

# **Wellington Regional Council Proposed Change 1 to the Regional Policy Statement 2024**

Report and recommendations of the  
Freshwater and Part 1, Schedule 1  
Independent Hearings Panels

21 June 2024

**Commissioners:**

Dhylum Nightingale (Chair)

Gillian Wratt

Glenice Paine

Ina Kumeroa Kara-France



# 1. Introduction

1. This report recommends that Wellington Regional Council approves Proposed Change 1 to the Regional Policy Statement (RPS) for the Wellington Region (Proposed Change 1 or PC1) with the recommended modifications as shown in Appendix 1 and for the reasons explained in this Report.
2. Proposed Change 1 was publicly notified on 19 August 2022. It is the first amendment to the RPS since it became operative in 2013 (superseding the first RPS which was operative in 1995).<sup>1</sup>
3. More than 156 submissions and 31 further submissions were received on the change proposal from 161 parties. Hearings commenced on 19 June 2023 and ran for 22 days spread out over 10 months. All the hearings were held at the Naumi Hotel conference room in Wellington City.
4. The Hearing Panels received a considerable volume of evidence including around:
  - a. 17 s 42A Reports (3579 pages in total – 1280 in Reports and 2299 in Report Appendices);
  - b. 12 statements of Council technical evidence, and;
  - c. 128 statements of evidence from submitters.
5. Proposed Change 1 is a complex and ambitious planning document. We were challenged with integrating three pieces of national direction:
  - a. The National Policy Statement on Urban Development 2020 (NPS-UD);
  - b. The National Policy Statement for Freshwater Management 2020 (NPS-FM), and;
  - c. The National Policy Statement for Indigenous Biodiversity 2023 (NPS-IB).

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<sup>1</sup> It is the first amendment using a submissions and hearing process; in December 2022, the RPS was amended without a First Schedule process to include the housing bottom lines for Tier 1 urban environments as required by clause 3.6(4) of the NPS-UD: [Public-notice-Housing-Bottom-Lines-Update-changes-to-Operative-RPS-Dec-2023.pdf](#) (gw.govt.nz).

6. Although not the specific purpose of Proposed Change 1, its provisions also give effect to national direction in the following instruments:
  - a. New Zealand Coastal Policy Statement (NZCPS);
  - b. National Policy Statement on Electricity Transmission (NPS-ET);
  - c. National Policy Statement for Renewable Energy Generation (NPS-REG);
  - d. National Policy Statement on Highly Productive Land (NPS-HPL), and;
  - e. National Policy Statement on Industrial Process Heat (NPS-IPH).
  
7. The following management strategies and plans developed under the Climate Change Response Act are also relevant to Proposed Change 1 and are matters that were given regard to in our Report:
  - a. The National Adaptation Plan<sup>2</sup>
  - b. The Emissions Reduction Plan<sup>3</sup>.
  
8. As is common in the resource management and planning environment, all parties and the Panels were working on shifting sands, with:
  - a. The gazettal of the National Policy Statement on Indigenous Biodiversity (NPS-IB) on 31 May 2023, some 9 months after Proposed Change 1 was notified;
  - b. Amendments to the NPS-FM taking effect on 5 January 2023;
  - c. The Regional Council introducing Variation 1 on 13<sup>th</sup> October 2023, which was heard as part of Hearing Stream 7, to add freshwater visions for two whitua;
  - d. The enactment and then repeal of the Natural and Built Environment Act 2023, and;
  - e. The introduction on 23 May 2024 of the Resource Management (Freshwater and Other Matters) Amendment Bill.
  
9. We sought advice from Counsel for the Council where we felt that was required, to help us understand the impact, if any, of these policy and

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<sup>2</sup> Ministry for the Environment, 2022, *Aotearoa New Zealand's first national adaptation plan*, Wellington.

<sup>3</sup> Emissions Reduction Plan, prepared under s 5ZI of the Climate Change Response Act 2022, May 2022, Ministry for the Environment.

legislative changes. We have not considered the Bill introduced on 23 May 2024 as it is not yet law.

## 2. Background to Proposed Change 1

### 2.1 An integrating frame approach

*“When RPS Change 1 was being developed near on two years ago, there were four key issues that Council wanted to see included. Its impetus was the NPS-UD, the National Policy Statement for Urban Development. The Council could just have gone ahead and introduced this new set of provisions to enable further housing intensification, but the Council determined that they wanted to actually look at the issues in tandem; they wanted to bound urban development with climate change, biodiversity, freshwater and other matters, to make sure that we didn’t enable that further development without actually putting the environmental boundaries around it.”<sup>4</sup>*

Daran Ponter, Chair, Wellington Regional Council.

10. Proposed Change 1 was publicly notified on 19 August 2022.
11. As stated in the public notice<sup>5</sup>, the focus of Proposed Change 1 is to “implement and support the National Policy Statement on Urban Development 2020 (NPS-UD) and to start the implementation of the National Policy Statement for Freshwater Management 2020 (NPS-FM).” Proposed Change 1 also addresses “issues related to climate change, indigenous biodiversity and high natural character”.
12. The NPS-UD and NPS-FM are therefore a primary driver for the scope, timing, processes and approach to Proposed Change 1.<sup>6</sup>
13. The NPS-UD requires RPS’ and District plans to notify changes by 20 August 2022 to give effect to Policies 3 and 4 of the NPS-UD.<sup>7</sup> These policies require Tier 1 urban environments (such as Wellington), to have, as part of providing for well-functioning urban environments, sufficient development capacity to meet demands, specific housing density and minimum building heights in particular zones unless exceptions or

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<sup>4</sup> Hearing Transcript, HS3 – Climate Change, Day 1, pages 5- 6, lines 228 – 238, as read by the Reporting Officer for the Climate Resilience and Nature-Based Solutions subtopic, Ms Guest, reading a statement by Daran Ponter.

