

With your permission, I will either answer any questions that you might have, or I have got some brief notes in response to Ms Anderson's submissions earlier in the week.

Over to you as to how you would like me to proceed.

Chair: If you would like to respond to some of the points that Mr Anderson made that would be really helpful. As you said, we've heard from various submitters and also Council on this allocation issue. It is very much a topic that is really central to this particular Hearing Stream and others; so yes, we would appreciate hearing your thoughts Ms Dewar.

Dewar: It is obviously a vexed issue and it is also an issue we have dealt with, with the Wellington District Plan, in terms of the other, the cousin Amendment Act in terms of intensification of housing. It seems to be a bit of a flavour of the month this type of issue.

Ms Anderson said that the Otago case can be distinguished. I agree with that, in terms of the relief granted and the declaration that the High Court made, and taking into account what Mr Anderson said this morning about he was a bit surprised as to which way the High Court made the declaration in the end. I think those of us who were watching were quite surprised about the angle that the High Court took. But, nonetheless that's the angle it took and we live with that.
In terms of the relief granted, it's a bit different here obviously because the Council hasn't notified or intended to notify the entire document as freshwater plan. It has notified two and it has attempted to allocate and divvy up the provisions between those two procedures or processes.
I think if you thought it was appropriate you could distinguish how you approached the 'where to from here' on that basis. But, what I don't think you can do is ignore the principles that came out of that decision, because it is on all fours with what we are dealing with now, as a matter of principle. It looked very carefully at the provisions that you are now having to look at. You can't ignore the ratio decidendi or the principles of that decision.

Probably where I part ways with Ms Anderson's eloquent submissions and her oral submission to you earlier in the week is that I don't think that 'related to' means just a connection. It is not a wide parameter at all. I think the High Court was trying to help, to find what is probably inherently wide or uncertain by using that language, to give some guidance as to how do you define 'relates to freshwater'. It said there must be a direct connection – not a wide one.

Some of the provisions, as you have seen this morning, will be easy to say, "Yep, that doesn't relate." In my submission, one of them would be the definition of

'central city zone'. It's nothing to do with freshwater. It doesn't even mention freshwater. So, you're going to have an easy pile and you're going to have a not so easy pile. Even then there's going to be a spectrum of the not so easy.

The other vexed issue of course is the sea water or the CMA issue and that's obviously going to be in the not so easy pile.

I probably disagree a wee bit with Mr Anderson's submissions this morning, although I do think it's finely balanced and can go both ways. What you can't do in my submission is seek to manage the CMA. You would have to be very careful how your references to go sea water or coastal water – recognising that cascade. Obviously the National Policy Statement, even though it is about freshwater doesn't define freshwater, so you have to go back to the parent Act and of course coastal water; and then you've got the subset of the CMA – a big huge subset of it, but nonetheless a subset because of course CMA also includes the air above it and it also defines those landward estuarine bodies. We all know there's been lots of cases about that, so it's helpful to know where those boundaries are.

I don't necessarily agree with Mr Anderson's submission on that, but I think that the way that it's in the plan at the moment goes too far because it seeks to manage the CMA. From my client's perspective it has bits and pieces in the CMA, but there is no freshwater anywhere around it. It doesn't want to get tangled up in the freshwater policy, or policies. Its consenting territory is pretty ugly as it is. It doesn't need any more policies and objectives that really relate to freshwater oozing into the CMA.

If a freshwater issue has the ability to affect the coastal water because of its parameters, the quantity or quality, then yes I think if that is carefully drafted can be included.

I think the other thing that Ms Anderson suggested, that if it was one of these what she called a 'joint provision', which I don't think you can have a joint provision unless it's been **a tactic** [01.36.14] the way I have just suggested to you, then it has to be a freshwater provision. I think the High Court said that you start for the premise that it's a Schedule 1 process. If there is such a thing, I don't think it automatically falls to be a freshwater provision. I think it needs to be a Schedule 1.

This connection or the directly related to, isn't saved by references to concepts like integrated management. Your urban development and climate change policies and provisions do not fit within a freshwater provision. When you look at the National Policy Statement for Freshwater it does mention climate change, but again it's the consequences of climate change in terms of those freshwater provisions. It's not managing climate change itself. It's sort of the by-product of when you are looking at freshwater provisions quantity, yes of course you need to take into account climate change measures, but the policies that deal with those are not freshwater policies, objectives or provisions.

I think Ms Anderson said she was worried by taking the strict approach would lead to repetition and duplication. I think she said a 'clunky document or clunky provisions.' That may be so, but the Case Law, I think, is pretty clear about

where the two processes fit in. I don't think it's necessarily true (I think Ms Anderson said) that you would have the same provisions in terms of Freshwater that you would have in terms of managing the CMA. In my submission that isn't necessarily true because you've got different National Planning documents to deal with for each of those resources. You might end up at the same ending, but you might not because those documents are different – certainly in terms of age at least, when you think about how old the New Zealand Coastal Policy Statement is. So, I don't think that is a reason not to have separate provisions and to separate these things out.

Finally, turning my attention to where to from now, when we drafted our submissions we weren't sure how the panels were sitting. To be fair, I hadn't really looked at the provisions forensically to see how many were in that dodgy box – the easy or the not so easy boxes. There are quite a few. In my submission, in my respectful submission, in order to make this process work the panels may have to sit together more often than you thought. Otherwise, I just think it could be a shambles. You might find that you are sitting alone as a Freshwater Panel and there are a number of provisions that you feel consider taking into account the principals that various of us counsel have provided to you that don't fit in the proper allocation, but that Panel is not there.

In my respectful submission, it would be helpful, I think, to look at that more carefully. Also, if I might suggest, to look at your delegations as Panels, just to make sure that if there are any changes to how you are going to deal with this issue that that's accounted for in your delegation.

My client only wants to go through this process once. It doesn't want to do this twice, so let's do it in the most efficient way. In some ways, I think going back to the beginning would be the most appropriate and the most efficient way. It's going to make your job a whole lot more difficult doing it this way, but nonetheless we agree that there is a path to do, if you distinguish the Otago Decision. That's is of course up to you. Going forward, it would be easier in my submission to have the Panel sitting together more often than not.
Thank you. Any questions you're welcome.

Chair: Thank you very much Ms Dewar.

Do you think that the P1S1 Panel actually has jurisdiction to consider and make recommendations on any provisions that perhaps indirectly relate to freshwater?

Dewar: No. There has to be a direct connection. They have to relate. Is that what you are getting at?

Chair: Sorry, no, the P1S1 Panel, so say if there are some provisions that are re-categorised and there is an indirect reference to freshwater in a provision that is allocated to the P1S1 Panel, do you think there are any jurisdiction issues there with that Panel considering that provision?

Dewar: I think it's more difficult.

Chair: Because we're in this tricky situation where the Freshwater Panel doesn't have it, the P1S1 Panel may not have jurisdiction, and I guess does this go to your point about why perhaps looking at them again might be the way to go.

Dewar: I think it's the simplest and the most efficient way long term. Even if the Council was asked through the Panel to have a relook at it, in light of the principles, and giving some examples where you thought that might be incorrect, like the definition 'central city zone', and provide an updated list of where the re-allocations would be, that might be helpful. At least then you would start off on a better footing.

Wratt: Do you think we have the power to do that? Could the Panel at this stage? We can only make recommendations.

Dewar: You would only be asking. You would only be recommending. The Council could say no. They could say, "No we don't want to do that. Get on with it."

Wratt: Can we recommend at this stage while the whole hearing process is now set in train?

Dewar: If you think it's important enough, yes. It is only a recommendation. Council doesn't have to take it. It is the one ultimately that has to decide the allocation. At the moment, we have suggested this way forward, that you do it at the end, when both panels have had a look at it. You've divvied them up and you've made appropriate recommendations, based on having heard all the submissions in evidence. That is a bit a clunky, but nonetheless that's what you're dealing with.

Chair: I think that is what counsel for the Council is suggesting, that in each Hearing Stream both panels hear the submissions, where they can do that, as you said, forensic examination of what the provisions are doing, which ones relate to freshwater and which ones don't, and do we need re-categorisation? But, there is that jurisdiction point that we just mentioned, because you could have provisions that don't clearly fall within the jurisdiction of either of the panels.

Just so I understand the point you're making about re-notification: even though that process is complex, do you see that as providing a pathway through if it can be done and there's no jurisdiction issues; or do you still think that there would need to be some re-notification at the end of that?

Dewar: That's difficult to say at this point in time because it will depend on the scope of submissions. Like, for instance, Policy 40, [01.45.41] hasn't made a submission on that policy. I haven't gone and had a look as to who did. There may be a submission that is strong enough or wide enough that you can have a really good play with it. From either perspective, form a Freshwater perspective or from a Schedule perspective, and you may be able to split them.

I think it will depend, but it's a risk that it might become so unwieldy, because there are quite a few provisions that are in the not-so-clear camp, that it would be easier for the Council to have another look at it and re-notify.

What we have tried to do is be helpful and say "Here's a reason that you could distinguish that very strong decision, that sets out a pathway, and do it this way"; but bearing in mind these things and trying to avoid some pitfalls along the way.

Thompson: Just following that line of thought through, if we go through the evidence in the submissions and then differentiate between matters that a 'directly' relevant to Freshwater and those that are not directly, then one panel or the other can clearly take jurisdiction over those issues. The Freshwater Panel does the freshwater, and anything else must then go to the General Panel. Nothing falls into a chasm where nobody is going to have jurisdiction to it, is it?

Dewar: No, unless you're talking about Policy 40, which was the one with Mr Anderson. That's when I think it's a matter of scope, as to how much room you have got to play with that provision. Can you split it down the middle? Or, can you delete it because it is managing the coastal marine area, and therefore is out of scope, and then it gets shoved back into the Schedule 1 Process, where it will be looked at in exactly the same way, but nonetheless you will be doing your duty.

Thompson: Thank you.

Chair: Another one like that, which I noticed was Objective 22 which is in the Regional Form Design Function part. While it is an objective about enabling urban development that must be done in a way that prioritises a protection and enhancement of quantity and quality of freshwater, which is I guess possibly implementing the Te Mana o te Wai requirement from the NPS-FM. But, then that is one of a list of other factors.

I think throughout there are provisions like this.

Dewar: Yes. That's why, heart of hearts, I would prefer you went back to the beginning and then we didn't have this risk. Because I think there are problems with that kind of drafting. But, I think it will depend, and it might be helpful even if the Council had another look at it with some… I would say with the proper principles. There was actually nothing wrong necessarily with the principles in the s.32 Report, it's really more how they've been implemented in the actual provisions in my view.

It might be helpful if someone had another look at it, so at least you knew what you're dealing with. How many tricky provisions are there to deal with? Is that going to make the whole process just too unwieldy, as I say? But some of them are easy and some of them are not.

Chair: Then of course, keeping in mind the need for integrated management. If you were to split out freshwater completely from provisions like that, are you losing consideration of the need to manage resources in an integrated way?

Dewar: I don't think that's necessarily lost. You can see from the Otago example the re-notified Freshwater Plan is really slim. They will still be part of the plan. Because they go faster the other provisions will probably eventually have to yield to the architecture, formatting or whatever. So, I don't necessarily think

that the integrated management aspect of the plan will be lost. But, the whole process is not helpful is it?

Chair: Thanks very much. Thank you. We will just take a short break now for ten minutes. We will come at 11.30am for Wairarapa Federated Farmers who have been waiting very patiently.

[Ten minute break taken 01.51.45]

Wairarapa Federated Farmers

Chair: Kia ora Mr Campbell. You're presenting today for the Wairarapa Federated Farmers?

Campbell: That is correct Madam Chair.

Chair: Welcome to the hearing. The floor is all yours. Thank you.

Campbell: Thank you.

Good morning Matua Thompson, Chair Nightingale and Members of the Panels. Thank you for the opportunity to speak today. My name is Mike Campbell and I appear as counsel for Wairarapa Federated Farmers (WFF).

Joining me today is Elizabeth McGruddy, Senior Policy Advisor for Federated Farmers, and I also understand that appearing remotely is Peter Matich who is the Planner for Federated Farmers.
Regarding format, I'll hand over shortly to Ms McGruddy to speak to WFF's submission generally, and then I intend to speak to the very vexed question of allocation of provisions between the Freshwater Planning Process (FPP) and P1S1 Process. Mr Matich is present to answer any questions arising from his evidence.

Before I hand over to Ms McGruddy, I just want to confirm the Panels should now have received six documents filed for WFF:

(a) My legal submissions;
(b) Hearing statement of Ms McGruddy;
(c) Planning evidence of Mr Matich;
(d) Extracts of the RMA;
(e) ORC High Court Decision;

And of this morning a sixth document entitled 'Matrix of Outcomes of Recommendations made on Allocation Issues.' I don't anticipate that you have had a chance to review that yet. I intend to speak to that as part of my submission.

I will now hand over to Ms McGruddy to speak to WFF's submission generally.

McGruddy: Good morning. I will take a few minutes to just give a bit of context of WFF's and our involvement in submission and then speak briefly to a couple of points highlighted in our Summary Statement.

Federated Farmers is a membership organisation. Membership is open to all land owners large and small. Our core membership is probably major sectors sheep and beef, dairy, arable. We are a broad church. Even though those are the major sectors within our membership, we have lifestylers, we have people with interests in apple orchards and sunflowers and we have organic producers; so Federated Farmers is a broad church.

The Wairarapa Province encompassed the area of Greater Wellington Region. We include the area over the hill here and up the coast. But, as the Panel will appreciate, most of the farmland and most of our farming membership is in the Wairarapa.

We've got around 400-odd members, and some of those are memberships of more than one farm. We represent a very good chunk – probably most of the commercial farmers in the region in those sectors.

