

Greater Wellington Regional Council**HEARING STREAM 1****Overarching Matters and Region-Wide Changes:
Air Quality; Beds of Lakes and Rivers; Schedules and Threatened Species**

Date: Monday 4th November 2024

Time: 9.30am

Hearing Stream: One

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

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

1 Chair: An enormous amount of collaborative work by communities, stakeholders, mana
2 whenua, counsel, Whaitua committees over many years in progressing this work
3 to improve the health and wellbeing of fresh and coastal water bodies and
4 implement the NPS.

5

6 We are the independent hearing panels that will be hearing submissions and
7 evidence and making recommendations to Council on Proposed Change 1 within
8 the scope of our delegated recommendation powers.

9

10 We are sitting as two panels with fully overlapping membership and will jointly
11 hear and consider both freshwater and non-freshwater provisions of Proposed
12 Change 1.

13

14 I have been appointed as Chair of both panels and Commissioner McGarry as
15 Deputy Chair.

16

17 I would like to now invite the other Commissioners, perhaps starting with
 18 Commissioner McGarry to introduce themselves.

19 [00.05.00]

20 McGarry: Kia ora koutou everybody. Sharon McGarry. I am based in Christchurch, or over
 21 the hill in Governor's Bay. I am very excited to be here working in this region.
 22 Just a little background about me: people think I'm a lawyer in my line of work,
 23 but I'm very much a scientist. I have got a background in marine and freshwater
 24 biology and then went on and did my Masters in Resource Management. I have
 25 been working for about thirty years, mainly in the regional council space, and
 26 for the last eighteen years I have been working as an independent commissioner
 27 and I work up and down the country from Southland to Northland, including the
 28 Chatham Islands.

29
 30 I am really interested. I have done a little bit of work here in this region and I am
 31 looking forward to getting to know some of the precious taonga on this region
 32 as we work through. Kia ora.

33
 34 Kake: Tuatahi, tēnei te mihi ki ngā mana whenua o tēnei rohe o tēnei wāhi, nā mātou
 35 te whiwhi ki te haere mai ki te hakarongo i ō koutou whakaaro. Tēnā koutou Te
 36 Ātiawa mō tō koutou whakatau ki a mātou, nō reira, tēnā tātou katoa. Ko wai
 37 tēnei? Ko Puawai Kake tōku ingoa. He uri nō Ngāpuhi me Te Roroa. Ahakoa
 38 tēnei uri nō Te Taitokerau ka hoki aku mahara i taku tipuranga ki konei ki te taha
 39 o taku Nana ki Porirua ki tawao [06.49] ki Tītahi Bay pea.

40
 41 Kia ora everyone. First and foremost thank you to our mana whenua
 42 representatives for opening us up in the right way this morning. Secondly, I
 43 would like to acknowledge the work of our staff that have gotten us here today,
 44 and equally everyone else who has made the time to be here. We look forward
 45 to hearing as we progress with this topic.

46
 47 A little bit about myself: I'm a planner by trade, although I hale from the mighty
 48 North, I do have a number of memories growing up here and coming here to visit
 49 my nana who lived here for a number of years when she left Northland. I plan
 50 Northland/Auckland.

51
 52 Really, really excited to be here in Wellington and look forward to proceedings
 53 as they progress.

54
 55 Stevenson: Tena koutou katoa. Ngā mihi nui kia koutou. Ko Sarah Stevenson tōku ingoa.
 56 I'm a planning consultant and Independent Commissioner. By way of
 57 background I've participated in freshwater planning processes in Canterbury and
 58 the Waikato, from the perspective of critically nationally important
 59 infrastructure. I've worked in the Kapiti region, so I am Te Whanganui-a-Tara
 60 local and based here. I was GM Strategy at Kapiti Coast District Council through
 61 the proposed District Plan preparation and hearings and becoming operative.
 62 I've acted on the plenary of the land and water forum through their fourth report
 63 as well.
 64

- 65 Freshwater has always been important to me personally coming from Te Mataua-
 66 a-Māui, Hawkes Bay. I was regularly in trouble for forgetting to walk to school
 67 and ending up catching crawlies and cockabullies in the creek in Havelock
 68 North. That was back in the day when water quality was sufficient that you could
 69 do that as a six year old girl. My how times have changed: so really looking
 70 forward to helping our community move forward with the NPS FM2020 to take
 71 this opportunity. I am pleased you have. Kia ora.
 72
- 73 Wratt: Tēnā koutou katoa. Ko Wharetahua [09.33] te moana, ko Motueka te awa, nō
 74 Whakatū ahau. Ko Gillian Wratt tōku ingoa.
 75
- 76 I am from Whakatu Nelson, which is where I was born. I grew up on a farm just
 77 out of Motueka and then went off to Canterbury University to do a degree in
 78 Botany and have worked predominantly in the science sector since then in a
 79 [00.10.00] range of management roles.
 80
- 81 I was Chief Executive of Antarctica New Zealand running New Zealand’s
 82 operations in Antarctica for ten years. Also spent some time living here in
 83 Wellington – a couple of years in the early 2000’s working for the Ministry for
 84 Environment, and then the Chief Executive at the Cawthron Institute, which is
 85 when I shifted back to Nelson.
 86
- 87 I am now, I guess, doing some Environment Commissioner work, but also
 88 involved in some not-for-profit entities in Titahi with the Janszoon Project in
 89 Abel Tasman - I chair the board for that. Also was involved on the governance
 90 group for ‘Our Land and Water’ National Science Challenge, with a very strong
 91 focus around how we can improve our farming methods to better take care of
 92 our land and water.
 93
- 94 I guess quite a broad ranging background. Great to be here. A privilege to be
 95 here helping with this process. Kia ora.
 96
- 97 Chair: Thank you Commissioners. There are many Council officers and Council staff
 98 here in the room with us today. That is really great to be able to have the hearing
 99 in the Regional Council’s chambers, and to be able to have so many of you here.
 100 So, thank you very much for attending. We all acknowledge the reports, the
 101 information, the technical expertise – all of the work that has gone on to bring
 102 us to this point. A special point to Mr Ruddock and Ms Aninstead our hearings
 103 advisor and policy advisor who have done a lot to get us organised for the start
 104 of these hearings.
 105
- 106 I might invite maybe the S42A reporting officers who are in the room, if they
 107 would like to, and perhaps the Council’s legal team, if they would like to
 108 introduce themselves so people here and those online can know who we have.
 109
- 110 Anderson: Tēnā koutou katoa. Ko Kerry Anderson tōku ingoa. Kei DLA Piper ahau e mahi
 111 ana. He rōia tumuaki ahau. Good morning everyone. I am Kerry Anderson, one
 112 of the Council’s lawyers from DLA Piper in Wellington. For the first day of the
 113 hearing I also have with me Ms Rogers and Ms **Manaha** [12.41], and over the

114 course of the hearing streams you will see one of us at the future hearing streams
 115 – so I thought it would be good to be here today to introduce all three of us.
 116 Thank you.

117
 118 O'Brien: Kia ora Sam O'Brien tōku ingoa. I'm the S42A Reporting Officer for the region
 119 wide provisions – that's three topics: air quality, beds lakes and rivers, schedules
 120 and threatened species objectives. Thank you.

121
 122 O'Callahan: Tēnā koutou. Nō Te Whanganui-a-Tara ahau. Ko O'Callahan te whānau, ko
 123 Mary taku ingoa. Tēnā koutou. I am the Reporting Officer for the overarching
 124 report. I am based with GHD. I'm a Planning Consultant working for the
 125 Council.

126
 127 Chair: Perhaps finally and most importantly perhaps, to the submitters: thank you very
 128 much for engaging with this Change Proposal and providing us with your
 129 considered views on it. We have read your submissions and any evidence you
 130 have presented in advance. We invite you when you do present to share the key
 131 points that you wish to make. We will listen always with an open mind and ask
 132 questions of clarification. This is very much your hearing and it's the opportunity
 133 for you to talk about the issues that are front and centre for you, and the changes
 134 you think are needed to implement to NPS-FM and achieve the sustainable
 135 management purpose of the RMA.

136
 137 Mr Ruddock has gone through the process with timeslots and the bells. I think
 138 probably the last thing is just to maybe remind everyone in the room to please
 139 turn your cell phones and laptops to silent.

140
 141 Are there any legal or procedural points anyone would like to make before we
 142 begin?

143
 144 [00.15.00] We will start the hearings today, Hearing Stream One, with presentations from
 145 Mr Corry the CEO of the Regional Council, followed by Counsel for the Council
 146 and then the two reporting officers for this topic. We will then move in the
 147 afternoon after the lunch break to hearing Ngāti Toa Rangatira and Forest &
 148 Bird, and that will conclude the submitters for today. Then we have
 149 presentations from all submitters on Tuesday and Wednesday this week.

150
 151 That is our programme for Hearing Stream One. We will take the lunch break at
 152 roughly around 12.00 to 12.15, around that time. We will be keeping as much as
 153 possible to the schedule, to make sure that those who are waiting online are not
 154 kept waiting and that the hearing runs efficiently.

155
 156 With that, I would like to invite Mr Corry. Thank you.

157
 158 **Greater Wellington Regional Council – Nigel Corry**

159
 160 Corry: Kia ora koutou. I'm Nigel Corry tōku ingoa. He Tumu Whakarae ahau ki Te
 161 Pane Matua Taiao. I am Nigel Corry. I am the Chief Executive of the Greater
 162 Wellington Regional Council. It's a pleasure to be here this morning with you

163 all, and it's a pleasure to be in this whare. We've had a lot of planning hearings
164 that haven't been in our whare. It's lovely to have people here from both staff
165 and the Commissioners, in our place. It's nice to be here.

166
167 By way of introduction, I've been the Chief Executive of the Regional Council
168 for slightly over three years now, but I have been around the Regional Council
169 on and off for probably close to twenty, including a period of time when I was
170 General Manager for the Environment Group when the Whaitua process
171 commenced circa 2016. A number of the officers you've got around the table
172 were also here around that time as well.

173
174 I would first like to acknowledge the mana whenua and express our gratitude to
175 Te Āti Awa for the mihi whakatau and starting the proceedings for Plan Change
176 1 this morning. I would also like to acknowledge Te Āti Awa ki te Upoko o te
177 Ika and Ngāti Toa Rangatira of mana over the whenua subject of this hui - Te
178 Awarua-o-Porirua and Te Whanganui-a-Tara, which are the places which bring
179 us together today.

180
181 I would also like to acknowledge and thank Taranaki Whānui and Ngāti Toa
182 Rangatira for their generosity, their mātauranga and support throughout the two
183 Whaitua processes and the plan change development leading to today.

184
185 Our partnership with mana whenua across our region frames the approach for
186 how we look at both land and water resources in a regulatory and non-regulatory
187 sense. I am proud that today's proceedings reflect the growing ways that
188 partnership is expressed and which will strengthen our mahi for getting better
189 outcomes for our taiao.

190
191 I had originally intended to spend most of my time with you this morning talking
192 about the Whaitua process and how we got to Plan Change 1, which is significant
193 because it is our first Plan Change, but obviously I do want to acknowledge that
194 we are continuing the hearings at a time when the Government has announced
195 changed in national direction.

196
197 More specifically, the amendment to the RMA Amendment Bill, which came
198 into effect on the 25th of October, has given clear direction around future
199 notification of freshwater plan changes.

200
201 We have of course considered this issue carefully. Firstly, it needs to be
202 recognised that the Council is not impacted by this recent amendment. There is
203 no legal impediment to continuing with this plan change process, given that this
204 plan change was notified on the 30th of October 2023, which is well in advance
205 of any proposed or actual change in national direction.

206
207 I am also aware that these [19.00] submissions seeking that the Council pause
208 or withdraw Plan Change 1 for reasons including change in national direction.
209 This region is far from alone in receiving requests such as this at this time.
210

211 Greater Wellington officers have kept Ministry of Environment officials clearly
212 up-to-date with the progress on Plan Change 1 as we have kept our Council up-
213 to-date on progress with Plan Change 1.

214
215 It is also worth noting the significant shift in national direction is nothing new
216 for a hearing process and change in national direction has in fact been addressed
217 during hearings, appeals and mediation processes in the past across the country.
218

219 I want to acknowledge the huge amount of mahi that officers, mana whenua,
220 territorial authorities and [19.40] have made in getting Plan Change 1 to the point
221 where we were able to commence these hearings.
222

223 Whilst some of the submitters are anxious to see a pause in the process, equally
224 many others are anxious to see us proceed – particularly noting the proximity of
225 the recent amendments to the already planned hearings that we are here for
226 today. And, to that end, changing course of time in Plan Change 1 would be
227 [00.20.00] unwelcome to Ngāti Toa Rangatira and Taranaki Whānui as well as many
228 submitters.
229

230 It is also worth noting that slowing down the hearing process may in fact create
231 its own risks, as Plan Change 1 has already some legal effect given it has been
232 notified.
233

234 So, and on balance, and for the reasons of openness and transparency, as I have
235 outlined, we remain committed to continuing with Hearing Stream One.
236

237 I would like to note that looking ahead into future streams it is now clearer that
238 when national direction lands, which we anticipate in mid-2025, although it may
239 be more likely that we start to find out the direction of the NPS changes early
240 next year, some of this will hit potentially with hearing streams four and five. In
241 fact, it might be more so in the first quarter of next year that it will become
242 clearer to the change in direction of the National government. So it is highly
243 likely we'll have a better understanding early New Year what the change in
244 direction is. So, we will keep reassessing the implications as we go through the
245 hearings, and as more information becomes available we will continue to work
246 internally to be able to advise you as the Hearing Panel and us as a Council to
247 any impact or ramifications that may have on future hearing streams when we
248 know.
249

250 I did want to talk briefly also about our commitment to mana whenua, the
251 territorial authorities and a community through the Whaitua processes that we
252 have run to date.
253

254 The Council made a long term commitment around 2016 to run processes to
255 improve the health of freshwater that involved mana whenua, our community,
256 territorial authorities and land owners - expression of this and the Whaitua
257 process which we have now completed four, and this is the first plan change
258 where the outcomes of these processes are being imbedded into plan changes.
259

260 The Whaitua began as an attempt to address and RMA consultation system that
 261 in our view routinely failed to engage with meaning with mana whenua,
 262 territorial authorities, communities and land owners. It came at a time when
 263 earlier versions of the NPS were on [22.01] requiring freshwater limits and
 264 allowed for mana whenua and communities to decide on regulatory and non-
 265 regulatory settings that worked best for them through the committee process that
 266 we put in place.

267
 268 They haven't been perfect processes and we've learnt lessons and amended our
 269 approach as we have gone, reflecting our evolving relationship – especially with
 270 territorial authorities who are critical partners in delivering any mahi that comes
 271 through plan change processes; and mana whenua, as their expressions of tino
 272 rangatiratanga become clear and stronger and who are equally key partners in
 273 the delivery of any plan change.

274
 275 Throughout out all these processes it's been critically clear to Greater Wellington
 276 that to deliver outcomes of the awa and te taiao having integration and alignment
 277 between all those that have a role in providing these outcomes is critical.

278
 279 During this year our Council again agreed to continue with the work, with the
 280 Whaitua Programme, and to undertake undergoing plan changes to imbed the
 281 goals of the Whaitua Programmes into statutory documents. This plan change
 282 obviously is in particular Te Awarua-o-Porirua o Whaitua, which operated
 283 approximately 2014 to 2019, and Whaitua Te Whanganui-a-Tara which
 284 operated approximately 2019 to 2021.

285
 286 I would like to thank all the people involved in this process from the committee
 287 members, the mana whenua members, members of our staff, territorial staff and
 288 councillors. It has been a massive undertaking and a process of which we are in
 289 fact quite proud of.

290
 291 Finally, I would like to thank again Te Āti Awa and Ngāti Toa for their welcome
 292 and to all those involved in the process to get ourselves here; and to you the
 293 Panel for your considerations and deliberations over a period of time as we go
 294 through the various hearing streams. Kia ora. Thank you very much.

295
 296 Chair: Thank you Mr Corry. Does anyone have any questions for Mr Corry?

297
 298 Wratt: Thank you Mr Corry for that introduction and outline. You've talked about the
 299 engagement with mana whenua, community, TAs and land-owners. One of the
 300 criticisms that has come through from several of the organisations, companies
 301 and businesses that are impacted by the proposed Plan Change is that they
 302 haven't been as engaged as they would like. Do you have any comment that you
 303 would like to make at this stage on that? Obviously we'll have opportunity to
 304 talk with them as well, but just an opportunity for you to make any comment.

305
 306 Corry: Thank you Commissioner Wratt. Certainly I'm aware of that. Feedback we've
 307 got I think it's very difficult for any local authority, be it regional or territorial,
 308 to run a process of consultation that engages everybody in the way that they

309 [00.25.00] would like. But, we did absolutely follow statutory timeframes, which is the
 310 minimum, but we were committed to actually engaging with people throughout
 311 the process of Whaitua development, and that involved in fact many parts of the
 312 community. It involved TAs, it involved obviously all those in the community
 313 that we engage with through that process and through those agencies.

314
 315 So, very aware of it, but I believe we have completed what we were required to
 316 deliver through statutory processes. We want to do more than that and I feel we
 317 have, but I also feel that it's very difficult to run a process understandably, and I
 318 accept the feedback that it does satisfy what everyone would like by way of
 319 consultation.

320
 321 McGarry: Mr Corry, I just wondered, from your perspective how you see the Whaitua
 322 implementation programme as different to other collaborative processes that
 323 may have been undertaken elsewhere in the country, and whether you see some
 324 distinguishing points.

325
 326 Corry: Thank you for the question. That's a good question.

327
 328 I think it has a number of similarities but I think in terms of the Whaitua process
 329 one of the objectives that we had always had, that the relationships we would
 330 have with mana whenua, the relationships we would have with the community
 331 through the community appointed representatives on the committee, and also
 332 territorial authorities – the idea was a structure of process that actually
 333 effectively in some respects allowed those members of the committee to consult
 334 and engage with their communities, with their council representatives and mana
 335 whenua, to build together an implementation plan that spoke as both on the
 336 regulatory processes but also in some respects particularly the non-regulatory
 337 processes. So when we got to the point where action had to happen on the ground
 338 and prove freshwater outcomes we would be doing that together.

339
 340 The alignment of mahi, of money, of resource to deliver outcomes is often to me
 341 misaligned. It's traditional RMA process often they're heavy on appeals and
 342 heavy on the process, but a little bit light on the delivery. So one of the intents
 343 was genuinely to find an integrated way that outcomes that we agreed to through
 344 a collaborative process would be actually seen in a delivery programme of mahi
 345 that included all parties, rather than just the Regional Council doing a regional
 346 plan that needed to be delivered by the Regional Council. We realised a long
 347 time ago that that is not a recipe for success, because it's simply not on any one
 348 entity, including the Regional Council, to deliver. It is our primary function, but
 349 in the absence of having partners to do that, and leveraging our capability, the
 350 mātauranga and the resource, it is very difficult to actually achieve the outcomes
 351 we want.

352
 353 That was the hope and aspiration and I think the way we have structured it to try
 354 and set up the delivery component of planning documents, rather than going into
 355 a process that is more likely to lead to appeal and court proceedings, was one of
 356 the defining features of what we tried to achieve here.

357

358 Kake: The opening statement with respect to some of the challenges with the Whaitua
 359 process and just wanting to get a better understand I suppose in terms of the
 360 involvement of the mana whenua groups, given the breadth and the depth of the
 361 region. What were some of the ways, I suppose, that the Council remedied some
 362 of those challenges? I understand it's an ongoing process, but could you just
 363 clarify I suppose that point that you made with respect to challenges faced.

364 Corry: Kia ora. Good question, thank you.

365
 366
 367 Right from the start, the very first Whaitua, which was at Ruamahanga, the
 368 involvement of mana whenua was enshrined and part of the committee terms of
 369 reference on how we wanted to structure these processes. Representation from
 370 mana whenua came at their nomination and that's been something that's
 371 remained throughout this whole process.

372
 373 In terms of the evolution and the challenges, obviously any process like this just
 374 starts with a discussion around values, outcomes and alignment. Those sort of
 375 things I think prevail. But, I think probably more importantly is how the process
 376 has understood the concept of tino rangatiratanga from a mana whenua
 377 perspective and how that shaped what we have structured by way of Whaitua
 378 committees and the outcomes of trying to provide. Probably the best example of
 379 that was in the Porirua Whaitua, where we got a long way through the process
 380 of that, but then Ngāti Toa said, "Actually some of what has been expressed in
 381 [00.30.00] this Whaitua Implementation Plan does not express our values, it does not
 382 access our mātauranga, it does not express what we would like to achieve in a
 383 way that actually works for us." They then at that point produced a compendium
 384 document effectively.

385
 386 I think that was one of the best lessons we've had in this process, because
 387 probably when we first set these Whaitua processes up we were looking for deep
 388 consensus and we were looking for outcomes that everyone would agree to at
 389 the end, to help with some of the issues I talked about earlier – implementation
 390 and cohesion; but also we probably missed a trick in the development of that,
 391 because actually what we did need to do and what Ngāti Toa really cleared
 392 showed us is that if it's not reflecting the aspirations that mana whenua have by
 393 way of outcome then it actually hasn't done its job.

