

**BEFORE THE INDEPENDENT HEARINGS PANELS APPOINTED TO HEAR AND MAKE  
RECOMMENDATIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS ON PLAN CHANGE 1 TO THE  
NATURAL RESOURCES PLAN**

**UNDER** Schedule 1 of the Resource Management Act  
1991 (the Act)

**IN THE MATTER OF** Hearing Submissions and Further  
Submissions on Plan Change 1 to the Natural  
Resource Plan

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**STATEMENT OF REBUTTAL EVIDENCE OF MARY O'CALLAHAN**

**ON BEHALF OF WELLINGTON REGIONAL COUNCIL**

**HEARING STREAM 1 – OVERARCHING MATTERS**

**24 OCTOBER 2024**

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## **INTRODUCTION**

1 My full name is Mary Elizabeth O'Callahan. I am a planning consultant employed by GHD Ltd.

2 I have reviewed the evidence and submissions of:

2.1 Transpower New Zealand Ltd – Letter from Rebecca Eng [Submitter 177]

2.2 Forest and Bird – Legal submissions prepared by M Downing [Further Submitter 23]

2.3 Porirua Harbour Trust and Guardians of Pāuatahanui Inlet [Submitter 176]

2.4 John Carrad [Submitter 50]

2.5 Meridian Energy Ltd – Statement of Evidence Planning Evidence - Christine Foster [Further Submitter 47]

2.6 Wellington Water Ltd – Letter from Julie Alexander [Submitter 151]

2.7 Wellington Fish and Game Council – Submissions prepared by Ami Coughlan [Submitter 188].

2.8 Winstone Aggregates [Submitter 185], including:

2.8.1 Legal submissions prepared by Pherne Tancock

2.8.2 Statement of Planning and Company Evidence - Philip Heffernan

## **QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT**

3 My qualifications and experience are set out in paragraphs 12 – 16 of my Section 42A Report. I repeat the confirmation given in that report that I have read and agree to comply with the Code of Conduct for Expert Witnesses.

## **RESPONSES TO SUBMITTER EVIDENCE**

4 This section responds to submitter evidence and submissions filed in relation to the overarching issues and submissions allocated to this topic.

## GENERAL ISSUES

### Transpower [Submitter S177]

- 5 Rebecca Eng has tabled a letter confirming Transpower's support for the officer recommendations on their submission points in my overarching and Sam O'Brien's region wide section 42A reports. The relevant submission points addressed in my report are 177.001, 177.002, 177.019, 177.045, 177.028 and 177.054. On this basis, I have nothing further to add in response to the letter from Ms Eng.

### Forest and Bird [Further Submitter 23]

- 6 The matters covered in the legal submissions of Forest and Bird are relevant to Mr O'Brien's beds of lakes and rivers report. There are no matters relevant to my report in the material received from Forest and Bird, so I have not considered this further.

### Porirua Harbour Trust and Guardians of Pāuatahanui Inlet [Submitter 176]

- 7 The new material received from this submitter provides background information and highlights the importance of the Porirua Harbour, comprising the Onepoto Arm and the Pāuatahanui Inlet, as an estuary and site of significant conservation values in the region and New Zealand. The submitter confirms their support for PC1.
- 8 Comments on Rule 5.4.8 of the NRP are provided, which is a Beds of Lakes and Rivers rule. I consider these comments are relevant to Mr O'Brien's report topic.
- 9 Comments are provided on wetlands, in particular, a desire by the submitter to ensure the NPR rules are enabling towards developing constructed wetlands. There are no changes to the NRP wetland rules under PC1. This material does not appear to be related to the submission points covered in the overarching matters report topic or Mr O'Brien's topic either. I assume it relates to the submitter's point S176.009 which seeks clarification and strengthening of rules and methods to support actions to increase wetland habitat. I have checked and can confirm that this point will be addressed in Hearing Stream 2 as part of the Objectives topic.

### John Carrad [Submitter 50]

- 10 John Carrad supplied a report on nitrogen leaching from gorse to the PC1 Hearings Advisor. There was no context or explanation of the relevance of this report to the matters addressed in PC1 or the Hearing Stream 1 topics, in particular. I assume Mr Carrad may wish



to address the Panels and refer to this material. I confirm there are no submission points from Mr Carrad that have been assigned to my report topic (Overarching Matters).