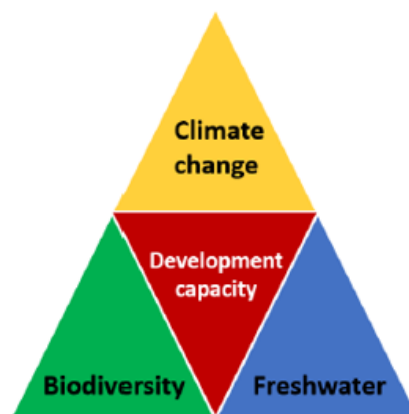
<sup>5</sup> Public notice, Proposed Change 1: <https://www.gw.govt.nz/assets/Documents/2022/08/Public-Notice-to-notify-Proposed-Change-1-to-the-RPS-For-website-.pdf>

<sup>6</sup> Section 32 report Evaluation of provisions for Proposed Change 1 to the Regional Policy Statement for the Wellington Region, August 2022, pages 9 and 11: <https://www.gw.govt.nz/assets/Documents/2022/08/RPS-Change-1-Section-32-Report-August-2022.pdf>

<sup>7</sup> Clause 4.1(2), NPS-UD.

‘qualifying matters’ are justified. The NPS-UD requires other policies in the national policy statement to be given effect to as soon as practicable.

14. The key urban development policy issues that Change 1 is intended to address are as set out in the Wellington Region Housing and Business Capacity Assessment, namely the lack of sufficient, affordable and quality housing supply and choice in the Wellington Region to meet current demand, the needs of projected population growth and the changing needs of diverse communities. A central objective of Change 1 is therefore to address these development capacity issues by providing for well-functioning urban environments and enabling urban intensification in appropriate locations.
15. As acknowledged in Mr Ponter’s quote above and in the Council’s s32 Report, the Council sought to implement the NPS-UD in an integrated way, aware that urban development does not occur in isolation to managing natural and physical resources. Achieving integrated management of resources is of course the core purpose of a RPS as discussed further in the Integrated Management chapter of Part B of this Report. Therefore, in addition to including issues, objectives, policies and methods to give effect to the NPS-UD, Change 1 also includes provisions aimed at addressing degradation of freshwater, loss and degradation of indigenous biodiversity and the impacts of climate change.
16. In recognising the connection between these issues, and the constraints in responding to national policy for urban development capacity and intensification, Proposed Change 1 takes an “integrating frame” approach as illustrated in Figure 1 below, reproduced from the s32 Report.<sup>8</sup>



**Figure 1:** The “integrating frame” approach of RPS Change 1.

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<sup>8</sup> Section 32 Report, page 16.

## 2.2 Consultation and engagement

17. The section 32 report and the section 42A Overview Report for Hearing Stream 1 (HS1) describe at a high level the work Council undertook with representatives from mana whenua/tangata whenua partners to prepare Proposed Change 1 including consultation on draft provisions between May to July 2022. The six mana whenua/tangata whenua partners Council engaged with are:
  - Ngāti Kahungunu ki Wairarapa;
  - Rangitāne o Wairarapa;
  - Te Rūnanga o Toa Rangatira;
  - Te Ātiawa ki Whakarongotai;
  - Ngā Hapū o Ōtaki; and
  - Taranaki Whānui (through Port Nicholson Block Settlement Trust).
18. The section 42A report also describes the key engagement activities undertaken over a 12-month period with territorial authorities in the Region<sup>9</sup> and other key stakeholders such as the Ministry for the Environment, Waka Kotahi New Zealand Transport Agency, Greater Wellington's Farming Reference Group and others.
19. The Regional Council also provided a draft of Proposed Change 1 to the following parties for feedback: all six mana whenua/tangata whenua, certain Ministers, Wellington Water Limited, neighbouring regional councils and all territorial authorities in the region.<sup>10</sup>
20. Pre-notification consultation with territorial authorities followed the process required in the Wellington Triennial Agreement (2019-2022) including allowing at least 30 working days for comments.

## 2.3 Submissions

21. The time period for submissions was doubled to 40 working days and ran from 19 August until 14 October 2022. The Council granted various submitters approval to file late submissions.<sup>11</sup>

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<sup>9</sup> Section 42A Overview, HS1, para 26. The territorial authorities in the Region are Wellington City Council, Porirua City Council, Hutt City Council, Upper Hutt City Council, Kāpiti Coast District Council, South Wairarapa District Council, Carterton District Council and Masterton District Council.

<sup>10</sup> Section 42A Overview, HS1, para 30.

<sup>11</sup> Section 42A Overview, HS1, para 43.



22. 151 submissions were received. A Summary of Decisions Requested was publicly notified on 5 December 2022 and provided in two formats – by Submitter and by Chapter. Every submission point was given a unique identifier.
23. The further submission period was extended to 11 working days and ran from 5 December to 19 December 2022. Four addenda were notified to address errors or omissions in the Summary of Decisions Requested. 31 further submissions were received including some further submissions received after the closing date, which Council accepted under s 37 of the RMA.

## 2.4 Parallel planning processes

24. The Regional Council notified Change 1 under two planning processes under Schedule 1 of the RMA:
  - a. The Freshwater Planning Process (FPP) under section 80A and Part 4 of Schedule 1 for provisions that form a freshwater planning instrument (FPI); and
  - b. The Part 1, Schedule 1 (P1S1) standard process for all other provisions (ie the standard First Schedule process).

### 2.4.1 Freshwater Planning Process

25. The FPP involves a specific statutory process including the appointment of a freshwater hearings panel (FHP) by the Chief Freshwater Commissioner to make recommendations to Council on submissions on the FPI.
26. The FHP was appointed on 28 March 2023 as a four-person panel with a quorum of three members. Commissioner Craig Thompson was appointed as Chair of the FHP, and Commissioner Gillian Wratt was also appointed as Freshwater Commissioner. Commissioners Glenice Paine and Ina Kumeroa Kara-France were appointed as the respective tangata whenua and Council nominees.
27. The FHP's Terms of Reference from the Chief Freshwater Commissioner require it to complete its recommendations to the Regional Council by 21 June 2024. Under the Terms of Reference, the Panel's report is to contain:
  - a. the Panel's recommendations on the freshwater plan provisions and matters raised in submissions;

- b. identification of any recommendations that are outside the scope of the submissions;
  - c. the Panel’s reasons for accepting or rejecting submissions; and
  - d. a further evaluation of the FPI in accordance with s 32AA of the RMA.
- 28. As well as the requirements in the Terms of Reference, the Panel has the duties, functions and powers set out in Schedule 1, Part 4 of the RMA and is able to determine its own procedures for hearing submissions and deliberating on proposals for the FPI.
- 29. The FPP was introduced to enable regional councils to make changes to their FPIs in a robust but more efficient way than the Part 1, Schedule 1 planning process. The FPP has reduced timeframes and limited appeal rights where the Council accepts the Panel’s recommendations.
- 30. The Freshwater Commissioner provided a set of guiding principles for the FHP, including:
  - a. Be inclusive and acknowledge the broad range of interests, capability and capacity represented in submissions;
  - b. Where practicable use collaborative and active participation processes to enhance / complement the formal hearings process; and
  - c. Undertake proceedings in a time-efficient manner.