394
 395 So there's been evolutions and change like that in the process. Whaitua Kapiti
 396 has taken a treaty house model approach to try and produce a WIP and an
 397 outcome from that process.

398
 399 I think it's something we are always learning and always evolving. There's been
 400 experiences in that, that have been quite humbling for the organisation, but
 401 ultimately it has led to far better ways of working together, collaborating and
 402 expressing, as I say, outcomes for mana whenua that are truly meaningful. The
 403 benefit of that obviously is then we can partner better with mana whenua to
 404 deliver the outcomes for te taiao, which this whole process is trying to do.
 405

406 Chair: Mr Corry, in your talking points you refer to the Council's long term
407 commitment to improving the health of freshwater in the region. At the moment,
408 there is this clear tension between central government direction and mana
409 whenua and Council aspirations, in this issue of freshwater management.

410
411 Has the Council been thinking about what the rest of the process for the
412 remaining Whaitua might look like? The statutory bar on plan changes applies
413 to the freshwater instruments, so not to Part 1 Schedule 1; and we've seen with
414 this plan change that since 70-odd percent of it is Part 1 Schedule 1 and not a
415 freshwater instrument. So, just any comments about, I guess, the integrity and
416 being able to achieve the vision for freshwater management in the region if the
417 national objectives framework can be implemented into Whaitua through the
418 freshwater planning process.

419
420 Corry: Thank you for the question.

421
422 The Whaitua were established so they could actually stand alone as Whaitua
423 chapters through plan changes. The two that you have in front of you, depending
424 what happens with the future national direction, but assuming the hearing
425 streams continue, they should result in outcomes that can stand alone in the
426 context of our planning documents, but particularly for the two Whaitua subject
427 to the plan change.

428
429 In that regard I'm completely comfortable that you can have a changing national
430 landscape, but if you get to the point where you can imbed plan changes and
431 look at freshwater outcomes they should be able to stand alone and be delivered
432 through both regulatory and non-regulatory instruments.

433
434 In terms of what future Whaitua look like, or indeed implementation
435 programmes, we are constantly thinking about that. I can't think of many pieces
436 of legislation that have been changed as much as the RMA, nor as many pieces
437 of national planning instruments that have been changed as much as the NPS.
438 So, how you evolve your planning documents, and then how you start to
439 implement those is a constant discussion amongst all councils, particularly
440 regional councils in this context.

441
442 How we approach our final Whaitua, which is Eastern Hills in the Wairarapa,
443 that is something we are thinking about at the moment.

444
445 But, I do go back to the principles of what we are trying to achieve. Despite the
446 changing the landscape, a national direction, which is ever present, what we have
447 always tried to achieve is an enduring and lasting relationship with the TAs and
448 with mana whenua; and in spite of changing landscapes, actually put our
449 resource, time and mahi into delivering outcomes for freshwater and te taiao;
450 because we spent a lot of time spending time, effort and mahi in process and
451 planning and not enough in delivery.

452
453 Part of the Whaitua process was absolutely to try and realign some of the

454 [00.35.00] resource and effort that went into delivering outcomes, and understand those
 455 outcomes in a joint sense; and I think the Whaitua has endured through all the
 456 processes and changes over the last ten-odd years, to be focused on what are the
 457 outcomes we want to deliver in partnership to actually improve the environment
 458 and freshwater quality.

459
 460 Certainly I think that's a necessary change for New Zealand, to be able to
 461 actually deliver environmental outcomes.

462
 463 Chair: Thank you. Just maybe one final one.

464
 465 When you're sitting around the table with your other colleagues and other
 466 councils in leadership meetings, I'm guessing people are looking at what
 467 Wellington is doing and are there comments that people are recognising that
 468 there is real leadership in freshwater management that's happening here? Are
 469 you able to share some comments about that?

470
 471 Corry: Thank you for the interesting question.

472
 473 You're quite right. There's obviously conversations all around the country at the
 474 moment, around the direction of freshwater planning, the changing landscape of
 475 national direction.

476
 477 I think it's incumbent on all regional councils to be very closely aligned. What
 478 is happening at the national level? We engage with MFE and engage with the
 479 communities about how they want to approach that. We've taken an approach
 480 that works for this region at this point in time. I think that's the most important
 481 thing to say. We think there was far too much excellent mahi, far too much
 482 excellent collaboration and the timing of change as a national direction we felt
 483 that we are in a position to continue at this time.

484
 485 I think we have a clear understanding that while that might change in the future,
 486 depending on what happens, it's right for this region, it's right for the integrity
 487 of the process that we've done or run this far, and it's right for the integrity of
 488 the people who have submitted in this process. Whatever their perspective, like
 489 should we stop, pause or go, there's a lot of engagement that's been put in place
 490 for this plan change that we should show respect to.

491
 492 Other regions will make their decisions that work for them, either for their
 493 communities, or politically, or for their mana whenua partners, or depending
 494 where they are on the process. Obviously there's some flagship examples right
 495 at the moment in other parts of the region. Down South they've made decisions
 496 based on what they think is right.

497
 498 The complexity of this is, there actually is no right or wrong process to a certain
 499 degree. Until we understand what the future of freshwater planning does look
 500 like, it will be a slightly opaque area, unless you want to notify a freshwater plan
 501 change post 25th of October – when probably that's made slightly harder.

502

503 It's a complex question. I'm not trying to be flippant. You have to make work
504 what works for your region and your partnerships.

505
506 Chair: Thank you very much Mr Corry. We appreciate your time in coming to present
507 to us today. Thank you.

508
509 We will move to Ms Anderson and team for Council's legal submissions, thank
510 you.

511
512

513 **Greater Wellington Regional Council – Ms Anderson**

514
515 Anderson: Kia ora. I was intending on doing maybe a five minute summary, or did you
516 want to move straight to questions? What is the most helpful?

517
518 Chair: [Nil audible]

519
520 Anderson: You should have in front of you legal submissions filed on the 3rd of October. I
521 was going to talk through the key issues raised in those.

522
523 The first issue really was the background to PC1 and I am not going to talk
524 through that because I think Ms O'Callahan will deal with that in a bit more
525 detail, and it's obviously set out in detail in her report.

526
527 The second issue, which is probably one of the key legal issues for the panel
528 throughout all the hearing streams is scope – because obviously that dictates the
529 ability for what changes can be made in response to submissions; and in some
530 respects for the two of you who sat in the RPS hearings panel this might be a bit
531 of déjà vu, but I thought in terms of just reminding everyone that there's two
532 parts to the scope test. The first part is the scope of the plan change test, and
533 that's really set out at paragraph 18 of the legal submissions; and that's relevant
534 to both the freshwater provisions and the standard first schedule provisions.

535
536 It's really about what Plan Change 1 proposed to alter and what it didn't propose
537 to alter. I guess you go about figuring out that envelope by looking at what was
538 in the notified plan change itself and the surrounding documents, particularly
539 the S32.

540 [00.40.00]
541 I have set out in the submissions there I thought what were key extracts from
542 that document.

543
544 I guess at a very basic level the scope of Plan Change 1 involves changes to
545 freshwater provisions that apply in the two Whaitua; and to changes to region
546 wide provisions relating to beds, lakes and rivers Schedule F, and air quality
547 rules in the CMA.

548
549 That really defines the scope of the plan change and I guess as these questions
550 come up it's probably easy exoterically to talk about it; but as examples come up
551 I think officers have largely addressed those in their S42A report.

552 The second part of scope then is scope of submissions and for that aspect, set
553 out at paragraph 19 of the legal submissions, this is really only particularly
554 relevant for the standard first schedule provisions in Change 1.

555
556 For the freshwater provisions scope of submissions is not a constraint on the
557 panel, but the issue does need to be raised at the hearing for that to apply. So,
558 you can go further than what the submissions have asked for, as long as it's raised
559 at the hearing.

560
561 For the standard first schedule processes, really the legal test, again as set out in
562 paragraph 19 of the legal submissions, is what was reasonably and fairly raised
563 in the submissions and then there's an ability to have consequential changes
564 which logically follow from those submissions.

565
566 Trying to sum that up, I guess, in sort of simple way, I would say it really
567 involves considering what was subject to change through Plan Change 1 as
568 notified; and whether any proposed changes by the panels are within the ambit
569 of what was asked for by submitters, or in the case of freshwater provisions
570 raised during the hearings.

571
572 The third addressed in legal submissions is really the plan change tests, which
573 probably I'm sure all of you involved in plan change processes will have seen
574 those many times. They come from ss63-70 of the RMA and they're set out in
575 full in Appendix A to the legal submissions. In paragraph 22 I have set out what
576 I submit are probably the most relevant ones to this particular plan change.

577
578 I also did want to note paragraph 24 of the legal submissions, which is the one
579 that talks about which version of the RMA applies to this plan change process,
580 and that is the one that was in place at the date the plan change was notified – so
581 30 October 2023. Unless there is a future amendment that alters that in some
582 fashion then that is the version that applies to this plan change.

583
584 While we are on that topic, and Mr Corry touched on this briefly, I also do want
585 to acknowledge the state of flux, I guess, in the legislative environment at the
586 moment. We've got pretty regular announcements in relation to changes to the
587 RMA and potential changes to national direction.

588
589 The key announcement I think that submitters have raised in this process is the
590 one touched on by Mr Corry around there being a substantially new NPS-FM
591 which is due to be out early next year for consultation.

592
593 In my submissions, from a legal perspective, the Council was legally able to
594 proceed with Plan Change 1 when it notified this plan change, and actually at
595 the time it was required to do so, because at that time we were working to the
596 2024 date that was in s.80A. When that time frame was subsequently changed
597 by the government to 2027, as you have heard in Ms O'Callahan's report,
598 Council did reassess whether to keep going, and the short point was that it
599 decided it was going to do that, and from a legal perspective I would say it's

600 entitled to do so. There is nothing in the RMA now amended or then that
601 prevented it from keeping going.

602
603 The fact that the government has now amended the RMA, which came into force
604 on the 25th of October this year, to put this I guess hold on most freshwater
605 planning instruments being notified for a year, in my submission doesn't alter
606 the situation we are in here. Council is entitled to keep going.

607
608 As you heard from Mr Corry, the Ministry was quite aware of this plan change
609 in the making. If the government had wished to it could have chosen to through
610 that process to require all freshwater plans to stop – notified or not, and it didn't
611 do that. I think that's an important bit of context.

612
613 [00.44.53]
614 Also probably important to note, because that Act came out after the legal
615 submissions were filed, is it does have some changes in there also around the
616 NPS for indigenous biodiversity relating to terrestrial ecology; more in TA type
617 functions around identifying SNAs being put on hold for a three year period.
618 But, in any event the new provisions that came in through that Act specifically
619 say that those don't apply to plan changes notified through that plan change. So
620 I haven't got into that in any great detail. That's s.78 now of the RMA if you're
621 looking for that reference. Albeit, in saying that, the legislation online doesn't
622 have those most recent amendments in it as yet – or it didn't this morning when
623 I checked.

624
625 The fourth issue addressed in the legal submissions is the Regional Policy
626 Statement, and as you are probably all aware, there is an operative Regional
627 Policy Statement and a proposed Regional Policy Statement in the form of
628 Change 1; and just the difference in requirements under the RMA to give effect
629 to the operative RPS and to have regard to the proposed RPS as set out in the
630 submissions is some case law around what that really means in a wording sense,
631 which is really 'give effect to' means implement, and 'have regard to' really
632 means give genuine thought and attention to the proposed RPS.

633
634 The last issue addressed in legal submissions is this issue of categorisation of
635 freshwater provisions versus standard Schedule 1. I guess for the panel members
636 who were involved in the RPS s.80A has changed since then, so the tests are
637 now different and the High Court case that was the focus of those proceedings
638 was not on the new version of s.80A.

639
640 I have set s.80A out in the submissions. Would you like me to talk through kind
641 of a basic summary of what the tests are, or are you happy? It will get addressed
642 by each S42A author as we go through the hearings as to their assessment against
643 those tests.

644
645 Effectively that flowchart I have put in there from Ms O'Callahan's report I
646 would say is the correct legal process and steps to consider when deciding which
647 ones are freshwater and which aren't.

648

- 649 Chair: This might be a good point to actually ask this question, which I haven't been
650 sure of. The s.80A was amended, as you said, last year. Does that amended
651 version apply to the assessment of whether a provision should be appropriately
652 categorised as freshwater or non-freshwater, or because PC1 was notified 30
653 October it pre-dates that amendment? So the older version of s.80A applies?
654
- 655 Anderson: As I understood it, that main amendment to s.80A was in August 2023. Then the
656 plan change was notified in October 2023, so that amended version of 80A
657 applied. It did then change again post October 2023, but that was mostly to
658 change that date from 2024 to 2027. So the tests, yes, are different.
659
- 660 That was actually the end of my summary. That is all the legal issues covered in
661 the legal submissions. So, very happy to take any questions.
662
- 663 Chair: I do have questions. Who would like to go first?
664
- 665 Stevenson: Thanks Ms Anderson. From a legal perspective, given the changing national
666 direction that's been foreshadowed, what steps from a legal perspective do you
667 think the Council could take to ensure consistency in freshwater planning
668 provisions across the region? I'm interested in how it's going to work on the
669 ground or in the water.
670
- 671 Anderson: Do you mean within this plan change or across the others that will follow?
672
- 673 Stevenson: Across. More conceptually across the subsequent plan changes.
674
- 675 Anderson: It's a difficult question. At this stage I'm certainly not aware of what, I guess,
676 companion amendments might come with an NPS, in terms of what Council may
677 be directed to do by central government – because obviously it's got a number
678 of powers it can direct changes to be made without first schedule processes, etc.
679 [00.50.00] But, let's just assume we are operating in a similar environment as we are now.
680
- 681 This plan change will proceed through its process. At some point in that process
682 we will have a new NPS-FM and I think I've said in the legal submissions that
683 counsel and the 42A officers will obviously be keeping you up-to-date with what
684 changes and what scope there is to make changes through this process.
685
- 686 If for whatever reason further changes are needed, I guess we have to cross that
687 bridge when we come to it. But, there will be nothing to prevent the further
688 freshwater plan changes to follow. At the moment, the date set is you can't notify
689 a new one before December next year, or potentially earlier, depending on when
690 the NPS-FM comes around.
691
- 692 So I am not sure in the big scheme of things if that makes a huge impact. You
693 will still be able to notify freshwater planning provisions in a year's time and
694 they will obviously deal with whatever the new different whatever framework
695 is in place.
696

- 697 Council you have to remember has been through the natural resources plan
698 process and throughout that time, which partially implemented the NPS-FM, I
699 think we had three maybe four changes to the NPS-FM. So it's not a new thing.
700 You just have to figure out which processes you need to use to make everything
701 align.
702
- 703 Wratt: Just a clarification around the RPS. There's now the decision version of the RPS,
704 correct – which is the version that the Council have signed off?
705
- 706 Anderson: That's right.
707
- 708 Wratt: There was a process for any appeals on the freshwater aspect of that by mid-
709 October I think, and then there are appeals to the Environment Court by 18th of
710 November.
711
- 712 Can you just sort of explain to me a little bit how that all works in the context of
713 this process?
714
- 715 Anderson: You're right, we have a decisions version now, and under I think clause 10 and
716 clause 48 of the first schedule, as at the time that decisions version was notified,
717 it is amended as per those decisions; so that decisions version is now the
718 proposed RPS, which of course was Change 1 and Variation 1 – both of those
719 together.
720
- 721 So that's the version you are now looking at as decision-makers.
722
- 723 You are correct, the High Court appeal process for the freshwater provisions
724 expired – and I can't quite remember the date, but mid-October, it's passed, and
725 as far as I am aware no appeals have been received.
726
- 727 For the balance I think it's 18 November the appeal period closes for
728 Environment Court appeals. I am not aware of any as yet, but there is obviously
729 a bit of time yet to go.
730
- 731 An appeal per se though on a policy statement doesn't necessarily change
732 anything. It's not like you have rules where things can be deemed operative etc.
733 because this is a policy statement that just has objectives and policies in it. So
734 the deemed operative aspect doesn't raise its head. It's really just a matter for the
735 panel about how much weight to give to the proposed RPS versus the operative
736 RPS, assuming that there is any inconsistency or difference between the two on
737 the issue you're looking at.
738
- 739 Wratt: So, to what extent should we be, if there are appeals, considering what those
740 appeals are? Or, do we just put that to the side essentially and really focus on
741 what's in the decision document?
742
- 743 Anderson: I think the case law would tell you that it's relevant to weight, because the weight
744 you give to things does increase, I guess, the further through the first schedule
745 process that you get – i.e. I'm not a huge fan of trying to unpick an appeal and

746 figure out what could be the ultimate outcome, but I think it does tell you what
 747 provisions are still under challenge; and so I think that will be relevant to weight
 748 and we can update you when we know what those are.

749
 750 Chair: Just following on from that – does that mean that we have now an operative
 751 version of the RPS in terms of the freshwater planning provisions?

752 [00.55.00]

753 Anderson: No. It's not like rules that it becomes deemed operative once it's beyond
 754 challenge. The Council will have to do a formal clause 20 making an operative
 755 step, which it has not done at this stage and I am not aware whether it's intending
 756 on doing a partial and making it operative. Again, it's something we would
 757 update you on as we go through the process.

758
 759 Chair: Legal counsel for Winstones raised s.65(6) of the RMA. This section says “the
 760 Council must amend the proposed Regional Plan to give effect to an RPS if...”
 761 and there’s a list of matters there. I wasn’t sure if the cross-reference in that
 762 provision to s.79 is that talking about changes to an RPS, or is that only talking
 763 about a full review of an RPS?

764
 765 I guess my question is, s.65(6) there is no ongoing obligation to amend Plan
 766 Change 1 to the Regional Plan as a result of changes that are coming through to
 767 the RPS?

768
 769 I guess I’m just not sure of the impact of s.65(6).

770
 771 Anderson: It is a slightly curious provision isn’t it, because the panel has to give effect to
 772 the operative RPS, which at the moment is the operative RPS without Change 1.

773
 774 Chair: The 2013 version?

775
 776 Anderson: Yes, that’s a good way. The Council and the panel in its decision has to give
 777 effect to that 2013 RPS. It's not required to give effect to Change 1 unless
 778 sometime before you make your decision that becomes operative and then that
 779 goes from having regard to it, to having to give effect to it. I guess why I say
 780 subsection (6) is slightly curious is, when you have just gone through a change
 781 process you would expect that outcome to have given effect to the RPS, but I
 782 hadn’t seen that as particularly relevant in this context, because you’re going to
 783 be given effect to the RPS in any event through your decision. So I am not sure
 784 how subsection (6)... it doesn’t actually change that requirement.

785
 786 Then if it's post your decision being made etc. and there’s a change to the RPS
 787 that needs to be given effect to, there is a process in the RMA for that. It's not
 788 an immediate requirement.

789
 790 Chair: We will appreciate your advice on this as we go through the next six months or
 791 so of these hearings. It's that question I think that Commissioner Wratt had about
 792 the extent to which we need to keep looking at what stage is the RPS at, and do
 793 we need to now be looking at whether this provision we’re looking at in the
 794 Regional Plan change should be amended in light of a provision that’s now not

- 795 subject to any appeals and is in the RPS – because some of those changes are
796 quite significant obviously, especially around the freshwater direction.
- 797 [01.00.00]
798 Anderson: That’s right, but I’m not sure that there’s any alternative to that based on what
799 the RMA requires you to do. If the Change 1 becomes operative during the
800 course of this panel then yes it will require... you will still be considering those
801 provisions because you have to have regard to them, but it might be that the
802 weight you give them becomes a lot more and you’re required to give effect to
803 them.
- 804
805 Chair: But, until the Council actually notifies an operative version, that give effect to
806 requirement doesn’t kick in?
807
- 808 Anderson: That’s right and there should be quite some warning for when that is, because
809 obviously it has to go to a full Council meeting, and then the date for it to come
810 up has to be notified. So there’s quite a lead-in time and then also we don’t know
811 what appeals may or may not come through to the Environment Court.
812
- 813 Chair: I know we are almost out of time. I did have a question on scope.
814
- 815 The provisions Hearing Stream One obviously focuses mainly on the region-
816 wide provisions. The threatened species, there were a couple of submitters, I
817 think Environmental Defence Society and Forest & Bird, said that indigenous
818 fish diversity could be listed as a value of Lake Wairarapa, and the officers have
819 said if the panel think that changes within scope because it doesn’t affect Te
820 Whanganui-a-Tara or Te Awarua-o-Porirua then that change may be possible.
821 But, given that we are dealing here with region-wide, those provisions are
822 region-wide and they are not limited to those two Whaitua.
823
- 824 Do you have any views on whether there is actually a scope issue? If you want
825 to come back to us on that that’s fine.
826
- 827 Anderson: I know I read Mr O’Brien’s S42A Report and I did agree with him at the time I
828 read it, but for some reason that might be something that’s better for him to
829 answer because he’s looked at it in a lot more detail; but I can give you the legal
830 perspective on it.
831
- 832 I know the approach had been... because obviously it's the panel’s decision
833 about what scope is, to raise if the officer thought there was scope, but leave it
834 to the panel to decide. So I can have a look at that now and form a view on that
835 if that’s helpful.
836
- 837 Chair: Thank you.
838
- 839 Stevenson: While we have got the legal team here in our sights, I am interested in Upper
840 Hutt rural community’s submission around the categorisation of drainage ditch
841 as a natural waterway, and particularly some case law that was referenced in the
842 submission. It was Greater Wellington Regional Council v Adams and Others I
843 believe; and another case GWRC v Upper Hutt City Council.