## CHANGES SOUGHT TO REGION WIDE OBJECTIVES

### Meridian Energy Ltd [Further Submitter FS47]

- 11 I have considered the statement of evidence from Christine Foster on behalf of Meridian. Ms Foster confirms Meridian's interests in this hearing topic and covers its further submission points seeking withdrawal of the plan change, and further submissions regarding the proposal to delete the applicability of the region-wide Objectives O2 and O6 for Whaitua Te Whanganui-a-Tara (TWT) and Te Awarua-o-Porirua Whaitua (TAoP).
- 12 Ms Foster comments on the engagement process at the draft plan change stage and her concern at the lack of opportunity for operators of regionally significant infrastructure to comment then, particularly those involved in the Environment Court mediation on the NRP. I agree with her that engagement with wider interests including RSI operators at this stage would have been beneficial. I draw attention to Ms Foster's helpful comment that the Hearing Panels have no ability to change or remedy this now, which I concur with.
- 13 Ms Foster notes in paragraph 7.2 that Meridian's further submissions on Objective O2 were not addressed in my report. This is because Meridian's submissions on this provision had been allocated to the objectives topic in Hearing Stream 2. The 'icon'<sup>1</sup> related submission points covered in the overarching matters report were selected as those that sought changes to the substantive content provisions, so were potentially out of scope. I can confirm that Meridian's further submissions on Objective O2 will be covered in the objectives topic as their further submissions only sought that the objective remain applicable within TWT and TAoP.
- 14 I have considered Ms Foster's evidence at paragraph 7.7 that my reasoning for recommending removal of the icon from Objective O2 applies equally to Objective O6. I disagree that the context for these objectives is the same. Accordingly, the same reasoning does not apply to Objective O6. Objective O2 is not under the heading 'beneficial use and development' in the NRP, as is the case with Objective O6. The 'contribution' of air, land, water and ecosystems' content in Objective O2 is neutral as to whether it relates to use or

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<sup>1</sup> The inclusion of the  icon on a provision in the existing NRP means that the provision no longer applies within Whaitua Te Whanganui-a-Tara, under PC1. Likewise, the inclusion of the  icon on a provision means that the provision no longer applies within Te Awarua-o-Porirua Whaitua.

protection. I interpret this objective to be saying both use and protection of these resources are beneficial for wellbeing. Objective O6, on the other hand, is directed at using water (e.g. for irrigation), so it only covers use and development benefits. I acknowledge that it is not a 'provide for' objective in that it only seeks to 'recognise' that taking and using water is beneficial. But to me it is at odds with the hierarchy of obligations expressed through Te mana o te Wai, as these benefits are not expressed as needing to be prioritised in a way that protects the health and wellbeing of the waterbody and ecosystems.

- 15 I note that benefits associated with any RSI reliant on the take and use of water, including Meridian's interests as a provider of RSI, remain 'recognised' in the NRP in a general sense through Objective O9, and are enabled in appropriate places and ways through Objective O10. This provides continued alignment with other national direction outside of the NPS-FM, e.g. the National Policy Statement for Renewable Energy (NPS-REG), without capturing every take and use of water that may not be regionally significant and recognised as such through national instruments.

#### Wellington Water Ltd [Submitter S151]

- 16 I have considered the table attached to the letter filed by Julie Alexander on behalf of WWL which sets out the submitter's position in response to my report and the report of Mr O'Brien on the region wide provisions. Relevant to my report are the submission points numbered 151.033, 151.183 and FS39.273.
- 17 I note that WWL has stated that its submission on Objective O6 does not seek to have different wording for the TWT and TAoP versus the rest of the region, which I understood when I drafted my Section 42A report. I was simply considering a refined version that would be within the scope of the change to this provision. Given the scope of the change to Objective O6 clearly only affects TWT and TAoP, not the whole region, I considered WWL's submission would change the plan on a region-wide basis, which I consider is beyond the scope of the proposed change to this provision. Notwithstanding this, the objective itself is not in my view consistent with Te Mana o te Wai, as outlined above in paragraphs 14-15 above. WWL's amendments only make this worse, in that they add more activities to the provision (stormwater and wastewater disposal), and they add 'and provided for' also. These additional activities and the requirement to 'provide for them' directly in an objective that deals solely with water, without noting the need to prioritise the health and wellbeing of that waterbody and its ecosystems, is not sufficiently aligned with the objective of the NPS-FM and the general direction of PC1 in implementing the NPS-FM in the TWT and TAoP

whaitua. As for Meridian, WWL’s activities remain recognised and provided for under the NRP notwithstanding PC1, through Objectives O9 and O10.