#### 2.4.2 Part 1, Schedule 1 process

- 31. The Regional Council’s elected members approved the establishment and membership of the P1S1 Panel on 30 March 2023 as a three-person panel with a quorum of two. The Council appointed Commissioner Dhilum Nightingale as Chair of the P1S1 Panel, with Commissioners Paine and Kara-France also appointed to that Panel therefore providing for some overlapping membership with the FHP.
- 32. The Terms of Reference provided the P1S1 Panel with delegated powers to consider and hear submissions on Proposed Chage 1 and make recommendations to Council. The Panel’s responsibilities include:
  - a. Ensuring the hearing and consideration process is carried out in a way that is effective and timely;

- b. Providing submitters with the best possible opportunity to be heard in support of their submission;
- c. Receiving submissions with an open mind and giving due consideration to each submission; and
- d. Ensuring the decision-making process is robust and transparent.

## 2.5 The Panels' Approach to the Hearings

- 33. Hearings commenced on 26 June 2023 and ended on 16 April 2024.
- 34. The Council's original intention was for the topics that included both FPI and 'non freshwater' (P1S1) provisions to be heard jointly by both panels (namely General and Overarching Matters, Climate Change, Urban Development and Small topics/wrap up and Integration). The remaining hearing topics (Integrated Management, Freshwater and Indigenous Ecosystems) would be heard solely by the FHP.
- 35. However, the Panel chairs decided early in the process that we would sit jointly for all Hearings to "mitigate the risk of the loss of integration which could occur if provisions which are written to be considered and decided on together, are put through separate planning processes".<sup>12</sup>

## 2.6 Changes in Panel Membership

- 36. Unfortunately, Commissioner Thompson had to stand down for personal reasons on 25 August 2023 shortly prior to Hearing Stream 3 – Climate Change (HS3) commencing. On the advice of the Chief Freshwater Commissioner, the Minister for the Environment appointed Commissioner Nightingale as a Freshwater Commissioner, and she took on the additional role of Chair of the FPP, and Commissioner Wratt was also appointed to the P1S1 panel.<sup>13</sup> The advantage of these changes was that as of 24 August 2023, both panels had completely overlapping membership, with a single Chair. We sat together for all hearings until hearings concluded on 16 April 2024, the last day of Hearing Stream 7 (HS7) hearings.
- 37. In hindsight, it was beneficial to sit jointly as this was a helpful way of ensuring submissions were considered holistically and that the 're-categorisation' of provisions (discussed below), could occur without any

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<sup>12</sup> First minute and directions of Hearings Panels dated 26 May 2023, paragraph 16: <https://www.gw.govt.nz/assets/Documents/2023/05/FIRST-MINUTE-AND-DIRECTIONS-OF-HEARINGSPANELS.pdf>.

<sup>13</sup> As recorded in Minute 11, [Minute-11-Changes-to-Membership-of-Independent-Hearing-Panels-240823.pdf](https://www.gw.govt.nz/assets/Documents/2023/05/Minute-11-Changes-to-Membership-of-Independent-Hearing-Panels-240823.pdf) (gw.govt.nz).

risk of the 'right panel members' not being present to hear and deliberate on submissions that we recommended be moved between the two planning processes once we had heard submitters.

38. As it turned out, having fully overlapping panel membership was also beneficial because in our view, other than HS5 (Freshwater and Te Mana o te Wai), no other hearing stream contained 'solely' Freshwater provisions so the Council's original plans for the hearing streams could have led to the awkward situation of a provision that was re-categorised to the P1S1 stream, not in fact having been properly heard and considered by the P1S1 panel. This could have meant that the process rather than the substance, inappropriately determined the categorisation of a provision.
39. From the beginning of HS3 hearings, the two panels had completely overlapping membership. All Minutes were issued jointly.
40. The panel members have a diverse range of skills and experience including law, resource management policy and NPS implementation, science and governance, tikanga, te Ao Māori and sites of significance to mana whenua.
41. Dhilum Nightingale chaired the P1S1 Panel throughout the Hearing, and also the FHP from the start of Hearing Stream 3 (HS3). Dhilum is a Barrister in Kate Sheppard Chambers specialising in resource management law, and also practices in the areas of employment and humanitarian immigration law. Dhilum has an LLM and a planning degree and is a Freshwater Commissioner and Chair-endorsed RMA Hearings Commissioner. She has worked in a range of private, public sector and in-house environmental legal roles for more than 23 years. Dhilum is of Sri Lankan heritage and was born in Tamaki Makaurau and has lived in Te Whanganui-a-Tara / Wellington for more than two decades.
42. Gillian Wratt is an experienced senior executive and director with an extensive background in science and environmental management and policy, including as Chief Executive of Cawthron Institute and Antarctica New Zealand. She is a certified Environment Commissioner with experience as an RMA Commissioner and on Environmental Protection Authority EEZ and Hazardous Substances and New Organisms decision making committees. She is based in Whakatu/Nelson and has several governance roles in the science and not-for-profit sectors.
43. Glenice Paine was appointed to the Environment Court as Deputy Commissioner in 2017. She is an RMA accredited Commissioner and

Mediator. She has a background in the conservation and resource management fields and has held appointments on various Environmental Protection Authority Boards of Inquiry. Glenice has an extensive background in leadership and governance within Iwi/Māori organisations and recently completed three terms on the Nelson City Council Environment and Climate Change Committee. Additional previous roles include being a member Te Tau Ihu Rivers & Freshwater Advisory Committee, and a directorship on the South Island whanau ora commissioning agency, Te Putahitanga o Te Waipounamu. Glenice affiliates predominantly to Te Atiawa Te Tau Ihu and Ngai Tahu.