I'm Liz McGruddy. I am a Senior Policy Advisor based in the Wairarapa and I have been employed by WFF since 2010. I have had a lot to do with Council over the last 12 years through that period. In fact, my first involvement with Council in the job was on the RPS. The RPS was notified I think back in around maybe 2006. I was involved in 2010 when appeals and mediations were on the go through 2011/12. The RPS I think was made operative in 2013.

It was around about in 2013 that Council kicked off consultation for what was then the upcoming PNRP. There was a couple of years of fairly intensive workshops, consultation and stakeholder engagement in draft plans. The PNRP was notified in 2015 and then there was a long period, in fact right through to 2022 of submissions, hearings, decision, appeals and mediation. I think the final consent order was signed off in June 2022.

A fairly intensive planning period certainly over the twelve years I've been involved with WFF.

Alongside that, a key plank within the PNRP was that it was Council's intention that a primary mechanism for giving effect to the National Policy Statement for freshwater was the Whaitua. I think perhaps the Panel are familiar with the Whaitua's within the region.

That concept was strongly supported by WFF. The idea of from the ground up, people in that place, in that Whaitua, coming together in those multi-stakeholder groups, and of course it was Council, the TAs, iwi and community representatives really engaging with their own patch and their own aspirations in developing the Whaitua Implementation Plans. Ruamāhanga was first out of the starting gate. That's the one that Wairarapa Federated Farmers took the closest interest in the Ruamāhanga Whaitua Process. And, of course, we've already also had the urban ones over the hill here at Porirua and Wellington Hutt. Kāpiti has just kicked on relatively recently. Wairarapa Coast is still in the very early stages.

Alongside those Whaitua processes, and kind of now out of the statutory framework the Wairarapa Water Resilience Strategy, that was a key recommendation coming forward from the Ruamāhanga WIP. Again it was a multi-stakeholder process with Council, TAs, iwi, WFF and Wairarapa Water Users – they touched on this yesterday briefly. Sustainable Wairarapa, a multi-stakeholder group are looking at what was coming down the pipe in the way of climate change and upcoming water restrictions that had been signalled through the WIP and recommending again that multi-stakeholder approach to provide for water resilience and reliable water for both the urban and rural communities. So, WFF was involved with that.

One other really important stream of work, which WFF highly value, is the very, very long standing partnership that we have had with Council – partnerships on the ground. Action on the ground partnerships in priority catchments. That partnership has got a very long history. In particular, the hill country erosion programme in the Eastern Wairarapa hill country, that work goes back decades, fifty years or more, focused on erosion and sediment, focused on priority catchments and very strong uptake. Multi-generations of farming families working with councils on that hill country erosion programme.

My memory is a bit murky but it was around perhaps 2012/13 period Council decided to roll that very successful hill country Erosion Partnership Programme down to the Ruamāhanga Valley. Again WFF strongly supported that both through the statutory frameworks and through the LTP processes (Long Term Plan) because it's all very well having flash, fancy and wonderful ideas but you've actually got to resource them to put legs behind them.
WFF supported Council in their first foray into rolling that model down to the valley floor. The first two priority catchments were Mangatarere which is just out of Carterton, and Wairarapa Moana down around the lake. Off the back of those two prototypes the Panel may or may not be aware that we have got this explosion of catchment groups across the Wairarapa. We have got at least twenty catchment groups from the ground up. They're land owners, or they're a mix of land owners and lifestylers, or they're a mix of land owners and lifestyle and industry and urban. So, we've got catchment groups.

I don't know how familiar you folk are with the Wairarapa but from Tinui, the Waipoua, Putaruru – an explosion of catchment groups. This is something that WFF have strongly supported. We greatly value the work that Council put into this space. Particularly it's the land management team supported by the environment science team. That, certainly from our perspective, creates that fantastic platform to really make progress on the ground.

Those work streams, both statutory and non-statutory, kind of bring us up to around 2022, and we are very mindful that still to come in 2023/24 is a full review of the RPS, which is scheduled as I understand in 2024, because it's ten years since it was last made operative. Following on from the WIP processes, there is going to be a NRP, PNRP Plan Change – it was going to be around June and I think it's now back to about October – an NRP Plan Change in October this year, in particular for the Urban Whaitua who have completed their WIPs – Wellington Hutt and Porirua; and a second PNRP Plan Change in 2024 before

the 2024 deadline for Rural Whaitua, which is Ruamāhanga already done, Kāpiti in process, Wairarapa Coast just kicking off.

Mindful that we were having a welcome small window of about a year between the last lot of plans and the next lot of plans, we were briefly excited that, 'Oh my gosh, this is a wonderful opportunity for us to do implementation; that the best use for our collective resources, industry, farmers, townships and counsel, that the best use for our collective resources in this small gap in the traffic between plans was to hook into action on the ground and support this wonderful network of catchment groups that have been getting up; take the Wairarapa Water Resilience Strategy, which has actually been sitting on the shelf for the last year or more, take it off the shelf, dust if off and put legs behind the recommendations in that strategy and follow up on the Whaitua recommendations – the ones that have already been made. Each of those three Whaitua have already completed WIPs, they each made multiple recommendations and Council have broadly categorised them into regulatory recommendations that will get carried forward into those plan changes that are coming down the pipe in 2023 and 2024; and then there was a raft of non-regulatory recommendations. They were all broadly in the theme of partnership and action on the ground.

I think it would be fair to say that Council has been making haste a wee bit slowly on that package of non-regulatory recommendations.

So, wonderful opportunity. A small gap in the traffic to hook into that implementation space and mindful that the next set of plans that are coming down the pipe, the full review of the RPS and the two plan changes that are on the go, mindful of the importance of those plans when obviously they're going to retake stock of where we are at on the climate change front, on the water front and the biodiversity front informed by a heap of work that has been happening at the national level at the same time.

Our hope would be that Council would prepare for those plan change processes with very, very good engagement processes – just in the spirit of we all live in this place and we're probably all heading roughly in the same direction. The opportunity to find and enlarge the common ground and identify and narrow the differences, before we go into those formal processes with a fighting chance of landing frameworks that reset our trajectory for the next phase and that can be enduring.

However, RPS Change 1. We all know that the driver for RPS Change 1 in the first instance was the NPS-UD and it had a strict timeline for notification. In addition to that, Council sought that Urban Development… I think perhaps implicit is a concern that it might be untrammelled urban development; but of course it's untrammelled, it's not occurring in a vacuum. Further to that again, to the extent there was a concern about sustainable urban development. The proposals in RPS Change 1 extended much wider across the whole region and fundamentally resetting the whole thing.

Turning to our summary statement, I am only very briefly to highlight two points. One is process and the other is scope. The process attached to RPS

Change 1 was rushed. It was not a good process. Happy to speak to any of the points. And, the scope of RPS Change 1 we are not kicking the can down the road. That is not our intent. We have presented substantive reasons, and that is not what this about.

On that note I will pass it back to Mike.

Campbell: In the time remaining I will address the Panel on the allocation of provisions between the FPP and the P1S1 process.

Having had the benefit of listening to submissions earlier in the week and today, it occurs to me that there are three key questions really at play here for the Freshwater Panel:

(a) What is the correct legal test to determine if a provision can constitute part of the Freshwater Planning Instrument ?
(b) Did Greater Wellington apply the correct legal test?
(c) If Greater Wellington failed to utilise the correct legal test, what can be done about it?

It is important that the Freshwater Panel (FWP) is satisfied that is has jurisdiction to make recommendation on the Freshwater Planning Instrument (FPI).

I bring to the Freshwater Panel's attention clauses 49(1) and (2) of Schedule 1, where recommendations, regardless of whether they are with the scope of submissions, must be either "on the Freshwater Planning Instrument" or "relating to the Freshwater Planning Instrument.

If the FWP cannot be satisfied that the provisions before it constitute part of the FPI, with respect, the Panel cannot be satisfied that it has jurisdiction to make recommendations on the FPI.

In terms of the correct legal test to determine if a provision can constitute part of a Freshwater Planning Instrument, WFF submits that the correct legal test is as is set out at [14] of my legal submissions.

I will just quickly read that out.

For a provision to "relate to freshwater" and qualify as part of the FPI, it must directly and discretely relate to the maintenance, protection, improvement or enhancement of freshwater. The provision at issue needs to focus on how it will achieve those goals. It is insufficient for a provision to qualify as part of an FPI simply by dint of being applicable to freshwater.

Federated Farmers submits that is really the ratio decidendi that can be extracted from the ORC case.

This can be contrasted with the method utilised by Greater Wellington, which is set out at Appendix E of the Section 32 Report. In particular, as set out in [20] of my legal submissions, Greater Wellington has included in the Freshwater Planning Instrument provisions that "also relate to other matters". It is WFF's

submission that, if a provision relates to other matters, it cannot be said to directly and discretely related to freshwater.

Federated Farmers therefore submits that Greater Wellington has erred in its interpretation of s.80A. There is therefore a lack of certainty that taints the allocation of provisions to the FPI and introduces an uncertainty as to the jurisdiction of the FWP and uncertainty in respect of the FPP generally.

So, turning to the question of what can be done then, it has been suggested during the course of this week that the issue could be addressed by both Panels hearing all the submissions and then addressing the allocation of provisions as part of their recommendations. Federated Farmers submits that this is not a viable option.

There are a number of reasons for this.

[Bell]

I'm sorry, I realise I have now come to time. Does the Panel mind if I continue? Thank you.

There are a number of reasons that WFF does not consider this is a viable option that I would like to briefly touch on.

The first is that s.80A clearly states it is for the Council to be satisfied whether a provision is part of a FPI or not. Federated Farmers submits that any panel recommendation would be an irrelevant consideration in Greater Wellington determining the allocation of provisions.

The second point is, conceptually it is difficult to understand how the FWP could make a recommendation that a provision should not be part of a FPI where the FWP can only make recommendations on a FPI. Essentially, by making such a recommendation the FWP would be undermining its jurisdiction.

Thirdly, there are a number of additional benefits to the FPP, such as conferencing, cross-examination and Alternative Dispute Resolution (ADR) that are not part of the P1S1 process. It would be wrong to allow a provision that is ultimately determined to be a P1S1 provision to take advantage of those benefits.

Fourthly, and arguably most importantly – it creates a lacuna as to which panel is making the substantive recommendation on a provision in the event Greater Wellington rejects the FWP recommendation to either include or exclude that provision as part of the FPI.

I turn now to the matrix of outcomes that I submitted to the Panels this morning.

This follows through on the Greater Wellington's submission to deal with the allocation of provisions as recommendations. Where the allocation of a provision to the FPI has been challenged there are two recommendations that will fall out if he Greater Wellington submission is accepted.

(1) There will be a recommendation as to what process the provision should be in; and
(2) A substantive recommendation on the provision itself.

If we turn to the table, if the Freshwater Panel was to recommend keeping a provision in the Freshwater Planning Instrument, and that was rejected by Greater Wellington, it would now form part of the P1S1 process. However, presumably it's the Freshwater Panel that is given the substantive recommendation; however, the recommendation should have come from the P1S1 Panel. Likewise, if the Freshwater Panel was to recommend moving a provision to the P1S1 process, which is subsequently rejected by Greater Wellington, it remains part of the Freshwater Planning Process, but it's presumably the P1S1 Panel that has given the substantive recommendation; however that recommendation should have come from the Freshwater Panel.

I guess that demonstrates the odd outcomes that could follow by following recommendations on the allocation issues.

It is for these reasons WFF submits that certainty around the provisions that are part of the Freshwater Planning Instrument are essential and needs to be established prior to the commencement of the Hearing Streams on substantive matters.

Federated Farmers therefore seeks the Freshwater Panel immediately refer the entire Freshwater Planning Instrument back to Greater Wellington for reconsideration of the allocation of provisions in light of what the Freshwater Panel considers is the correct legal test – which Federated Farmers submits is the legal test set out at para 14 of my legal submissions.

Just a note that the relief sought now differs slightly form what is in my legal submissions.

In my legal submissions I had sought that all the provisions except for the Freshwater Chapter be referred back.

However, having had the benefit of listening to submissions this week and reflecting on those, I think it is only proper that the Freshwater Panel refer the entire Freshwater Planning Instrument back to Greater Wellington.

Just to round out: setting to one side the legal issues, pragmatically Greater Wellington is best placed to decide what is part of the Freshwater Planning Instrument or not.

The Freshwater Panel making recommendations that could either be accepted or rejected by Greater Wellington appears to be double handling – both a recommendation of the Panel and then an assessment of that recommendation by Greater Wellington. Rather, it is Federated Farmer's submission it would be more efficient to refer the entire instrument back to Greater Wellington with the correct legal test.

This concludes Federated Farmer's oral submissions for Hearing Stream 1 (HS1) and we welcome any questions the Panel may have.

Thank you for the additional time.

Chair: Thank you Mr Campbell, thank you Ms McGruddy.

Questions from the Commissioners?

Paine: Not a question as such, just to say to Ms McGruddy, it was helpful to understand the context or the background within which the Federated Farmers have made their submission. Thank you for that.

McGruddy: Thank you Commissioner. Sorry I went over.

Wratt: Thank you for those presentation. Just referring to our final relief that you're seeking Mr Campbell.

If the Freshwater Planning Instruments were referred back to GWRC what then is your path?

Campbell: In the submissions of Mr Anderson, and I apologise her name escapes me, the counsel for WIAL, they submitted that it would need to be re-notified and Federated Farmers would certainly support re-notification of the Freshwater Planning Instrument.

Wratt: The additional provisions that would then be part of the P1S1? There would potentially then be additional provisions that were part of the P1S1 process. What then is required of those?

Campbell: Logically, I would submit that it would need re-notification as well.

Wratt: Thank you.

