

**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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**REPORTING OFFICER RIGHT OF REPLY OF SAMUEL O'BRIEN**

**ON BEHALF OF WELLINGTON REGIONAL COUNCIL**

**HEARING STREAM 1 – Air Quality and Schedules/Threatened  
Species**

**5 December 2024**

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## **RIGHT OF REPLY AUTHOR**

- 1 My full name is Samuel Nicholas O'Brien. I am a Policy Advisor at Greater Wellington Regional Council.
- 2 I prepared the Air Quality and Threatened Species Objectives and Schedules section 42A reports for hearing stream 1 My qualifications and experience are set out in Section 1.3 of my Air Quality Section 42A Report.
- 3 I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023, as applicable to this Independent Panel hearing.

## **SCOPE OF REPLY**

- 4 This Reply follows the Hearing Stream 1 hearing, which was held from 4-6 November 2024.
- 5 Minute 3 requested that I address the specific questions raised in that Minute in my written Right of Reply for Hearing Stream 1.
- 5.1 My Reply covers my responses to the questions raised in Minute 3 as relevant to both the Air Quality and Schedules/Threatened Species topics.

## **RESPONSE TO MATTERS RAISED IN MINUTE 3 – Air Quality**

- 6 The matters I respond to in this section are those raised in paragraphs 6 to 8 of Minute 3.
- 7 In Minute 3, at paragraph 6 the Panels have sought confirmation that the provisions covered in the Air Quality topic are P1S1 provisions, and not freshwater provisions. I acknowledge that the coastal icon has been recommended to be removed from a suite of provisions in the Air Quality chapter and therefore these provisions would no longer form part of the regional coastal plan section of the Natural Resources Plan. Those provisions could therefore form part of the freshwater planning instrument. However, I can confirm that all the provisions within the air quality topic either have the coastal icon and are not freshwater provisions, or where I have recommended that the coastal icon is removed, remain to be considered as P1S1 provisions as they do not relate to freshwater.
- 8 At paragraph 7 the Panels request further analysis and justification for recommending that the coastal icon is reinstated for Rule R26 (Abrasive blasting outside an enclosed area) and reconsideration of this recommendation. The Panels have expressed the view that despite there being situations in which abrasive blasting has a functional need to occur in the Coastal Marine Area (**CMA**), this does not necessarily justify permitted activity status.

- 9 To clarify, the impact of removing the coastal icon from Rule R26, is that this activity would now be a discretionary activity in the CMA under Rule R42 of the NRP. Should the coastal icon remain, the activity would be a permitted activity, should the conditions of Rule R26 be complied with.
- 10 I agree with the Panels to the extent that abrasive blasting can have adverse effects on the CMA from the discharge arising from the activity discharging into sensitive coastal areas. However, I consider that the conditions provide appropriate controls for how abrasive blasting can be undertaken as a permitted activity that limits these adverse effects. The primary discharges from abrasive blasting activities are largely the blasting materials themselves, water, or byproducts removed from coastal structures through the maintenance being undertaken. These byproducts are captured in the condition (a) by the reference to ‘particulate’.
- 11 Condition (a) for Rule R126 as recommended provides protections for public access and contamination in the CMA:
- (a) the discharge shall not cause noxious, dangerous, offensive or objectionable odour, dust, particulate, smoke, vapours, droplets or ash beyond the boundary of the **property or in the coastal marine area**, and
- 12 The wording of the condition, through the inclusion of “in the coastal marine area” ensures that the discharge does not enter the CMA.
- 13 I consider that the CMA is adequately protected from the adverse effects of abrasive blasting through the conditions of the rule. I therefore recommend that Rule R126 retains the coastal icon, enabling the activity to be a permitted activity.
- 14 In paragraph 8, the Panels highlight a grammatical error in the drafting of Rule R42. I agree with the concern raised and I recommend that R42 is amended as follows to address this issue:

Rule R42: All other discharges – discretionary activity



The discharge of contaminants into air from activities which are either:

- (a) from an industrial or trade premise; or
- (b) do not comply with one or more conditions of permitted rules R1, R2, R3, R7, R8, R9, R10, R11, R12, R14, R15, R16, R17, R18, R19, R20, R21, R25, R27, R28, R29, R30, R31, R33, R35, R35A, R36, R37, R38 and R40;

And are not expressly classified as a that are not permitted, controlled, discretionary, non-complying or prohibited activity in the plan is a discretionary activity.

### RESPONSE TO MATTERS RAISED IN MINUTE 3 – Threatened Species

- 15 The matters I respond to in this section are those raised in paragraphs 20 and 21 of Minute 3.

16 At paragraph 20 the Panels have sought clarification on the difference between the NPS-FM definition of ‘threatened species’ and the PC1 definition of “Nationally threatened freshwater species”.

17 The NPS-FM defines threatened species as:

*“threatened species means any indigenous species of flora or fauna that:*

*(a) relies on water bodies for at least part of its life cycle; and*

*(b) meets the criteria for nationally critical, nationally endangered, or nationally vulnerable species in the New Zealand Threat Classification System Manual (see clause 1.8).”*

18 NRP PC1 proposes to introduce a new defined term of a “Nationally threatened freshwater species”, with the following definition:

“Has the same meaning as the National Policy Statement for Freshwater Management 2020:

Meaning any indigenous species of flora or fauna that:

(a) relies on water bodies for at least part of its life cycle, and

(b) meets the criteria for nationally critical, nationally endangered, or nationally vulnerable species in the New Zealand Threat Classification System Manual (see clause 1.8)

Note: For **Whaitua** Whanganui-a-Tara and Te Awarua-o-Porirua **Whaitua** the known locations of **nationally threatened freshwater species** are identified in Schedules A2, F1, F2 and F3”

19 The PC1 definition is identical to the definition in the NPS-FM. However, the defined term is different. The reasons for this terminology difference are set out in paragraph 77 and 83 of the Threatened Species Objectives and Schedules S42A report. The primary reason being to distinguish the definition from other threatened species managed in the NRP which includes provisions that also apply to threatened species in the coastal domain. Ie, the NRP addresses all parts of the environment, and contains provisions for a range of threatened species, including those outside or beyond the freshwater environment, whereas the NPS-FM relates solely to freshwater and freshwater threatened species.