44. Ina Kumeora Kara-France holds a Master of Business Administration in International Business, and a Post Graduate Diploma in Business Māori Development and is a certified Commissioner for the Resource Management Act 1991. A specialist advocate for Mana Whenua regarding Tikanga Māori, Mātauranga Māori, cultural values, sites of significance, Te Mana o Te Wai, Iwi environmental management plans and cultural impact assessments. Ina has Resource Consents, Future Development Strategy, Regional Policy Statement and District Plan Change experience. Ina has 2 years with WSP NZ Ltd, and 30 years of experience. Ina is a full-time Independent Hearing Commissioner and an Expert Consenting Panel member for the Environmental Protection Authority. Ina is a Board member of the New Zealand Conservation Authority and Board Liaison for Tāmaki Makaurau, Te Tai Tokerau and Te Hiku o Te Ika Conservation Boards. Ina affiliates to Waikato-Tainui, Ngāti Kahungunu, Ngāti Tuwharetoa, Te Ati Hau-nui-A-Paparangi, Ngarauru and Ngāti Koata Iwi.

## 2.7 Overview of the Hearings

45. Table 1 below lists the Reporting Officers for each of the Hearing Streams, the number of original and further submission points, the s42A Reports and the dates of the Councils' Rebuttal and Reply evidence. In total there were seven hearing streams:
1. Hearing Stream One - Overview and General Submissions (26 to 30 June 2023);
  2. Hearing Stream Two - Integrated Management (18 to 19 July 2023);
  3. Hearing Stream Three - Climate Change (28 to 31 August 2023);
  4. Hearing Stream Four - Urban Development (2 to 4 October 2023);
  5. Hearing Stream Five - Freshwater/Te Mana o te Wai (20 to 22 November 2023);

6. Hearing Stream Six - Indigenous Ecosystems (20 to 22 February 2024);  
and
7. Hearing Stream Seven - Small Topics, Wrap up and Variation 1 (15 to 16 April 2024).

**Table 1:** Summary of reporting officer's and supporting documentation for each of the Hearing Streams of RPS Change 1.

Hearing Stream	Report Topic	Hearing Report Author	Number of Documents:				
			Reports	Sub Points	Further Sub Points	Rebuttal Evidence*	Right of Reply*
HS1 - General and Overarching Submissions	Overview Report	Kate Pascall	2	131	110	3	3
	General / Overarching Submissions	Sarah Jenkin					
HS2 - Integrated Management	Overarching Issues and Objectives, Integrated Management	Steph Bougen / Jerome Wyeth	1	153	183	3	2
HS3 - Climate Change	Climate Change General	Jerome Wyeth	6	1167	820	11	7
	Agricultural Emissions	Jerome Wyeth					
	Climate Resilience and Nature-Based Solutions	Pam Guest					
	Energy, Waste and Industry	Jerome Wyeth					
	Natural Hazards	Iain Dawe / James Beban					
	Transport	Louise Allwood					
HS4 - Urban Development	Urban Development	Mika Zollner	1	542	325	9	3
HS5 - Freshwater / Te Mana o te Wai	Freshwater / Te Mana o te Wai	Kate Pascall	1	653	625	4	6
HS6 - Indigenous Ecosystems	Indigenous Ecosystems	Pam Guest / Jerome Wyeth	1	574	521	5	3

Hearing Stream	Report Topic	Hearing Report Author	Number of Documents:				
			Reports	Sub Points	Further Sub Points	Rebuttal Evidence*	Right of Reply*
HS7 Small Topics, Wrap-up and Variation 1	Consequential Amendments	Louis Schwer	5	117	53	8	10
	Definitions - Regionally Significant Infrastructure National Grid and Strategic Transport Network	Shannon Watson					
	Natural Character	Iain Dawe					
	Omitted Submission Points	Mika Zollner					
	Variation 1	Richard Sheild / Sam O'Brien					
<b>Totals</b>			<b>17</b>	<b>3337</b>	<b>2637</b>	<b>43</b>	<b>34</b>
<b>Total Includes Legal Documents*</b>							

46. Our approach to the Hearings was to test the information we read and heard from submitters with Council Officers through, and across, Hearing Streams. We posed a series of questions, often quite extensive, to the Council in a Minute at the end of each Hearing addressing what we considered to be some of the key points remaining in contention after hearing submitters. The Officers and sometimes Counsel for Council addressed these questions in their Reply Evidence and Legal submissions. The Officers produced a 'green track-changed Reply version' with additional amendments. We are grateful to the Officers and Council's technical experts, other staff and Counsel for their comprehensive responses to our questions, which, in many instances, resulted in refinements or even significant revisions to their recommendations but in turn also often addressed outstanding submitter relief.

47. This approach of 'refining as we go', meant that in the majority of instances, we agree with Council Officer's Reply version of the provisions for the reasons sets out in the s 42A Report, Rebuttal or Reply Evidence, and recommend that Council approve and adopt these provisions in the RPS. The Recommendations in our Report retains the following colour-coding in the Officers' Reply version:

- s42A recommended amendments to provisions shown in red underlined and marked-up text;
  - Rebuttal Evidence recommended amendments to provisions shown in blue underlined and marked-up text; and
  - Reply Evidence recommended amendments to provisions shown in green underlined and marked-up text (including any amendments Council officers support following expert caucusing or having considered any submitter comments post-caucusing).
48. Our Recommendations are shown using the Council’s Reply version colour coded as above. Where we have not amended the Council’s Reply version, that means we agree with the Council’s recommendations. Where we propose any amendments, those are shown in purple shaded tracking with additions underlined and deletions in strike through.
49. Our task was to achieve horizontal and vertical integration of provisions from national direction and across topics and at times this was not an easy task. We found there was at times somewhat of a siloed approach to the provisions. By this we mean that the Reporting Officers usually provided their assessment of the provisions coded to that particular Hearing Stream and did not look across the Change 1 chapters. This is no criticism of the Officers and we found that they all consistently provided very high quality and professional planning advice, well supported by Counsel, technical experts and Council staff. But ideally, we would have had more advice on how best to achieve better horizontal alignment across the Change 1 topics. We did not have a qualified planner on the Panels and while we were satisfied with some of the integration achieved through Hearing Stream 7 (HS7), we appointed a Special Advisor, Ms Sylvia Allan, a planning consultant, to assist with some specific integration-related questions we had on the FPI. Ms Allan’s advice is reflected in Part C of this Report.
50. We directed expert planners’ caucusing for four topics (although the two climate change topics were discussed in one caucusing session):
- a. Climate Change: Transport (caucusing held on 21 September 2023);
  - b. Climate Change: Climate Resilience and Nature-Based Solutions (caucusing held on 16 October 2023);
  - c. Climate Change: Natural Hazards (caucusing held on 16 October 2023); and



d. Indigenous Ecosystems: Regionally Significant Infrastructure  
(caucusing held on 6 May 2024).