Thompson: It's obviously an important issue Mr Campbell. We've been thinking about it since the matter has really got underway. Thinking about your submissions, which are helpful, you're talking about the Freshwater Panel making a decision about what pieces of the present document should be considered as freshwater matters, and sending the others back to the P1S1 Panel, and the problems that might arise from that. But, if both panels made decisions agreeing which piece of the document should be in which category, doesn't that resolve that problem?

Campbell: I think the issue that I have with that is, it is unclear what statutory authority the Freshwater Panel and the P1S1 Panel in terms of delegation would be relying on to essentially pass the provisions between them.

Thompson: Just relying on the law.

Campbell: I could not find any provision that would allow the Panels to do that. And, given that the Freshwater Panel is a creature of statute, it needs some form of statutory basis upon which to do that.

Thompson: If the Freshwater Panel as a matter of law said we accept that Items 1, 2, 3, 4 are within the terms of Otago Decision freshwater matters and we will decide on those, and the P1S1 Panel says, "We will take all of the other pieces and we will decide on those," what's the problem?

Campbell: I guess I turn to clause 37 of Schedule 1 to the RMA, which states that it is for the Regional Council to refer to the Chief Freshwater Commissioner the Freshwater Planning Instrument. That would suggest to me that it is Greater Wellington that is to decide what constitutes the Freshwater Planning Instrument and not for the Freshwater Panel.

Thompson: So, you're saying that the only body that can make that decision is the Council?

Campbell: Yes, and that is also my reading of the Otago Regional Council case, where the court was quite clear in stating that it is for the Regional Council to decide what provisions form part of the Freshwater Planning Instrument and what don't.

Thompson: Okay, thank you.

Chair: Given that both panels are delegated to only make recommendations to the Council, could the Council not fulfil that requirement in clause 37 when it makes decisions on those recommendations?

Campbell: I guess the difficulty I have with that proposition is that would be jumping around in terms of process. It would require Greater Wellington to revisit that decision where they have already referred those provisions to the Freshwater Commissioner.

Generally, it gets quite messy I guess is what I am trying to say. I think the cleaner option here is to refer the entire thing back to Greater Wellington for reconsideration.

Chair: Thank you. Thanks for the matrix document. Do you mind just explaining the text in red? I just want to be sure I understand that. So, there's a recommendation that a provision either goes into the Freshwater Planning Instrument or into the general process. Greater Wellington makes a decision on that recommendation.

I understand that there are different appeal rights that spring from that but I didn't quite follow the section in red. Who is the substantive recommendation given by? Do you mind just explaining that?

Campbell: It's sort of explained a little bit by the bullet beneath. Essentially, if the Freshwater Panel has recommended, if you just take the first line, to keep a provision in the Freshwater Planning Instrument and that is rejected by Greater Wellington then it would obviously fall to the P1S1 Process. But, presumably that recommendation would also be accompanied by another recommendation in terms of the substance of the provision.

So, if Greater Wellington was to reject the recommendation to keep the provision as part of the Freshwater Planning Instrument, then essentially the

Freshwater Panel would have made a recommendation that the Council kind of can't take into consideration, because it should have come from the P1S1 Panel, because it's now part of the P1S1 process.

Wratt: So, you're saying that it ceases to be a Freshwater Planning provision, therefore the Freshwater hearing panel cannot make a recommendation on it?

Campbell: That is correct, yes.

Wratt: Thank you.

Chair: Wouldn't the substantive parts be considered through, in this instance the Environment Court Appeal process?

Campbell: Potentially, but then you also move to the other option there, which is if the Freshwater Panel recommends to move to the P1S1 Process, and if that is rejected then it appeals to the High Court only.

Chair: Point of law.
Campbell: Mm.

Chair: Complex isn't it? I think we are at time. I appreciate Wairarapa Federated Farmers have got lots of other important submission points and we look forward to hearing your further hearing streams, and do hope that you can come back and present to us in the future. Thank you.

Campbell: Thank you.

Muaūpoko Tribal Authority

Chair: Kia ora.

Our final submitter on today's agenda is the Muaūpoko Tribal Authority. Welcome Mr Bennion.

Bennion: Thank you. I should be joined online imminently.

I te tēpu, tēnā koutou. I ngā kaiwhakahaere o te tēpu, tēnā kōrua. Te Ātiawa o Te Tau Ihu, tēnā koe.

Panel, I am just the lawyer in this setting. You should have from me the late legal submissions. My apologies, normally that's a lawyer's excuse for I was busy, but in this case the Tribal Authority is extremely busy, including with the Ōtaki Levin hearing which Judge Dwyer is dealing with at the moment. Apologies for the late submissions but I understand you have a submission. You have a Power Point to go through, and you should have an attachment to the submission which is come historical documents.

I am going to get my online reps to present themselves. You're going to hear from Di Rump who is the kaiwhakahaere of the Muaūpoko Tribal Authority, and Dean Wilson who is in the Te Taiao Unit of the Authority.

The intention here is that they will present against the Power Point slides which I will take you through, and then I will address the legal submission. I understand we have thirty minutes. I've been listening.

As you will, if you heard from phone before, I've been breathlessly following the hearings on my phone as I have walked around Wellington. You do have an audience out there.

I will put up the Power Point. Di, if you introduce yourself, and Dean and we'll go through the Power Point.

Wilson: Tēnā tātou. Ngā mihi ki a koutou ngā kaiwhakawā o te rā. Heoi anō, ko wai au? Ko Dean Wilson ahau. He uri ahau nō Muaūpoko, [02.31.31] mokopuna o Ngāti [02.31.31]. Tēnā tātou. Good afternoon. Big mihi to you all there today. My name is Dean Wilson. I am the kaiwhakahaere taiao, Environmental Manager for Muaūpoko Tribal Authority. Kia ora.

Rump: Tēnā koutou katoa, ngā kaiwhakawā, tēnā koutou. Ngā kanohi o te rā, tēnā koutou. Tom, tēnā koe. Ko Di Rump tōku ingoa. He [02.32.03] CEO mō Muaūpoko Tribal Authority. Kia ora everyone. Thank you for allowing us to be able to join in this way as Tom said, as we head up to the 30th of June any minute now and things get a bit busy at this time of the year for all of us. We really appreciate this flexibility for our last minute submission.

Dean and I will take you through the presentation and prompt Tom on-screen, and then Tom will speak to some matters seen he is there with you.

Thomas, if you could put that up on sharing we'll get cracking for those of you there.

First of all Muaūpoko, ko wai au, Muaūpoko or actually in full Ngāi Tara or Muaūpoko o te Ika a Māui. We are the people who descend from Tara, or Tara Ika, who live at the head of the fish. As you can probably understand, Muaūpoko actually refers to a takiwā, we are the people of Tara. We descend directly from Kupe. We have a direct descendant line from Kupe and through Whatonga, the father of Ngāi Tara. We are recognised by our ancestors naming of the various parts of the region in the lower North Island, so ko Ngāi Tara o Muaūpoko o Te Ika a Māui, Te Whanganui-a-Tara, Maunga Tararua, Te Waewae Kāpiti o Tara rāua ko Rangitāne o Taitoko.

Next slide please.

Dean, I will get you to speak to this one.

Wilson: Looking at this here we have Ko Toi te Huatahi, ko Rongoiro, ko Whatonga, arā, ka puta mai ko Tara. That is our connection from Te Moana a Toi, up in Whakatāne with Toi arriving there where Whatonga chased after his grandfather. Found him there and then proceeded to move down in the direction of his grandfather Whatonga down the East Coast, down towards Te Whanganui-a-Tara. Also coming through via Te Tāpirinui o Whatonga, which

is from Moatāne down to Pahiatua, going through the gorge there into what we now as the Manawatū/Horowhenua area as well too.

Whatonga situated himself down the East Coast with his son Tara and also with another one o his sons also, which is Tautoki. From those lines there, from Whatonga, his first wife was Hotuwaipara and we have Tara as his eldest son there, and then Reretua was his second wife and we have Tautoki. That is the connection for those two therein with Te Whanganui-a-Tara. First initially arriving – they arrived at what we now know as Soames Island, which was Matiu, and erected their three whare. Had the whare there but then moved to Whetukairangi, which is over at the Miramar Peninsula. That was pretty much the fortified pā there in the base, and pretty much the start of Ngāi Tara. Then from there [02.35.30] ventured up through the West Coast and descendants from Ngā Tara expanded north through to Porirua, Paraparaumu, Ōtaki, Horowhenua and the Manawatū Coastal area through to Rangitikei. Also became as Muaūpoko in that area as well too.

Those descendants of Tautoki migrated through to the East, through to Wairarapa and over time to the north to Tāmaki-nui-a-Rua. I should also say, down through to Wairau and through to the Manawatū also.

Kia ora Di.

Rump: If we go back a slide Tom, I will just make the point that by the 1820's and 1830's we started of course to see the migration of other iwi and arrival of others into this area. That just gives you a picture of the landscape around 1820 to 1830. That landscaped showed that the descendants of Whatonga and other chiefs from the Kurahaupō waka essentially took up the total of the lower West Coast of the North Island and the top of the South Island.

Now we move to the 1820 period to 1830's on, where in particular the arrival to this region of Ngāti Toa, Ngāti Raukawa and others. This gives you a picture of what the landscape starts to look like in change.

Next slide please.

In terms of our evidence and association, which is over a thousand years with this total region, it is demonstrated in our waiata, mōteatea and the naming of the various areas that both Dean and I have spoken to and are reflected in our evidence.

Today, if we move onto the next slide, the Muaūpoko o Ngāi Tara o Mua Ūpoko o Te Ika rohe today, the traditional historic area ranges from the Rangitikei River in the North to Tūrakirae or Cape Palliser in the South. That is the recognised area, traditional and historic area of our people.

Next slide please.

For the purposes of the purposes of the Porirua ki Manawatū inquiry area, we have also shown you what you Treaty negotiation area is.

Next slide please.

For the purposes of the Resource Management Act and other dealings we have, this is an excerpt for the tribal area that we cover and the councils that we work with.

Next slide please.

That also talks to our hapū and current marae. I want to make the point that there are around about twenty other pā sites that are spread across that entire historic area that we are currently looking to undertake revitalisation plans for. That is coming in the future.

As far as Muaūpoko Tribal Authority, we'll go onto the next line to give you an idea of who we are and what we do. As our evidence says, we are the mandated iwi organisation for Treaty and Fisheries on behalf of our people. We are involved in a number of very significant projects with the Crown and others. As indicated, the Ōtaki to North Levin Expressway, which you may be aware is the largest express way in the history of Whaka Kotahi from a distance and investment point of view. We have been involved in that for the last six years to varying degrees. Obviously more involvement more recently.

We are also a member since October 2018 of the Greater Wellington Regional Leaders' Group, as it has become known. We are also leading the Te Whatu Ora and Te Aka Whai Ora Horowhenua prototype. Horowhenua is one of eight prototypes in New Zealand for the new health reforms and we have been appointed, along with seven others, to be a prototype for that region. We are represented in roughly 27 different forums across our historic area, including in such things you would expect Three Waters Forums, some Freshwater Management Forums, and we are also involved in the regional and national Seedbank Project – that's a big one for New Zealand that feeds into the world seedbank project; and we are also working with DIA and in particular archives for the relocation and establishment of a new deep storage unit that is going to be based in Taitoko.

That's a range, and in the next few pages of the presentation it's really visual impact, if you like, to give you really a bit of a glimpse into our wider activities across our education and iwi development space. You will see the previous Prime Minister flashing by. We've been involved as a key partner in the development of the largest subdivision in the North Island that is currently away called 'Taraika' – of course for obvious reasons.

I think now, moving ahead, there is a slide we have put in there, on page-18 I think it is. We thought it was important to reference our thousand year history for the whole lower North Island on the West Coast in particular and to raise the fact that many of taonga that may be found in this area, that pre-date 1820 will of course be our people and Rangitāne. To know that much of the knowledge that was gained actually about early New Zealand Māori life was the result of the findings in this part of the world. I am told up to forty percent of what has informed New Zealand's understanding of early New Zealand Māori life came

specifically from this region – mainly because of the nature of the whenua, the waterscape and the typography.

I will now hand over to Dean to talk to more recent taonga finding experiences.

Wilson: I think we just wanted to highlight the nature of what Di has just brought up and represented there in the sense of the traditional and customary connection to the area for Te Whanganui-a-Tara as noted. E mihi ana ki ōku whanaunga i roto i te whare i reira, anei ko Te Ātiawa.

There was a call from Te Ātiawa to Muaūpoko, Rangitāne, Ngāti Kahungunu. This was in 2021, commencing then after the discovery of a waka on Te Awakairangi. It was the time for when this waka was actually active in the water or being carved, it dated back to the time when we had that traditional or customary connection to that whenua there and to the awa there. It's a shared view that whakapapa and our toto that is connected to the whenua there, that is what we are looking at, very much so.

We acknowledge as always to Te Ātiawa, Ngāti Toa in the area there now. Just looking at the names that are plastered – I know that Wellington Council do a great job in highlighting the history of the area looking at traditional whakapapa – whakapapa that is around the library and throughout Wellington itself, Te Whanganui-a-Tara itself, of those ancestors and the connection for our whakapapa to that area. That is just an example in contemporary terms here and now, where we are working together.

At this stage, Te Ātiawa are actually leading the process and housing the waka for Te Awakairangi, with support from Muaūpoko and from local tāne also.

Kia ora.

Rump: Thank you Dean. Just to make the point that in contemporary times we continue to engage with our cultural interests right down the coast from the Rangitikei River, but obviously in particular from Horowhenua right down through that part of our historic area.

Over to you Tom.

Bennion: Kia ora. I am not sure if you will leave questions to the end, or if you have any for these two while they're available.