- 844 I would appreciate understanding whether the commentary in that decision was
 845 critical of the provisions in the NRP as they stood and the interpretation given
 846 to them; and therefore whether Plan Change 1 provisions, as they are proposed,
 847 will address that circumstance.
 848
- 849 Yes I could look into that, but I would appreciate your advice as to my
 850 investigation.
 851
- 852 Anderson: That's not something I know the answer to at this point, but I can certainly do
 853 that and provide that in reply. Thank you.
 854
- 855 McGarry: Just back to the scope issue Ms Anderson. There are some instances, I think in
 856 Mr O'Brien's S42A where he says there may be a scope issue and he hasn't been
 857 that firm in his view whether he thinks there is nor not. I just wondered whether
 858 you could have a look at those instances and give us your legal perspective on
 859 those instances where he's used the words "may be a scope issue".
 860 [01.05.00]
- 861 Anderson: Certainly. I guess that really aligns with Commissioner Nightingale's question
 862 as well doesn't it?
 863
- 864 McGarry: That's right. It was just a bit wider than that. I think there's some other instances
 865 than just the one that Commissioner Nightingale had drawn to our attention; so
 866 I would appreciate that advice.
 867
- 868 : Just in terms of the recent amendments to s.70 and s.107 of the Act, which were
 869 surprises, I just wondered if you have turned your mind in terms of whether
 870 there's any implications of either of those changes to this process?
 871
- 872 Anderson: I hadn't past this Hearing Stream. That is also something I can look. I didn't see
 873 them as having implications for this hearing stream, but they may well have later
 874 going forward. That will just be really checking the transitional provisions to see
 875 when they applied from. Obviously s.107 is relating to resource consents, so I
 876 wouldn't expect that to be relevant to this process, but s.70 may well be.
 877
- 878 McGarry: It's just some of the wording of the rules actually reflects s.107, so I think it
 879 would be prudent to look at that.
 880
- 881 Anderson: Thank you.
 882
- 883 McGarry: Just one final question. It's really just, with identifying some rules as coastal or
 884 objects of coastal, once a coastal objectives is confirmed in terms of a
 885 recommendation will all of those with coastal icon require signoff from the
 886 Minister?
 887
- 888 Anderson: All of those – you mean Minister of Conservation?
 889
- 890 McGarry: Yes.
 891
- 892 Anderson: Because they'll be regional coastal planning provisions.

893 Sorry, just on that topic, I was thinking about s.80A. If something changes to
 894 have a coastal icon either on or off it, either being added to it or being taken off,
 895 that will also affect any categorisation decision as well, because the regional
 896 coastal provisions are not freshwater provisions.

897
 898 It might just be a procedural matter just with respect to when the topics are raised
 899 and it's merely around definitions. I suppose it might be something for the panel
 900 to discuss or perhaps get some direction from reporting officers after the break,
 901 in terms of when to raise those questions.

902
 903 Chair: Ms Anderson, I just have one final one and it's again about amendments made
 904 recently to the RMA. As I understand it, the requirement to apply the Te Mana
 905 o te Wai hierarchy in resource consent process doesn't exist at the moment, but
 906 that doesn't affect... so, if a provision in the Regional Plan applies to consenting
 907 and it still preserves the Te Mana o te Wai hierarchy, that's fine isn't it? That's
 908 vires and we don't need to consider the amendment that deals with Te Mana o
 909 te Wai and consenting as part of our consideration of that Regional Plan
 910 provision?

911
 912 Anderson: That's correct.

913
 914 Chair: I think those are our questions. Thank you very much.

915
 916 Anderson: Thank you.

917
 918 **Greater Wellington Regional Council – Mary O'Callahan**

919
 920 Chair: We welcome Ms O'Callahan the Reporting Officer for the overarching matters
 921 topic in Hearing Stream One. Ms O'Callahan we have gone fifteen minutes over.
 922 I am just checking that you are still okay if we need to go a bit past our schedule
 923 of 12.35.

924
 925 O'Callahan: Yes I'm fine.

926
 927 Chair: Great. Thank you. I'll pass over to you.

928
 929 O'Callahan: I've got a presentation and hopefully you've been given a paper version of that
 930 if you want to make any notes as well.

931 [01.10.00]

932 What I'm just going to cover this morning is just a brief outline of the structure
 933 of the operative plan and Plan Change 1. I will just provide a brief summary of
 934 my report which has two parts to it. The first is just setting the scene for the plan
 935 change, and then the second part is considering and making recommendations
 936 on the submissions that have been coded to this topic, which are generally of an
 937 overarching nature.

938
 939 I will provide a summary of my rebuttal evidence and summary of the
 940 amendments to Plan Change 1 recommended within this report.

941

942 I have also provided a summary of the matters which I refer in my report to
943 future hearing streams, that really arise from the submissions in this topic. And,
944 I have also undertaken a review of the RPS Change 1 provisions and I will just
945 comment on that too.

946
947 Just turning to the structure of the NRP I want to just clarify that the NRP is a
948 combine regional air, regional land plan. water plan and coastal plan. The coastal
949 plan content is identified by the coastal icon. The NRP, the operative plan, was
950 step one of the Council's NPS freshwater implementation. In doing so it
951 combined five earlier plans into a single integrated planning document.

952
953 Chapter 3 we will talk about has objectives, or has the policies for five rules, and
954 then the remaining chapters set up the catchment chapters for the Whaitua plan
955 changes.

956
957 Many of the provisions are both combined coastal and say land use, or coastal
958 and freshwater provisions – especially the rules. There are a number of
959 provisions that have coastal icons, so they are part of the coastal plan but they
960 also are part of either they are freshwater or the land plan as well. It's an
961 integrated plan in that regard which is a virtuous undertaking, but becomes a bit
962 messy now that we have this business of these two processes for plan changes
963 between the Schedule 1 and the freshwater planning process.

964
965 The objectives cover both natural resource outcomes and the interactions of
966 resource users; so they are intended to be read together. Another key part of this
967 plan which is different to other plans is that there are no integrated or strategic
968 objectives sitting above all of the factor three objectives. It's just those
969 objectives.

970
971 Plan Change 1 does introduce objectives into Chapters 7 and 8 as well. There
972 are no objectives in there as present.

973
974 Plan Change 1 is step 2 of the NPS implementation, which is for these two
975 Whaitua. Something that is addressed in my report is that Plan Change 1 also
976 removes certain objectives, policies and provisions from the region wide part of
977 the plan from applying to these two Whaitua. That's generally to avoid conflict
978 with the more developed freshwater provisions that occur for those two Whaitua,
979 so they don't conflict. That's been indicated by the icons.

980
981 In those situations the change is really only to not apply the objectives that's in
982 the region-wide chapter; so to not apply that to these two Whaitua – Porirua and
983 Whanganui. That means there is no change to those objectives in so far as the
984 balance of the region, and that's the important scope issue.

985
986 Just looking at the **sensitivity** [01.14.06] report, I have listed the relevant high
987 order direction which includes the national instruments, in particular the NPS-
988 FM and the RPS. There is a section setting out the approach to the freshwater
989 planning process, which Ms Anderson has discussed.

990

991 The PC1 background which includes the Whaitua process, which led to the
992 Whaitua implementation programmes, which were the basis of the direction
993 given to the officers for implementing this plan change.
994

995 Just confirming the submissions there. In the report we talk about submission
996 points, but in my presentation here, I will just confirm that there are 288
997 submissions that were received and 46 further submissions. Obviously within
998 those submissions there were across the plan change thousands of submissions.
999

[01.15.05]

1000 In Part 2 the general themes that came through those overarching submissions,
1001 we've got general support for the plan change and general opposition, and
1002 requests for it to be withdrawn. Uncertainty around the impact of the government
1003 direction. Comments about the sufficiency of the consultation. Comments
1004 around technical evidence and the lack of quantitative cost benefit analysis in
1005 the S42A Report. Overuse of regulatory approach and the evidence supporting
1006 it.
1007

1008 No specific changes have been recommended from these key themes. I just
1009 comment that the government direction changing, as Ms Anderson mentioned,
1010 the NPS has changed numerous times already since it's been enacted and those
1011 issues I expect to be able to be accommodated generally - assuming that there is
1012 still some sort of mandate to be improving freshwater through this process.
1013

1014 Quantitative economic evidence has been recommended and is underway for
1015 future hearing streams.
1016

1017 Other issues arising in general submissions are requests to align definitions with
1018 both definitions in the National Planning Standards and the Water Services Act.
1019 The RPS, which I will come to, consistency with the WIP recommendations,
1020 clarify and accessibility of the plan and what we've coded to this topic is the out
1021 of scope request for policy amendments associated with the visions that are
1022 proposed to be no longer applicable to the Whanganui and Porirua Whaituas.
1023

1024 That's probably a little bit confusing to some of the parties. There are further
1025 objective submissions on the objectors that no longer apply. They will be dealt
1026 with in the objectives hearing topic, and likewise with any policies and rules that
1027 no longer apply, in terms of the two Whaitua chapters. They will be dealt with
1028 in the relevant rules or policy for that topic.
1029

1030 Generally in terms of trying to align with the National Planning Standards and
1031 other legislation, just the nature of the scope of this plan change made a lot of
1032 those definition requests on the face of it seem sensible, but actually really
1033 difficult to do in terms of maintaining the scope because they would have the
1034 impact of changing region-wide provisions that were not subject to Change 1.
1035

1036 In my rebuttal evidence I have confirmed that Transpower has accepted the
1037 recommended amendment that they requested that I have allowed for in my
1038 recommendations.
1039

1040 I responded to Meridian Energy's planning evidence and further explained my
1041 reasoning for differing approaches to Objective 02 and 06. Here I've been
1042 looking at the requested drafting changes for 02. I have made a recommendation
1043 that actually I think Objective 02 sits okay with the Whaitua plan change. It's
1044 not inconsistent with Te Mana o te Wai and it is much broader than the content
1045 of this plan change.

1046
1047 I have recommended that that icon be removed and that it remain applicable
1048 within these Whaitua as part of the recommendations in the officer's report. I
1049 have explained that further in my rebuttal.

1050
1051 The drafting requests that came through on 06 and/or the request to have it
1052 continue to apply within these Whaitua I think is a different kettle of fish. It uses
1053 language which is directly inconsistent with the hierarchy of obligations in that
1054 it deals with use and take of water. The other benefit objectives of 09 and 010
1055 are not impacted by this plan change and are retained, which are of use to
1056 infrastructure providers such as Meridian.

1057
1058 I respond to Wellington Water's letter to reiterate that the out of scope nature of
1059 the amendments that they request to 06, and also their edits make it further
1060 contrary to the objectives and approach that's been taken within Plan Change 1.

1061 [01.20.00]

1062 In terms of Fish & Game their requests are also addressed in my rebuttal and it
1063 is not necessarily inconsistent with the approach of the objectives in Plan
1064 Change 1, but it is duplicative and better expressed in Plan Change 1 – so it
1065 doesn't need to be [01.20.16].

1066
1067 Then finally I respond to the evidence of Winstone Aggregates and really just
1068 confirm at this point that I agree that the existing quarry activities undertaken at
1069 Belmont Quarry in Te Whanganui-a-Tara were not adequately considered in the
1070 drafting and there will be opportunities to address those through the specific
1071 provisions that they relate to – so that's the earthworks provisions and the
1072 stormwater topic, which will be in Hearing Streams Three and Four.

1073
1074 The next slide I just confirm the minor amendments that are recommended
1075 within the scope of my report, which is firstly the removal of the icon in 02 –
1076 which I mentioned there's a correction to numbering in one of the methods, in
1077 Chapter 6, and the inclusion of that note regarding the [01.21.06] Transpower
1078 related NES.

1079
1080 The next slide I have summarised the matters that I've said from the submissions
1081 in this hearing stream are important to consider in future hearing streams, so that
1082 the panel may keep track of that. Firstly the request for detailed technical
1083 evidence and economic evidence around costs and benefits. That's important to
1084 respond to and is underway.

1085
1086 The change in national direction as I have mentioned that will be responded to
1087 as it becomes visible by reporting officers and then there is the integration

1088 hearing at the end which will enable a refresh across matters if it is changed
1089 subsequent from when you heard the detailed evidence.

1090
1091 One of the other matters was clarity of some Māori language within the plan
1092 change which doesn't have definition, which is the general style – but I think
1093 that's best dealt with in those hearing streams, just in terms of the context of the
1094 objectives and if they stay as they are, and also the kaitiaki monitoring is within
1095 the base water and stormwater topics as used in a schedule is my understanding
1096 – and the Belmont Quarry that I mentioned.

1097
1098 Finally, I will just comment on the RPS change. I have had a look through the
1099 decisions version. It contains some useful direction for the plan change. I don't
1100 think it's necessarily the case that the plan change is contrary to the RPS Change
1101 1. There is deliberate intention to be aligning those as they were being prepared,
1102 but they will certainly need to be checked against any provisions that did subtly
1103 change. But, in my reading of it, and I am reasonably across the provisions of
1104 the whole band change, it did seem to be quite aligned and there is useful
1105 direction there around some of the matters that are sought.

1106
1107 All the provisions that are really key freshwater for the plan change, in the
1108 freshwater space; so it's including the content that my colleague Mr O'Brien is
1109 working on. All of those are freshwater provisions. From a planner's
1110 perspective, they from my perspective area all beyond challenge, so my
1111 approach in future topics will certainly be to be looking to align so that they will
1112 give effect to it.

1113
1114 Thank you. You can ask any questions.

1115
1116 Chair: Thanks very much Ms O'Callahan. Before we go to questions, we were actually
1117 talking as a panel earlier before we started, about how it would be really useful
1118 for us to have a wiring diagram or something similar for those provisions that
1119 you in your view a PC1 can now give effect to in the RPS because they're
1120 beyond challenge. It would be really useful for us to see those and then be able
1121 to see the cascade down to the PC1 provisions – if that's something that we could
1122 ask you or your team to provide.

1123
1124 O'Callahan: Sure. It can be provided, at least in the right of reply. Hopefully it will be earlier.

1125
1126 In my slides I do address the provisions that I think are the key ones, but I haven't
1127 [01.25.00] reviewed ones that relate to the region-wide part of the plan change.

1128
1129 So that's the introduction and the revised Objective 12, the long term visions,
1130 and the policies that are the ones that apply to the Regional Plan.

1131
1132 Chair: Thank you. In fact, there's no particular hurry. If it's not ready for the right of
1133 reply next year is fine.

1134
1135 O'Callahan: I can definitely have it for the right of reply.

1136

- 1137 McGarry: Just on that point my question was really if something has a coastal icon in the
 1138 Plan Change and then it flows back to the RPS, would a decision-maker be
 1139 looking at both the freshwater and the coastal aspects of that provision? Because
 1140 some of the provisions don't necessarily apply or even use the word coastal.
 1141 They've become coastal.
 1142
- 1143 I guess the question is, if you have a coastal one that you're say applying to a
 1144 resource consent, does it link back to both the freshwater and the coastal both in
 1145 the RPS?
 1146
- 1147 O'Callahan: Have you got an example of a provision that you've picked that up on? I'm just
 1148 trying to understand the question a bit more.
 1149
- 1150 McGarry: I haven't got a provision in mind. There's quite a few. Quite a lot of them they're
 1151 outside of the CMA but they've been categorised as coastal say for a stormwater
 1152 discharge, where ultimately the receiving environment might be the coastal area.
 1153 I guess it gets back to this wiring diagram question, as to whether some of those
 1154 coastal icons, which are dealing with situations outside of the coastal area,
 1155 whether as a decision-maker say applying or looking back to the RPS as they're
 1156 working through say a resource consent for a stormwater discharge, would they
 1157 be looking at both the coastal and the freshwater chapters of the RPS?
 1158
- 1159 O'Callahan: From a resource consent point of view, if the stormwater discharges direct to the
 1160 coastal marine area they would look at the coastal provisions in the RPS. From
 1161 the plan preparation point of view the main driver for the coastal content in this
 1162 plan change has been the relationship that it has with the NPS freshwater. The
 1163 NPS requires as part of the work to look at what is needed in the coastal
 1164 environment, from the land and so forth that drains into it.
 1165
- 1166 It's in the context of water quality and ecosystem health, rather than all of the
 1167 coastal provisions say of the RPS, if that makes sense.
 1168
- 1169 In terms of wider coastal content in the RPS I don't know that you need to
 1170 concern yourself with that, because presumably that was implemented with the
 1171 plans in the operative plan.
 1172
- 1173 I might be able to get some assistance from the offices at the Council with an
 1174 understanding of what they regard as implemented in the RPS and what isn't.
 1175 But, I am not aware of significant anomalies other than around there's some
 1176 areas that still need to be implemented that I'm aware of, such as natural
 1177 character, mapping and so forth, but they're well outside of the areas that are
 1178 within scope of this plan change.
 1179
- 1180 McGarry: I suspect the wiring diagram will help us in terms of those provisions –where
 1181 they go back to in terms of their genesis from the RPS and the higher documents.
 1182
- 1183 O'Callahan: I think it's probably worthwhile asking Mr O'Brien what RPS provisions are
 1184 relevant to his topics and that would narrow that down. From my perspective it's

1185 really the WIPS that the coastal content is implementing in the context of the
 1186 NPS freshwater.
 1187

1188 McGarry: Are you aware is there a mana whaka rohe in the region at all, in terms of
 1189 agreement on how to engage?
 1190 [01.30.05]

1191 O'Callahan: I am not aware of the answer to that question sorry.
 1192

1193 McGarry: I probably should have asked Mr Corry that question.
 1194

1195 I've got a couple that I probably neglected for the legal team, but I would like
 1196 your view from a planning perspective anyway. The legal team might be able to
 1197 provide something in writing.
 1198

1199 I am aware in other regions that there has been challenges to rules which limit
 1200 public notification in plans. So my question to you really is do you think it's ultra
 1201 vires to have a rule that limits public notification?
 1202

1203 O'Callahan: I haven't done any work on the rules as part of preparing for this hearing, but as
 1204 a planner, as a matter of principle, no I think they have a valid place in the
 1205 planning system.
 1206

1207 McGarry: I'm just aware in other parts of the country that they have been challenged, so
 1208 maybe it's something for the legal team to look into for us. I know that the plan
 1209 already has some, but we're putting in some more.
 1210

1211 This question is probably in a similar category maybe for the legal team as well,
 1212 but Forest & Bird have considered that references to financial contributions
 1213 really should be referred to not as offsetting, but as compensation. Would you
 1214 agree that financial contributions would fit better with compensation than
 1215 offsetting in the RMA sense?
 1216

1217 O'Callahan: No, I don't think I do agree with it. Obviously I'm not reporting on that but my
 1218 opinion is, and I did have some involvement in the preparation of the plan
 1219 change, and certainly the way that has been designed is designed as an offset.
 1220 Those provisions are designed to deal with the residual effects that don't get
 1221 treated through stormwater treatment and they are trying to really make it easy
 1222 for applicants to have an easy option to offset those, to enable the maintenance
 1223 or improvement – the cannot get worse imperative of the NPS freshwater. So it's
 1224 an easy way for them to pay into a fund that basically then can be used to
 1225 improve water quality in the catchment through things like funding
 1226 improvements to treatment in stormwater areas that are not subject to
 1227 developments that are outside or have that benefit. It's a much easier way of
 1228 offsetting than requiring every urban developer to go around and try and find a
 1229 bit of stormwater discharge to put a treatment mechanism in.
 1230

1231 The intent is that it is offset. I think it's probably a matter for the lawyers about
 1232 the semantics of whether it's offset or compensation; but certainly designed and
 1233 intended to work as an offset.