51. The caucusing was facilitated by Mr Jason Jones, Principal Consultant with Resource Management Group, and resulted in a narrowing of issues and consensus reached among the planners on some provisions.

## 2.8 Submissions

52. Clause 10(3) of Schedule 1, Part 1 of the RMA allows us to consider submissions by themes or grouped according to topics rather than needing to consider submissions individually. This is the approach we have taken in this report. We have also completed 'Accept/Reject' submission tables for each Hearing Stream, which are appended to our Report.

## 2.9 Acknowledgements

53. It was evident to us from the time we started preparing for Hearing Stream 1 (HS1), the massive amount of work the Council Officers put into their s42A Reports, and Rebuttal and Reply Evidence. They all paid close attention to submissions and expert evidence, and assessed and evaluated submitters' relief carefully, respectfully and with an open mind. This is clear from the significant changes between the notified version of Proposed Change 1 and the provisions the Officers support in their final Reply Evidence.
54. We sincerely thank the Officers for their dedicated work on these provisions, and every submitter and their representatives and advisors who prepared submissions, evidence and hearing presentations. As we said at the conclusion of the hearings, everyone's involvement has contributed greatly to the process and informed our understanding and response to the provisions and relief requested.
55. We also acknowledge the dedication and tireless work of the Hearings Advisors, Ms Jo Nixon and Ms Whitney Middendorf who ensured the hearings ran smoothly and effectively. The AVL transcription service Ms Nixon arranged was excellent to work with and produced a very accurate and timely record of the hearings which has assisted us in our deliberations.

## 2.10 Record of the Proceedings

56. The RMA requires an FHP to regulate its own proceedings in a manner that is appropriate and fair in the circumstances and keep a full record of proceedings.
57. A full record has been kept on the [Hearings Webpage](#) of all proceedings, including all Minutes issued by the Chair/s of the Panels, a transcript of all hearings, all Officer Reports and Council technical evidence and legal submissions, all submissions and further submissions from submitters and evidence and legal submissions. A summary of the Minutes issued by the Chair/s of the Panels can be seen in Table 2.

**Table 2:** Summary of the Minutes issued by the Chair/s of the Panels throughout Hearings for RPS Change 1.

Minute	Date Issued	Relevant Hearings	Points covered
<a href="#">First Minute and Directions of Hearings Panels - 26 May 2023</a>	26 May 2023	Panel Direction	This Minute sets out directions on key procedural matters for the hearing of submissions and further submissions on Proposed Change 1 to the Wellington Regional Policy Statement. Including: <ul style="list-style-type: none"> <li>• Background</li> <li>• Notice of Hearing</li> <li>• Hearings Process</li> <li>• Key dates for s 42A reports, evidence and presentations at Hearings</li> <li>• Hearing Panels' Powers</li> </ul>
<a href="#">Minute 2 - Directions regarding HS1 - Overview and General Submissions</a>	15 June 2023	HS1	This Minute sets out directions for HS1, including: <ul style="list-style-type: none"> <li>• Amendments to general timetabling directions for HS1</li> <li>• Overview of Day 1, HS1</li> <li>• Directions for s 42A presentations and Wellington Regional Council legal submissions</li> <li>• Directions for submitter presentations</li> <li>• Requests to speak on additional topics</li> </ul>
<a href="#">Minute 3 - Timetabling Directions for HS2 and Future Hearings</a>	16 June 2023	Panel Direction	This Minute sets out general timetabling directions for all Hearing streams from Hearing Stream Two onwards including pre-lodgement of evidence and presentations at Hearings and other timelines.

<b>Minute</b>	<b>Date Issued</b>	<b>Relevant Hearings</b>	<b>Points covered</b>
<b><u><a href="#">Minute 4 - Further Directions for HS1 and Future Hearings</a></u></b>	22 June 2023	HS1 Panel Direction	<p>This Minute:</p> <ul style="list-style-type: none"> <li>• Responds to requests by some submitters for additional time to present their submissions in HS1</li> <li>• Requests information from Wellington Regional Council</li> <li>• Comments on submissions and evidence regarding the allocation of provisions between the P1S1 and FPP processes, and</li> <li>• Provides a direction on managing any conflicts of interest.</li> </ul>
<b><u><a href="#">Memorandum - Background information on Treaty partners provided by GWRC as requested in RPS Chairs Minute 4</a></u></b>	23 June 2023	Response to Panel Direction	<p>This memo records the response to a request for information in Minute 4 on the following issues:</p> <ul style="list-style-type: none"> <li>• Background profiles and information on Treaty partners; and</li> <li>• Treaty of Waitangi Statutory agreements with the Greater Wellington Regional Council; and</li> <li>• Mana Whakahono a Rohe agreements; and</li> <li>• Iwi Environmental Management Plans; and</li> <li>• Cultural Values assessments and or Cultural Impact assessments.</li> </ul>
<b><u><a href="#">Minute 5 - Proposed Directions Regarding Allocation of Provisions between PS1 and FHP Processes</a></u></b>  <b><u><a href="#">Attachment to Minute 5 - James Winchester - Advice WCC IHP - Topic-allocation-between-PDP-and-ISPP 8 March-2023</a></u></b>	4 July 2023	HS1, Hearing Process and HS2	<p>This Minute addresses:</p> <ul style="list-style-type: none"> <li>• proposed directions regarding allocation of provisions between the P1S1 and FPI Processes</li> <li>• HS 2 Integrated Management Presentation time extension requests.</li> </ul> <p>The Minute attaches publicly available legal advice received by the Independent Hearings Panels conducting hearings on the Wellington City Proposed District Plan and the Wellington City Intensification Planning Instrument.</p>
<b><u><a href="#">Minute 6 - Request from Regional Council for Extension of Timeframe for filing Evidence from s 42A Officer for HS2</a></u></b>	5 July 2023	HS2	<p>This Minute:</p> <ul style="list-style-type: none"> <li>• Grants the Regional Council's filing extension request for the s 42A Author's Rebuttal Evidence</li> <li>• Sets new timetabling directions.</li> </ul>
<b><u><a href="#">Minute 7 - Request to Increase Representation of Members on P1S1 Panel</a></u></b>	19 July 2023	Hearing Process	<p><b>P1S1 Panel Minute:</b></p> <p>This Minute request Council issue a decision regarding the appointment of Commissioner Wratt to the P1S1 Panel in addition to her current appointment to the FHP prior to HS3 commencing in late August 2023.</p>