20 The issue raised by Environmental Defence Society in Hearing Stream 1 was that as the term defined is different. I disagree that the definitions are different. However, I accept that additional clarity can be provided. The “has the same meaning as” statement should clarify which definition from the NPS-FM 2020 is being repeated given the terminology difference explained above. I agree with the submitter and recommend the following change.

“Has the same meaning as ‘threatened species’ in the National Policy Statement for Freshwater Management 2020: Meaning any indigenous species of flora or fauna that:

(a) relies on water bodies for at least part of its life cycle, and 6

(b) meets the criteria for nationally critical, nationally endangered, or nationally vulnerable species in the New Zealand Threat Classification System Manual (see clause 1.8)

Note: For Whaitua Whanganui-a-Tara and Te Awarua-o-Porirua Whaitua the known locations of nationally threatened freshwater species are identified in Schedules A2, F1, F2 and F3.

- 21 At paragraph 21 the Panels note that Schedule F2c relates to the CMA and seeks clarification of the use of the 'Nationally Threatened and At Risk species' in this context.
- 22 The definition of threatened species in the NPS-FM 2020, which is proposed to be adopted into the NRP through PC1. Includes in (a) any flora or fauna that relies on water bodies *for at least part of its life cycle*. I accept that water body is not defined in the NPS-FM, the RMA definition of water body limits it to fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area. Many species that meet the NPS-FM 2020 definition (relying on water bodies for at least part of its cycle) have habitats in both freshwater and coastal areas. These species are outlined in the technical evidence of Dr Philipa Crisp<sup>1</sup>.
- 23 Section 3.8(3)(c) of the NPS-FM 2020 directs that every regional council must identify the location of the habitats of threatened species. The approach taken in PC1 was to include in the schedules the habitats of threatened species in both freshwater and coastal sites if the species meets the definition under the NPS-FM 2020 and occupies both areas for part of its life cycle.
- 24 The memorandum provided by Environmental Defence Society Inc in response to Minute 3, requests that an advice note be added to Schedule F that refers plan users to the DOC report that provides information on the Habitat requirements of native freshwater fish in Aotearoa New Zealand. I note that the report is not publicly available at this time, and therefore I cannot consider it within this right of reply. More broadly, I consider that the current information within PC1 is adequate to meet the requirements for threatened species under the NPS-FM 2020.

**Date:**

**5 December 2024**

**SAMUEL O'BRIEN**

**POLICY ADVISOR, GREATER WELLINGTON REGIONAL  
COUNCIL**

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<sup>1</sup> Crisp 2023. *Threatened freshwater species mapping technical guide for the Wellington region*.

## APPENDIX 1 – Recommended Amendments to Provisions

### Proposed version

The provisions of the Natural Resources Plan are shown in black text, with changes proposed in the notified version of Plan Change 1 shown in underline for additions and as ~~strikethrough~~ for deletions.

### S42A report version

Amendments to provisions recommended by officers in a Section 42A Report officer are shown in red underline for additions and in ~~strikethrough~~ for deletions.

### Recommendations on other s42A reports

Amendments to provisions recommended by officers in a s42A Report to provisions from another S42A report are shown in orange underline for additions and in ~~strikethrough~~ for deletions.

### Rebuttal Evidence

Amendments to provisions recommended by officers in Rebuttal Evidence are shown in blue underline for additions and ~~strikethrough~~ for deletions.

### Right of Reply Evidence

Amendments to provisions recommended by officers in Right of Reply Evidence are shown in green underline for additions and ~~strikethrough~~ for deletions. This is also the approach for amendments officers support following expert caucusing or having considered any submitter comments post-caucusing.

Rule R42: All other discharges – discretionary activity



The discharge of contaminants into air from activities which are either:

- (c) from an industrial or trade premise; or
- (d) do not comply with one or more conditions of permitted rules R1, R2, R3, R7, R8, R9, R10, R11, R12, R14, R15, R16, R17, R18, R19, R20, R21, R25, R27, R28, R29, R30, R31, R33, R35, R35A, R36, R37, R38 and R40;

And are not expressly classified as a that are not-permitted, controlled, discretionary, non-complying or prohibited activity in the plan is a discretionary activity.

<b><u>Nationally threatened freshwater species</u></b>	<p>Has the same meaning as '<u>threatened species</u>' in the <i>National Policy Statement for Freshwater Management 2020</i>:</p> <p>Meaning any indigenous species of flora or fauna that:</p> <ul style="list-style-type: none"><li>(a) <u>relies on water bodies for at least part of its life cycle, and</u></li><li>(b) <u>meets the criteria for nationally critical, nationally endangered, or nationally vulnerable species in the New Zealand Threat Classification System Manual (see clause 1.8)</u></li></ul> <p>Note: For <b>Whaitua</b> Whanganui-a-Tara and Te Awarua-o-Porirua <b>Whaitua</b> the <u>known locations of nationally threatened freshwater species</u> are identified in Schedules A2, F1, F2 and F3.</p>
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