- 1234 McGarry: Thank you. I did neglect to ask that of legal counsel, but it's probably something
1235 they need to have a think about anyway in terms of the wording of the plan.
1236 Thank you.
1237
- 1238 Just looking at your actual report Ms O'Callahan, you talked in paragraph 82
1239 about trying to get a response from another submitter in terms of an incomplete
1240 submission. I just wondered if there's any update there or any further attempts
1241 for the incomplete submission?
1242
- 1243 O'Callahan: I'm not sure of the answer to that. Possibly the hearing administrator, Mr
1244 Ruddick, might know. This is just missing contact details?
1245
- 1246 McGarry: Yes.
1247
- 1248 Just one final one and that's in paragraph 188 of your S42A where you're talking
1249 there about the words "to the extent practicable" and that the meaning is similar
1250 to "best practical option". It just raises the question for me, why not use "best
1251 practical option" when that's a defined term?
1252
- 1253 O'Callahan: Oh look it may be possible to look at that, but not in this hearing stream because
1254 [01.35.00] that was a general submission across the whole plan. So, it would depend on the
1255 context of the policy or the objective in which it is used.
1256
- 1257 I recall there were two instances to the extent practicable.
1258
- 1259 McGarry: Yes, we appreciate that. The difficulty on this with the tables. We don't want to
1260 leave all of the questions to the end. Hopefully some of those are just flags and
1261 sign points for further streams to come back to us. Thank you.
1262
- 1263 O'Callahan: I think "to the extent practicable" is quite understandable. It's a common term.
1264 Whichever order the words are in that's what 'practicable' means – in terms of
1265 it's a consideration of things about site constraints and costs etc. I don't think it's
1266 unclear in this instance – either in the defined version or the other language that's
1267 appeared.
1268
- 1269 McGarry: Thank you.
1270
- 1271 Wratt: Just a slight elaboration I guess on Objective 06, in that icon for removing, so
1272 that it doesn't apply to the two Whaitua. I'm probably extrapolating what you
1273 said. Your comment was, "It's inconsistent with the hierarchy of the obligations
1274 and Te Mana o te Wai."
1275
- 1276 My understanding and sort of extrapolating from that is that, for those two
1277 Whaitua where the aim is to implement the Te Mana o te Wai, therefore it's not
1278 appropriate that if those icons... if it was to apply to those Whaitua, then that
1279 would be inconsistent with what is in those Whaitua chapters. Is that the essence
1280 of what you're saying?
1281
- 1282 O'Callahan: Yes, that's right.

- 1283 Wratt: Thank you.
1284
- 1285 Chair: Just to follow on from that, I had that same question, because I think that is the
1286 remaining issue I think that Ms Foster for Meridian had, because Objective 2
1287 has been resolved from their perspective. So Objective 2 applies to all Whaitua.
1288 Well, your recommendation is that Objective 2 applies to all Whaitua, but
1289 Objective 6 should not apply to Te Whanganui-a-Tara or Te Awarua-o-Porirua
1290 Whaitua.
1291
- 1292 My question is, because we're not obviously looking now at the detail of the
1293 provisions and in the objectives for those Whaitua, but we are going to be doing
1294 that next year, is will there be a chance perhaps in the final integration hearing
1295 to come back and discuss with you or get your views again on whether the
1296 provisions should or should not apply once we've gone through that exercise of
1297 looking at those provisions, and if we think 'Actually, no it is appropriate for
1298 say Objective 6, for example, to apply region-wide' to be able to come back and
1299 talk with you again perhaps in that final hearing stream? Or, is that a discussion
1300 that we need to pick up with the reporting officer when we are looking at the
1301 wording in those objectives?
1302
- 1303 O'Callahan: Either way. It's intended to be made for both of those, both objectives and the
1304 integration. There will be opportunity yes.
1305
- 1306 Chair: I guess the point is saying, we're not looking at that right now, but when we do
1307 come to look at it we might need to come back and pick up this discussion on
1308 whether the icon should stay or be removed, i.e. whether they apply region-wide
1309 or whether they don't apply to the two Whaitua.
1310
- 1311 O'Callahan: I'm happy to have the discussion now if that's helpful.
1312
- 1313 Chair: Thank you, but I'm not sure that we can. I think it needs us to be looking at the
1314 objectives that are proposed say for Te Whanganui-a-Tara Whaitua in order to
1315 [01.40.00] then give our views on whether Objective 6 for example should still
1316 appropriately apply to the two Whaitua, or whether it shouldn't apply. But, if we
1317 can pick up the discussion maybe either in that hearing stream or in the
1318 integration hearing stream.
1319
- 1320 O'Callahan: Actually, just looking at it now, I realise that I might have made a mistake here.
1321 It's really talking about taking and using water. It's probably only Porirua that it
1322 shouldn't apply in, because the plan change doesn't include the water allocation
1323 for the Te Whanganui-a-Tara. So my apologies. I hadn't really picked up that
1324 nuance until the questions started.
1325
- 1326 I think I probably just need to update my recommendation. I will just have a look
1327 at the consideration of it, but it really is talking about taking and use of water.
1328
- 1329 Anyway, the matter for this hearing is that definitely the submissions that I have
1330 dealt with here are really intended to be the ones requesting rewording of it.
1331 Meridian's further submission I think didn't request rewording, they just wanted

- 1332 it retained. That submission I think has actually been coded to the next topic. So
 1333 it's ended up being a little bit confusing having them split across them really.
 1334
- 1335 Just realising that the reason that is different to 02 is that it's specifically sitting
 1336 under the heading of 'Beneficial Use and Development' and it's about water
 1337 taking. The plan change doesn't deal with any changes to the water quantity
 1338 provisions for Te Whanganui-a-Tara. So there is an icon for just the not
 1339 applicable in the Porirua one, because the Porirua one includes the provisions to
 1340 the waterflows, levels and takes.
 1341
- 1342 I think it's probably more prudent that it is just for the icon for the Porirua.
 1343
- 1344 Chair: Thank you Ms O'Callahan. We appreciate acknowledging that. That's what this
 1345 whole process is about. That's really useful.
 1346
- 1347 I've just had a very quick skim of the other objectives. If you could just see
 1348 whether there's any others that fall into that same category - they're addressing
 1349 allocation so not within scope of Te Whanganui-a-Tara. There may not be, but
 1350 it would be good to just confirm that.
 1351
- 1352 That could come in your reply, rather than responding to that now.
 1353
- 1354 O'Callahan: I've got a table at page-52 of my S42A Report. I don't think there's any others
 1355 in that camp. I don't think there's any others, but I will come back to you on
 1356 that.
 1357
- 1358 Chair: Thank you very much. Just one final one from me.
 1359
- 1360 I think you say in para-179, must be of your S42A, and I think also in your oral
 1361 presentation just before you talked about further economic analysis and a
 1362 quantitative cost benefit analysis be undertaken to support major hearings. By
 1363 that are you meaning that the Council might be presenting economic evidence,
 1364 or are you talking about a S32AA if there's further changes recommended?
 1365
- 1366 O'Callahan: The Council looking to present economic evidence.
 1367
- 1368 Chair: Thank you.
 1369
- 1370 [01.44.47]
 1371 Kake: There's a few submission points with respect to definitions and terminology
 1372 which you have commented on. This may be a question that's best asked this
 1373 afternoon with mana whenua, with Ngāti Toa as well, but I suppose just getting
 1374 some clarity in terms of where the discussion around definitions also does sit,
 1375 because there are terms that go throughout the whole entire plan. Just as an
 1376 example there are objectives under Te Whanganui-a-Tara and the Porirua
 1377 Waitua chapters, in particular I think it's just the first objectives under each
 1378 chapter which is slightly different with regards to the terminology of the mauri
 1379 and waiora, and how waiora is in one chapter but not the other. There was a
 1380 submitter who requested that the term 'mauri' is included in one of the Waitua

- 1381 chapters which was rejected; and perhaps that's a discussion that's better had
 1382 with respect to Whaitua committees.
 1383
- 1384 I'm just wondering in terms of your opinion as a plan user perhaps and how that
 1385 might be interpreted. Would it be beneficial having an advisory note, which there
 1386 are a number under each of those objectives, which explains what 'mauri' might
 1387 mean, and acknowledging that we might have a bigger discussion on this next
 1388 year under the objective stream.
 1389
- 1390 So, in your S42A one of the sub-issues that you have raised seeks to retain the
 1391 existing wording of the waiora reference I suppose and not including mauri in
 1392 Te Whanganui-a-Tara, because waiora is enough.
 1393
- 1394 O'Callahan: Sorry, are you able to take me to the section in my report. Sorry, I'm just getting
 1395 a bit confused.
 1396
- 1397 Kake: That's alright, so was I. There's different interpretations I suppose and this might
 1398 come down to an operational matter with respect to what is to fund under the
 1399 plan. I note that there are different definitions in the plan with respect to some
 1400 of these terms, under the interpretation section. Bear with me while I just find
 1401 the relevant part of your S42A.
 1402
- 1403 This is where I'm thinking it might be a wider discussion because you've got a
 1404 whole table on page-42 which requires quite an extensive discussion. On page-
 1405 43, paragraph 204, you've disagreed with one of the submitters requesting the
 1406 inclusion of the term 'mauri'.
 1407
- 1408 O'Callahan: Okay, right. Yeah.
 1409
- 1410 Kake: Really just wondering if that's something that can be addressed perhaps through
 1411 the objector's hearing stream, or if that's something that can be responded to
 1412 through a right of reply perhaps with further direction internally, or perhaps from
 1413 mana whenua. At the moment, I read them as quite different objectives.
 1414
- 1415 [01.49.38]
- 1416 O'Callahan: I think that's just a similar issue to the submissions that I was dealing with in
 1417 about paragraph-196, but I think that... has the plan change defined, or has
 1418 interpretation notes on it I think, or that's what the objective is, and is 'mauri'
 1419 already in the plan. I'm not sure. I just probably need to come back to you on
 1420 that sorry.
 1421
- 1422 Kake: That's fine. Thank you. I might have another question later.
 1423
- 1424 Supplementary to this and again it comes down to definitions – some of the
 1425 provisions requesting additional clarification in terms of – and this might be a
 1426 discussion for the rules actually just thinking of it now – the inclusion of
 1427 papakāinga in the plan, and it comes down to the activity in terms of stormwater
 1428 discharges. I suppose there are competing views with respect to unsettled
 1429 development or unplanned development – greenfield developments.

1430 Again I think this might be a topic for next year, but perhaps just having some
 1431 thought around the particular activity of prohibiting unplanned greenfield
 1432 development in certain areas where stormwater discharges aren't considered I
 1433 suppose.

1434
 1435 There's a few submission points but I think that might be better addressed, just
 1436 thinking of it now, through the stormwater topic.

1437
 1438 O'Callahan: There's a very large number of submissions to be with the greenfield areas and
 1439 the impact of the private activities, so I think it is best dealt with in the Hearing
 1440 Stream Four which is the stormwater topic.

1441
 1442 But, I can answer your previous question – sorry, I just needed a bit of time to
 1443 find the word. The word 'mauri' is defined in the operative plan already – so
 1444 that one is defined. I think when I was looking at the 'waiora' is that it's defined
 1445 in the note under the objective. So, the understanding of what is expected for
 1446 that term is in the plan.

1447
 1448 Kake: Supplementary sorry. The wording is slightly different when 'mauri' is excluded
 1449 from one of the objectives.

1450
 1451 O'Callahan: Correct. That's because they've been informed by mana whenua. Those
 1452 objectives were drafted either in consultation or by mana whenua.

1453
 1454 Kake: Okay, so they've omitted to exclude that term through this objective.

1455
 1456 O'Callahan: Say again.

1457
 1458 Kake: They've decided to exclude the term 'mauri' through the objective?

1459
 1460 O'Callahan: The note to the objective, yeah, potentially.

1461
 1462 Kake: Thank you.

1463
 1464 Stevenson: I'm interested in the economic evaluation. Thanks for the acknowledgement. I
 1465 think it's paragraph-110 or thereabouts, where you note the economic evaluation
 1466 to date has been fairly qualitative. And, I note your confirmation earlier that
 1467 further economic evaluation will be provided in subsequent hearing streams.

1468
 1469 I'm interested in the economic assessment to date. Is it fair to say that the S32
 1470 reflects the full economic evaluation that informed Plan Change 1, and any
 1471 changes to the provisions as a result? I couldn't find in the technical reports a
 1472 details economic evaluation.

1473
 1474 So that table in the S32 report, from about page-85 onwards. Fairly high level.

1475
 1476 O'Callahan: Yeah. I can explain the approach to the economics.
 1477 [01.55.00]

- 1478 A number of pieces of economic advice were provided or carried out during the
 1479 Whaitua processes. They received a lot of information of all sorts of technical
 1480 nature, including economics and informing their recommendations. That
 1481 information was used to make the recommendations and then those
 1482 recommendations, particularly around the objectives, which were really setting
 1483 the benefits and the costs, they were then taken into the plan change.
 1484
- 1485 So, there was no economic evidence or quantitative work done for the plan
 1486 change. It was a qualitative assessment drawing on the work that was done
 1487 through the Whaitua process, and just then comparing the options in terms of
 1488 there were options that were more or less... it's a pretty clear relationship
 1489 between improvements to water quality and to have those benefits which are
 1490 valued from an economic sense as well as from an environmental and cultural
 1491 perspective. They also have the higher you go in terms of water quality the more
 1492 costly it is when it's either for new activities or retro-fitting existing impacts.
 1493
- 1494 That's the way in which the approach in S32 was done, on a qualitative basis.
 1495
- 1496 Stevenson: In follow-up to that, are you expecting quantitative economic evaluation
 1497 specifically relevant to submitter concerns to come in future hearing streams?
 1498
- 1499 O'Callahan: Correct. That's what I'm hoping for. It's underway. I have not seen any outputs
 1500 yet.
 1501
- 1502 Just to clarify: I forgot. There were some narrow bits of economic evidence work
 1503 done for the plan change, which I just failed to mention in response to
 1504 Commissioner Stevenson. That was around looking at the costs for the waste
 1505 water improvements. In particular there were two timeframes that were tested.
 1506 Then there was some economic work that went into the financial contribution
 1507 provisions, but not in the sense of the work that was being commissioned now
 1508 is more broad than those bits of scope.
 1509
- 1510 Chair: Thank you very much. I think that concludes this section of the proceedings for
 1511 today. We will come back after the lunch break. Mr O'Brien, were you planning
 1512 to go through your topics one by one, or are you happy to address all of them
 1513 together?
 1514
- 1515 O'Brien: I was planning to address them all together.
 1516
- 1517 Chair: That's good. Maybe if we come back, because we have gone over. Is ten past
 1518 okay? Sorry, it doesn't give everyone a very long lunch break, but I hope that's
 1519 enough time, because we don't want to keep our submitters in the afternoon
 1520 waiting for too long.
 1521
- 1522 Mr Ruddock, is that okay?
 1523
- 1524 Ruddock: Yes. Thank you Madam Chair-person, that will be fine. We'll go for a short
 1525 break and come back at 1.10pm.
 1526

1527 Chair: Thanks very much.

1528

1529 [Lunch break taken – 01.58.42 – 02.22.05]

1530

1531

1532 **Greater Wellington Regional Council – Sam O’Brien and Dr Philippa Crisp**

1533

1534 O’Brien: Kia ora koutou. Ko Sam O’Brien tōku ingoa. I am a Policy advisor here at
1535 Greater Wellington Regional Council. As mentioned I have prepared the S42A
1536 Report for three topics in this Hearing Stream One.

1537

1538 Today I am also joined by Dr Philippa Crisp who has prepared expert evidence
1539 in relation to the threatened species topic. She’s online today – hopefully.
1540 Philippa if you’re there do you want to introduce yourself initially? Otherwise
1541 we can do that at the end.

1542

1543 Chair: Just because we’re running short of time, maybe we can talk with Dr Crisp after
1544 Mr O’Brien has presented.

1545

1546 Crisp: I’m unmuted now. Greetings.

1547

1548 Chair: Kia Dr Crisp. Welcome.

1549

1550 Crisp: Kia ora.

1551

1552 O’Brien: As mentioned, I will cover three topics today – the first being amendments to
1553 the air quality chapter. This topic is a region-wide topic. Unlike other provisions
1554 in PC1 it applies to the whole region and not exclusively to Te Whanganui-a-
1555 Tara and Te Awarua-o-Porirua Whaitua.

1556

1557 The second topic is beds and lakes of rivers chapter amendments – so this is also
1558 entirely made up of region-wide provisions.

1559

1560 And, the final topic is the schedules and threatened species objectives which
1561 includes both region-wide amendments and provisions that applied to the
1562 Porirua and Te Whanganui-a-Tara Whaitua.

1563

1564 My rebuttal evidence is a combined report covering the air quality and bed, lakes
1565 and rivers topics. There was no submitter evidence relating to the schedules and
1566 threatened species topic.

1567

1568 Starting with the air quality topic, as I mentioned these are region-wide
1569 provisions and they’re also all allocated to the Schedule 1 process. The key focus
1570 of these amendments was to ensure that the chapter was giving effect to the New
1571 Zealand Coastal Policy Statement, as well as existing RP objectives.

1572

1573 Under the operative of natural resource planning conditions within the air quality
1574 rules, use property boundaries to adverse effects, which did not provide

1575 [02.25.00] appropriate protections for the coastal marine area; and to address this, activities
1576 that were deemed inappropriate to the current CMA they were excluded by
1577 removing the coastal icon, or where the activity has a need to occur in the CMA
1578 the amendment was made to manage the effect in the Coastal Marine Area, as
1579 well as beyond the boundary of property.
1580
1581 At the same time other changes to the chapter were proposed and these changes
1582 were largely to provide the clarity the plan uses, or to address minor plan issues.
1583
1584 In terms of the main issues that arose through submissions, submitters sought
1585 that the coastal icon was reinstated for activities that have a functional
1586 operational need to occur in the Coastal Marine Area, and through the S42A
1587 Report I recommend amendments to address some of those concerns.
1588
1589 There also are several other issues raised with the suite of agricultural rules,
1590 water and wastewater rules and the climate change impacts of specific
1591 provisions. There were either no amendments, or minor amendments
1592 recommended in response to those issues.
1593
1594 There was only one piece of submitter evidence in relation to this topic, which
1595 was received from Wellington Water and they retain the position from their
1596 submission that specific reference to drinking water should be made in Rule
1597 R.35. I do not consider this necessary and recommended no changes to that
1598 through the rebuttal evidence.
1599
1600 Moving onto the beds, lakes and rivers topic, it is again all provisions that apply
1601 region-wide. The provisions in this topic are split between Schedule 1 and
1602 freshwater.
1603
1604 The proposed amendments are a collection of miscellaneous changes that seek
1605 to improve the effectiveness and efficiency of the chapter. These include
1606 amending the general conditions for better protection for indigenous birds
1607 scheduled in F2A and F2B.
1608
1609 Amending the new structures rule to limit the extent of the listed permitted
1610 structures; minor wording amendments to the extraction rules 132 and 133; and
1611 the inclusion of a new rule 151A for the ongoing divergence of river.
1612
1613 Looking at some of the key issues for this topic, submitters raised concern with
1614 the restrictive nature of the proposed amendments to the general condition (n)
1615 relating to the protections of scheduled indigenous bird species.
1616
1617 Wellington Water reiterated their position on that in submitter evidence.
1618
1619 I recommended minor changes to the S42A Report, but I did not consider any
1620 significant relief was required.
1621
1622 Submitters sought various amendments to Rule 128 that covers new structures
1623 in beds, lakes and rivers. Several submissions sought the inclusion of specific

1624 structures to give them permitted activity status. In contrast, other submissions
1625 sought that specific structures included in the rule were removed to remove the
1626 implement activity status, given the risk effects.

1627
1628 In their submitter evidence, Wellington Water sought that both pipes and
1629 pipelines were included in Rule 128, and that a definition of pipeline was
1630 provided. In my rebuttal evidence I recommended an amendment to provide a
1631 definition of pipeline for that rule.

1632
1633 The appropriateness of new diversion Rule 151A was a key matter of contention
1634 in submissions and in submitter evidence. Given this contention I will talk to
1635 this matter in slightly more detail now.

1636
1637 The concern highlighted is that the permitted activity status for an ongoing
1638 diversion rule does not allow the Council to decline an application or impose
1639 consent conditions. I do consider that new diversion can have significant adverse
1640 effects particularly associated with the land use consent that enables reclamation
1641 or other works. Consents for these works have a range of conditions to address
1642 those effects. These typically relate to maintaining streamflows, supporting
1643 development of river ecology and habitat, implementing fish passage and fish
1644 rescue, and limiting erosion and scouring effects.

1645
1646 For permitted activity status under this rule for ongoing diversions all of those
1647 conditions of the consent to establish diversion must be complied with.

1648
1649 Rule 151A seeks to avoid the consenting scenario, which after the term of a
1650 consent expires a consent holder has to apply for a water permit for a lawfully
1651 established existing permit diversion where there is no works required. And, this
1652 presents a difficult assessment for a consenting officer to determine what the
1653 effects of the activity are.

1654
1655 In addition, if the new application was declined it would require a further
1656 application for the works to reinstate the original course of the river, which if
1657 granted would likely result in significant respects on now established stream
1658 ecology and habitat.

1659
1660 [02.30.02]

1661 As outlined in my rebuttal evidence I consider that permitted activity status as
1662 the most efficient and effective option.

1663
1664 I do agree with the view provided in submitter evidence that preferences of mana
1665 whenua may not have been covered in the original consent, or may not be a
1666 matter that could be addressed through consent compliance and I therefore
1667 recommend that Schedule C, Mana Whenua Sites, are excluded from that
1668 proposed rule.

1669
1670 I also recommended that compliance with Condition J of the beds, lakes and
1671 rivers general condition needs to be achieved to meet this rule, and this condition
1672 states that the activity should not result in erosion or scour the riverbanks, or

1673 shall not result in flooding of any neighbouring property. This will ensure that
1674 there is a compliance mechanism should any respects of this nature arise as a
1675 result of the diversion, although I would consider that be unlikely.

1676
1677 I also note in submitter evidence several submitters sought a list of resource
1678 consents that would be captured by the new rule at the time of the expiry.
1679 Unfortunately the Greater Wellington Regional Council consent database is not
1680 able to determine specifically which consents would fall under the scope of this
1681 rule, particularly for consents granted for the NRP under a different rule
1682 framework.