<b>Minute</b>	<b>Date Issued</b>	<b>Relevant Hearings</b>	<b>Points covered</b>
<b><u>Minute 8 - Request for Information to be provided in Regional Council's Reply</u></b>	21 July 2023	HS3	This Minute requests the Council address specific issues/questions in Reply Evidence/submissions.
<b><u>Minute 9 - Timeframe for Council to respond to further information request</u></b>	25 July 2023	HS2	This Minute: <ul style="list-style-type: none"> <li>• Grants the Regional Council's extension request for the HS2 Reporting Officer's Reply Evidence</li> <li>• Sets new timetabling directions.</li> </ul>
<b><u>Minute 10 - Directions regarding Recategorisation of Provisions and HS3 Extension Requests</u></b>	18 August 2023	Hearing Process and HS3	This Minute addresses: <ul style="list-style-type: none"> <li>• Re-categorisation of provisions</li> <li>• Panels' approvals for: <ul style="list-style-type: none"> <li>○ Submitter requests for extra presentation time</li> <li>○ Submitter late request to speak</li> <li>○ Regional Council request for extensions for filing rebuttal evidence</li> </ul> </li> </ul>
<b><u>Minute 11 - Changes to Membership of Independent Hearing Panels</u></b>	24 August 2023	Hearing Process	This Minute addresses the: <ul style="list-style-type: none"> <li>• Resignation of Chair Thompson from the FHP</li> <li>• Appointment of P1S1 Chair Nightingale as a Freshwater Commissioner and Chair of the FHP.</li> <li>• Appointment of Commissioner Wratt to the P1S1 Panel</li> </ul>
<b><u>Minute 12 - HS3 - Council's Reply And Directions For Expert Caucusing</u></b>	8 September 2023	Hearing Process and HS3	This Minute addresses: <ul style="list-style-type: none"> <li>• Amendments to our directions in Minute 3 regarding the Council's Reply</li> <li>• the specific issues/questions the Panels requested the Council Officer address in Reply Evidence/submissions</li> <li>• Expert Caucusing</li> <li>• Consolidated provisions and categorisation</li> </ul>
<b><u>Minute 13 - Requests for extensions and other matters and response to caucusing questions</u></b>	20 September 2023	HS3 and HS4	This Minute responds to various procedural matters relating to HS4 – Urban Development and the caucusing directed for HS3 – Climate Change. <p><b>HS4 - Urban Development:</b></p> <ul style="list-style-type: none"> <li>• Requests for extension of presentation time during HS4</li> <li>• Filing of evidence outside the timetabled directions</li> <li>• Late request to present in HS4 and to file legal submissions after submitters have been heard</li> <li>• Council Rebuttal</li> <li>• Information sought from Council for HS4</li> </ul>

Minute	Date Issued	Relevant Hearings	Points covered
			<p><b>HS3 - Climate Change:</b></p> <ul style="list-style-type: none"> <li>Expert caucusing – Submitters’ comments and timeline for caucusing for the Climate resilience, Nature based solutions and Natural hazards subtopics</li> <li>Council Reply to Caucusing</li> </ul>
<p><a href="#"><u>Minute 14 - HS4 - Council’s Reply, Request for Information from Territorial Authorities and Various Procedural Matters Arising</u></a></p>	12 October 2023	HS3 and HS4	<p>This Minute:</p> <ul style="list-style-type: none"> <li>Responds to a request for leave sought by Wellington Water Limited (S113)</li> <li>Requests further information from territorial authorities</li> <li>Provides timetabling directions for the Council’s Reply for HS4</li> <li>Responds to late information provided by Winstone Aggregates (S162) and Stride Investment Management Limited and Investore Property Limited (S155) outside the evidence and legal submission filing deadlines, and</li> <li>Acknowledges comments received by Doctors for Active Safe Transport (DAST (S116)) on the HS3 – Transport Joint Witness Statement.</li> </ul>
<p><a href="#"><u>Minute 15 - Responses from Territorial Authorities to Information Request about Centres Hierarchy (PDF 131 KB)</u></a></p>	27 October 2023	HS4	<p>This Minute responds to comments provided by some territorial authorities to the Panels’ information request regarding the centres hierarchy proposed by Kāinga Ora.</p>
<p><a href="#"><u>Minute 16 - Hearing Stream Four Responses and Hearing Stream Five Time Extensions (PDF 205 KB)</u></a></p>	13 November 2023 [Updated with links to documents 14 November 2023]	HS4 and HS5	<p>This Minute responds to:</p> <ul style="list-style-type: none"> <li>HS4 Memorandum filed by counsel for Stride Investment and Investore Property</li> <li>HS4 presentation extension requests</li> <li>HS4 additional information sought by Panels from Waka Kotahi, and</li> <li>Response to memorandum filed by counsel for Kāinga Ora.</li> </ul>
<p><a href="#"><u>Minute 17 - Matters relating to Hearing Stream 6 - Indigenous Ecosystems - 15 November 2023 (PDF 264 KB)</u></a></p>	15 November 2023	HS6	<p>This Minute covers:</p> <ul style="list-style-type: none"> <li>Matters relating to HS6 – Indigenous Ecosystems.</li> <li>Porirua City Council document - “Response to request for pre-hearing discussion on Implementation of the National Policy Statement for Indigenous Biodiversity (NPS-IB)”</li> </ul>