18 WWL raise concern that I’ve taken an overly narrow approach to scope in recommending rejection of their submission to reword Objective O9 of the NRP, which is not subject to any change under PC1. While I stand by my finding around scope, I have now also considered the merits of this submission. The amendment suggested by WWL would not align with the plan’s RSI ‘provide for’ objective, which is O10. Objective O10 is slightly more nuanced than ‘provide for’ generally, as sought for O6 by WWL.. In my view, this duo of objectives provides a high level of support and provision for WWL’s activities, so there is no need for amendment to Objective O9 in the manner sought by WWL.

19 I note that WWL is happy with my recommendation on its further submission on Objective O19.

Wellington Fish and Game Council [Submitter S188]

20 I have considered the statement from Ms Coughlan on behalf of Fish and Game. At paragraph 1.8 she summarises Fish and Game’s interests in Hearing Stream 1 and refers to a guidance document<sup>2</sup> on the Council’s website in setting out her list of the amendments sought by Fish and Game relevant to Hearing Stream 1. I have subsequently reviewed the document relied on by Ms Coughlan, as some of the points noted did not align with my understanding of provisions assigned to Hearing Stream 1. I have confirmed there were some errors in the document she would have used for this. I understand the Council will update this document.

<b>Fish and Game submission topic</b>	<b>Where addressed</b>
General comments – waterbodies: Target attribute states	Hearing Stream 2 (objectives topic)
General comments – waterbodies: minimising	Hearing Stream 4

<sup>2</sup> [Guide-to-allocation-of-provisions-to-hearing-streams-and-topics-September-2024.xlsx](#)

cumulative impacts of water takes	
General comments – waterbodies: Mis-named soft bottomed streams	Hearing Stream 1 – to be covered by Mr O’Brien (Beds of Lakes and Rivers topic)
Provision 5.4.4 - General conditions beds of lakes and rivers	Hearing Stream 1 – to be covered by Mr O’Brien (Beds of lakes and Rivers topic)
Provision 5.4.8 Rule R1515A – Ongoing diversion of a river – permitted activity	Hearing Stream 1 – to be covered by Mr O’Brien (Beds of Lakes and Rivers topic)
Method M40 – Fish passage action plan for Whaitua te Whanganui-a-Tara and Te Awarua-o-Porirua Whaitua	Hearing Stream 4 (Freshwater Action Plans topic)
Policy WH. P28 – Achieving reductions in sediment discharges from plantation forestry	Hearing Stream 3 (Forestry topic)
Objective O19 – Biodiversity, aquatic ecosystem health and mahinga kai in freshwater bodies	Hearing stream 1 – this topic (Overarching Matters), and responded to below

21 Ms Coughlan has reiterated Fish and Game’s original relief sought in relation to Objective 19. Fish and Game sought the following amendment to Objective O19, clause (c):

*Biodiversity, aquatic ecosystem health and mahinga kai in freshwater bodies and the coastal marine area are safeguarded such that:*



.....

~~(c) Restoration of aquatic ecosystem health and mahinga kai values is encouraged~~ are maintained where in good health and restored where degraded.

- 22 As I set out in my section 42A report, the only change proposed to Objective O19 in PC1 is to apply the ‘not applicable to whitua’ icon such that the objective does not apply in TWT and TAoP. This change recognises that there are whitua-specific objectives that apply under PC1, so retaining the application of the region-wide objectives (such as Objective O19) is duplicative and unnecessary.
- 23 Ms Coughlan cites Policy 5 of the NPS-FM in raising her concern that clause (c) of Objective O19 may not be directive enough to meet this higher order policy direction<sup>3</sup>. Ms Coughlan has suggested an alternative amendment of ‘improve where degraded’ which would, in her opinion, also provide the stronger direction sought in Fish and Game’s original submission.
- 24 While I agree with Ms Coughlan that Policy 5 of the NPS-FM directs that the health and wellbeing of degraded water bodies and freshwater ecosystems is improved, I remain of the opinion that this is addressed by new provisions proposed in PC1 (e.g. Objective WH.O9 and Objective P.O6 and their target attribute states that set the improvement targets that need to be achieved where the current state of ecosystem health is degraded). In my opinion, any amendment to Objective O19 is out of scope because the only change to that clause is the inclusion of the icon. Putting aside the scope issue, the change requested and/or retention of O19 is also unnecessary, as the PC1 objectives are expected to be more effective than O19 at driving improvements to water quality and ecosystem health. The PC1 objectives are in my view preferred over O19 for achieving restoration as they are drafted to give effect to Policy 5 of the NPS-FM, specifically the National Objectives Framework. As noted in my section 42A report<sup>4</sup> amending the drafting of Objective O19 in a way that ensures the changes are within scope of PC1 (i.e., retains its application only to wetlands within TWT and TaoP as proposed under PC1) would be complex and unnecessary.