1683
1684 The final topic is the scheduled and threatened species objectives amendments.
1685 This includes both region-wide amendments to the schedules and the
1686 introduction of nationally threatened species that give effect to the requirements
1687 of the NPS-FM, for those two PC1 Whaitua.

1688
1689 The provisions under this topic include adding threatened species and habitats
1690 in the planned schedules, as well as introducing new threatened species
1691 objectives for each Whaitua, as well as a definition.

1692
1693 The region-wide changes include new information to update schedules F4 which
1694 covers sites with significant indigenous biodiversity in a coastal marine area,
1695 and F5 which schedules habitats with significant indigenous biodiversity in a
1696 coastal marine area.

1697
1698 There is no submitter evidence in relation to this topic, however the key issues
1699 related to adding further species and values to ensure the consistency and
1700 accuracy of the schedules. I have recommended minor amendments in the
1701 section [02.32.29] across those issues.

1702
1703 Wellington International Airport have also sought further evidence regarding the
1704 accuracy of the mapped areas and schedules.

1705
1706 Dr Philippa Crisp has provided evidence in response to the submission and in
1707 response to other submissions on threatened species aspects of this topic. And,
1708 as I mentioned Dr Crisp is here today to answer any questions on those.

1709
1710 Finally, I will just note that Wellington Airport also raised in submissions that
1711 Schedule F2C had been misallocated in the S32 Report as a freshwater
1712 provision, and I address this through my S42A Report and recommend it as
1713 categorised to the Schedule 1 process.

1714
1715 Thank you panel. Dr Crisp and I are now able to take any questions.

1716
1717 Chair: Thank you very much Mr O'Brien, that was very clear.

1718
1719 Hello Dr Crisp, we can see you now.

1720
1721 Crisp: Good.

- 1722 Chair: Did you want to present separately Dr Crisp, or are you happy to take questions?
1723
- 1724 Crisp: I'm happy to take questions.
1725
- 1726 Chair: Thank you. We will see you would like to ask.
1727
- 1728 Kake: Thank you Mr O'Brien for outlining your key points. As you mentioned in your
1729 statement and in your evidence, the exclusion of Schedule C, with respect to
1730 sites of significance for mana whenua, it's been requested to be retained as part
1731 of the rule. I'm just wondering if you could clarify the rationale a little bit
1732 further, just with respect to that framework that you speak to in it, and it being
1733 perhaps addressed in other provisions under the plan.
1734
- 1735 O'Brien: What do you mean in terms of addressed in other provisions?
1736
- 1737 Kake: In your S42A at paragraph 55.
1738 [02.35.00]
1739
- 1740 I think it's copy and pasted throughout the report, in terms of the rationale.
1741 You've quoted 'higher order provisions' with respect to the rationale for
1742 excluding Schedule C. The rule, I suppose, is a permitted activity with respect
1743 to those general conditions. I suppose the request from submitters, mana whenua
1744 and in particular being mindful that those sites won't necessarily be considered
1745 under permitted activity status; so how would a plan user I suppose assess the
1746 effects on those sites?
1747
- 1748 O'Brien: Those general conditions apply across beds, lakes and rivers and Schedule C
1749 protections within those permitted activity rules, and that's generally the
1750 approach to vying for those sites.
1751
- 1752 Kake: Just a supplementary question:
1753
- 1754 If it's not part of the condition, is the expectation that it will be captured under a
1755 higher order provision, such as Policy 48 or Policy 19?
1756
- 1757 O'Brien: In terms of consultation that relates to those policies. In terms of conditions that
1758 relates to the rules themselves rather than any higher order policies.
1759
- 1760 Kake: Thank you. I might have something in addition after.
1761
- 1762 Chair: Shall we start with events of lakes and rivers topic and just have questions on
1763 those first, and then that way we're not jumping around for you Mr O'Brien. I
1764 have some questions on that topic. Would anyone like to go first?
1765
- 1766 McGarry: Just a couple of minor ones. One in paragraph-51, and you're suggesting
1767 changing the 'or' to an 'and.' Was that sought in a submission or is that a clause
1768 16 fixing an error?
1769

- 1770 O'Brien: It's not a clause 16 matter. It was in response to a general submission, and I think
 1771 it might have been Forest & Bird, in relation to providing extra clarity on that
 1772 rule. It's not a Clause 16 matter.
 1773
- 1774 McGarry: Secondly, just in the paragraph below, in terms of the submission from PF Olsen,
 1775 wanting to exclude forestry, really the issue is the disturbance in removal of
 1776 vegetation and the potential for sedimentation impacts, rather than the activity
 1777 itself. Is that your view?
 1778
- 1779 O'Brien: I think the wording relates to construction or disturbance. I think that was
 1780 something that was established when these rules came to the RP. It was quite
 1781 specific about those intending for those purposes.
 1782
- 1783 McGarry: It's specifically about disturbance and not any type of activity per se?
 1784
- 1785 O'Brien: Yes, correct.
 1786
- 1787 McGarry: Thank you.
 1788
- 1789 Chair: Mr O'Brien, general condition 5.4.4 on page-44 of Plan Change 1, should this
 1790 have the coastal icon. I know PC1 is only making that change in Condition N.
 1791 Should this condition have the coastal icon?
 1792
- 1793 O'Brien: Yes. I am fairly certain – and I actually noticed this recently as well – I think it's
 1794 just an error that just sometimes that coastal icon just gets missed of things. I
 1795 can double-check that, but I am fairly certain it should have the coastal icon.
 1796
- 1797 I think in the S32A Report it mentions that it does – the coastal icon.
 1798 [02.40.00]
 1799 I think it's just an error that it's been left off.
 1800
- 1801 Chair: In Rule 132, starting on page-48, I understand the reason for deleting 'all lake'
 1802 from Condition A. I think that Condition B does need to refer to the beds of lakes
 1803 and rivers, because it's just cross-referring to 5.4.4.
 1804
- 1805 O'Brien: Correct.
 1806
- 1807 Chair: It's just a very minor point, but in B it says "section 5.4.4" and whether that
 1808 should be a Clause 16 correction to condition, but a very minor point. I will just
 1809 leave that with you.
 1810
- 1811 Then same I think the coastal icon. I think it's missing from Rule 145.
 1812
- 1813 O'Brien: Correct. Same issue.
 1814
- 1815 Chair: New Rule 151A, is it correct that some of these diversions would have occurred
 1816 quite a long time ago?
 1817
- 1818 O'Brien: Correct.

- 1819 Chair: So this kicks in where the diversion has been in place for at least ten years and
 1820 it meets the conditions of the consent. In some of these older consents there may
 1821 not have been very many conditions associated with the diversion.
 1822
- 1823 My question was, have you looked at whether this rule would achieve a written
 1824 O14 which is Objective 14 about the natural character of natural wetlands, rivers,
 1825 lakes and their margins should be preserved and protected from an appropriate
 1826 use and development.
 1827
- 1828 Have you considered whether this provision would have appropriate regard to
 1829 that objective?
 1830
- 1831 O'Brien: Yes, I have considered that. It is a tricky one with those older consents. I accept
 1832 that the conditions may not have been giving effect to the latest and more
 1833 stronger direction through various plan changes. I still maintain that position
 1834 through our [02.42.55] and things that it is consistent with those objectives.
 1835
- 1836 Chair: Thank you. My last question on that is, I think you might have been involved in
 1837 the RPS hearings where there was quite a bit of discussion about daylighting of
 1838 streams and rivers and that came up into some policies in the decisions version
 1839 – I think like Policy Freshwater 3 and maybe 14. I have a list in here somewhere.
 1840
- 1841 Where a river, which I think under the RMA also includes a stream, has been
 1842 diverted for some time of development, is this rule saying that if that's happened
 1843 it's happened for at least ten years and then it will remain permitted, and despite
 1844 this new direction which might be coming in through the RPS, which is saying
 1845 daylighting should be promoted where practicable – which is I think the wording
 1846 – that for these older diversions it's in your view appropriate for that to be a
 1847 permitted activity?
 1848
- 1849 O'Brien: I think the key thing to note is that this only relates to structures. So, where there
 1850 has been any piping of a stream or anything like that, anything associated with
 1851 a structure, then this rule wouldn't apply and resource consent would still be
 1852 required. It wouldn't be a permitted activity.
 1853
- 1854 Chair: That is not associated with a structure – is that what you said?
 1855 [02.45.00]
- 1856 O'Brien: Yes, if it's associated through a structure it doesn't fall under this rule; so the
 1857 rule says that it is not associated with existing structures in Clause A and B on
 1858 that.
 1859
- 1860 Chair: So you're saying that the diversion of a stream or a river, aware that was needed
 1861 for a development, that wouldn't be associated with a structure?
 1862
- 1863 O'Brien: Sorry, just to clarify: where it is associated with a structure, say for example you
 1864 give, for a housing development, that wouldn't be captured under this new rule.
 1865 It wouldn't be permitted activity under [02.45.47] 1A. It would revert to the
 1866 general rule for diversion.
 1867

- 1868 Chair: And, we don't have that? That's not part within the scope of PC1?
1869
- 1870 O'Brien: Correct.
1871
- 1872 McGarry: If there's no structure, if we think about a diversion of a river that's been put
1873 into a different channel with no structure and it carries on, it's been there for a
1874 certain period of time, is there potential for any of these to move their position
1875 and then would it be a permitted activity to put the diversion back into the course
1876 that it was. I am not familiar enough with some of these examples to understand
1877 if there's potential for these diversions to shift naturally, say with a flood event.
1878
- 1879 O'Brien: So you're talking about the river naturally moves its channel back to an original
1880 course?
1881
- 1882 McGarry: Yeah. I haven't got any examples in my mind, so I'm not sure what...
1883
- 1884 O'Brien: If there was any requirement to move the channel or divert the channel and that
1885 required any earthworks or anything like that, then that would require resource
1886 consent and then you consent to undertake those works.
1887
- 1888 McGarry: So you would need a consent to put it back to the original diversion channel?
1889
- 1890 O'Brien: Yes.
1891
- 1892 McGarry: There would be a trigger then?
1893
- 1894 O'Brien: Yes.
1895
- 1896 Stevenson: Again on new Rule 151A, I am interested in the scale of permitted activity that
1897 may come about through this proposed rule. Do you have an idea of how many
1898 of these current damming and diversions there are across the region, and in
1899 follow-up to that, whether any of those consented damming and diversions
1900 require ongoing compliance with conditions – for example, monitoring and
1901 reporting?
1902
- 1903 O'Brien; As I mentioned, unfortunately we don't have that information in terms of the
1904 number of consents. In terms of monitoring that tends to only occur where
1905 there's an issue has arisen and there's a breach of resource consent conditions.
1906 As well, I would just like to make a clarification that the damming and diverting
1907 of water is the title of that set of rules; so for this provision it doesn't relate to
1908 any damming. So it's just for diversion.
1909
- 1910 Stevenson: Thank you. In follow-up to that, are there any diversions that you're aware of
1911 that have not become naturalised. You note in your 42A Report that some of the
1912 diversions may have become naturalised. Do you know if there are any that
1913 haven't?
1914
- 1915 O'Brien: I am not familiar with that. I could look into that. I guess in my report that
1916 reference naturalises that's what we would expect after that period of time, with

1917 the appropriate consent conditions, that it would be naturalised. That's the
 1918 expectation.
 1919

1920 Stevenson: Thank you. One final follow-up.
 1921

1922 When you were looking at the activity status for these diversions, was there any
 1923 work done to evaluate the benefits and dis-benefits of different activity status?
 1924 For example, for a 151A proposes permitted activity status. Was there a look at
 1925 [02.50.00] restricted discretionary or other activity status that might achieve the objective
 1926 – Objective 14?
 1927

1928 O'Brien: Any other activity status, other than permitted, would run into the same
 1929 consenting issue, where when you're actually looking at that, evaluating that
 1930 consent, then it's difficult to determine what you're actually assessing at that
 1931 point. I guess I have considered the other alternatives, potentially controlled
 1932 activity, but again that would still run into that same issue.
 1933

1934 Wratt: A follow-up really to the questions both from Commissioner Nightingale and
 1935 the last questions.
 1936

1937 Is it possible there could be probably an older scheme where there was a
 1938 diversion into, for example, a pipeline, or a concreted channel or something like
 1939 that, which is nothing like the natural form of the river? Would that come under
 1940 here?
 1941

1942 O'Brien: Again that would relate to a structure so it wouldn't come under this. Just to
 1943 clarify: it would be the status quo which is a discretionary rule.
 1944

1945 Wratt: So this only applies where you've got a diversion that is in a natural state?
 1946

1947 O'Brien: Yeah, it depends what you define natural as, but yeah.
 1948

1949 Wratt: Thank you.
 1950

1951 Chair: Thank you Mr O'Brien. We have Ngāti Toa Rangatira with us and we don't
 1952 want to keep them waiting, so what we might do, if it's okay with you, if see if
 1953 the panel has got any questions for Dr Crisp, so then we can let Dr Crisp go.
 1954 Then if it is okay if we can come back and keep talking with you on air and the
 1955 schedules after our next two submissions. Is that okay?
 1956

1957 O'Brien: Yep, that's fine.
 1958

1959 Chair: Kia ora.
 1960

1961 Ngāti Toa: We're happy to wait if you want to continue. We're in no rush if it helps.
 1962

1963 Chair: Thank you very much.
 1964

- 1965 Kake: Mr O'Brien, this is in addition to some of the questioning I was asking earlier.
 1966 With respect to Schedule C and some submission points, noting that sites that
 1967 aren't scheduled won't necessarily be considered under these particular rules of
 1968 sand and gravel extraction for an example is a permitted activity.
 1969
 1970 The rationale I suppose, and just wanting some clarification from you with
 1971 respect to why Schedule C is noted in some parts of the rules and then it's
 1972 excluded in other parts. An example I think might be under 128, and then Rule
 1973 132J and consider Schedule C.
 1974
 1975 So, just some clarity in terms of consistency around why you may or may not
 1976 consider scheduled sites or not.
 1977
 1978 O'Brien: Thank you. I guess the rationale for why some rules and where some rules
 1979 reference Schedule C sites. Obviously I wasn't involved with the development
 1980 of those provisions. I've only been involved with making these amendments. It's
 1981 something I can look into in further detail if you would like, to understand why,
 1982 and potentially look at and review the submission as well, to relook at that.
 1983
 1984 Kake: Thank you. That would be helpful. It is paragraph 81 just in terms of reference
 1985 for you. Just following on from that, in that same paragraph, and it is with respect
 1986 [02.55.00] to Rule 132, the assessment against those scheduled sites, if it's to do with adding
 1987 pipelines or cables then the assessment against those scheduled sites have to
 1988 occur, is that correct, in terms of how it's worded?
 1989
 1990 I just wonder if there's any definition that might be provided with respect to the
 1991 extent of a pipeline or a cable that can go through that scheduled site.
 1992
 1993 O'Brien: Yeah, I would need to look at that.
 1994
 1995 Kake: Thank you.
 1996
 1997 Chair: I just have one more on the beds, lakes and rivers while we are here and then
 1998 perhaps we might move on from that topic.
 1999
 2000 Rule 128, Federated Farmers have raised a point that the words that are struck
 2001 out here, "except a structure permitted by Rules 125..." and so on, that that
 2002 clarified that this rule doesn't apply in those provisions. Is that clarification
 2003 helpful, that it couldn't lead to potential confusion? I guess I'm just interested
 2004 in why you think that should be deleted?
 2005
 2006 O'Brien: It's to do with the way that Rule 128 has been amended. In the operative version
 2007 it says "including" which opens it up to a wider range of structures. That was
 2008 required in there to show that those rules have applied over this general new
 2009 structures rule. Now that we are removing that and specifying the specific
 2010 structures, that's no longer needed, because anything that comes under this Rule
 2011 128 is specified – so there wouldn't be any confusion about which rule it would
 2012 fall under.
 2013

- 2014 Chair: It's clear what's in it so you don't need to say. Okay.
 2015
 2016 I've just noticed a typo in there, which is hopefully picked up. At Clause 16 it's
 2017 got "structures or a structure associated..." just a minor.
 2018
 2019 Am I understanding the operation of this rule correctly? If someone wanted to
 2020 place one of these structures listed here in say a coastal estuary, and this is a
 2021 freshwater rule, so it wouldn't apply at all anywhere in the CMA. So if someone
 2022 wanted to do that they couldn't rely on this permitted activity rule; they would
 2023 need to apply for consent. I'm not sure what the activity status would be, but it's
 2024 not under this rule?
 2025
 2026 O'Brien: Correct.
 2027
 2028 Chair: We might leave that and we might ask if there's any questions of Dr Crisp, so
 2029 we don't keep Dr Crisp waiting.
 2030
 2031 I had one question. Did anyone else?
 2032
 2033 McGarry: One was just a correction on your evidence Dr Crisp, just in paragraph 13 of
 2034 your evidence. You've just put "freshwater quality or quality." I'm assuming
 2035 you meant quantity for one of those? Paragraph 13, first line.
 2036
 2037 Crisp: "Provisions to give to freshwater quality..." yes, that's a typo. Should be
 2038 quantity.
 2039
 2040 McGarry: Shall I amend that without you?
 2041
 2042 Crisp: Yep.
 2043
 2044 McGarry: And, then the quantity only relates to Porirua doesn't it?
 2045 [03.00.00]
 2046 Crisp: I might check what Sam O'Brien says in relation to that.
 2047
 2048 McGarry: Just you've written it as 'general [03.00.15] PC1. That's okay.
 2049
 2050 My question and it might be more of a planning one, but I just want to understand
 2051 why in the freshwater environment it doesn't include at risk species; whereas if
 2052 you look at Policy 11 of the NZCPS and the coastal environment, it's quite clear
 2053 that it's all threatened and at risk species. But, here we're using just present. Can
 2054 you explain to me the difference?
 2055
 2056 Crisp: Yes. That's because the freshwater threatened species have been driven by the
 2057 NPS for freshwater management, and they specify in there that it should be only
 2058 nationally threatened species. They spell that out.
 2059
 2060 McGarry: Just on that one Mr O'Brien, are there any ones here that are both freshwater and
 2061 coastal and then we have sort of an inconsistency in definitions in terms of giving
 2062 effect to Policy 11 and then having the freshwater focus on just threatened? Is

2063 there any implications in terms of any of the provisions that maybe have been
 2064 marked with a coastal icon?
 2065
 2066 I can leave that one with you to have a wee bit more of a think about.
 2067
 2068 O'Brien: Yeah, I might just consider that.
 2069
 2070 McGarry: Thank you. That was my only one for Dr Crisp.
 2071
 2072 Chair: I know you were involved with the RPS as well, the hearings that finished last
 2073 year, or earlier this year. Similar to Commissioner McGarry's question, to me I
 2074 was trying to see whether I understood the different classifications and how they
 2075 flow through from the RPS into the regional plan. I was finding it a bit hard to
 2076 follow.
 2077
 2078 Policy 47, just by way of quick example, in the RPS, talks about maintaining
 2079 long term populations of threatened or at risk declining species. I appreciate
 2080 some of this terminology will flow through from the NPS-IB.
 2081
 2082 Would it be possible for you, perhaps maybe working with Mr O'Brien, to again
 2083 provide us with a wire diagram or cascade, so we can understand the flow-
 2084 through of what is in the proposed RPS into the Regional Plan? If I have put that
 2085 clear enough what we are asking for.
 2086
 2087 I found it hard to understand the protection recognition given at that RPS level
 2088 and then how that comes through into the Regional Plan.
 2089
 2090 Crisp: Sure.
 2091
 2092 Chair: Then once we have seen that we may have some questions which we might have
 2093 to pick up in the final integration hearing stream.
 2094
 2095 Anything else for Dr Crisp?
 2096
 2097 Thank you very much Dr Crisp. We might move to our submitter Ngāti Toa
 2098 Rangatira and then Mr O'Brien we'll come back and talk with you about air
 2099 quality, and just in case anyone has any other questions on the threatened species
 2100 topic. Thank you.
 2101 [03.05.00]
 2102 **Te Rūnanga o Toa Rangatira**
 2103
 2104 Welcome Te Rūnanga o Toa Rangatira.
 2105
 2106 Ngāti Toa: [Nil audible - 03.05.13]
 2107
 2108 Chair: Kia ora. Thank you very much for joining us today. Would you like us to do
 2109 some quick introductions so you know who we are, or did you hear?
 2110
 2111 Yes, kia ora. Okay.