Thanks for that presentation.

Just picking up the context and legal points from this, just to say that as a first practical point, this is a pre-settled iwi that is in the middle of negotiations. The questions of statutory acknowledgements, which are being sought I understand over places like Te Whanganui-a-Tara is still at large and still being discussed. There's some interesting discussions about being a pre-settled iwi with iwi that are settled and how that works. It's quite an interesting tension.

The other thing to say is that while these submissions focus on Te Whanganui-a-Tara, I have noted for you that actual boundary for the Regional Council goes up to Ōtaki, if you like. The Horowhenua Māori freehold lands remaining to Muaūpoko people around Lake Horowhenua are just of course north of Ōtaki and around Levin; but your regional boundary comes right up into water interests that are right up just around the Ōtaki area where Muaūpoko interests exist as well.

I guess I am focusing on Te Whanganui-a-Tara because it's become a particular difficult question in recent times; but just to say that you will see from the Kāhui Māngai site that it is referenced to this area. The Muaūpoko were not approached about the Regional Policy Plan development. We understand of course it's out of scope for you to look at that issue. If we want to take that up there's another forum. You can do some repair, as we see it. We don't have the opportunity to shape the initial plan now, but perhaps we can manage some of the ultimate outcomes.

In this submissions I made about paragraph-8, I have gone through and just highlighted the key points about the historical background. It's something that I'm going to refer to in a minute in the Port Nicholson case.

We have a very interesting situation here: an extremely long history of occupation. As Dean is saying, we've got Ngāi Tara o Muaūpoko and actually Ngāi Tara… anyway, there, and Rangitāne as a sort of off-shoot of that. But, coming to 1840, the materials we have presented you with show that even at 1840 Te Ātiawa people at Petone were on the beach with muskets concerned about ongoing unease. There is a settlement, I think, and a peace agreement with Rangitāne in about October/November of 1840. I think there were two moments where they settled how and what they were going to do from here on out, and how they were going to leave the harbour to the incomers and Rangitāne would keep their interests mostly to the east. That worked out over the next few years.

The other complexity here is that shortly after that, all the rights get extinguished in this area in the purported sale to the New Zealand company, the Wakefield Company. Actually, that's happened in 1839, so I guess the rights have started to disappear already.

There's a moment of, let's call it… is it 'extinguishment'? Certainly it's alienation at that time of some rights. The Waitangi Tribunal Report actually says, "What could Te Ātiawa itself have sold at that time?" It would have been a limited set of rights, because it had only recently come to the harbour. The Waitangi Tribunal says, "Ngāti Toa have no customary interests in Te Whanganui-a-Tara, and of course it says "Muaūpoko, whatever links you have are gone." We disagree with that, but it does show the complexity.

I have referred you to the Port Nicholson case, which I hadn't been aware of myself until recently, and that's a decision actually of Sir Joseph Williams, as he is now, and I have one spare copy here. That was actually Te Ātiawa anticipating this very issue when they were settling. What was going to happen about Ngāti Toa? Why would they get a statutory acknowledgement over the harbour, when the Waitangi Tribunal itself said there are no Ngāti Toa

customary interests in the harbour? But, everybody has accommodated for Ngāti Toa interest. There is no pushback against that as I understand it now. But, that points to the complexity of these issues.

I have given you a quote at page-5 of my submissions from this decision. Judge Williams is saying, "Taranaki whānui's view on this is obviously understandable. The tribunal have found that Ngāti Toa had no rights. Given clear and independent surprising that Taranaki Whānui would seek to protect its position. The problem with statutory acknowledgement and deeds of recognition in the modern area is that they do not reflect the sophisticated hierarchy of interests. They have the effect of flattening out interests as if they are equal, as the Native Land Court did 150 years ago. In short, modern RMA based acknowledgements dumb-down tikanga Māori and that is particularly problematic in the Port Nicholson context, because all relevant customary interests were fresh and evolving at the point of extinguishment.

Our contention would be, had there been a Land Court equivalent operating with a full investigation of interests in Te Whanganui-a-Tara at 1840 or 1839, we think they might have had quite a different discussion and outcome. Because, for example, for Muaūpoko while their rights today, in terms of Māori freehold land, are in the Horowhenua Blocks, they were also paid out for interests as far north as Palmerston North. So, that gives you the idea of the complexity of the time.

The rest of the submissions, I have gone over the slightly different worded statutory acknowledgements for Te Ātiawa versus Ngāti Toa – Ngāti Toa's one referring to the taniwhā of Ngake and Whātaitai. Those are all Muaūpoko Ngāi Tara stories which are central to understanding here.

So, I have pointed to the complexity and the slight difference in wording, if you like, of the statutory acknowledgements.

That's the background.

I guess I have also looked at the opinions of Mr Allen and Mr Beverley – very helpful. I endorse them about this issue. They point to the Ngāti Maru decision and the Ngāti Whātua decision and say, "You ought not to be making **dural** [02.52.25] decisions about the existence or not of iwi in an area, unless you need to meaningfully respond to a particular concern. We would simply say, in this plan, a reference to six iwi would be exclusionary; and so we support the suggestion that at least you should remove the reference to the six, and better yet, you could say seven and have a footnote or a list, better yet to go to where our planner has gone, Ms Karaitiana, who is suggesting that you should more fulsomely refer to Muaūpoko in the body of this part of the plan change.

I accept that she didn't set out particular wording that you would use, but I would point you to the Appendix to her submission, which seems to me to at least say any of those things are within scope.

We say you ought not be exclusionary in your language – if you can avoid doing that. And, we would like you to be positive in mentioning Muaūpoko if you can, or if you can find your way there. We think the evidence supports it.

Finally to say that we have been recently involved in the Kaiwharawhara Development (we've referred to that) which was the Covid Fast-track Panel. Gee, isn't that a quick process? Yes.

Anyway, the one thing that really stuck out, I think, for that panel was the archaeology question; which is how are you going to look at any archaeology pre-1820 unless you're talking to some of the people most intimately associated with it. I think that's a particularly strong moment. The Kaiwharawhara Panel said, "You need to be included in the archaeological protocols.

I understand this might make life a little bit more complex in this area, but I did have a note in a previous submission that there are seventeen groups in Auckland. We're relatively easy here. We've got six or seven groups we need to talk about and be sensitive about. I'm sure we can work our way through this. It's an evolving landscape. We're in a new world.

Those are all the submissions from me. If you have any questions for the members, Dean, Di or myself.

Chair: Kia ora, thanks very much.

Paine: Tēnā koe Mr Bennion. I am not going to open up Pandora's Box, I just wanted to say thank you for your legal submissions, and I have certainly noted what you have included in that. Thank you for that. Kia ora.

Bennion: Kia ora.

Thompson: I don't have any further questions Mr Bennion. Thank you very much for the material. Thank you.

Bennion: I have a spare copy of the Port Nicholson case.

Chair: That will be great thank you. Mr Bennion, just one point, and I raised this as well when Mr Allen was presenting his submissions on Monday. You referred to one aspect of your relief being that the provisions are not exclusionary in language. You would prefer that they went further than that, but one option you have presented is that the provisions are not exclusionary in language.

There are certain provisions in PC1, for example on page-69 of the Change, in Chapter 3.8 Issue 1, which refers to the regionally significant issues and issues of significance to the Wellington Region's Iwi Authorities.

I know we are not considering this topic right now, so feel free to think about and if you are able to come back during that hearing stream - I think you have a submission coded to that), but would that be an example of a provision that you would be happy with on the basis that it's not exclusionary, because it applies to all iwi authorities?

Bennion: On its face, that looks to me to be right and that's the place where Mr Beverley and Mr Allen go with their commentary. It is only that moment where you step over and have a number or a name.

I guess all iwi would want to be positively referred to and respected but a non-exclusionary approach is, I guess, second-best preference yes.

There's a question about iwi authorities. Muaūpoko is an iwi authority so it's happy with that, but I know that becomes an issue in other places.

Chair: This is, I think, connected with the requirements in s.6 of the RMA, which of course you will be very familiar with – the relationship for Māori and their culture and traditions with their ancestral lands. Some submitters have sought relief, including a definition of ancestral lands in PC1. There is a provision in the urban chapter to refers to ancestral lands.

Bennion: I think the expression ancestral lands is a very broad expression. I think where it starts to tighten up a bit, if you like, is these references to tangata whenua and mana whenua and matters like that. Ancestral lands, these are clearly that in terms of the links that are here.

Muaūpoko people are here. They walk around in this area and see their stories, and wonder who is celebrating them on their behalf and that sort of thing. It's a very real impact for people, - whether there's nice appropriate arrangements between the groups and how they treat each other. It is a very important and real matter for them.

Chair: Just to confirm: is it Wai75? Is that the Waitangi Tribunal? You refer, I think, in your submissions to the Waitangi Tribunal Report, or perhaps referred to in the legal opinion that Mr Ian Gordon provided to the Kaiwharawhara Fast-track Panel.

Bennion: Yes.

Chair: Is there a current proceeding before the Waitangi Tribunal relating to Muaūpoko's interests?

Bennion: Elsewhere yes. Ms Rump referred to the Porirua ki Manawatu Inquiry. Let me say, to give you an idea of these challenges, in that inquiry the Ngāti Raukawa groups are arguing that Muaūpoko has no interests in that district. Even in their own Māori freehold lands some claimants of the Ngāti Raukawa claimants are making that level of argument – which we are all working out way through and trying to maintain relationships as we deal with that issue.

These challenges are turning up in every district in some form or another. I have to say, you would want a court to rule in your favour. If you think of the Ngāti Maru litigation and the Ngāti Whātua litigation, in some ways you want the court to rule in your favour if you're the winning person, but you can also see the sense in the court saying, "Don't make new lines on maps unless you really have to for particular issues as they arise." You can see some sense in that given our

history about the problems of drawing lines on maps too early and without too much thought.

Chair: Just one final question and Ms Rump or Mr Wilson might be able to answer this.

Have there been sites of significance to the Tribal Authority that have been recognised in say district planning documents?

Rump: Yes, as part of our Treaty Tribunal process we have been mapping over the last five to eight years and getting increasingly on our sites of significance. There is a map book that is evolving on that.

Chair: Kia ora, thank you. Is that in the Horowhenua District?

Rump: Right throughout. Because of the Treaty inquiry there does tend to be more depth given there first, because of the inquiry; but we are absolutely right throughout.

Chair: Kia ora.

Bennion: I think that answer refers to the iwi's work on that. I could come back to you on particular sites. I think there will be some in planning documents, particularly as we head to the Kāpiti area. If I can come back to you on that.

Chair: That's all questions we had. Thank you very, very much for coming today. Thank you very much Ms Rump and Mr Wilson. Kia ora.

We will close Whaea Ana with karakia. E tū, e te whānau.

Admin: E tū te whānau. Koia nei te wā hei whakanuia, hei whakakapi i tā tātou nei mahi, otirā, kia kaha haere, a tō mahi āpōpō. Nā reira, me īnoi.

Kia tau ki a tātou katoa
Te atawhai o tātou ariki a Ihu Karaiti
Me te aroha o te Atua
Me te whiwhingatahitanga
Ki te Wairua Tapu
Ake, ake nei
Amine

[End of recording 03.04.43]

Hearing Stream One – General and Overarching – Day Four

Greater Wellington Regional Council

Hearing Stream One – General and Overarching – Day Four

SUBMISSIONS
Proposed Change 1 to Regional Policy Statement
For Wellington Region

Date: Friday 30th June 2023

Hearing Stream: One

Location: Venue: Naumi Hotel, 213 Cuba Street, Te Aro, Wellington 6011

Hearing Panel: Commissioner Dhilum Nightingale (Chair)
Commissioner Craig Thompson (Chair)
Commissioner Glenice Paine
Commissioner Gillian Wratt
Commissioner Ina Kumeroa Kara-France

Chair: Tēnā koutou katoa. I would like to invite everyone to stand for karakia.

Admin: Tēnei te mihi ki a koutou. Te mea tuatahi he karakia tīmatatanga. Kia tau ngā manaakitanga o te mea ngaro, ki runga ki tēnā, ki tēnā o tātou. Kia maha te hua mākihikihi kia toi te kupu, kia toi te mana, kia toi te aroha. Kia tūturu a whiti whakamaua kia tina. Tina. Haumi e, hui e, tāiki e.

Chair: Kia ora.

Tēnā koutou katoa. Good afternoon. Ko Dhilum Nightingale tōku ingoa. I am a Barrister and Independent Hearings Commissioner. Nau mai, haere mai ki te kaupapa o te rā.

Welcome and a pleasure to welcome you to the fourth day of the Hearing of Submissions on Proposed Change 1 to the Regional Policy Statement for the Wellington Region.

This is the last day in this topic stream – general and overarching matters.

Thank you Ms Nixon, you've covered off the health and safety briefing already.

We are the Independent Hearing Panels that will be hearing submissions on Proposed Change 1. We are two panels and are sitting jointly for this particular topic.

I have been appointed by the Regional Council as Chair of the Part 1 Schedule 1 Panel. We are tasked with considering and making recommendations to Council on provisions in Proposed Change 1 that do not relate to freshwater.

The other panel is the Freshwater Hearings Panel that is chaired by Matua Thompson, who will be known to many of you.

I would like to invite the other panel members to introduce themselves and state the panel that they are a part of. Kia ora.

Thompson: Tēnā koutou katoa. I am Craig Thompson. I have been appointed Chair of the Freshwater Hearings Panel. Thank you.

Kara-France: Tēnā koutou katoa. Ko Ina Kumeroa Kara-France taku ingoa. Ko waka te Tainui, ko Ngāti Kahungunu, ko Ngāti Tūwharetoa, ko Te Atiaunui-a-Pāpārangi, ko Ngā Rauru ngā iwi. Tēnā tātou katoa.

