

Before The Freshwater Hearing Panel

Under the s 80A and Part 4 of Schedule 1 to the
Resource Management Act 1991

In the matter of Proposed Change 1 to the Regional Policy
Statement for the Wellington Region

HEARING STREAM 2

LEGAL SUBMISSIONS FOR WELLINGTON WATER LTD

30 June 2023

(Counsel)

M J Slyfield
Stout Street Chambers
Wellington

Phone: 021 915 9277
PO Box 117
morgan.slyfield@stoutstreet.co.nz

Introduction

1. These submissions are made on behalf of Wellington Water Limited.
2. Wellington Water is both a submitter (S113) and further submitter (FS19) on Plan Change 1 to the Regional Policy Statement for the Wellington Region (**PC1**).

Overarching Issues

3. PC1 proposes three new overarching resource management issues in the introduction to Chapter 3 of the RPS.
4. Wellington Water's concern is that these issues do not adequately reflect the role and importance of regionally significant infrastructure (**RSI**).
5. PC1 aims to set a new RPS direction, integrating the issues and responses on three core subjects: freshwater, climate change and indigenous biodiversity. These three subjects are the "integrating frame" for the key issues for the region.¹ The intent is to provide "clear direction to territorial authorities" to, among other things, 'support the transition to a climate resilient region'.²
6. Unlike the resource management issues set out in the introductions to other chapters of the RPS, the issues proposed for the introduction to Chapter 3 are "overarching". This suggests they either sit above other issues (in a hierarchical sense) or at least are intended to provide a framework for other issues. Either way, they are clearly central to PC1's aspiration to integrate the relevant subjects.
7. However, the issues do not reflect the vulnerability of RSI to the impacts of climate change.
8. Issue 1 identifies that "communities ... are increasingly exposed to the impacts of climate change", but this statement is so general that it obscures the specific issue that one of the critical ways in which communities are exposed is through the vulnerability of the regionally significant infrastructure that serves those communities. Unless this particular vulnerability is reflected in the statement of overarching issues, the RPS will fail to provide the guidance necessary to facilitate the

¹ Section 32 Report at [53], Section 42A report for HS2 at [37]-[38].

² Section 42A report for HS2 at [38].

upgrading, adaptation and relocation of RSI that is needed to support the transition to a climate resilient region.

9. Wellington Water acknowledges that infrastructure is explicitly mentioned in Issue 2, but that reference is limited to the impacts of population growth, and so fails to address the link between RSI and climate change resilience.
10. For these reasons, and those outlined in the evidence of Ms Horrox, Wellington Water maintains its request for an amendment to the overarching issues. Ms Horrox outlines some potential refinements to the wording, which Wellington Water supports.

Objective A

11. Mr Wyeth's s 42A report resolves three of Wellington Water's concerns with Objective A:
 - 11.1 Mr Wyeth recommends³ that the reference to Te Ao Māori is moved from the chapeau into a new paragraph (a). Wellington Water supports this. It resolves Wellington Water's concern that Te Ao Māori was being set up as the pre-eminent consideration in integrated management.
 - 11.2 Mr Wyeth says Objective A is not intended to have greater weight than other objectives in the RPS, and acknowledges that describing it as the "overarching" objective has created some confusion. He recommends the description is amended to simply describe it is the integrated management objective for the region.⁴ Wellington Water supports this, but notes this has not been picked up in the tracked changes accompanying Mr Wyeth's report.
 - 11.3 Mr Wyeth has recommended paragraph (c) as notified is split into two separate paragraphs. This is one of the requests covered in Wellington Water's original written submission, and Wellington Water supports this.
12. If Mr Wyeth's recommendations are followed, this leaves Wellington Water with one remaining concern about Objective A: Wellington Water considers Objective A should include explicit references to RSI.

³ Section 42A report for HS2 at [123].

⁴ Section 42A report for HS2 at [117].

13. In response to this aspect of Wellington Water's submissions, Mr Wyeth's says RSI is specifically addressed in Objective 10 and its related policies, and the reference in Objective A to "physical resource" encompasses RSI.⁵ Wellington Water agrees with both of those points. However, Wellington Water disagrees with Mr Wyeth's conclusion that this makes it unnecessary for Objective A to include a reference to RSI, for four key reasons.
14. First, as already covered, much of the RSI under Wellington Water's control will need to be upgraded, adapted and/or relocated to support the transition to a climate-resilient region. An explicit reference to RSI is necessary to guide this. Reliance on a generic reference to "physical resources" does not provide the "clear direction"⁶ needed to support the transition to a climate-resilient region.
15. Second, the RSI under Wellington Water's control has a regionally significant role above and beyond providing for "well-functioning urban environments". Three waters infrastructure is central to the implementation of Te Mana o te Wai; and central to climate resilience. Relying on a single reference to "well-functioning urban environments" does not adequately capture these other roles of three waters infrastructure.
16. Third, Objective A already contains other examples of more general concepts being supplemented by more specific concepts. For example, "Te Ao Māori" is all encompassing. It includes "ki uta ki tai" and "mana whenua / tangata whenua values", yet those more specific concepts are also expressed in the Objective. So too is "mahinga kai" expressed, even though it is plainly a subset of "mana whenua / tangata whenua values". These exemplify that where necessary Objective A has given expression to both general and specific matters, even though they overlap. So, even though RSI is a "physical resource", the Objective can be made much clearer than at present by including specific references to RSI to supplement the generic phrase "physical resources".
17. Finally, the very purpose of Objective A is to guide integration. To do this, the Objective attempts to express the variety of matters that must be collectively considered in order to achieve integrated management. The omission of a specific reference to RSI is a failure to clearly express one of

⁵ Section 42A report for HS2 at [118].


⁶ Above n 2.

these matters — which will ultimately lead to a failure to achieve the integration to which the Objective aspires.

18. For the reasons outlined above, and in reliance on Ms Horrox's evidence, Wellington Water maintains its request for amendments to Objective A to add appropriate references to RSI. If Objective A is amended in all the ways addressed above (including those on which Wellington Water agrees with Mr Wyeth), then that would address Wellington Water's concerns, and Wellington Water would no longer seek additional methods to help to give effect to Objective A.

Other matters

19. For the record, Wellington Water also filed a further submission opposing every part of the submission of Wellington Fish and Game Council (S147) that seeks amendments to PC1. One such amendment was sought in relation to the Anticipated Environmental Result for Objective A. Wellington Water has considered and supports Mr Wyeth's recommendations on this point,⁷ which are to reject Fish and Game's submission.



M J Slyfield
Counsel for Wellington Water Ltd

⁷ Section 42A report for HS2 at [212], [216] and [218].