- 2112 Ko Dhilum Nightingale tōku ingoa. I am chairing. We are all on both the
2113 freshwater and non-freshwater panels.
2114
- 2115 McGarry: Kia ora Sharon McGarry.
2116
- 2117 Kake: Tēnā rā tātou. Tuatahi, tēnei te mihi ki a koutou kua tae mai nei. Pai ki te kite i
2118 a koutou ki raro i tēnei kaupapa whakahirahira o mātou, te mana o te wai. Tērā
2119 pea te hikinga o te mauri pea. Ko Puawai Kake tēnei, he uri nō Ngāpuhi me Te
2120 Roroa, engari, ahakoa tēnei nō Te Taitokerau i hoki aku mahara ki taku tipuranga
2121 ki te taha o tōku Nana nō konei, nō Porirua, Tītahi Bay pea. Nō reira, nōku te
2122 whiwhi ki te hakarongo ki ō koutou hakaaro, tēnā koe.
2123
- 2124 Stevenson: Tēnā koutou katoa. Ngā mihi nui kia koutou. Ko Sarah Stevenson tōku ingoa.
2125 Planning Commissioner on both the Schedule 1 and freshwater panels.
2126
- 2127 Wratt: Tēnā koe Gillian Wratt. Commissioner for both parts of the hearings.
2128
- 2129 Chair: Kia ora and welcome. Just to acknowledge the years of work and commitment
2130 that you've had into the Whaitua development process. It's a real privilege to be
2131 here and looking at some of the fruits of all of that hard work. So, welcome and
2132 thank you for your submission. Please over to you as to how you would like to
2133 present.
2134
- 2135 Falkner: Ka tū ake au tuatahi tēnei te mihi atu ki a koutou ngā pou rangatira kei runga i
2136 te paepae nei ki waenga i ā koutou mahi kei waenganui o te taiao, o te tangata,
2137 o ngā hāpori o te rohe. Nei rā te mihi ki a koutou katoa. Tuarua, tēnei nā te mihi
2138 ki ngā mana whenua, whānau, ko Taranaki Whānui, ko Te Ātiawa mai rā anō ki
2139 Wairarapa. Tēnei te mihi atu ki a rātou hoki mō ō rātou awhi, tautoko o te
2140 kaupapa ki waenganui i a tātou. Ko wai au? Ko Rawiri Falkner tēnei ki te Toa
2141 Pou Toa Matarau ki Te Rūnanga o Toa Rangatira. Ki te taha o tōku māmā ko
2142 Ngāti Toa, Ngāti Whakāue, Ngāti Raukawa ki te Tonga. Nō reira, tēnei te mihi
2143 atu ki a koutou katoa.
2144
- 2145 Thank you very much for having us here today. My name is Rawiri Falkner. I
2146 am the Pou Toa Matarau for Te Rūnanga o Toa Rangatira. I have been in that
2147 role for about a year. It is very good to be here and I look forward to sharing
2148 with you some of the aspirations that we have regarding Plan Change 1. It is
2149 lovely to see you all.
2150
- 2151 Can I say from the start, I was just commenting to Robert and Jada while we
2152 were waiting that I think this is the first time I've ever appeared before an all-
2153 women panel and it's awesome. It's lovely. Anyway we won't get into the whole
2154 gender thing, because I will get myself in trouble before we even start.
2155
- 2156 It's lovely to be here and thank you very much. I will let these two super-stars
2157 introduce themselves.
2158
- 2159 McLean: Kia ora Rawiri, [03.09.34] McLean tōku ingoa. I am the principal adviser for Te
2160 Rūnanga o Toa Rangatira. Lovely to be here today with you all.

2161 Jada: Tēnā koutou, ko Jada tōku ingoa. He uri ahau nō Ngāti Toa Rangatira, and I
2162 work at the Rūnanga as a resource management planning assistant.

2163 [03.10.05]

2164
2165 Falkner: Thank you very much. I will just kick straight into it. One of the things I would
2166 like to do is, at the start, as I said earlier, I would just like to acknowledge and
2167 support the involvement of all of the other mana whenua partners that are
2168 involved in this process. We have all had the opportunity to co-design alongside
2169 the Council in many different ways, and I would just like to acknowledge the
2170 input that they have had into this plan, but also the ability for the Council to
2171 enable that to be the case. As you very well know, we didn't land here over the
2172 course of a couple of months; we landed here after years and years of great work
2173 done by the staff and kaimahi of the councils, and the commitment and the
2174 dedication of many of our mana whenua partners. So, I just wanted to
2175 acknowledge that before we kicked off.

2176
2177 I managed to listen to some of the earlier kōrero as well, and I think it's important
2178 to make an overarching comment before we get into our submission.

2179
2180 There has been much spoken about politically where plan changes like this
2181 currently sit. I don't want to get into too much of the politics behind that, but I
2182 do want to say that I commend Greater Wellington for their continued
2183 perseverance in trying to explore and navigate this pathway moving forward,
2184 because regardless of what political motivations there are the work still needs to
2185 happen and the job in front of us is still great.

2186
2187 I just wanted to support the Council in their endeavours to continue with this
2188 planned change process and recognise that that is a very bold and aspirational
2189 thing to do, but it is one that we as Ngāti Toa Rangatira one hundred percent
2190 support. I just wanted to make that comment at the front end.

2191
2192 Obviously the speaking notes, there's a few things that I want to go through, and
2193 I would be happy to share those with the panel as well, if that is something that
2194 the panel would like.

2195
2196 Those of you who know me know I'm not good at sticking to what is written in
2197 front of me, so I might start deviating a little bit here and there, but just come
2198 with me on the ride, because it will land somewhere that I'm sure makes sense
2199 to everybody by the time we finish.

2200
2201 Also I don't anticipate that we will be needing all of this time, but happy to have
2202 questions as we come to the end, because we are very, very supportive of this
2203 process.

2204
2205 Te Rūnanga o Toa Rangatira, we are the mandated iwi authority for Ngāti Toa
2206 and have had our settlement in place now for over ten years. In 2014 our
2207 settlement was signed. As I said, we also support the aspirations of our iwi
2208 partners and the Council as well.

2209

2210 As outlined in our submission, we commend Greater Wellington for completing
 2211 work to give effect to Te Awarua-o-Porirua and the Whanganui-a-Tara Waitua
 2212 recommendations.

2213
 2214 The National Policy Statement for freshwater management, although going
 2215 through changes, is also part of this process as well. Te Awarua-o-Porirua and
 2216 Te Whanganui-a-Tara are at the heart of the heritage and values that Ngāti Toa
 2217 Rangatira have.

2218
 2219 The importance of the harbours are recognised in our legislation and through the
 2220 Ngāti Toa Rangatira Claims Settlement Act 2014. The health of Te Awarua-o-
 2221 Porirua and the Whanganui-a-Tara have been negatively impacted by human
 2222 activity for many years, including reclamation and discharges of contaminants,
 2223 to the point where environment values have been severely degraded and
 2224 unacceptable levels of sediment and other contaminants continue to flow into
 2225 the harbour resulting in poor water quality and chronic environmental effects.

2226
 2227 I just want to pause there for a minute and comment that at the heart of
 2228 everything we sit here in front of you to talk about, is that. When we look at the
 2229 natural environment around the areas that we are responsible and obligated to
 2230 protect and to enhance for current and future generations, we have seen ongoing
 2231 degradation that is unacceptable.

2232
 2233 Plan Change 1 is not the silver bullet that's going to fix that, but it's a big part of
 2234 us turning the waka into the right direction and starting to navigate those waters
 2235 that allow us to be more authentically and meaningfully connected to the things
 2236 that matter for Ngāti Toa Rangatira and Plan Change 1 is a big part of that.

[03.15.05]

2237
 2238 That's my first example of deviating from my notes. I will get back to it. Aroha
 2239 mai. It's a good deviate.

2240
 2241 We are here today to not only recognise the past but to also recognise the future.
 2242 Our people are physically and spiritually well, and culturally thriving. We will
 2243 know that the mauri of Te Awarua-o-Porirua is restored.

2244
 2245 Many of our whānau have a lived experience of interacting with the harbour.
 2246 Many of our people speak to the fact that they would go and harvest kai out of
 2247 there when they were young and be able to catch mullet and do different things
 2248 to manaaki visitors who came to our rohe in an appropriate way.

2249
 2250 We also have generations of kids who have never known that to be a thing; who
 2251 have never ever had the opportunity to have an intimate and authentic connection
 2252 with the harbour. That saddens me, that we have children... well, not only
 2253 children now but adults who have never had the chance to be connected to the
 2254 harbour.

2255
 2256 For Te Whanganui-a-Tara, Te Mahere Wai o Te Kāhui Taiao, it is to be
 2257 implemented alongside. That's that lovely doorstep there, that's in front of Jada.
 2258 It outlines the values of mana whenua and establishes the assessment framework

2259 for improving the mana of freshwater which is directly linked to the Plan Change
2260 1 provisions.

2261
2262 We would like to acknowledge the mahi that has been undertaken to complete
2263 the Whaitua processes and the introduction of those through Plan Change 1.

2264
2265 The Rūnanga supports the proposed objectives, policies and rules of the plan in
2266 relation to both Te Whanganui-a-Tara and Te Awarua-o-Porirua. The planned
2267 change provisions involve a level of ambition to achieve measurable
2268 improvement towards waiora by setting new targets and standards for coastal
2269 water, nationally threatened freshwater species, ground water habitats, water
2270 quality and ecological processes of rivers.

2271
2272 Te Rūnanga o Toa Rangatira supports positive regulatory outcomes, which
2273 include limits, target attributes, dates, coastal water objectives and providing
2274 clear direction for the restoration and freshwater health.

2275
2276 Our high level submission is grounded in detailed input and involvement from
2277 GW. The submission of Te Rūnanga o Toa Rangatira reflects our efforts towards
2278 the long term restoration of Te Awarua-o-Porirua. The planning for the
2279 restoration began in 2011 when the Porirua City Council and Wellington City,
2280 Greater Wellington and Te Rūnanga o Toa Rangatira published the detailed
2281 harbour and catchment strategy and action plan. This was the first initiative by
2282 agencies to tackle environmental degradation in the harbour.

2283
2284 Many of the regulatory recommendations of the WIP are included within the
2285 policy and raw framework of Plan Change 1. In 2019 Ngāti Toa issues a
2286 statement for the Whaitua Implementation Programme and articulated a vision
2287 for the iwi and the harbour calling for a partnership model that honours Te Tiriti
2288 o Waitangi and the settlement. It states: “Our vision is that mauri or life force of
2289 Te Awarua-o-Porirua is restored and its waters are healthy so that all those live
2290 in the region, including Ngāti Toa and our manuhiri and visitors can enjoy, live
2291 and play in our environment and future generations are sustained physically and
2292 culturally to realise this vision.”

2293
2294 It is Ngāti Toa’s expectation that initiatives to restore our waterways are based
2295 on a partnership model that honours the Te Tiriti, the Ngāti Toa Claim
2296 Settlement Act, our current partnerships and responsible councils, and a
2297 recognition of our relationship with our natural environment.

2298
2299 The vision remains central to the restoration of Te Awarua-o-Porirua.

2300
2301 Plan Change 1 focuses on the planning provisions for the catchment, alongside
2302 their statutory provisions and important non-regulatory restorations of our
2303 harbours.

2304
2305 I want to further emphasise in that point that this a regulatory process and as
2306 important and as critical that is to achieve the outcomes we want to see, there
2307 are a whole lot of non-regulatory processes that are equally as important for us

2308 to be able to enable and achieve the authentic connection that we have. We often
2309 don't talk about the non-regulatory stuff enough.

2310 [03.20.00]

2311 So whilst the recognising the need to have statutory tools in place that allow us
2312 to do the good stuff, we as Ngāti Toa Rangatira have seen the meaningful impact
2313 non-regulatory provisions can have in enabling and sustaining long term gains
2314 in harbour health – not just harbour health but environmental health.

2315
2316 In 2019 the Whaitua Implement Plan recommended the restoration of riparian
2317 margins along waterways within the catchment. Since then, Porirua City Council
2318 has rolled out a comprehensive riparian planting scheme with the support of
2319 central government funding. Te Rūnanga o Toa Rangatira has also undertaken
2320 the planting of thousands of trees and plants in the catchment.

2321
2322 The important matter is for iwi and councils to sit down and map out what
2323 success looks like and the councils taking responsibility for building it into the
2324 LTP and planning system to ensure there is dual accountability for each other.

2325
2326 For this purpose, we are currently working towards a harbour accord for Te
2327 Awarua-o-Porirua with Great Wellington, Porirua City Council and Wellington
2328 City. The harbour accord sets out the vision, objectives and principles for the
2329 restoration of the harbour and it will enable joined up resourcing functions,
2330 actions and work programmes to be prioritised as a collaborative approach.

2331
2332 In terms of Plan Change 1 we intend to attend hearing streams two and four to
2333 support the detail of the topics of freshwater, stormwater and freshwater to
2334 present evidence from some of the other mahi if we also have the opportunity to
2335 do so.

2336
2337 As I spoke to, the non-regulatory functions are very important and we continue
2338 to explore avenues for them to be utilised that adds value to these outcomes.

2339
2340 I thank you for the opportunity. Sorry, we thank you for the opportunity to speak
2341 to day to our submission, as well as the engagement that has been supported by
2342 Te Rūnanga o Toa Rangatira, to be involved throughout this entire plan change
2343 process alongside the Greater Wellington Regional Council and others. We look
2344 forward to continuing this work regardless of the outcome of this Plan Change
2345 1 Process. We are happy to answer any questions you have. If they are difficult
2346 and curly ones they'll answer them. If they're really easy and simple questions
2347 I'll answer them.

2348
2349 That's where we are at today. Thank you very much. It's clear that we support
2350 Plan Change 1, and what Plan Change 1 is attempting to achieve, for the reasons
2351 as set out in our summary and our submission.

2352
2353 Ngā mihi nui. Kia koutou.

2354
2355 Chair: Kia ora. Thank you very much. I shall see who has questions. Kia ora
2356 Commissioner.

- 2357 Stevenson: Kia ora. Thank you Rawiri. A very clear submission and kōrero. I am interested
2358 in the non-complying status that Ngāti Toa o Rangatira are proposing instead of
2359 prohibited activity status for unplanned greenfield development. I acknowledge
2360 your submission outline of the concerns you have around historical land uses.
2361
2362 What would you see as appropriate considerations or criteria to be looked at
2363 through a non-complying activity status, if that were indeed carried forward?
2364 What are your concerns and what would need to be considered through that to
2365 address them?
2366
- 2367 McLean: Is this in relation to unplanned greenfield development?
2368
- 2369 Stevenson: Aē.
2370
- 2371 McLean: Discharge of stormwater, is that right?
2372
- 2373 Stevenson: Aē.
2374
- 2375 McLean: Yeah, in relation to that question I guess we thought those stormwater issues
2376 would be covered in the hearing in the future, but I guess ideally you want to
2377 have it planned, right – whatever development that’s going on in your region
2378 ideally it’s properly zoned at a district or territorial authority level. That’s what
2379 I would say would be the key, and a joined up thinking between Greater
2380 Wellington and the Territorial Authorities about where that development should
2381 occur.
2382
2383 So hopefully we won’t need to ever use that rule. If we’ve got properly planned
2384 development as opposed to unplanned that would be just what I would say.
2385 [03.25.05]
- 2386 Falkner: I also acknowledge in the question that we haven’t in our submission, although
2387 requesting a non-complying rather than prohibitive, we did not provide an
2388 adequate level of detail to be able to give confidence of what non-compliance
2389 looked like. So I acknowledge that there was a shortfall in that with regards to
2390 our submission.
2391
- 2392 McGarry: Just a supplementary one on that, because it was a question I had as well. I just
2393 wondered for the next hearing whether you could have some thoughts about
2394 maybe some other words. A word that came to mind rather than “restricting” for
2395 me was avoiding, because avoiding kind of sits with that direction of heading
2396 towards a non-complying activity where you need to demonstrate minor or less
2397 than minor effects, or not be contrary to the objectives of policies. So obviously
2398 you will think more about that for the next hearing stream, but that’s one
2399 particular work I would like you to consider, is avoiding rather than restricting.
2400 It’s just a bit stronger.
2401
- 2402 McLean: Yeah, we can look at that and we can prepare something ahead of the hearing
2403 next year.
2404
- 2405 McGarry: Thank you.

- 2406 Falkner: A good pointer too to what that could be as well Commissioner.
2407
- 2408 Kake: Just in addition to that, and I am expecting that will be discussed next year as
2409 well under that particular hearing stream, but we have had some submitters talk
2410 about definitions as well. One definition which might be useful to consider next
2411 year is the use of papakāinga and where that might apply in respect to particular
2412 whenua and how and why this particular rule would apply, or what conditions
2413 might be applied to that.
2414
- 2415 In addition to that wider topic of kupu, we did have submitters and the reporting
2416 officer did comment on the use of kupu mauri meta waiora. I just wanted to get
2417 your stance I suppose. I know we can go into wānanga on this, but the
2418 clarification in terms of one of the objectives, in the Whaitua for Porirua I think
2419 the kupu mauri has been excluded. Is there a particular reason for that, without
2420 going into a big rabbit hole? What your whakaaro might be with respect to
2421 waiora versus mauri.
2422
- 2423 Falkner: I can give a generic response before Robert maybe will be able to give a specific
2424 response. We seem mauri as something that has a broader possibility, so it
2425 applies to many, many things and not just wai. Mauri in and of itself is a
2426 commonly used term within legislation to speak to the spiritual or the health and
2427 wellbeing of anything. We see waiora as being a more specific reference to the
2428 health and wellbeing of water. Water specifically rather than... so, mauri is
2429 applicable to water as well, but waiora being a term that we would commonly
2430 associate with a specific wellbeing of wai only.
2431
- 2432 With regards to the second part of the question and the exclusion, Robert might
2433 be able to, or Jada might be able to provide some light.
2434
- 2435 McLean: Yes, I think we would see the Whaitua report to be read in conjunction with the
2436 Ngāti Toa statement, so kind of like together. As you heard from Rawiri, it was
2437 in the Ngāti Toa statement which outlined that vision for Te Awarua-o-Porirua,
2438 and very much that vision is about that restoration of the Māori, or that life force
2439 of the harbour.
2440
- 2441 So, I think it is included in a way if you kind of view these together – but I know
2442 this one is bigger.
2443
- 2444 Falkner: It's tuākana teina.
2445
- 2446 McLean: Yeah, we should have made this one look bigger.
2447
- 2448 Kake: Thank you. Just in addition, through the Chair, a question was also asked earlier
2449 [03.30.00] in the day with respect to planning mechanisms and tools, mana whakahono to
2450 be exact. Ngāti Toa Rangatira have Treaty Settlement legislation and there are
2451 schedules in the plan that do reference statutory acknowledgements.
2452
- 2453 Have you though, I suppose, in terms of the effect of some of these activities
2454 that aren't scheduled. You've got the sites in Schedule C. You've got Ngā

2455 Taonga Nui a Kiwa in Schedule B, and then statutory acknowledgements in
2456 Schedule D.

2457
2458 In terms of process and planner readability, how would you navigate I suppose
2459 in terms of those particular tools and documents? We know consultation fatigue
2460 is a big thing. If I was to go to a planning provision in a rule in particular that
2461 said to only consider sites of significance scheduled under Schedule C, is that
2462 adequate? Is there more in your perspective with respect to an activity or a site
2463 I suppose is the question?

2464
2465 Falkner: We look at those three provisions that you spoke to – so the Schedules B, C and
2466 D, as a collective of things that are useful to ensure that an activity at a particular
2467 site is adequately recognised through one or more of the provisions that are set
2468 out.

2469
2470 I think the answer to the question is yes, we do feel they're adequate. The proviso
2471 on that though is that it can be quite a complex process when it's an activity at a
2472 particular site that has overlaps between all of those different schedules.
2473 However, that's not uncommon for a lot of other provisions within the plan as
2474 well.

2475
2476 So I think yes it can be clumsy but that is the case for many of the other
2477 provisions as well.

2478
2479 I think the important thing to remember is that it's the intent and the reason why
2480 those mechanisms are there, rather than its practical application. So if it's
2481 something that you're wanting to do, that's in or near a site of significance, it's
2482 the intent by which that has been identified that's the important first
2483 consideration.

2484
2485 I would always encourage people not to look at the minimum requirement you
2486 would have to do to pass an activity, but look at the intent of why that's there
2487 first. I think those three areas capture the intent of what we are trying to achieve
2488 in an appropriate way.

2489
2490 McLean: If I may add, I think the plan really recognises the harbour as a site of
2491 significance. In the past sites were looked at as pā sites or archaeological sites,
2492 urupā and so forth. But, the plan clearly, as collective with the schedules, plus
2493 the statutory acknowledgements together, as Rawiri is saying, that together the
2494 significance of the harbour with the waterways, the catchment, is front and
2495 centre. We see that on an everyday basis with our relationship with the
2496 consenting team at Greater Wellington Regional Council. We can see that
2497 practically. We can actually see that on a daily basis and how that works in
2498 practice, which is a really great experience to be honest.

2499
2500 Chair: I'm really interested in that last comment. Can you talk a little bit more about
2501 what that's like day-to-day, working with the Regional Council? Te Mahere
2502 Wai, which you've got there, is a really amazing example of what seems to be

2503 really impressive collaboration between yourselves and Taranaki Whānui, and
2504 into developing a mana whenua Whaitua Implementation Programme.

2505
2506 I'm interested in knowing is that continuing now that we've got the PC1
2507 provisions and now we've got this important and challenging job in front of us,
2508 listening to submitters and making recommendations.

2509 [03.35.00]

2510 Does that work continue past this stage and into implementation and also if you
2511 can talk a bit more about your work, as you said, with Regional Council at that
2512 consenting assessment side?

2513
2514 Falkner: I'm happy to have first crack at the answer to this question.