Independent Commissioner. I also work for WSP New Zealand Engineers as the Kaitohutohu Māori Matua, Senior Advisor, Māori with a focus on cultural values and sites of significance. I am appointed to both panels, Part 1 Schedule 1 and also the Freshwater Hearing Panel.

Wratt: Kia ora koutou katoa. Ko Gillian Wratt tōku ingoa. I am from Wakatū/Whakatū, Nelson. I am a Freshwater Commissioner and just on the Freshwater Panel.

Paine: Kia ora koutou. Ko Glenice Paine taku ingoa. Ko Te Ātiawa, ko Ngāi Tahu ōku iwi, nō Waikawa ahau. I am Glenice Paine. Good afternoon. I am an Environment Court Commissioner appointed to both panels.

Chair: Ngā mihi nui.

I would like to acknowledge all of the Commissioners and the experience and knowledge they bring to this hearing.

We do have some Regional Council staff in the room. Would they be happy to introduce themselves, just so we know who is here today? Thank you.

Pascall: Kia ora, Kate Pascall. I was the s.42A Report author for the overview report and am Programme Lead for RPS Change 1 contracted to Greater Wellington from GHD.

Jenkin: Tēnā koutou katoa. Ko Sarah Jenkin tōku ingoa. I am Reporting Officer for general submissions for Hearing Stream One. I am also contracted to the Regional Council from GHD. Kia ora.

Tania: Ki a koutou. I am the Director for Mana Whenua Partnerships at Greater Wellington Regional Council. Ko Tania Parata tōku ingoa. Kia ora.

Chair: Kia welcome. You've just walked in. We are just doing introductions with the Greater Wellington Regional Council staff.

Just some very brief housekeeping points before we get underway.

Hearings are being recorded and being livestreamed.

[00.05.00]

If you could please use the microphones and say your name before you speak – that is helpful for the transcript. Just a wee reminder for the panel to do the same.

We have pre-read everyone's submission and evidence. We do invite you to share the key points that you would like to make. Do try to keep your submission points to those that have been allocated to this hearing stream. So that we can ensure the hearing runs efficiently a bell will sound when there is five minutes left of your allocated hearing time and then another bell at time.

For anyone listening out there, just note that even if you are not presenting in this hearing stream we assure you we have read your submission and will be considering it very carefully in our deliberations.

Lastly, please turn cell phones to silent mode.

Today we are hearing from Winstone Aggregates, Te Rūnanga o Toa Rangatira and Taranaki Whānui were on the agenda to present, but have advised they won't be appearing today. Te Rūnanga o Toa Rangatira have asked if we could play a video instead and we are very happy to do that.

Are there any procedural points before we begin?

Admin: No.

Chair: **Welcome Winstone Aggregates**.

Tancock: Kia ora. My name is Phernne Tancock and I am a Barrister from Wellington. I am appearing today on behalf of Winstone Aggregates.

I have actually provided a little bit of a handout with some summary points that I am going to take you though. I am conscious that things have developed quite rapidly over the course of the week. I have had the benefit of hearing some of the other parties submissions on the allocation point, and thought it might be useful to provide some comments on those rather than rehashing what you have seen earlier in the week. I am sure you are very familiar with the Otago case by now. I will just hand that out to you.

In the meantime, I am also appearing this afternoon along with Mr Heffernan who is a Planner at Winstone Aggregates.

Winstone's has filed legal submissions in evidence, which appreciate the indication that has been pre-read by the Panel. These opening submissions will briefly introduce Winstone's interests for the hearing, signposting key issues of concern which may get picked up as threads over the course of the other hearing streams and raise concerns about what it sees as the wrongful allocation of some of the provisions to the FPP process and provide some comment on the proposed fix-up to that.

In terms of Winstone's submission there is a key theme there, which is around the treatment of aggregates. It sought relief in its submission across Plan Change 1 to provide better policy recognition for aggregate extraction activities in the Plan Change.

This is essential to ensure a continued supply of aggregate in the Region, particularly in Wellington City where the demand is highest and there is only three remaining working quarries.

There is no alternative to aggregate yet. Huge quantities are required to build, support and maintain communities.

It needs to be locally sourced also to keep transport costs and also emissions down. It can only be established where there is accessible quality aggregate resource; and in the case of Wellington City a lot of development has occurred over the top of that resource so it has been sterilised and it is no longer accessible for quarrying.

Winstone's preference has been to maximise the use of its existing quarries in the region, rather than it seeking to establish greenfield ones. This is the most sustainable and efficient way to provide aggregate. It also has the benefit of restricting the quarrying effects to existing regional significant sites and known sites – so sites where we know that's going to happen and where land has been set aside.

[00.10.00]

The problem with this is, it's usually undeveloped land within their existing quarry footprints which contain streams, gullies, tributaries, wetlands and indigenous vegetation which, no surprise, is often high in natural value because those areas have been left unspoiled for decades.

Plan Change 1 introduces for Winstone's a combination of unworkable policy direction that focuses on the "avoid" policies for indigenous ecosystems, freshwater wetlands, tributaries and streams.

Probably a good place to pause and say that Winstone's do actually support a lot of the rest of the plan changes and the direction that things are going, but they need to have what is sometimes an uncomfortable and difficult conversation around how as a region we look and manage some of these things because it's a common problem for everyone.

Currently Plan Change 1 doesn't provide any policy exceptions for quarrying activities at all. There are a few references in terms of the RSI but quarrying has been left out.

If this approach is adopted in the RPS it sets the tone for the Regional and District Plans that follow. Winstone's are concerned that it sets a path where it is very difficult for it to be able to get consents to access aggregate within the existing quarry footprints that it has in the region.

A reliable source of aggregate is necessary to achieve development and infrastructure outcomes in the NPS-UD and to provide for increased housing and resilient communities.

The difficult position of aggregate extraction and clean filling was recognised by the government in the NPS Freshwater and the February update provided a little bit of relief for the industry in terms of clause 1.22. That set out a pathway for the activities where rather than having an avoid policy they applied an effects management hierarchy, which enabled offsetting where necessary.

I would like to emphasise, those threshold tests are still very, very high. There's a functional need test in there. These are big hurdles to cross, so it's not a clear path through, but it's a recognition that in certain circumstances this activity might be acceptable. It is really the onus on the application to be able to demonstrate those at that point.

There is also a similar provision proposed in the draft NPS-IB for [12.44] aggregate as well.

This gives national direction to Councils as to how to manage competing values of protection and use – and that's accepted that it can be a problematic interaction. It is this national direction which in Winstone's view should be given policy recognition in the RPS via PC1.

I think the case for strong guidance in the RPS is vital. The RPS should dealing and identifying with resource management issues that are valid for the district. And, I think this is crucial, having sat in many Council hearings where you are trying to consent quarries: it is not helpful to have an absence of policy guidance when decision-makers are coming up against the competing principles and how that works.

I think it is a very valid role of the RPS to have consideration of that at a regional level and to figure out or provide direction to decision-makers about how they should attempt to reconcile those values.

The RPS occupies an important place in the planning hierarchy and directly influences the content and tone of the District and Regional Plans.

Winstone's has been a little bit disappointed in the way that the Regional Council and the officers have viewed its submission. One of the problems with this is that there has been a lot of pushback to say soils and aggregates belong in the mineral and soil chapter only. You've got two objectives and a couple of policies there.

Our submission is that it's not helpful just to put it in a silo and remain entirely silent on issues as to how these activities work through and when they interact with tributaries, streams and indigenous vegetation and all these things that we know they will.

In my submission, putting it to the side and saying that this plan change doesn't cover that, or we don't want to look at that, or you belong in the soils and mineral

chapter and that's where you must stay, isn't consistent with how anything else is treated in the Regional Policy Statement.

[00.15.00]

You see references all through different chapters to freshwater, climate change and urban development – all sorts of those things. We're saying, "It's just sensible to have the same pathway there, or same recognition for minerals."

In my submission, leaving it in the soil and minerals chapter for all time doesn't really help anyone, because then someone picks up the RPS and you've got some policies here and some policies here and there is no speaking to each other.

I think also that sets up a theme where Plan Change 1 has been focused very much on protection elements of the NPS. It has addressed use in other contexts, but for aggregates and quarrying and clean filling it's failed to look at that, and we all know that the protection and use are two sides of the same coin and sometimes it's very hard. We're not saying one should favour the other, but we are saying that they need to be considered, because not having any use at all is unrealistic.

The next theme that Winstone's will be probably harping back to throughout the course of the hearing is the role of the Draft National Policy Statement on Indigenous Biodiversity.

Winstone's is critical of GWRC's decision to introduce provisions in its indigenous ecosystem chapter to give effect to the exposure draft of the NPS-IB.

I appreciate the desire for the protection and also the fact that when the RPS was notified in August last year, it did look like the NPS-IB was going to be advanced far more rapidly than it has been. At this point, when I check back on the website, for FME is there is still no update on when that would be released.

Winstone's is not opposed to provisions that better protect biodiversity and ecosystems. It does a lot of work with ecosystems internally, which you might hear some more thoughts from Mr Heffernan on today.

As the quarry operator around the country, Winstone's actually does a lot of offsetting in all these sorts of things, and encounters restoration projects on a large scale quite frequently. So we are very familiar with those, but they do think that introducing provisions that aim to give effect to the draft NPS-IB at this time is a little premature.

The text will inevitably change as a result of consultation and we have all seen the changes that have gone through with the various wetland drafts. You can't assume that the document at the beginning will be what you get at the end. It's always a little bit of a surprise where that lies.

One of the other things about that is we think that trying to implement that into the District Plan now has the potential to create confusion and to lock in provisions that differ from the national direction.

I appreciate there is an ability to fix those up, depending on whether there is a direction, but we are in a very strange planning environment at the moment where there is national directions coming out about maybe not doing plans, or not doing plan reviews and all of these things. It's an unusual time and I think the concern is that that's going to get locked in and left in a way that creates confusion, and ultimately may differ from what the final national direction is. So you would have an inconsistency there.

As you will be well aware the RMA doesn't direct an RPS to give effect to a draft National Policy Statement, and the courts have been very reluctant to do so.

I guess in a nutshell Winstone's position would be that the indigenous ecosystem chapter should be done properly in one go and it should be done as a whole; so when you're looking at not just elements of protection for that chapter, but the full gambit of the NPS. The key thing is that we need to wait to have the final gazetted version of the NPS to enable that to occur and be done properly.

Next is scope.

The officers did raise in the initial reports some concerns around scope of Winstone's submission. The relief sought by Winstone's was to provide policy recognition in the RPS and that may not have been entirely clear in the written submission in some of the general comments, but we have confirmed that.

[00.20.00]

It is hard to see how Winstone's seeking relief that the RPS gives effect to the NPS Freshwater is out of scope for either process. We did file detailed submissions on this and will return to that topic if we need to. I just thought I would alert the Panel to that if it was necessary; but it hasn't been addressed by GWRC in reply. So it is unclear to me at this point whether it's been accepted, whether it wasn't an issue, or whether it's just been deferred to another hearing stream if and when it arises is part of a component of the submission.

Turning now to the allocation of provisions between Freshwater Planning Process and Schedule 1, and I know that's been a relatively hot topic for submitters this week, Winstone's do share the jurisdictional concerns of Forest & Bird and Wellington Airport to the extent that they consider the provisions have been wrongly allocated to the FPP. Not all of them, but quite a lot of them.

Winstone's supports the detailed submissions and accompanying analysis, that have been filed by those parties and most of the points made by the oral submissions by counsel yesterday.
Winstone's is opposed to the entire indigenous ecosystem chapter being allocated to, or being used to the Freshwater Planning Process. It is wrong to use that process which is designed for the NPS Freshwater to implement an entirely different draft NPS-IB. Out of absolutely no disrespect to the Panel Members whatsoever, a Freshwater Panel has been comprised to be a specialist panel to deal with the freshwater aspects of that. So our concern is that we don't necessarily want to put a very narrow freshwater lens on a wider issue where you would expect perhaps if the NPS-IB was a little further along, you might

have a similarly composed panel with experts who have terrestrial diversity and expertise and things like that. That remains a key concern for Winstone's.

That chapter, as I have said earlier, is a bit of a significant policy shift in a technical and complicated area already. There may be aspects of that chapter that are rightly falling within the Freshwater Panel's jurisdiction, but equally from some of the analysis proposed by the other parties I think that's questionable, that it applies to the whole chapter.

If the chapter is advanced, and I know that is something that the Panel will be considering, and Council will be considering too, in my submission, in the very least, it should be assigned to the Schedule 1 Process to allow these provisions to be tested in the usual way.

Forest & Bird's legal submissions have provided a really detailed analysis of the breakdown of that chapter, which Winstone's adopts. I think counsel for Forest & Bird had been very closely involved in the Otago Regional Council case and his description for the Panel yesterday was very helpful in answering some questions as to how that case had played out, which weren't evident when I had gone back and looked at the submissions in the procedural minutes and things like that on the website. So we adopt that approach.

I note that similar questions have arisen around the Council's reasoning for including urban development and climate change and integrated management of natural physical resources. Again, it's probably not a chapter-by-chapter approach, but it's probably a finer toothcomb that what has been applied. Winstone supports the submission and the analysis of the Wellington Airport in that, and I think the table they provided raised some very important questions around how Council's analysis had been done.

In the reply which GWRC filed, I think it was Ms Zollner, there is a table which refers to a number of different options which the Council looked at when they were deciding what provisions should be in or out. They describe a holistic High Court approach was adopted.

[00.25.00]

Based on my reading, I think this misinterprets the High Court Decision in Otago, which is binding precedent. I re-read that decision this morning to see whether I could gleam any further light from it. I think it adopts a very narrow approach and reinforces that it's necessary to give a very narrow approach. It provides very detailed direction as to how a Council should apply that approach and what can be seen as being in scope and what can be seen as being out of scope.