<b>Minute</b>	<b>Date Issued</b>	<b>Relevant Hearings</b>	<b>Points covered</b>
<b><u><a href="#">Minute 18 - Councils Reply and Request for Information Sought from Submitters During the Hearing (PDF 279 KB)</a></u></b>	29 November 2023	HS5	This Minute: <ul style="list-style-type: none"> <li>• Sets out the specific issues/questions the Panels requested the Council address in its Reply Evidence/submissions and the due date for the Reply, and</li> <li>• Notes information requests that were made of Hort NZ at the Hearing.</li> </ul>
<b><u><a href="#">Minute 19 - Revised Timetabling Directions for Hearing Stream 6 Indigenous Biodiversity (PDF 141 KB)</a></u></b>	5 December 2023	HS6	This Minute covers the revised timetabling directions for HS6 – Indigenous Biodiversity.
<b><u><a href="#">Minute 20 – HS6 requests for extensions and Conflict of Interest Update (PDF 199 KB)</a></u></b>	2 February 2024	HS6 and Panel processes	This Minute covers: <ul style="list-style-type: none"> <li>• HS6 – Extension request for hearing presentation</li> <li>• Filing extension request</li> <li>• Potential conflict of interest</li> </ul>
<b><u><a href="#">Minute 21 – Legal Advice Received on Structure of Panels' Recommendation Reports (PDF 458 KB)</a></u></b>	12 February 2024	Panel process	This Minute covers the legal advice received on the structure of the Panels' Recommendation Report.
<b><u><a href="#">Attachment to Minute 21 - RPS Panel Advice Letter of advice to PC1 FPP and P1S1 Panels 070224 (PDF 312 KB)</a></u></b>	12 February 2024 (Advice dated 7 February 2024)	Panel process	Attachment to Minute 21 - Legal advice from Brookfields Lawyers: Procedural Advice on questions the Panels asked regarding the structure of the Recommendation Report including the most appropriate location for the discussion and recommendations on any re-categorisation of provisions between the FPI and P1S1 process.
<b><u><a href="#">Minute 22 - Hearing Stream Six Council's Reply, Request for Information Sought from Wellington International Airport During the Hearing and Directions for Caucusing (PDF 252 KB)</a></u></b>	6 March 2024	HS6	This Minute: <ul style="list-style-type: none"> <li>• Sets out the specific issues/questions the Panels requested the Council address in Reply Evidence/submissions</li> <li>• Notes information requests that were made of Wellington International Airport Limited at the hearing.</li> <li>• Directs caucusing on specific provisions in HS6 relating to regionally significant infrastructure, and</li> <li>• Sets out directions post-caucusing including for legal submissions for parties and Counsel's Reply.</li> </ul>

<b>Minute</b>	<b>Date Issued</b>	<b>Relevant Hearings</b>	<b>Points covered</b>
<b><u><a href="#">Minute 23 - HS6 Caucusing Update, HS7 Questions Related to Integration PC 1 Provisions and Amended Timetable and Legal Advice Nation Policy Statement (PDF 358 KB)</a></u></b>	18 March 2024	HS5	This Minute: <ul style="list-style-type: none"> <li>• Sets out specific questions we would like the Council to address in its Reply for HS5 and the due date for the Reply, and</li> <li>• Notes information requests that were made of Horticulture NZ at the hearing.</li> </ul>
<b><u><a href="#">Attachment to Minute 23 - Letter of advice to PC1 FPP and P1S1 Panels on NPS Implementation (PDF 273 KB)</a></u></b>	8 February 2024	Panel Process	Attachment to Minute 23 - Legal advice from Brookfields Lawyers: Procedural Advice on questions the Panels asked about amending provisions in Proposed Change 1 to give effect to new national direction that is gazetted after the Change is notified, namely: <ul style="list-style-type: none"> <li>• Recent amendments to the NPS-FM</li> <li>• The NPS-HPL</li> <li>• The NPS-IB.</li> </ul>
<b><u><a href="#">Minute 24 - Extension Request for Council to Provide Information (Paragraph 6(d), 6(f) and 9 of Minute 23) (PDF 117 KB)</a></u></b>	26 March 2024	HS5	This Minute addresses the extension request for Council to provide information (Paras 6(d), 6(f) and 9 of Minute 23)
<b><u><a href="#">Minute 25 - Extension Requests for Presentation Time, Hearing Stream 7; Filing Extension Request; Consolidated Provisions and Revised Timetable to the End of Hearing Stream 7 (PDF 210 KB)</a></u></b>	3 April 2024	HS7	This Minute address HS7 – Extension requests for hearing presentation: <ul style="list-style-type: none"> <li>• Filing extension request.</li> <li>• Consolidated version of provisions and word versions of submission recommendation tables – including setting directions for formatting.</li> <li>• Revised timetable to the end of HS7.</li> </ul>
<b><u><a href="#">Minute 26 - Change of Reporting Officer for Variation 1 Hearing Stream 7 080424 (PDF 282 KB)</a></u></b>	8 April 2024	HS7	This Minute address Change of Reporting Officer for Variation 1, HS7.

Minute	Date Issued	Relevant Hearings	Points covered
<a href="#">Minute 27 - HS7 Response to Submitter Correspondence, Councils reply for HS7 and updated Timetabling Directions (PDF 255 KB)</a>	17 April 2024	HS3 and HS7	<p>This Minute:</p> <ul style="list-style-type: none"> <li>Notes specific submitters' decisions to withdraw from presenting in the HS7 hearings,</li> <li>Responds to unsolicited comments received from submitter DAST (S116) regarding HS3 – Climate Change Transport Right of Reply from Ms Allwood,</li> <li>Sets out specific questions the Panels requested the Council address in its Reply Evidence/submissions</li> <li>Provides updated and consolidated timetabling directions.</li> </ul>
<a href="#">Minute 28 - Questions for Reporting Officers and Appointment of Special Advisor 290524 (PDF 255 KB)</a>	29 May 2024	HS3, HS5 and Panel processes	<p>This Minute addresses:</p> <ul style="list-style-type: none"> <li>Questions for Reporting Officers</li> <li>Appointment of Special Advisor</li> </ul>

## 2.11 Glossary of Abbreviations

58. A list of the abbreviated terms and submitter names used in this report is contained in Tables 3 and 4 below.

**Table 3:** Abbreviations of terms used throughout this report.

Abbreviation	Means
The Act/RMA	Resource Management Act 1991
AER	Anticipated Environmental Result
Change 1/ PC1	Proposed Change 1 to the Regional Policy Statement for the Wellington Region
CMA	Coastal Marine Area
Council or Regional Council	Wellington Regional Council
Officer	Council Officer / Reporting Officer / Section 42A Report Author
EEZ	Exclusive Economic Zone
FHP	Freshwater Hearing Panel
FPI	Freshwater Planning Instrument
FPP	Freshwater Planning Process
GHGe	Greenhouse gas emissions
IPI	Intensification Planning Instrument