2515
2516 The work never stops. So now that we're into this PC1 process, the amount of
2517 work that we do together with Greater Wellington continues. One of the things
2518 that we do as an organisation is we sit down and say, "What is it that is important
2519 to us? What do we aspire to achieve as an iwi when it comes to restoration of
2520 the natural environment and those things that community matter, and where does
2521 that aspiration and commitment line up with the partners and organisations that
2522 we work alongside?"

2523
2524 When we sit down and say a clean, healthy, vibrant Te Awarua-o-Porirua, who
2525 else wants that? You know what – who else wants that is Greater Wellington
2526 Regional Council.

2527
2528 So, if we want the same thing that you want, what are the things that we can do
2529 together to ensure that those things become a visible, tangible, authentic change
2530 through consenting and regulatory processes like we are doing today; but also
2531 the things that we can do non-regulatory that help us breathe life into those things
2532 that are important.

2533
2534 I don't look to a consent process as a way to achieve the aspirations that we
2535 have. If I want a healthy harbour I don't go, "Let's make sure we process a
2536 consent really well," because I don't believe that that's the mechanism we can
2537 use to achieve that. So I don't look for really strong, broad environmental
2538 outcomes at a strategic operational level through the eyes of a consent. That
2539 might upset some of the consent people, but what I do is say, "How do we make
2540 sure that whilst we do all of that stuff we are not losing sight of the stuff that we
2541 want to see." Because we haven't done that well up until now. I mean, the
2542 degradation of the harbour up until this point is a good example.

2543
2544 So, for me, I kind of say we've got a whole lot of regulatory things that we need
2545 to do and they're important, so I'm not trying to undervalue them. But,
2546 processing consents is not something I see adding a lot of value to making the
2547 harbour cleaner. Processing consents is making sure that we've got the adequate
2548 regulatory processes in place to ensure that we're not making it worse. But, I
2549 look to the hearts and minds of regulators, communities and iwi to achieve the
2550 really big outcomes.

2551

2552 I genuinely believe Greater Wellington are on that journey too. In fact I know
2553 they are, because the conversations we have are very aligned.

2554
2555 I'm not for one minute trying to belittle the role of resource consenting. I mean,
2556 that stuff is important. But, I don't think it's the answer to the questions that we
2557 have, which is how do we get really good environmental outcomes.

2558
2559 McLean: A great example of that is like the other shore wetlands being built in Porirua,
2560 such as the one currently being constructed up in Cannon's Creek. That wasn't
2561 driven by consent at all. It was driven like Rawiri was saying – these shared
2562 aspirations. The same with the wetland at Elston Park – that would be in that
2563 same camp. There was no consent requirements out of this. All the riparian
2564 planting would be the same. Joint project on enabling fish passage with Greater
2565 Wellington. So once you kind of add it up.

2566
2567 But, yeah, I think we do consents pretty well too. And, what triggers often the
2568 consent is something to do with waterways. If it's waterways in the catchment
2569 Jada will see that consent.

2570
2571 But, coming at those consents as opportunities and often the biggest
2572 opportunities is with land owner and with the relationship with landowners;
2573 [03.40.05] because often otherwise you never meet these people.

2574
2575 So that's where we see the opportunity is in the relationship space.

2576
2577 Stevenson: A related question Rawiri. You mentioned the more strategic perspective you
2578 take and not diving to consenting level. Ngāti Toa Rangatira's submission noted
2579 the importance you place on the cultural health of water bodies, specifically kai
2580 moana and mahinga kai. From a plan monitoring perspective what do you see as
2581 some of the important indicators of progress in those areas and how would Ngāti
2582 Toa Rangatira be involved in developing those, or have you been?

2583
2584 McLean: That's a very good question actually. We've got a cultural health monitoring
2585 programme that we run for the harbour. We've got five main sites, mahinga kai
2586 sites that we go back on a regular basis. That's with the support of ESR who
2587 happen to be camped in Kenepuru not far away. With the support of ESR we
2588 monitor sediment, water and shellfish. We are expanding into micro-plastics,
2589 sea grass and other indicators, and also into the waterways.

2590
2591 We've had that programme now running for some years, and that definitely
2592 highlights that for the harbour largely the shellfish is not edible. It should not be
2593 publically consumed.

2594
2595 Then alongside of that we have a kaitiaki monitoring framework which more
2596 looks at atua based indicators, like the feeling of in your puku, of a place. Often
2597 that feeling often aligns with the more western scientific indicators.

2598
2599 That's been positive. I don't know if Jada or Rawiri want to comment on that
2600 programme.

- 2601 Falkner: Just further to that, I think it's important to put programmes like monitoring, as
 2602 as important as they are, to be able to provide baseline information to be able to
 2603 then understand changes over time.
 2604
- 2605 They're very much at the back end of what we should be doing if they don't
 2606 include how do we then influence changes to behaviour. Just saying it's bad and
 2607 just going "Actually it's worse than last year," is not actually in and of itself
 2608 enough. We need to be able to say if we know it's not, "What are the nett
 2609 contributions to that? How can we work with Council and others?"
 2610
- 2611 I see monitoring as being nested into a broader suite of things to help us
 2612 understand and improve our connection to waterways.
 2613
- 2614 McGarry: Just related to that one – you're really just monitoring and documenting a
 2615 decline. Have you seen any of your measures head in a positive direction, or are
 2616 you just monitoring the decline at this stage?
 2617
- 2618 McLean: In areas we have seen improvement. A great example that was at Whitirea where
 2619 the shellfish at [03.44.22] Bay is very much in a deteriorated state, maybe ten
 2620 years ago. But, since the cattle and sheep have been removed from Whitirea and
 2621 we have seen revegetation of the hillsides... actually, I shouldn't advertise this
 2622 too loudly actually, but we have had such a positive restoration of the shellfish
 2623 in that bay.
 2624
- 2625 [03.45.00] It's great to see how changes in land use and the removal of cattle can have such
 2626 a positive effect on not just the shellfish but the coastal dunes and so forth – as
 2627 soon as after you remove cattle off the land and the revegetation of the
 2628 indigenous forest. I think that's a real positive example.
 2629
- 2630 As I say, we didn't actually want to advertise that, because this is now public
 2631 information. Anyway.
 2632
- 2633 Falkner: Was that bell for us to finish up was it?
 2634
- 2635 Kake: I know we have run out of time, but again just tēnei te mihi anō ki a koutou kua
 2636 tae mai.
 2637
- 2638 I think this actually might be better, just thinking about it now, better addressed
 2639 next year in terms of those action plans. Just out of interest, with respect to the
 2640 monitoring framework that you spoke about, those attributes, those tohu,
 2641 [03.46.02] taonga species. Because there is wording in the Regional Plan with
 2642 respect to what mahinga kai and taonga species are, and so how that might be
 2643 given effect to from your perspective. That would be quite interesting. Tena
 2644 koutou.
 2645
- 2646 Falkner: Can I just make one last comment. Don't bell me again. I don't want you to
 2647 double-bell me. I'll get in trouble. I don't want to be the first person to be double-
 2648 belled.
 2649

2650 Just in closing, I just wanted to offer the following comments.

2651
2652 When my moko gets older, ten or fifteen years from now, he's going to come to
2653 me and say, "Koro, didn't you use to run the environmental team at the
2654 rūnanga?" He'll say to me, "Why is the harbour not healthier now? What did
2655 you do Koro to make the harbour better? Or, did you do nothing?" My answer
2656 to my moko, I would want it to be, I know that the harbour is not as healthy as
2657 we want it to be, but one of the things I did was work alongside the councils and
2658 developed plan changes and initiatives that I hand on heart believed would leave
2659 the legacy that I want to leave, that you may not enjoy, but I genuinely hope that
2660 your mokos will enjoy the benefit of.

2661
2662 PC1 is a critical tool for the toolbox in order for me to confidently be able to say
2663 to my moko, "We did the best we could to create the legacy of turning this
2664 around, so that you and your grandchildren could have a connection to the
2665 harbour like my grandparents did, that we missed out on. That's how important
2666 this stuff is to us, and that's why it is so important to have Plan Change 1 and
2667 others in the toolbox for us to be able to pull out and use in a way that adds value,
2668 so that I can say it to my mokopuna hand on heart, "Your Koro tried his best to
2669 get this done." Tēnei te mihi.

2670
2671 I just wanted to say you've got a lot in front of you and it's a big challenge. I just
2672 wanted to commend you and thank you for your time, because I know, I've sat
2673 in that seat before and I know how much this thinking can consume your life.
2674 So I thank you for taking the opportunity to lean into this process and develop
2675 the best possible outcome we can for our communities. I say with the deepest
2676 sincerity that I thank you very much for the time that you're going to dedicate
2677 to us, because it's not an easy journey. It's one that's fraught, but I thank you
2678 very, very much from the bottom of our hearts for your time.

2679
2680 Tēnei te mihi atu ki a koutou katoa. Kia ora.

2681
2682 Wratt: I don't have any further questions for you. My colleagues have asked you plenty.
2683 I would just like to say thank you very much for sharing your vision,
2684 commitment and the work that you're doing. Thank you. Kia ora.

2685
2686 McGarry: I'm not going to let you go like that Ra. You do really well on the other side of
2687 the table. I didn't think you actually answered questions, I thought you just asked
2688 them. I wasn't going to let you go that quickly.

2689
2690 I just wanted to touch on economics and the perspective from the rūnanga on
2691 that. There has been quite a bit of submission and comment that there needs to
2692 be more quantitative economic evidence put forward in terms of the benefits of
2693 what PC1 generally is offering.

2694 [03.50.05]

2695 I just wondered, from a te ao Māori perspective what you think that kind of
2696 quantitative economic information could give us, or what the limitations might
2697 be if we head off down that road?

2698

- 2699 Falkner: Thank you Commissioner McGarry. We save the big questions for the end, right.
 2700
 2701 If we are speaking economics with regards to dollars and cents, or if we are
 2702 speaking economics with regards to broader social benefit as well as dollars and
 2703 cents, I believe there is a need for quantitative data, to be able to inform the cost
 2704 and benefit of the stuff that we do, but it can't be the only measure. It can't be
 2705 the only measure, because one of the ways that we have fallen over is we have
 2706 too rigidly put stuff into a box that's not fit for purpose and been able to measure
 2707 and articulate the true cost and benefit of an activity. That's not to say that
 2708 quantitative information and economics isn't important, because it is.
 2709
 2710 Within the rūnanga we are constantly at battle with ourselves, and that we have
 2711 economic drivers that may be inconsistent with the environmental outcomes that
 2712 the same organisation has. So we are continuously looking at the balance
 2713 between the economic drivers of success, or the commercial drivers of success,
 2714 and the success that we have as an organisation around the importance of
 2715 ecosystem health and restoration etc.
 2716
 2717 I believe they're both important and I believe that we don't do enough of it to
 2718 be able to be fully informed around what the benefit of the quantitative
 2719 information and the benefit of the analysis. But, at the same time, that's a big
 2720 question to answer.
 2721
 2722 I mean you go down that process and it can just become huge; and so I wouldn't
 2723 want anything that allows us to lose sight of the obligations we have, which is
 2724 the hearts and minds as much as the qualitative and the raw information for want
 2725 of a better term.
 2726
 2727 But, a very important point Commissioner, that I think is going to be something
 2728 that you're going to be continuously asking yourselves to unravel over the next
 2729 however long this goes for.
 2730
 2731 McGarry: Aroha mai. Now that you have mentioned economic analysis and the
 2732 frameworks within which we might look at costs and benefits, is that an aspect
 2733 of economic evaluation that from a te ao Māori perspective might be more
 2734 relevant than just dollars and cents? I don't want to lead you with examples.
 2735
 2736 Falkner: Can we come back to you on that? Is that okay? I understand the question. Off
 2737 the top of my head I don't have an answer, but I'm happy to come back to you,
 2738 if that's okay, with an answer.
 2739
 2740 Chair: Kia ora. Thank you so much. Before you go, I'm really interested – being mana
 2741 whenua for both Whaitua and we heard Mr Corry the CEO talking about how
 2742 the two processes are sort of run with some differing timeframes. There might
 2743 have been some overlap but they were sort of run as separate processes, separate
 2744 Whaitua committees and other stakeholders involved. But, you were there at
 2745 both, in both, very involved in both.
 2746

2747 There must have been organic kind of learning from each process and also
 2748 adding the dimension of working closely with Taranaki Whānui and Te
 2749 Whanganui-a-Tara as well, which would have added another interesting and
 2750 dimension too.

2751
 2752 The question is, a very unique perspective being so closely involved in both
 2753 [03.55.00] Waitua and the outcome is now, as I said, a set of provisions before us. Has
 2754 that been really challenging to be involved in both processes, or has it actually
 2755 enriched and has it been really helpful being involved so closely in two Waitua?
 2756

2757 Falkner: The answer is the latter. It's very enriching. Anything that has a resource
 2758 implication is challenging because there are limited resources that we have
 2759 available to do ad hoc or periodic things. So we've built capability based on the
 2760 work programme ahead of us. Anything that comes into that, like a Waitua
 2761 obviously requires more resourcing, so there was the adaptation to that as well.
 2762

2763 Both Waituas, even though we were involved, were very distinctly different.
 2764 Porirua Harbour has a very different list of catchment attributes that the
 2765 Wellington Harbour would have as well. Even though they were the same in
 2766 regards to being a Waitua, they were very different in the way that we
 2767 participated.
 2768

2769 But, one thing we have always done is gone into these processes with what can
 2770 we do as an iwi to support the Council and the stakeholders to achieve the best
 2771 possible outcome? So what is our contribution to that?
 2772

2773 We have got a very good relationship with Taranaki Whānui. You may hear
 2774 things to the contrary but it is very good. At the same time it's about maintaining
 2775 that independence that's important, whilst also supporting the broader outcomes.
 2776 Because, it's actually not about us: it's about the environment and it's about the
 2777 taiao – which sometimes we let ourselves get in the way.
 2778

2779 Our approach has always been when it comes to a Waitua, what is it we can do
 2780 to enhance or add value to the outcome that everybody is wanting, and we have
 2781 found that to be a very useful process.
 2782

2783 Waituas are new. No-one had ever done them. It's not like we got the play book
 2784 and said, "That's how you learn. That's what you wouldn't do." We had to learn
 2785 as we go. There were parts of it that were clumsy. That's the reality. But, I think
 2786 we learnt and adjusted over time, so that if we were going to do it all again now
 2787 then we would do it differently and it would be more aligned.
 2788

2789 It was definitely a useful exercise to be involved with, because we did bring a
 2790 consistency to the approach as well. Very, very useful conversations had.
 2791

2792 Chair: Thank you very much. I think those were all the questions we had. Kia ora. We'll
 2793 see you again in future hearing streams.
 2794

2795 **Forest & Bird – Ms Downing**

2796 I think Ms Downing is joining us online from Forest & Bird. Kia ora. Hi Ms
2797 Downing.

2798
2799 Downing: Hello. Kia ora koutou.

2800
2801 I've had to hole up in the airport, so hopefully there are no sound issues. Please
2802 let me know if there are and I can look to migrate somewhere else.

2803
2804 Chair: I think we can hear you okay. There's a little bit of a delay on the video, but
2805 that's okay we can hear you.

2806
2807 Thank you very much. Sorry to keep you waiting. Over to you.

2808
2809 Downing: Thank you. Not a problem. It was very interesting hearing the discussions
2810 beforehand. I hopefully shouldn't take too long. I am just hoping to briefly
2811 address you on legal submissions filed for Forest & Bird on the 17th of October,
2812 and just an outstanding matter, which is the activity status for Rule 151A.

2813
2814 Forest & Bird acknowledges there have been some slight improvements
2815 recommended by the S42A Report writer, but we still seek discretionary activity
2816 status.

2817
2818 Primarily the inability to decline or otherwise set different conditions in my
2819 submission won't achieve...

2820
2821 [End of recording 04.00.00]

2822
2823

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2824
2825 Downing: ... a higher order direction. I have listed these specific policies from the NPS-
2826 FM at paragraph 19 of my legal submissions.

2827
2828 Fundamentally, permitted activity status relies on conditions of consent being
2829 adequate, which may not be the case specifically for the older consents. I
2830 acknowledge the question put my Madam Chair to the S42A Report writer about
2831 some of the older consents, which may have been granted under a completely
2832 different framework; and would also add to that, they could have been granted
2833 at a time when less was known about the environment – for example, fish species
2834 that were present. In some cases newer technologies enabled better identification
2835 of species that might have been present.

2836
2837 The other point that was produced in the legal submissions is around climate
2838 change and unknowns – for example, related to biosecurity.

2839
2840 The ability to reassess the consent and whether conditions remain appropriate or
2841 fit for purpose is even more important with these unknowns – for example, there
2842 may be a proliferation of pest fish, but we won't know until it happens.

2843

2844 Forest & Bird’s understanding is also that water races are captured by this
2845 activity, or this rule I should say, and it's not clear what the implications of that
2846 could have.
2847
2848 In my submission there could be diversions to warrant reconsideration as a
2849 discretionary activity – for example, it might be more appropriate in ten years’
2850 time that there’s piping or an alternative method.
2851
2852 Those are the only key points that I wish to speak to. I’m happy to answer any
2853 questions.
2854
2855 Chair: Thank you very much. Commissioner Wratt, Commissioner Stevenson, any
2856 questions for Ms Downing?
2857
2858 Stevenson: Thanks Ms Downing. I’m not sure quite where to look, but rest assured my
2859 attention is on you.
2860
2861 Forest & Bird’s submission indicated that the timeframe for reaching the target
2862 attribute states, so 2040, may not comply with the NPS-FM. I am interested in
2863 an expansion of the ‘may not’ reference there. Would you consider, for example,
2864 2033 as a date for interim targets to be set? What measurable improvements
2865 would you want to see by that time?
2866
2867 Sorry, there’s a lot in that question, so feel free to answer in parts.
2868
2869 Downing: I’m not sure if that was a provision for this hearing stream. I haven’t prepared
2870 for the specific question. I am wondering if it would be okay – Forest & Bird
2871 doesn’t anticipate bringing a lot more experts to the next hearing stream, so I’m
2872 wondering if we could address that in the next part.
2873
2874 Stevenson: Absolutely. Thank you.
2875
2876 Following from that, a question that I think is relevant to what you have opened
2877 with, Rule 151A – so the proposed permitted activity status for existing
2878 divergence.
2879
2880 You may have heard, if you were online, I was interested in whether officers had
2881 compared the pros and cons of different activity status for that activity.
2882 [00.05.05]
2883 Downing: Yes, I did catch that.
2884
2885 Stevenson: Does Forest & Bird have a preference for an activity status and what matters
2886 would you want addressed through any consent process if there were to be one?
2887 So what matters of discretion, for example, do you think could be reserved?
2888
2889 Downing: Sorry, was that for Rule R151A still?
2890
2891 Stevenson: Yes.
2892

- 2893 Downing: Our position is still that it should be discretionary, particularly as we don't have
 2894 enough detail as to those 75 existing consents. When you did ask that question I
 2895 was thinking about another way to cut it, and it could be that certain diversions
 2896 of lesser concern, and I can't think of an example off the top of my head, could
 2897 appropriately be recast as restricted discretionary, with I guess of course
 2898 indigenous biodiversity as a matter of discretion, potentially biosecurity, and a
 2899 matter of discretion regarding mana whenua values.
 2900
- 2901 Wratt: With a follow on question there – one of the responses that I'm hearing from the
 2902 Council officers is the difficulty of actually addressing any, I guess, change that
 2903 might come out of having to go through a consenting process. What sort of
 2904 actions would you see as being the sort of actions that could be taken if there
 2905 was a requirement for it being a discretionary activity?
 2906
- 2907 Downing: At the least, I appreciate the issue... so, for example if land use is changed so
 2908 much that it wouldn't naturally be physically feasible to re-divert a stream, in
 2909 that instance it would seem onerous.
 2910
- 2911 I guess the other hypothetical we're thinking of is where the community,
 2912 including mana whenua, may want to change the course. That would require a
 2913 decline potentially with discretionary activity status. I guess something less
 2914 extreme would be the ability to just double-check that the conditions of consent
 2915 are fit for purpose and they're still providing for fish passage; or otherwise, if
 2916 the passage of fish isn't an issue, that we're still ensuring that any populations
 2917 aren't being affected, again worst case scenario by proliferation of pest fish
 2918 species that come into that.
 2919
- 2920 Wratt: Could you not address that with a restricted discretionary approach rather than
 2921 the full discretionary?
 2922
- 2923 Downing: Yes. Yes we could. I think provided it's got the right matters of discretion. It
 2924 would still be able to. There would be that ability to revise the consent conditions
 2925 or to add new conditions as appropriate.
 2926
- 2927 Just as I was saying that: in terms of this hypothetical [09.22] rule, I guess
 2928 another matter of discretion that might be helpful would be around natural
 2929 character.
 2930
- 2931 Wratt: Is that something that Forest & Bird would be prepared to give some more
 2932 consideration to – is what the restricted activities might be?
 2933
- 2934 Downing: Yes, absolutely. I could provide that within a timeframe that suits the panel.
 2935
- 2936 Wratt: I will hand over to our Chair. Thank you very much.
 2937 [00.10.00]
- 2938 Chair: Thank you Ms Downing. We haven't set a timeframe for the officers' right of
 2939 reply for this topic, but what I think we will do is, we will talk about this. We
 2940 just need to obviously give anyone who would want to comment on any
 2941 proposed RD or provision for example that you wanted to suggest, to ensure that