I know that exercise gets difficult when you're actually faced with the provisions and you're tasked with separating individual components out. It is sometimes very easy to take these principles and go, "They're very clear," and then when you start to look at it, things get a little bit more murky.

In my submission, the Otago case is very clear about what can be seen as in out, or the principles for that, for s.80A. They may relate to more than just freshwater

and directs that only parts of the RPS that relate to freshwater can be used for the Freshwater Planning Process – the rest must proceed via Schedule 1.

I have read the submissions filed by GWRC in reply. I do struggle to see what the basis is for distinguishing the decision from the current circumstances. It makes no difference in my view that Otago was a full plan review. We're still dealing with whether something is in or out of the Freshwater Planning Process or Schedule 1 Process and the scope of the FPP as an IPI.

In my submission, Justice Nation's principles on the scope on IPI are equally applicable here.

In terms of the proposed fix-up by GWRC, Winstone's do not support the proposed solution to the jurisdictional issue, having all the members of both panels sit on all chapters, and making allocation decisions as part of their final recommendations, having heard the evidence.

While the Freshwater Plan Panel may regulate its own proceedings, the Panel will obviously be very aware it must do so in a manner that's fair and appropriate in the circumstances.

In my submission, the solution being proposed by the Council is procedurally unfair to submitters. Firstly it creates uncertainty and confusion. Submitters should know in advance what legal processes they are participating in and understand the parameters of that process. They should not have to wait to receive the Panel's recommendation at the end of the hearing to find that out.

Submitters will also incur greater costs in terms of expert witnesses in cross-examination that they otherwise might have done if they have to proceed on the assumption that everything is in the FPP – and there are some key chapters and provisions there that have been included in the FPP. It will come as no surprise to the Panel that they're going to be contentious hearings.

The level of involvement that will be required, because of the fact that question is left open, will create an expensive burden and make this process a lot longer than it may have otherwise been if the FPP provisions were defined first and were narrower than what they are at the moment.

I mirror their concerns of other submitters about the loss of appeal rights. This also results in the opportunity to mediate, which is a very valuable tool in planning development, and a very important component of what happens in an Environment Court Appeal. Just thinking about the proposed natural resources plan for GWRC that went through that had, was it thirty or something different appeals allocated to it, and most of them were settled via mediation over the course of a year or two. That was an incredibly successful process where the parties and various interests managed to get around the table and work out where the balance and tension lies with those policies.

In my submission, that's a very important aspect of that process that shouldn't be removed lightly.

Not reaching an allocation decision until the end of the process also adds further confusion to an already difficult area. It's a novel process as it is. It does put the entire hearing process at risk of being challenged.

[00.30.07]

My client particularly has a concern that if they go through the process with a lot of time, expense and commitment throughout the entire process and then there's a decision issued and a party isn't happy with the jurisdiction, it is left open for them to challenge that bi-judicial review and that puts everyone's hard work throughout the planning process in jeopardy. So that remains a big concern for us.

Winstone's respectfully request that the Chairs provide detailed direction to the officers to reconsider the allocation decisions now, carefully applying the Otago decision.

Key aspects that we say are important in the Otago Decision were covered in Winstone's submission.

I think Wellington Airport's opening submissions also provided a really good and slightly more comprehensive summary of those parts. Some of the items there actually did tease out the questioning that Commissioner Wratt had yesterday around the freshwater coastal component. I think that also provides some useful guidance, and essentially that's the relevant parts of the Otago judgement from paragraph 191 to 208.

It is also requested that a more detailed explanation as to the reasons why particular provisions have been allocated in that process is provided to submitters.

Greater Wellington are reluctant to do this without hearing the evidence first. I note the Panel does have the ability to commission its own report if it didn't want to. Otago Regional Council did manage to successfully complete the exercise in advance of hearing the chapters, following the Court's direction. And there is no reason why GWRC couldn't do the same in my submission.

Following the decision in Otago Council should redo the assessment in light of the principles of the case and re-notify the FPP provisions accordingly. Re-notification is a common remedy to rectify procedural errors or flaws, but I do admit it is a very complicated area and in my submission it's probably going to be an easy exercise to look at that once we actually a reassessment and some good reasoning for that – and you can see the extent of the problem if the Panel opts to go that way.

I know that when the Otago Regional Council undertook that exercise with the direction of the Court, they ended up with very narrow provisions. I guess in my submission, those submissions that turned up in Otago were land and water based. Indigenous ecosystem, urban development and climate change were out of there.

While I accept that different plans are different and they have different structures, they are all supposed to have a relatively similar structure based on the NZ Planning Standards, and there should be some consistency in terms of application of the Otago judgement as to what can be included in the IPI. So there should be consistency. We shouldn't be going around the country have different RPS finding different things are included. Of course that is something the Panel will see as they look at these things in different regions.

Those are my submissions. I am mindful of the time and the bell – apologies for that.

Heffernan: My name is Phil Heffernan.

Kia ora tātou. Ko Te Mata te maunga, ko Tukituki te awa,
Nō Heretaunga ahau,
Ko Heffernan tōku whānau,
Ko Piripi tōku ingoa.

I am a Principal Planner with Winstone Aggregates. As you will be aware, Winstone's is a pivotal player in the Wellington region's aggregate supply chain.

Today, I bring to the Panel's attention critical issues regarding the Proposed Plan Change 1 (PPC1) and its potential impacts on the aggregate industry, sustainable quarrying and regional development.

My first point of concern centres on the wide-ranging implications of the Freshwater Planning Instrument (FPI) in Plan Change 1.

The s.32 report, in my professional view, fails to thoroughly analyse the potential impact this instrument may have on sectors such as the aggregate industry.

Further, the document does not sufficiently recognise the role of the supply chain, especially mineral and aggregate extraction.
Moreover, the imminent increase in demand due to the National Policy Statement on Urban Development (NPS-UD) seems inadequately addressed.

[00.35.00]

On one hand we've got bigger controls coming in, but then we've got the Urban Development NPS coming in as well and potentially increasing the demand; so will make it harder to try and get the aggregate out, but the demand is going to increase.

It's disconcerting that these vital aspects, integral to our region's progression, appear to be overlooked.

The cost-benefit analysis in the s32 report appears deficient in its examination of the potential repercussions of the proposed policies on the aggregate industry.

The strategic significance of the aggregate industry to the region's growth must be acknowledged and evaluated appropriately.

Interpreting key principles within PPC1, particularly those related to biodiversity offsetting and compensation, is a source of concern for Winstone's. The proposed changes seemingly conflict with the current RMA legislative framework and relevant case law.

I have personal concerns regarding the potential consequences of including a Draft NPS-IB into the FPI process. This mirrors my experience with the Auckland Unitary Plan. A number of provisions were put into the Unitary Plan on fast-track processes and they are still in there today. A number of those have caused some of my clients over the last five to eight years a lot of cost, and there has been a lot of mention about "We'll come back and revisit those and we'll get plan changes done," but still none have been done in my time to address some of those fast-track processes.

Given these points, Winstone Aggregates seeks a nuanced, evidence-based approach in PPC1; an approach that simultaneously considers the preservation of indigenous biodiversity and ecosystems while recognising the vital role of the aggregate industry.

I also acknowledge the Council's rebuttal evidence in response to our submission. We maintain our stance that the current plan insufficiently addresses the potential impacts on the aggregate industry.

In conclusion, we urge for a comprehensive approach in Plan Change 1 that respects the economic, social, and environmental aspects of aggregate extraction, clean filling activities, and aggregate supply, understanding their critical roles in supporting housing supply and infrastructure development.

Thank you for your time.

Chair: Thank you very much for your presentation.

Ms Tancock, Winstone's is seeking policy recognition of the pathway that's provided in the NPS Freshwater for aggregate extraction. Those amendments to the NPS, they took effect from February this year; and PC1 was notified August 2022?

Tancock: Yes. The Winstone submission actually highlighted the fact that there were a tranche of amendments coming, and that they asked given the timeframe of the process sort of straddling the expected date of that, that they should be included and picked up. Hopefully that addresses any concerns around notification and timing. Should provide scope for that to happen.

Chair: That would need to be through a variation though wouldn't it?

Tancock: The direct submission point for Winstone's on the notified plan was that the notified plan should take into account and include reference to the intended update, which was going to provide the aggregate pathway. I can take you to the wording if you like.

One of the reasons that we specifically did that is because they had had a similar experience throughout the course of the Proposed Natural Resources Plan. The Proposed National Resources Plan came through with the NPS Freshwater without the wetland exception. They knew it was coming, but it didn't happen in time for that process.

Chair: There is the ability though by consent authority? Looking at this issue, there is always the ability to look higher up the chain at a National Policy Statement?

[00.40.00]

Tancock: Yes there always is, but I guess in my submission if you have the opportunity to get it right and the Regional Policy Statement give effect to the NPS as it sits now, which I will have to go back to the section, but I think that you do have to give effect to the valid NPS as part of the decision-making, the direction, then there's no reason not to.

Great Wellington have provided those pathways for other; I think the pathway is there for potentially Urban Development and RSI. It is just that the aggregates has been dropped off that.

I guess in my submission, if you've got the opportunity to do it at the top of the hierarchy it's representing national direction and why wouldn't you include that if you had the opportunity to do so. I would say that you have based on the wording in the submissions that we have got.

Wratt: Can I just ask a further question there? You will be coming back to present to subsequent hearing streams?

Tancock: Yes.

Wratt: Will you be making suggestions in terms of how you would like to see that done at PC1?

Tancock: Absolutely. We will be returning in relation to the policies that we have submitted throughout the stream, to I guess present to the Panel and try and convince you why we think those things should be slipped into the policies that they are. You will be seeing us quite a bit.

Kara-France: Kia ora Ms Tancock. I have a question. In regards to your point 17, regarding indigenous ecosystems, what would your interpretation be in regard to that technical expert on Te Mana o te Wai freshwater and also ecosystems please?

Tancock: My paragraph 17 of the summary?

Kara-France: Yes.

Tancock: I must say, unlike some of the other submitters, we didn't do a detailed analysis at this point on those provisions. I would probably just have to direct you back to the Otago judgement where Justice Nation says that these things may be included; parts of them may be, but you need to look very closely at the relationship. I think that applies to all of those provisions.

Some of these provisions probably have been rightly included in the FPP, but some of them, and I suspect if you look at the Otago Regional Decision, a lot of them have wrongly been classified and there is too much a tenuous link with the freshwater. So, there will be some that do and there will be some that don't.

When I actually went to the s.32 Report to try and see whether we could add anything particularly helpful on individual policies there, particularly in the indigenous ecosystem chapter, you come up with this intrinsic link to these things. I think I said in the substantive decisions, that's describing or saying what the relationship is; it's not actually examining and looking at the reasons why the particular wording of those provisions fall within the FPP or the Schedule 1.

That's why I think we need to have a finer grain, we need to have an explanation from Council, and we need to have that explanation directly refer back to those criteria in Justice Nation's judgement; because otherwise it's a very hard and maybe impossible exercise to do. Fighting that out, policy-by-policy over the course of the hearing, doesn't seem to be a particularly productive use of anyone's time – if we can get agreement on that upfront, or some agreement on that upfront.

I hope that was helpful.

Kara-France: Yes, very helpful.
I have another question actually, just in regards to mātauranga Māori, kaitiakitanga, te o Māori perspectives regarding indigenous biodiversity and ecosystems and Te Mana o te Wai issues.

[00.45.00]

What is your opinion on the strength of the technical expertise regarding the three cultural values that I have just mentioned – mātauranga Māori, te o Māori, kaitiakitanga? Do you see this as a strengthening technical expertise to be applied through that lens for these particular visions of indigenous ecosystems and Te Mana o te Wai?

Tancock: I think there is definitely a place for that lens. I don't think that the Otago Decision says that there isn't. I think one of the aspects that Justice Nation does make very clear is that this is obviously a new and novel process. We are introducing components into plans that haven't necessarily had the recognition that they deserve in the past. We are redefining those relationships.

Justice Nation made a comment which at first I thought was out of context. If you look at it to start with, you're like, "Well, integrated management should look at this holistic view over the top that incorporates all these components." But then he says, "It's very important as well that we are not underselling appeal rights or the ability to work out how this new frontier of planning should sit. So having a Schedule 1 process it's not saying it has no importance because it's not allocated to a Freshwater Planning Process. Freshwater Planning Processes go hopefully quicker, but there's nothing to say these things aren't important if they're in a Schedule 1 Process. Sometimes that Schedule 1 Process provides checks and balances to make sure those things are given effect to properly.

I think for the Panel that's a very important component. You're hearing a lot of voices and a lot of people telling you different things about how they would like to see these things applied in a plan. That's going to be a component of what you will hear, because we're articulating new concepts and how people express those.

I think the Schedule 1 Process provides a lot more space for that to occur. Having mulled on it, I think that Justice National in the Otago Decision actually did have quite a good point there, about giving those processes the time, space and respect, and everything that they deserve.

You will see it's been a lot for submitters to come together in the timeframes that it provided. It's going to be a gruelling six months. Not to say that the Freshwater Planning Process isn't very important and it is a streamlined process, but it doesn't provide a lot of space for those conversations.

Thompson: Ms Tancock thank you for what you have provided so far, it's been helpful.

Looking at your paragraph 25, where you say that the Otago Council did manage to successfully complete this exercise in advance of hearing the chapters, are you able to direct us to anything that describes the mechanics of how they did that, their process?

Tancock: I think sir it may be I brought with me a whole load of paper today and I'm not sure whether I provided the right piece of paper. Ms Zollner in reply, from GWRC, in their evidence they provided a greater explanation as to how that exercise was undertaken.