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<sup>3</sup> NPS-FM Policy 5 requires: Freshwater is managed (including through a National Objectives framework) to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.

<sup>4</sup> [Section-42A-Hearing-Report-Overarching-Matters.pdf](#), Pages 50-54

## PROVIDING FOR QUARRYING ACTIVITIES IN PC1

### Winstone Aggregates [Submitter 206]

- 25 Mr Heffernan and Ms Tancock, on behalf of Winstone Aggregates, have highlighted the potential implications of PC1 for aggregate extraction (quarrying) activity in the region and the subsequent issues this may pose for the construction and infrastructure sector and the regional economy.
- 26 While Mr Heffernan's statement and Ms Tancock's legal submissions set out Winstone's concerns of an overarching nature, noting their specific concerns will be addressed in later hearing streams, I have reviewed the submission in more detail to understand their concerns more fully, noting the comment by Mr Heffernan that my report does not adequately address the operational realities of quarrying<sup>5</sup>. I note Winstone's have sought a new suite of provisions to specifically recognise quarrying activities. This is because the submitter is concerned that quarrying activities appear to be captured by the urban development stormwater rules and earthworks rules of PC1 and that these rules are unsuitable for quarrying activities because the rules are aimed at residential, commercial and industrial activities. The submitter seeks a specific consenting pathway for the continuation of regionally significant quarrying activities in the Wellington Region<sup>6</sup>.
- 27 I do not make comment on new suite of quarry provisions sought by Winstone specifically here, given the overarching nature of this hearing stream. The appropriateness and need for specific quarrying provisions will likely depend on any broader recommendations for changes to policies and rules identified by the submitter as capturing quarrying activities. The necessity and merits of the new provisions sought by the submitter will be assessed in detail, by the relevant reporting authors in later hearing streams dealing with these rules where all the provisions and evidence on the topic can be considered. On that basis, I make no further comment on Winstone's request for a specific quarrying policy and rule framework, except to recommend these overarching comments be considered by the report authors for the earthworks and stormwater topics in Hearing Streams 3 and 4 respectively.
- 28 Looking further at the stormwater from urban development rules, Winstone is concerned about the lack of a definition for 'greenfield development' in PC1 and the mapping of part

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<sup>5</sup> Evidence of P. Heffernan, [S206-Winstone-Aggregates-Statement.pdf](#), para. 9.8.

<sup>6</sup> [S206-Winstone-Aggregates.pdf \(qw.govt.nz\)](#), pg. 5

of the Belmont Quarry site as ‘unplanned greenfield development’ (see Map 89). A prohibited activity rule applies to stormwater discharges from any new impervious surfaces in unplanned greenfield development areas. The submitter is concerned that due to the lack of a definition of ‘greenfield development’, any development in the mapped areas is captured by the term and concludes therefore, a prohibited activity rule applies regardless of the type of activity.

29 I agree with Mr Heffernan that PC1 is unclear about how quarrying activities are to be managed. It is my understanding that it is not the intention of PC1 to capture quarrying activities in the greenfield development/unplanned greenfield areas provisions. The intent is to enable consideration of the receiving environment for stormwater discharges that might be expected from urban development, through considering the impact of such changes on water quality and the health of ecosystems in areas that are not planned for urban land use (e.g. through strategic plans or district plan zoning). Thereby enabling a ‘plan’ response to the increase of contaminant loads, rather than an ad hoc consent by consent response.

30 The unplanned greenfield development restriction only applies where the site requires an underlying district plan zone change to undertake the urban development activity. In the case of Winstone’s site at Belmont, I consider the prohibited activity rule would not apply to the existing quarrying activity on the site given this is not greenfield development for residential or urban activities. Notwithstanding this, I acknowledge that there may not be an ideal rule to consider a new stormwater discharge under the PC1 provisions, if this were required on the Belmont Quarry site, but I have not investigated this in detail at this stage, given this is a matter for later hearing topics.

31 I have discussed this issue with the report author for the Stormwater topic, where this issue will be addressed in detail. I understand this may be considered in terms of amendments to Map 89 or the definition of ‘unplanned greenfield development’ to make the intent I’ve described here clearer.