- 2942 there was time for people to consider that, and also the officer in the right of
 2943 reply. We will discuss that as a panel and if we think that that might be helpful
 2944 we will issue a minute.
- 2945
- 2946 Downing: Thank you.
- 2947
- 2948 Chair: I was also wondering if you had thought about this provision and consistency
 2949 with the policies we were looking at in the RPS around promoting the
 2950 daylighting of streams. I appreciate Mr O'Brien's comments about how this
 2951 activity rule wouldn't apply where the diversion was associated with a structure,
 2952 but you might of course have some division with an urban development where
 2953 there isn't a structure, there isn't anything fixed to the land, but there's a still a
 2954 diversion stream that's needed for an urban development. And you've got the
 2955 RPS saying that you need to be thinking about how you can promote and enable
 2956 the daylighting of streams.
- 2957
- 2958 So, I was wondering if this proposed Rule 151A is actually appropriate in light
 2959 of that higher level direction, and if that was something you had thought about?
- 2960
- 2961 Downing: It wasn't until today. I think my submission would be that an activity status isn't
 2962 appropriate in light of that policy direction – just of course because of the
 2963 inherent restriction of it. It's just precluded from being considered if it can go
 2964 ahead without the oversight of a consent.
- 2965
- 2966 Chair: Thank you Ms Downing.
- 2967
- 2968 McGarry: Ms Downing, just reading through the documentation, it's my understanding that
 2969 there's not an exhaustive list of all of these diversions that would be permitted.
 2970 That's your understanding?
- 2971
- 2972 Downing: Yes. Correct.
- 2973
- 2974 McGarry: If more work was done to discover what all 75 look like, do you think there
 2975 could be an opportunity where some could perhaps be considered appropriately
 2976 permitted activities, and those that perhaps there's not as much certainty around
 2977 or potential for effects that might be more than minor, are we just being a little
 2978 bit too blunt?
- 2979
- 2980 Downing: I appreciate that. Yes, the approach we are taking could be seen as overly
 2981 cautious. I guess until we know the specific detail, I guess that's when Forest &
 2982 Bird would be more comfortable and be more open to considering less activity
 2983 status to address diversions.
- 2984
- 2985 McGarry: But in the absence of that, you would be wanting to have the ability to decline
 2986 obviously?
- 2987
- 2988 Downing: That's right. I guess again that sounds really strong, but more so the ability to
 2989 reassess those conditions and revise them if necessary.
- 2990

- 2991 Chair: Thank you Ms Downing. We don't want you to be missing a plane that you need
2992 to be catching, are you still okay?
2993
- 2994 Downing: I am still okay, thank you. I've got an hour.
2995
- 2996 Chair: I think then maybe just one more very quick one. This issue of scope – and I
2997 don't know if you were listening in before – this is the Lake Wairarapa values -
2998 [00.15.00] threatened species. Forest & Bird had a submission point on this, about
2999 indigenous fish diversity being listed as a value of Lake Wairarapa to ensure
3000 those values can be protected. I think that was supported from a technical
3001 perspective by Dr Crisp. But then there was this question mark about scope.
3002
- 3003 I'm not sure that there is a scope issue because these are region-wide provisions,
3004 these schedules. They're not specific to the two Whaitua.
3005
- 3006 Did you have any view on that?
3007
- 3008 Downing: We looked at it, but I guess when we assessed what we really needed to divert
3009 energy into, we thought... I understand EDS might address you on it, so I don't
3010 want to step on their counsel's toes.
3011
- 3012 When you look at how it was inserted, it's not clear that there's scope. But given
3013 that there are a number of other provisions which are applying across the Natural
3014 Resources Plan and it not limited to Whaitua, it's easy to form the view that it is
3015 within scope, or there isn't a scope issue with it.
3016
- 3017 Chair: Thank you. I'm not aware of any... I guess if we did recommend that was
3018 included in that schedule, and I think it's Schedule A2, if we did recommend that
3019 was included I couldn't really see how someone might say if they had known
3020 that was being proposed they would have submitted on it. I guess it's a question
3021 about whether there could be any flow-on from that amendment that a submitter
3022 might have wanted to comment on. But that might not be a very fair question to
3023 ask you.
3024
- 3025 Downing: No, that's fine. I agree. I don't really see how given there's the fact that it's not
3026 just purely dealing with the two Whaitua, and it was dealing with broader
3027 provisions, would have put the public on notice that other things could change.
3028 I think it would be quite hard to argue prejudice – if that makes sense.
3029
- 3030 Chair: Yes, that makes sense. Thank you.
3031
- 3032 Kake: The submission from Forest & Bird, just looking at paragraphs 19 through to
3033 21/22 with respect to financial contributions, there is some preference in there I
3034 suppose with respect to how wording within the plan might direct compensation,
3035 minimisation, offsetting [18.32].
3036
- 3037 Perhaps if you come back to future hearings next year, because it seems to be a
3038 bit of a theme and a topic, what that framework might look like in a bit more
3039 detail from Forest & Bird's perspective, and how you might envisage that

- 3040 working at an operational level given the constraints under the regulatory
 3041 framework and just quoting the NZCPS and the NPS-FM which is drafted in
 3042 your submission.
 3043
 3044 If you could come up with an example and perhaps this is the new Rule 151A
 3045 that you use as an example, how that might be considered in the plan. I don't
 3046 know if you will be able to answer that right now because I know that you're in
 3047 between flights. Your legal submissions are only addressing Rule 151A.
 3048
 3049 Any thoughts on that at this stage?
 3050
 3051 Downing: Sorry, could you repeat the paragraph that you said this submission related to?
 3052 [00.20.00]
 3053 Kake: In Forest & Bird's submission on page-5 there's a few paragraphs that speak
 3054 about financial contributions and the position of Forest & Bird at that point. I'm
 3055 just wondering, because there have been a few questions that have arisen today,
 3056 and I'm not sure if you've heard all of them, but the position of Forest & Bird,
 3057 in terms of how financial contributions are for the purpose of offsetting.
 3058
 3059 Downing: Yes, unfortunately I won't be able to answer that one on-the-fly. It would be
 3060 good to give a more considered response, as it relates to offsets and
 3061 compensation. If I may kick that to touch I would appreciate that.
 3062
 3063 Chair: Thank you very much Ms Downing, I think that was all that we had. I appreciate
 3064 your time and look forward to talking with you again in future hearing streams.
 3065
 3066 Downing: Thank you so much for having me.
 3067
 3068 Chair: We're sorry we are running overtime, but we would like to talk to Mr O'Brien
 3069 about the air topic, and also possibly schedules. We might have a few more
 3070 questions on the schedules. Thank you Mr O'Brien. Sorry to change the order
 3071 of things.
 3072
 3073 I will perhaps start with air. Can you just confirm for me – let's take Rule 1. If
 3074 this is not a permitted activity rule, if this is not taking place in the CMA, does
 3075 that default to the activity status in Rule 42?
 3076
 3077 O'Brien: Yes, I think it's Rule 142 – the catch-all rule.
 3078
 3079 Chair: And it's doesn't matter that Rule 42 has a coastal **icon** [22.55] as well – that's
 3080 just saying that it applies also in the CMA, but it applies also...
 3081
 3082 O'Brien: Correct.
 3083
 3084 Chair: I think that's the same with Rules 3, 28 and 33?
 3085
 3086 O'Brien: Sorry what was that question?
 3087
 3088 Chair: I think it's the same default for Rules 3, 28 and 33, that if they're not occurring.

- 3089 O'Brien: Correct.
3090
- 3091 Chair: Can you clarify? There's a statement – have you got the S42 Report handy?
3092 There's a statement which I didn't follow on page-16 in part E, which is right at
3093 the very back of the S42. Page-16 is talking about these air provisions. "This
3094 amendment permits minor discharges outside of industrial premises that are not
3095 managed by the plan." I am not really sure what that means.
3096
- 3097 O'Brien: The way the air quality chapter works is that it identifies a rule for all of the Act
3098 discharges that we would want to seek to regulate. But, I guess a discharge
3099 includes anything really – from the smallest spraying or anything like that.
3100
- 3101 The way the chapter works is it goes through all discharges that we would
3102 envisage could cause any concern and has a rule for that. The catch-all rule is
3103 for where permitted activity status isn't reached, or it's another discharge on
3104 industrial trade premises.
3105
- 3106 Chair: So, if it's a discharge from an industrial trade premise then that's dealt with
3107 elsewhere in a different provision, and it's not the default in 42?
3108
- 3109 O'Brien: Yes. It would be covered under whatever rule the activity had.
3110
- 3111 Chair: Did anyone else have any questions on air?
3112
- 3113 McGarry: Mr O'Brien, there's some concern adding a coastal icon and putting it all in the
3114 CMA. It just seems to open up quite an extensive permitted activity rule, and
3115 I'm not convinced that there's not potential for contamination. Because if we
3116 think about it, we're not just talking about the coastal environment here, we're
3117 talking about the coastal marine area – so we're talking about the inter-tidal
3118 zone. What we see around the country is people doing sanding of boats and that
3119 kind of thing in that area and it is very difficult to contain the contamination that
3120 ends up usually in the sand and then washes into either stormwater or into the
3121 harbour. And I would have thought we were heading in 2024 into more dedicated
3122 facilities for that kind of thing to occur. Even biosecurity issues from just
3123 cleaning hulls in the water and things like that, are things that we're sort of
3124 moving away from those practices.
3125
- 3126 So, I'm just wondering here what the potential is for more than minor effects in
3127 the coastal marine area – of somebody pulling up their boat on the beach and
3128 then proceeding to sandblast their hull.
3129
- 3130 O'Brien: I guess it depends obviously on the activity and whether the conditions would
3131 appropriately manage that. There's all sorts of other conditions on these
3132 activities.
3133
- 3134 I guess in terms of I would have to look at that specific example you're giving,
3135 and look at whether those effects... it's not something that's been raised through
3136 submissions, but yes, I see your point and I could look into that specific case.
3137

- 3138 I guess we did it on a case-by-case for each rule and determined looking at each
 3139 rule, and whether it's likely to apply in the CMA. I could look into that further
 3140 if you would like.
- 3141
- 3142 McGarry: I'm just aware of most facilities now would have a resource consent or
 3143 something held and have proper capture facilities for any run-off or anything.
 3144
- 3145 I guess the other aspect is, it's kind of treating all of the environment with the
 3146 same sensitivity as the coastal marine area. Would you think that the coastal
 3147 marine area is more sensitive say than a land-based operation?
 3148
- 3149 O'Brien: Yeah, absolutely.
 3150
- 3151 McGarry: I guess the other element that it brings into me is the potential for the public
 3152 health and safety, when you're trying to not erode any access to and along the
 3153 coast. If somebody is doing that kind of activity, say on a beach or on a
 3154 foreshore, then you've got that potential there to sort of affect public access and
 3155 public use of that area.
 3156
- 3157 I'm just thinking of some other examples I can think of in New Zealand where
 3158 there's been quite a lot of case law about this type of activity being undertaken
 3159 in the coastal marine area. One of those you might want to look into is up in
 3160 Northland. There's a Mr Schmuck is his name. There is quite a lot of case law
 3161 of undertaking this type of abrasive operations in the CMA and the impacts not
 3162 only on the coastal marine area but on public access and enjoyment of the coast.
- 3163 [00.30.00]
- 3164 O'Brien: Yes. I guess I would note, like I said before, we've removed the coastal icon for
 3165 a lot of these activities so it doesn't make it a permitted activity. It comes under
 3166 that catch-all rule, which then you would evaluate those effects. It's only the
 3167 cases in which we've determined there's a need for that in the coastal marine
 3168 area, and maybe where we've identified that there could be an additional
 3169 amendment – to in the example that you've given, maybe address some of those
 3170 effects.
 3171
- 3172 McGarry: Have I got you wrong, because I thought your amendment was to reinstate the
 3173 coastal icon?
 3174
- 3175 O'Brien: For that particular activity yes, but generally across the chapter it's doing the
 3176 opposite.
 3177
- 3178 McGarry: I will leave that with you, maybe for a bit more thought. Thank you.
 3179
- 3180 Wratt; A question around specifically Rule 34, but it may be broader than that. I see
 3181 you're removing the coastal icon from that. I guess I have two questions really.
 3182 One was around removing the coastal icon. You've got boats cruising up and
 3183 down the coastal marine area. Is that not a mobile source of emissions in the
 3184 marine CMA?
 3185
- 3186 O'Brien: Yeah, that is. That would be a mobile source emission.

- 3187 Wratt: So, if that's not a permitted activity in the coastal marine area, having removed
3188 that...
- 3189
- 3190 Chair: Commissioner Wratt, I think it's been reinstated.
- 3191
- 3192 Wratt: Okay. My apologies. That's fine. Thank you.
- 3193
- 3194 Chair: Mr O'Brien, just sticking with Rule 34, I know that doesn't have any conditions
3195 in it, so if you're discharged contaminants into air there's no conditions there
3196 which is presumably why it's not listed in Rule 42B – because that talks about
3197 'do not comply with one or more conditions of permitted rules'. So again, if
3198 you just didn't comply with... I guess what I am trying to say is someone either
3199 thinks that yes they're permitted under that, and if they're not then they would
3200 need to get discretionary consent under Rule 42.
- 3201
- 3202 O'Brien: Are you talking about a plan clarity issue?
- 3203
- 3204 Chair: Mm.
- 3205
- 3206 O'Brien: I guess it is not listed in that list, I believe, so it wouldn't fall down to that
3207 cascade in the catch-all rule. But, whether that could be more clear with a note
3208 is definitely something that could be considered.
- 3209
- 3210 Chair: It may be captured, I wonder, by the bit right underneath B and not expressly
3211 classified as a permitted activity, and then it would be perhaps captured there.
- 3212
- 3213 O'Brien: Yes.
- 3214
- 3215 Chair: I think that's the only one. I think all of the others have got conditions on them,
3216 so if you breach one of the conditions in the rule then you default to
3217 discretionary.
- 3218
- 3219 O'Brien: Correct.
- 3220
- 3221 McGarry: Mr O'Brien, you heard my comment this morning. You've said there could be
3222 [34.27]. I'm just wondering – some of them you've given us a view and some
3223 of them you haven't – 82 is an example on the climate change one, where you've
3224 said, "I consider there may well be..." I'm just being a bit pushy here, one side
3225 of the fence or the other. Your view?
- 3226
- 3227 O'Brien: In my view that would be out of scope.
- 3228 [00.35.00]
- 3229 McGarry: I think there's another one, paragraph 70 that uses the same words. There may
3230 well be a scope issue.
- 3231
- 3232 O'Brien: I would consider that submission would be out of scope as well.
- 3233
- 3234 McGarry: Out of scope. Thank you.
- 3235

- 3236 Chair: Mr O'Brien, I think I've asked this but I just want to be absolutely clear that I've
3237 got it.
3238
- 3239 So where a provision doesn't apply in the coastal marine area, so the icon is
3240 struck out, like Rule 40 for instance, then if someone wants to carry out that
3241 activity in the CMA do they go to Rule 42?
3242
- 3243 O'Brien: That's correct, yes. That captures all rules where you're not compliant with the
3244 conditions.
3245
- 3246 McGarry: And, that would be where you would end up if the coastal icon wasn't reinstated
3247 on the abrasive?
3248
- 3249 O'Brien: Correct.
3250
- 3251 Chair: Just seeing if anyone has any questions on the scheduled...
3252
- 3253 Kake: I do have one question just with respect to air.
3254
- 3255 Similar to I think an earlier question under the other topic of beds, rivers and
3256 lakes, with respect to air quality and the permitted activity status of the rules,
3257 how some of these conditions consider mana whenua values, the effects on
3258 cultural values, whether they were considered as part of your S42A at this stage?
3259
- 3260 O'Brien: As far as I'm aware there wasn't a submission on that issue so I didn't consider
3261 it through the S42A, but could double-check that. If that's something you would
3262 like me to assess I can obviously assess that as well.
3263
- 3264 Kake: Just in addition to that, the consistency with respect to general conditions I
3265 suppose is what I am leaning towards. If there are particular references that can
3266 be considered alongside your additional assessment perhaps, just so that we're
3267 clear when as a plan user what the conditions might be with respect to assessing
3268 mana whenua values or not. Thank you.
3269
- 3270 O'Brien: Thanks.
3271
- 3272 McGarry: A supplementary: just looking at the Rule 42. If the coastal icon wasn't
3273 reinstated on R26 then would you need some kind of amendment to R42 to then
3274 add in another limb that it would be in the coastal marine area?
3275
- 3276 O'Brien: Would you be able to repeat that question sorry?
3277
- 3278 McGarry: If the coastal icon wasn't reinstated for R26, and I know you've got submissions
3279 both ways and you're going to rethink about that, but you just said that Rule 42
3280 would apply; but I don't think it would. It would need another amendment
3281 wouldn't it, to have another limb that would say was in the coastal marine area?
3282
- 3283 O'Brien: I would need to think about that.
3284

- 3285 McGarry: Think about that, or just keep that in mind, what amendment might be needed
3286 there if you were to... thank you.
3287
- 3288 Chair: Mr O'Brien, I thought that you had said that that's the default for any activity
3289 anywhere in the region though, if it doesn't meet the permitted activity rule
3290 then...
3291
- 3292 O'Brien: Correct. I was just trying to think about the wording and how it would fit in.
3293 [00.40.00] Maybe whether those in clause (b) there needs to be any change. Your reasoning
3294 is correct, yes, that would default to 42.
3295
- 3296 Chair: You will come back to us on the drafting?
3297
- 3298 O'Brien: Yeah, potentially.
3299
- 3300 Chair: I have one question on the schedules.
3301
- 3302 New map 27, which just for ease of reference is on page-290 of PC1 and actually
3303 page-289. It goes over a few pages around there. There's four Map 27's.
3304
- 3305 This is again that earlier when Dr Crisp was here and I asked if you might be
3306 able to work with Dr Crisp and just help us orientate the RPS provisions –
3307 significant indigenous biodiversity values. We were looking at them. I don't
3308 know if you were involved with I think it was Table 17 in Appendix 1A. That
3309 talked about the threatened species in the CMA.
3310
- 3311 I think that this schedule F4, this new Map 27 pages here, I think that there's a
3312 connection with those provisions in the RPS. If you could think about that when
3313 you're putting together a simple table that shows how those link would be really
3314 helpful.
3315
- 3316 I am still not quite clear why some are nationally threatened, some are at risk
3317 and some are declining. Just the different kind of categories and how the RPS
3318 talks to the Regional Plan.
3319
- 3320 O'Brien: Just to clarify: the at-risk declining that Philippa Crisp was talking about, those
3321 relate to the ones, as she mentioned, the directives from the NPS-FM rather than
3322 anywhere else.
3323
- 3324 The confusion I guess is that Schedule 4, F4 and F5 their directive does not come
3325 from the NPS-FM, it comes from the RPS to keep up-to-date the schedules with
3326 any new information.
3327
- 3328 I note that it is a little bit confusing considering they're in the same report topic.
3329 I can see that would be difficult.
3330
- 3331 Chair: I think that's possibly why I was getting muddled. But, still if it's okay to put
3332 that together that would be really useful.
3333

- 3334 O'Brien: Absolutely.
3335
- 3336 Chair: Thank you. What I'm trying to work out for myself is, so the implications of
3337 being added to Schedule F4 and F5, I think the implication is that those activities
3338 in those areas are subject to some stronger policies and rules to protect the values
3339 in those areas.
3340
- 3341 I would like to have some more clarity around actually what the impact of that
3342 is.
3343
- 3344 O'Brien: That can be done.
3345
- 3346 Chair: Does anyone have any other questions on those schedules.
3347
- 3348 McGarry: Just on your paragraph 30 Mr O'Brien, you've got Policy 23 and 24 – and
3349 forgive me, this is just my lack of working knowledge of the RPS – but you've
3350 said there of the operative Regional Policy Statements. So can I take it that both
3351 of those policies were not amended through PC1?
3352
- 3353 O'Brien: Through PC1 or RPS Change 1?
3354
- 3355 McGarry: Yes, RPS Change 1.
3356
- 3357 O'Brien: There were minor amendments to those is my understanding.
3358
- 3359 McGarry: So just minor wording amendments, or didn't really change the intent?
3360
- 3361 O'Brien: I would need to check that, but there's I guess the same direction. It might be
3362 slightly stronger potentially. I think there might be a deadline inserted in that.
3363 I'm not sure if the deadline is relevant. I can't remember off the top of my head,
3364 but I can check that.
3365
- 3366 McGarry: That would be good. Thank you.
3367 [00.45.00]
- 3368 Chair: Unless there's anything else Commissioners, thank you very, very much. That
3369 brings us to the end of day one.
3370
- 3371 Thank you very much Mr Ruddock and Ms Anistead, all the Council team and
3372 our submitters, mana whenua. We will close with a karakia.
3373
3374
- 3375 [End of recording 45.30]
3376
3377