I guess the other place that you would find that is as part of s.32 analysis for the provisions. It's not aligned by line, or a blow-by-blow account of every provision and how that has been allocated but in some cases there is a bit more of a detailed description about the allocation decisions.

I think there was a reference in my filed submissions to the page in the s.32 Report on that. Page-390 to 395 of the s.32 sir. It will be there or thereabouts, because that is related to the assessment that the Council has undertaken on indigenous biodiversity in Policy 24.

[00.50.00]

I think in those filed submissions I just make the point that on Policy 24 there is that s.32 evaluation asserts that the freshwater ecosystems are intrinsically linked. That's all the description that we get. It doesn't particularly help.

Thompson: I will check it as best I can. Thank you very much.

Wratt: Just taking that one step further, just to clarify what you are suggesting we should do. Is that we put this back to GWRC for them to review their allocations, but that we continue with the hearing process as it is set using those?

Tancock: I would have to have a foot in both camps on that question. I think the reason is, there's a few steps I'm suggesting the Panel give serious consideration to, asking them to reconsider with some quite detailed directions as to what they are going

to be looking at and filing in explanation, based off the Otago case as to why those things should be in and out.

Then I think there's an additional step. It is very difficult to have those discussions about whether anything needs to be re-notified, or what has been wrongly assigned, until you understand what the extent of the problem is.

If you take say, Wellington Airport, Forest & Bird and Winstone Aggregate's view of that, there's a large portion of plan that has been inadequately or wrongly allocated. It may be that that's not quite the case, but we simply don't know, and until we see that analysis I don't think you can really have an intelligible conversation about the remedy.

The remedy in Otago obviously was re-notified and the FPP provisions were re-notified. Re-notification is the common way to address a procedural perceived unfairness or defect. I guess we would just need to look and see what the extent of the defect was that we were looking at.

I did hear the discussion with counsel for Forest & Bird yesterday. It's not an easy thing when you start to look at how that will work line-by-line with different policies. I would suggest you do the exercise. I would very much like the parties to be able to pop in a memorandum or something on the outcome of that, if the Panel was minded to allow us to do that. But, until you know what the problem is, you just simply don't know how to rectify it.

Wratt: You commented on the costs of going through the current process and such like, but there are also costs of taking a different approach or re-notifying. I guess just from Winstone Aggregate's perspective, would your submissions coming up differ significantly whether you were addressing your submissions to a Freshwater Process as opposed to a Schedule 1 process?

Tancock: I would have to take some instructions, but I suspect yes. We were at a workshop yesterday with the ecologist experts. They're taking it very seriously, having one shot an indigenous ecosystem chapter, and facing removal of offsetting and the like is a significant problem for them. I guess in terms of the resourcing, we're having that conversation with the experts now and getting work underway for a hearing that's scheduled for early next year because of the concern.

We will be wanting to cross-examine on that if we don't think that there's appeal rights. It does change your approach. Whereas, in the Schedule 1 Process you get the opportunity to test the water and thrash it out. Present seriously but not to the extent that you might be if you have no other option.

Then you know that if it doesn't work out you've got the right of appeal if you don't like how it's turned out, and the ability to participate in mediation and expert conferencing and all of those things.

I think the attitude would be very different, and I suspect that you will see that from a lot of submitters across the board because there's a lot for them to lose.

Heffernan: I would just like to add and would confirm from Winstone Aggregate's point of view, that would be the case – it would be treated differently just for the same arguments that Phernne has just articulated.

[00.55.00]

Particularly again, we were in a workshop yesterday about our Belmont Quarry and talking through with some of our specialist, and some of these type of processes did come up and we effectively were bouncing that around just from a pure workload point of view – the wider industry. I am not saying that's something you could consider, but is at its threshold. So we're just trying to make sure our resourcing is adequate for some of these processes going forward, as they are trying to deliver other things at the same time.

It's a bit of priority. Some of them we are effectively saying if we are in the fast-track process that this has to be your priority, and that is then trumping some of our other jobs that we may have those specialists on.

Tancock: That said, if there is a concern about slowing down the hearing process then allocating to Schedule 1 would be a safe option for many of those things which may be acceptable to a lot of the submitters and would allow the Panels jointly, or individually as the case may be, to sit and hear those provisions.

Wratt: Could that process, of reviewing the allocations, actually be split, so that we weren't going to GWRC to ask them to revisit the whole of the provisions but to revisit the ones that might come up in the next hearing – because that's only three weeks away.

Tancock: I think certainty is a big thing. Certainty of process is really important. The timetabling for this just simply doesn't give the opportunity to have that kind of approach I don't think. I doubt that would provide much comfort. Submitters need to know what they are facing and what the process is.

At the moment, what has been proposed results in sort of running blind.

That said, Otago Regional Council did that analysis pretty quickly when they were directed by the court and the plan got re-notified. All we are asking for is that the analysis is redone. If the Council doesn't have the resources, or is unwilling to do so, obviously the Panel can commissions its own suitably qualified person to undertake that exercise if it has concerns, and I would really encourage you to do that.

Wratt: Thank you, that's a helpful suggestion.

Tancock: The big problem with the next hearing is, integrate management is all FPP isn't it? Yes. So it's a tricky one.

Chair: If submitters were reallocated provisions, based on what you were saying about how it's important that submitters know which process they're going to be engaging in, and that they might prepare for their case differently depending on which process, do you think that there should be then an opportunity to be able to prepare and lodge a submission again, or do you think that isn't needed?

Tancock: It's such a tricky one. I would have to go back. It's impossible to know that until you know the scope of your problem. If the problem is the size of say Forest & Bird's interpretation, so all of the indigenous biodiversity, all of the integrated management, say you take this bit that they have, I think there's a question around Freshwater Planning Process is, in my mind at least, and obviously we are more familiar dealing with these things on a daily basis than your average lay person, but it's a different process. There were minutes around cross-examination if you wanted it or not. It's a quicker process. There's been all these things. It's not your regular submitters make a submission and turn up on the day and make a submission sort of process.

You would have to think about whether people had been deterred from making a submission as a result of it being allocated to the Freshwater Planning Process.

[01.00.00]

Obviously parties like Winstone's won't be, but arguably would there be people out there that have said, "It's too quick. The timeframe is too tight. My involvement is too difficult." And they had been put off that.

When you look at ability to hold informal hearings and things like that, and I know that the Panel does it best not to, but whether there is this deterrent or something that has put people off engaging in the Freshwater Planning Process simply because that's what it is, as opposed to your normal Schedule 1 Plan Change.

It's hard to know. I guess you'll have to figure that one out.

Heffernan: I would just like to add, just from a Winstone's perspective, I don't think our original submission material would change; but I would refer back to how we would treat potentially our specialist turning up if we know we only had one shot. That does materially change the future workload.

The original submission wouldn't necessarily change, but the future ones, how we would prepare and resource it would.

Tancock: There also doesn't appear to be as many lay submitters or community group type submitters involved in this process – including people filing the evidence. I know this is just the first hearing so it's very hard to know but, just based off potentially a comparison with the previous RPS hearings back in 2013, it seems like there is less of a take-up of the opportunity to make submissions on behalf of a wider community view.

Chair: I just want to ask about the Natural Resources Plan which I understand from the Regional Council's website that is going to be operative in about a month's time. I think you refer to it in you submissions, or maybe in Mr Heffernan's evidence, there are objectives that provide policy support for aggregate extraction – in the appeals version.

Tancock: Yes, I will just have to cast my mind back because it was a little while ago.

There are objectives in there. Winstone's participated in that process and filed an appeal. It went to mediation. As a result of that Winstone's was successful in

obtaining a similar pathway recognition – so it was grouped with RSI and renewable energy. There's policies and objectives in there. I will have it somewhere. I think it's in the original submission that were there.

It was disappointing having done all of that work over a process of two years or more; that GWRC didn't pick up those objectives and update the RPS, because the updates have occurred for the RSI and for the renewables, but the aggregates has been left out of that conversation despite coming from one of the underlying factors in the s.32 that the Council was aiming to update the RPS to reflect some of those positions. I know it's a little bit the wrong way around, but they've just got there.

Chair: You're saying that it's important to have that at that higher level, as a direction for territorial authorities?

Tancock: Yes.

Chair: Having it in the Regional Plan is one thing, but it is important to also capture that in the RPS?

Tancock: Absolutely. There's an incredibly restrictive framework for aggregate consenting in the Natural Resources Plan; you're generally non-complying and you're facing void policies. NPS provides a little bit of relief, but there's a really big question as to whether they can even get through those pathways. They're incredibly narrow.

You will know from experience that when you're facing non-complying void, no more than minor, having that policy recognition in the RPS is really, really valuable.

Chair: Just one last question. I just wanted to ask about that because 3.22 in the NPS-FM, and I know that's dealing with you're seeking to locate in a natural inland wetland, that policy is a mandatory policy; so it would be the expression of how that is implemented in the lower order documents?

[01.05.00]

Tancock: Yes. We haven't seen how that's come through yet. Greater Wellington is slightly unusual in that because of the timing of the proposed natural resources plan some of those NPS updates, they've taken the position that the plan takes a more restrictive approach, which was open in the NPS Freshwater – so you didn't need to do an update if the plan took a more restrictive approach to protection.

I think the officer said that there was an update in clause 3.22 to the Natural Resources Plan coming up, but we haven't seen that. It's hasn't been notified yet.

If we are setting the hierarchy, we're setting the planning for the next ten years, then why not use the opportunity to reflect what the national direction says at the time in this process, and then obviously that will flow through the planning documents at a lower level in due course.

Chair: Thanks very much for your time and your presentation.

Tancock: Thank you very much.

Heffernan: Kia ora. Thank you.

Chair: I think we are now going to play a video provided by Te Rūnanga o Toa Rangatira.

Te Rūnanga o Toa Rangatira *[with use of Translator]*

Speaker 1: [Māori 01.07.40] Tēnā koutou ngā kaikōrero [01.07.44] with ēnei take, take **mōhio** [01.07.47] i waenganui i a mātou, ki waenganui [01.07.48]. Tēnā koutou ki a koutou katoa me te **huahua** [01.07.56] hoki o tēnei kaupapa. [01.08.00] me tīmata pea au i te karakia [01.08.06].

Ko te pō tuatahi, ko te pō tuarua
Ko te ata, ko te aotūroa, ko te ao mārama
Hui te mārama, hui te ora
Haumi e, hui e, tāiki e

He mea tauhou au ki tēnei kaupapa taku haeretanga mai ki te mahi i tēnei rā, kātahi au i rongo nā te mea he tauhou. Ki te whakapuaki i aku whakaaro, taku hinengaro mō tēnei kaupapa.

I am new to this matter before the Commissioners today. I have come here this morning to express my thoughts on the matter before us.

Ehara i te mea he tauhou ki tō mātou hītori, te hītori o Ngāti Toa me tō mātou ahikāroa ki tēnei takiwā, Te Upoko o Te Ika.

It is not as if I am new to the history of Ngāti Toa and our ancestral rights to this area.

Tata ki te rua rau pea tō mātou whawhai mō tēnei take.

Nearly two hundred years we have been fighting for this land and this issue.

Nō reira, taku māharahara, ko taku āwangawanga ko te whakauru i ērā atu iwi e kī ana ko Muaūpoko, ko Rangitāne, ko wai rā, ko wai atu, tae atu ki te Taranaki Whānui.

My principle concern today is the inclusion of other groups, Rangitāne, Muaūpoko and other groups on this particular issue.

[01.10.00]

I ahau ēnei tuhituhinga nā āku tūpuna i hoatu ki te Kāwana Kerei i tōna wā mō tēnei kaupapa.

I have before you documents that demonstrate the rights to land that were given by Governor Grey on this matter.

He mea pēnei ana, "E hoa, e Te Kāwana, whakarongo mai, whakarongo mai."

And it says to my friend the Governor, "Listen, listen."

He kōrero tēnei mō taku kaha.

This is an account of my strength.

I riro ai au tēnei motu, tērā motu, me Te Waipounamu.
I acquired this island and that island into Waipounamu.

Nā tōku kaha, nā tōku uaua ki te ao i te whenua.

And it is as a result of my strength that those rights were recognised and acquired.

Ehara nāianei, ināianei. Nō mua, he owha nā ōku tūpuna.

It is not a matter that is simply before us today, but it is a historical matter from my ancestors.

Tāna mahi he tango whenua, he tango whenua.

On that occasion the land was taken, the land was taken.

He kōrero tawhito ēnei korero

This is an ancestral saying.

Nō ahurei, nō ngā whare wānanga Māori tuturu nei.

This is a traditional saying from the Māori house of knowledge.

Ana tika, correct, the right way. Kupu, words, communication, tata, those who are close and those who have the affinity to the subject. This a Māori whakaaro from our old schools. For something to be tika you have to have the right communication to those who have the affinity about what you want to talk about.

In this case here, for it to be tika, for any other iwi to come into our rohe and claim mana whenua status, or tangata whenua status, there needs to be the communication with the right people. To date that communication has not taken place amongst our Ngāti Toa people.

Everyone knows where to find us. Right? Instead, this communication or this kupu has taken place in a hearing like this, in the courts of the land; but that's not the right people that have the affinity to this land, that have the whakapapa and that have the history. We have no qualms with any of these people coming to us. He kōrero hei aha ngā mea. But of all the things that are concerning you, so we have the opportunity through words, through affiliation to make it correct for all.

Koinā ngā kōrero tawhito o te whare wānanga that is still applicable today.

This is the traditional saying in the Māori houses of knowledge.

Kua kōrero kē ngā hītori o Ngāti Toa i roto i ngā kereme o te taraipuna rā.