32 Mr Heffernan also refers to the provisions that seek to manage the effects of winter earthworks, noting that a blanket shutdown during winter months could disrupt quarrying operations. As drafted, PC1 requires the shutdown of earthworks over 3000m<sup>2</sup> from 1 June – 30 September each year<sup>7</sup>. A non-complying activity status applies to earthworks

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<sup>7</sup> Policy WH.P32 and Policy P.P29

undertaken during this period<sup>8</sup>. Winstone's detailed submission notes the following concerns about the winter works policy and rule framework:

- 32.1 It does not consider long term ongoing permanent earthwork activities that need to be undertaken throughout the year
- 32.2 There is little justification in the section 32 report for this approach and the direct and indirect effects have not been considered in the cost benefit assessment
- 32.3 The winter works approach will substantially increase the cost and length of construction periods
- 32.4 Maintaining a suitable and secure supply of aggregate (and concrete) to respond to demand will be challenging
- 32.5 Limits on hours of operation and noise prevent Winstone's from operating for longer hours outside of the Winter works period
- 32.6 Unpredictable rainfall events resulting in uncontrolled release of contaminants into stormwater can occur at any time of the year and this will increase with the effects of climate change.
- 32.7 Receiving environments are typically less vulnerable during the winter months with water temperatures lower and flows higher.

33 Winstone has sought an amendment to PC1 such that winter earthworks shutdown is removed and the non-complying status changed to discretionary. In their opinion, a discretionary activity status is more appropriate, as in practical terms the non-complying status is no different to discretionary.

34 I agree with Mr Heffernan that the PC1 approach to the effects of winter earthworks when applied to quarrying, may not be the same as for other earthworks, as a quarry operation is long term and ongoing in nature. I therefore recommend this issue is considered further in the earthworks topic, in Hearing Stream 3.

35 Mr Heffernan has also highlighted Winstone's concern that quarrying is captured by the definition of, and associated provisions to manage, 'high risk industrial or trade premises'. Mr Heffernan states that quarrying does not result in any use of discharge of hazardous

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<sup>8</sup> Rules WH.R25 and P.R24

substances. However, a high risk and industrial trade premise is defined in PC1 as a premise '....that stores, uses or generates contaminants or hazardous substances'.

36 I assume the concern is the inclusion of 'mineral extraction, refining and reprocessing, storage, and use' in the list of activities in the definition of 'high risk industrial or trade premise'. PC1 manages these activities due to the potential for contaminants from these activities becoming entrained in stormwater. Such contaminants may include chemicals used on site which may create a contaminated site and subsequently impact groundwater, freshwater or coastal water. PC1 therefore proposes specific rules for these activities in relation to stormwater discharges from new and redeveloped impervious surfaces.

37 I have discussed the intention of the high risk and industrial trade premise provisions for quarrying with Council officers involved in drafting these provisions. I understand that the earthworks component of quarrying activities (i.e. the pit activity), such as Winstone's, is not what is sought to be managed under these provisions. Instead, it is the effects of runoff from hardstand areas associated with the listed activities that is of concern to the Council. Where these impervious surfaces are proposed to be redeveloped, or new impervious surfaces are proposed, a discretionary activity rule applies (Rule WH.R11 and Rule P.R10), which is subject to the preparation of a Stormwater Impact Assessment and payment of a financial contribution (for greenfield development).

38 In my opinion, the general approach proposed in PC1 to manage contaminants from high risk industrial and trade premises is appropriate to meet the requirements of NPS-FM. However, I consider there is scope for clarification as to how the definition and rules apply to quarrying activities to make it clear that it is the impervious surfaces associated with the activity that are to be managed, not the earthworks component. I have discussed this with the report author for the Stormwater topic, and expect such an amendment can be considered, for example, via a clarifying note in the definition or similar.

39 Mr Heffernan and Ms Tancock have set out their concerns about continuing with PC1 despite changes to national direction signalled by central government. I have set out my opinion on this issue in my section 42A report, specifically at paragraph 146. My view remains unchanged, and therefore I provide no further comment on the issue.

40 Finally, I note Mr Heffernan and Ms Tancock have requested a review of the categorisation of provisions to the Freshwater Planning Process. This review will be undertaken within each hearing stream, with reporting authors evaluating how each provision within their

topic has been categorised. On this basis I make no further comment on this issue as the provisions that the submitter is concerned about, are not allocated to the current overarching reporting topic.

**DATE:**

**24 OCTOBER 2024**

**MARY O'CALLAHAN**

**TECHNICAL DIRECTOR PLANNING, GHD**