The history of Ngāti Toa to this land has already been traversed in the Waitangi Tribunal.

And well documented, as we know.

Kore rawa mātou e whakaae. Mā koutou, mā tētahi atu rānei e mea ana me whakauru tēnei iwi, tēnei iwi, tēnei iwi.

We will never, ever concede to allow iwi today, or any other person, to say that another iwi has mana whenua status here.

Kāore au e hiahia kia whakawhānui i ngā hītori.

I don't want to have to expand upon the history.

Ahakoa ka taea.

Though I can.

Taku mōhio kei te mōhio pai koutou katoa i ngā hītori ki ngā mea kua tutuki kē roto i ngā kōti.

It is my understanding that you will be already be aware based on the proceedings that have taken place in relation to this area.

Nō reira, taku whakahē, ko te whakauru i a ētahi atu i roto i te kaunihera hei ahikā, hei mana whenua, hei tangata whenua rānei. Kore rawa mātou e whakaae ki tērā kōrero.

[01.15.13]

And so my principal opposition is to the inclusion of other groups into the status as mana whenua or tangata whenua today. We will never agree to that. And Taranaki whānui – I'm sorry I missed that.

E pā ana ki a Taranaki Whānui. I roto i ō mātou kōrero karekau he iwi e kī ana, Taranaki Whānui.

According to our traditions there is no particular iwi called Taranaki Whānui.

Mehemea ko Taranaki Whānui, ko wai rātou? He aha ngā hapū, he aha ngā iwi ki roto i tērā ohu Taranaki Whānui?

If there is such a thing, who are the hapū and who are the iwi that comprise of Taranaki Whānui?

E whakaae ana ahau Ngāti Tama, ko Ngāti Mutunga, ko Te Ātiawa. Karekau ērā atu o ngā iwi o Taranaki.

It is not Taranaki Whānui. I will accept Ngāti Mutunga, Ngāti Tama and Te Ātiawa to a certain extent, but not any of the other Taranaki groups.
Hoki ana ahau ki ngā hekenga a ō mātou tūpuna mai i Kawhia, mai i Taranaki.

I refer now to the great migrations that our ancestors from Kawhia and down to Taranaki.

I tērā rau tau te tahi mano, iwi rau, or he waru rau, in the 1800s. Arā, ko Ngāti Tama, Ngāti Mutunga, ko Te Ātiawa.

In the 1800 migrations it was Ngāti Tama, Ngāti Mutunga and Te Ātiawa.

Mehemea ko Ngāti Ruanui me ētahi atu, kāore au i whakaae. I te mea whawhai tonu mātou i roto i ērā hekenga. Nā rātou tonu i patu ētahi o ō mātou tūpuna i mua i tō rātou taenga mai ki konei ki Te Upoko o Te Ika.

If you were to claim that Ngāti Ruanui or any other Taranaki groups comprised of those that migrated then I would strongly disagree. In fact it was them that caused contestation and dispute during the migrations.

Pērā tonu ki tēnei rā.

And it's the same today.

Tēnei wāhi mō Te Upoko o Te Ika, ka roa mātou o Ngāti Toa i āhua mahue i ngā kereme i ngā whenua o Te Upoko o Te Ika. Ehara nā mātou te hē, nā Te Kāwana ki ētahi.

For this area, in Wellington, there have been many occasions when Ngāti Toa have been simply left out and that's not our fault.

Ka pai. Nō reira, kei aku rangatira, koia pea taku kōrero hei tīmata i ō mātou kaupapa i tēnei rā. Tēnā koutou, tēnā koutou, e rau rangatira mai. Kia ora.

And to the Commissioners, I want to thank you for hearing our opening address. My acknowledgements to you. Kia ora.

We are not adverse to having a kōrero to any of these people and trying to sort that out before a Commission sorts it out. I don't know how we got to this point. Well, I do. I will leave that to my friends to discuss. I would like to acknowledge you all here for listening. Thank you, kia ora.

Speaker 2: [01.19.10]. Ehara tēnei he pātai ki a koe me te rangatira. Engari, mai i mātou nei he paepae nei e noho ana. He mihi nunui, he mihi aroha ki a koe mō tō kōrero, i ngā whakapapa, i ngā mana whenuatanga o Ngāti Toa tēnei.

This is not a question to you, but I just want to acknowledge you for expressing to us today the genealogy and the status of Ngāti Toa according to your view to us today. Kia ora.

Heoi anō, tēnā anō tātou, kei te whare, kei te tēpu, ngā kaikomihana, ngā [01.19.56]. Nei rā te mihi ki a koutou e whaiwhai noa iho nei i ngā kōrero o tōku tuākana a Hohepa, i roto i ngā kōrero kua takoto kei mua i te aroaro.

[01.20.00]

Thank you for today. My role now is to follow on from the opening remarks of my colleague and friend Hohepa.

Engari, ka noho au, kāore e whakaae kia tū ake ahau ki runga ake i a koutou, engari, kia noho kanohi ki te kanohi.

I want to sit on an even and level playing field with you, so I won't be standing, I will be sitting.

First of all, I would just like to welcome you all to our whenua. Akakoa nō koutou te whare, nō mātou tonu te whenua, te mana whenua.

Although this house may be one that belongs to the Council, according to our tradition we are the ones who have mana whenua status here.

I would like to further endorse all the statements that have been said by my tuākana or my elder, tungāne or sibling. In our whakapapa he sits as an elder to me. It's a privilege to have him here this morning, considering he's been in hospital all last week. As soon as these kaupapa had turned up he got his backpack and his electric pack for his heart and we picked him up and we're here. It's just to emphasise the seriousness of what is happening. The ability for these people to once more, as Hepa stated, claim mana whenua, tangata whenua status.

I think you really need to have an understanding of the difference of what those words mean. You can only ask yourself. I can't ask you whether you have a concept of mana or mana whenua, or tangata whenua, which was expressed in Te Tiriti o Waitangi. You're probably familiar with tangata whenua. That's a term given to all Māori, to the Treaty.

When we are talking about mana whenua, that's the people who have authority.

Next year in 2024 Ngāti Toa celebrates or commemorates the two hundred years of the Battle of Waiorua on Kāpiti Island. I'm assuming you all understand what that is – the Battle of Waiorua and how significant it is to our history here, and our history in New Zealand, Aotearoa.

Here we are, as my cousin referred to, two hundred years later having the same bloody discussion, because of a faulty process; because of a Commissioner allowing this to happen because of a fast-track ruling. But it ain't anything fast-tracked. You ask yourselves what would be the intent and purpose of fast-tracking a ruling of a Commissioner. I would love to have that person's name, so that I could tell my iwi the person responsible for a lot of this nonsense; that a taonga found within a certain level of strata now if it precludes Ngāti Toa being here, now we don't have ahikā and we don't have mana over those taonga – by a Commissioner? That just infuriates me. One person who has no idea about our culture obviously, and for some reason put that through to cause all this stuff to

give Muaūpoko Rangitāne an opportunity to reinvigorate their ahikā or their mana whenua status.

I support my cousin. We will absolutely refute any thought or intention of that happening. You understand that the Treaty process cost millions and millions of taxpayer money. We have followed that process through to the letter and now we are sitting here with you people, having to have this discussion as we move into the commemorations of our ascension to mana whenua. Two hundred years we have had to endure this.

We're all sitting in this room now because you have an opportunity as Commissioners, in your positions of authority, to set it right.

[01.25.00]

E kore rawa a Ngāti Toa, e kore, kore rawa. We will never agree to that happening, because what was all that for? Thirty years of trauma, of recalling all our trauma for our whenua; where over 27 of my kaumātua were the original claimants and only one got to see it through to its fruition? Think about that. One. For all those original claimants of our Treaty claim one got to see it through to its fruition.

Now, because of your Council workers and people in offices and their limited experience, I suppose, in dealing with Māori – and I know what it's like, councillors only last for three years and workers come and go – Ngāti Toa are enduring and we are not going nowhere. Think about that.

So to support my cousin and honour her mahi that she's done for our iwi, I will take the words of Tamihana Te Rauparaha. I don't like to quote him too much, o mātou tēnei te whiwhi, who are a couple of guys trying to do the best for their time given their circumstances: engari, nō hea hoki e taea.

That's probably one of the most strongest statements of all our Treaty claim process, our Land Court documents. There was absolutely no way, no way, e kore hoki e taea. Otherwise you've just undermined all that stuff I just talked about.

So think about that. Think about this Commissioner. Think about the iwi that are probably having and opportunity – taking the best of an opportunity to reaffirm their mana within Te Whanganui-a-Tara.

There is a certain extent, or a certain degree where given the chance good on them. But that's not mana. You can't go to a Crown agent and receive mana. You understand that that iwi you are dealing with, the only reason why they're in Levin and in Taitoko is because they got a gratuity for one of their ancestors fighting with the Crown. Not under the laws of what we call Tūmatauenga, which is the God of War. And Uenuku-kaitangata and I will let you translate that.

God of Cannibalism. Māu pea tētahi whakapākehātanga pai ake.

Uenuku-kaitangata. Uenuku was a taonga brought over on the Tainui canoe. It is one of our oldest relics. It goes probably older than a few thousand years. That

represents the God of War. How can I put it in a Pākehā way? All is fair in love and war. I will just leave it at that. Ka pai. All is fair in love and war. That's Uenuku-kaitangata.

So, when you have those mantras, we're an iwi that came down here and muru raupatu i te whenua, means we cleared the land. My cousin talked about it. It's written in the letters. In order to establish our ahikā. Here in the whole of Te Upoko o Te Ika, from Rangitikei, Whangaehu (the pub is no longer there but the stream is enduring) the Whangaehu all the way to the top the South Island. Ngāti Toa have interest in all of those lands. It's been re-emphasised. We are part of one of the tribes that were part of a 20 million acre land-grab from the Crown. Ka pai.

I thought we had sorted our story. We've had our kaumātua come through and put all our evidence on the table.

So, if I could re-emphasise to you all, you need to scratch whatever that other Commissioner sorted out. You have the power to do it. Challenge him. You should have our backing.

That's no kōrero towards Muaūpoko, Rangitāne and Ngā Tara, but if you get that as a precedence, you're now saying in theory that Ngāpuhi could go and claim the whole of Kahungunu. You're now saying that Ngāti Porou can come down and claim Queen Elizabeth Park.

[01.30.00]

So stop the silliness, okay, because it's stupid silliness really. Get some clarity around and inform yourselves properly about the situation. Ka pai?

I have nothing towards those other tribes trying, I suppose, to do their best for their iwi, but I will not tolerate a Pākehā system getting us to fight amongst each other for your people's entertainment. E kī, e kī! E kī, e kī! [01.30.43] ngā ringa i tō koutou kūare.

I object strongly to ignorance.

That's all I am going to say about that. Because you understand yourselves my disdain towards the whole kaupapa. I'm going to leave it there.

I even took the [01.31.04] and that's a big thing when you [01.31.07] in Māoridom. I am not going to take it any further. We have said what we have said. I support my cousin. Once again Taranaki Whānui are using the system, the process, to elevate themselves to ahikā.

When did Ngāti Toa's ahikā ever, ever get extinguished in Te Pane o Te Ika? Go and walk across to Parliament. There's a mere pounamu. Oh, no, I don't know that guy on the end, that a certain relation of ours took it to Parliament to remind government Te Ātiawa, Taranaki Whānui, who have the mana of Te Whanganui-a-Tara. It's called tawhito whenua. It resided at Taputeranga. And that kuia that we saved, Tamairangi, and married Te Rangi Haeata, gave us the mana of the whole of the Whanganui-a-Tara.

Tikanga Māori tūturu.

Māori customary law – binding.

Not a Commissioner, or a group of councillors who might be there for three years. That's not enduring. This section of your community is the enduring community. We are going nowhere. Never have since the time we have been here. We don't necessarily encourage our people to move away. In fact, we have a whole strategy to encourage our people to move home. How the hell can we do that if we are still fighting with the Crown after all this time?

I think from what my cousin has said, and what I am saying to you, we have never extinguished our ahikā and there are reasons. Ahikā doesn't mean by virtue of the fact that you live somewhere, because there's a historical layer to Te Whanganui-a-Tara, a historical context. I don't want to get there.

You're probably familiar with Kāwana Kerei and the things that he did to force and the causal effects of that particular person.

Here we are, two hundred years, having to talk about that. Really? I would much rather be talking about how we can work together moving forward in the future.

All I can say, with respect, is can you fellas sort yourselves out please? You tell those people if they want to have a kōrero we've been over the hill for a couple of hundred years and we are not going anywhere. Nau mai haere mai. Please.

In conclusion, that was my understanding in the Treaty process; that there is nothing matters pre the signing of the Treaty of Waitangi. We played that game. We had to. What's wrong with everyone else not playing it?

So, once again to re-emphasise, pre 1840 nothing else matters. Who has the mana? Please get some distinctions between the general term of tangata whenua and mana whenua. Ngāti Toa have ahikā from like I said the Rangitikei to the top of the South. It's all in our research.

Is there anything else I should add while I am here? I think that's pretty much it.

You get the idea. Nō reira, Any questions? We're doing it so if you've got questions I can answer. You might have something now. Then I'm going to hand it to [01.34.51].

[01.35.00]

Chair: Kia ora. Thank you very much.

That was the agenda for the day. Thank you very much. That is the conclusion of submissions in this Hearing Stream. Hearings are resuming again is the week of the 17th of July for Hearing Stream 2 – Integrated Management.

Kia ora. I would like to end with a karakia. Thank you.

Admin: Karakia whakamutunga.

Tuia ki runga, tuia ki raro
Tuia ki roto, tuia ki waho
Ka rongo te ao, ka rongo te pō
Haumi e, hui e, tāiki e

[End of recording 01.36.15]