LGA	Local Government Act 2002
NES-FM	Resource Management (National Environmental Standards for Freshwater) Regulations 2020
NoF	National Objectives Framework
NoR	Notice of Requirements
NPS	National Policy Statement
NPS-FM	National Policy Statement for Freshwater Management 2020
NPS-HPL	National Policy Statement for Highly Productive Land 2022
NPS-UD	National Policy Statement on Urban Development 2020
NRP	Natural Resources Plan
PC1	Proposed Change 1
P1S1	Part 1, Schedule 1 process
PDP	Proposed District Plan
RMA	Resource Management Act 1991
RMI	Resource Management Issue
RPS	Operative Regional Policy Statement for the Wellington Region 2013
RSI	Regionally significant infrastructure
s 32 Report	Section 32 Evaluation Report for Proposed Change 1 to the Regional Policy Statement for the Wellington Region
s 42A Report	Hearing Report prepared by Council Officer under s 42A of the RMA
TA	Territorial Authority

**Table 4:** Abbreviations of submitters' names used in this report.

<b>Abbreviation</b>	<b>Means</b>
Ātiawa	Ātiawa ki Whakarongotai Charitable Trust
BLNZ	Beef and Lamb NZ
DAST	Doctors for Active, Safe Transport
DGC or the Director-General	Director General of Conservation
CDC	Carterton District Council
Forest and Bird	Royal Forest and Bird Protection Society of New Zealand Inc
Fuel Companies	BP Oil NZ Ltd, Mobil Oil NZ Ltd and Z Energy
HCC	Hutt City Council
HortNZ	Horticulture New Zealand

Kāinga Ora	Kāinga Ora – Homes and Communities
KCDC	Kāpiti Coast District Council
MDC	Masterton District Council
PCC	Porirua City Council
PPFL	Peka Peka Farm Limited
Meridian	Meridian Energy Limited
Ngāti Toa	Te Rūnanga o Toa Rangatira
Ngā Hapū	Ngā Hapū o Ōtaki
Muaūpoko	Muaūpoko Tribal Authority
Rangitāne	Rangitāne o Wairarapa Inc
Summerset	Summerset Group Holdings Limited
SWDC	South Wairarapa District Council
Telecommunications Companies or Telcos	Chorus New Zealand Limited, Spark New Zealand Trading Limited, One New Zealand Group Limited (previously Vodafone)
Te Tumu Paeroa	Te Tumu Paeroa, Office of the Māori Trustee
Transpower	Transpower NZ Limited
UHCC	Te Kaunihera o Te Awa Kairangi ki Uta Upper Hutt City Council
Waka Kotahi	New Zealand Transport Agency
WCC	Wellington City Council
WIAL	Wellington International Airport Ltd
Winstone Aggregates	Winstone Aggregates Limited
WFF	Wairarapa Federated Farmers
WWL	Wellington Water Limited

## 2.12 Structure of our Report

59. Proposed Change 1 is one of the first change proposals to use the dual planning process.<sup>14</sup> We sought advice from Mr Matthew Allan at Brookfields on the most appropriate structure for our recommendation report, that is, whether we could write one joint report, whether we needed to write two separate reports from each panel, or whether a hybrid approach was valid.

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<sup>14</sup> Independent Hearings Commissioners delivered their recommendations on the Proposed Otago Regional Policy Statement 2021, another dual planning process, in March 2024.

60. Brookfields advised that there was nothing in the RMA which mandates a particular approach to the preparation of the recommendation reports in the present circumstances.<sup>15</sup> However, it was important to ensure that:
- a. We followed the process and requirements in the RMA when making our recommendations (for example as set out in clauses 10, 49 and 50 of Schedule 1);
  - b. There was sufficient distinction / delineation between the reasons and recommendations that apply to the provisions within each planning process because:
    - i. With the FPI:
      - 1. we are not limited to making recommendations within the scope of submissions (clause 49(2)(a) of the RMA);
      - 2. we may make recommendations on any other matters related to the FPI that are identified by the FHP or any other person during the hearing (clause 49(2)(b);
      - 3. where the Council accepts our recommendations on provisions, submitters' appeal rights are limited to an appeal to the High Court on a question of law (clause 55, Schedule 1); and
    - ii. With the P1S1 provisions:
      - 1. our recommendations must be within the scope of submissions (clause 10 of Schedule 1);
      - 2. merit appeals are available on Council's decisions on our recommendations (clause 14 of Schedule 1, and s 299 of the RMA); and
  - c. When structuring our report, we have regard to what we considered to be fair and appropriate in the circumstances ((s39(1) and clause 48(1) of Schedule 1)) and the procedural principles under s18A (including taking all practicable steps to use timely, efficient, consistent and cost-effective processes that are proportionate to the functions or powers being performed or exercised).

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<sup>15</sup> Procedural Advice – Plan Change 1 to the Regional Policy Statement for the Wellington Region, 7 February 2023, advice provided to the Chair of the P1S1/FPP Panels and prepared by Matthew Allan and Lisa Wansbrough, Brookfields Lawyers.

61. We have followed Brookfields' guidance to structure our Report in the following way:
- a. Part A Report – Overview (general background, explanation regarding the process, categorisation of provisions and the structure of the Report, and an Appendix summarising the Panels' recommendations on categorisation;
  - b. Part B Report – P1S1 provisions and our reasons and recommendations relating to those provisions;
  - c. Part C Report - Freshwater provisions and our reasons and recommendations relating to those provisions;
  - d. Appendix 1 with a track changed version of Proposed Change 1 showing our recommended amendments; and
  - e. Appendix 2 - 'Accept/Reject submission tables'.


## 2.13 Categorisation of provisions between the planning processes

62. The categorisation of provisions between dual planning processes is a complex and subjective issue. Legal submissions and planning evidence was presented to us in every Hearing Stream on the matter and Officers' recommendations on categorisation evolved throughout the process. This simply reflects that the judgement call is a finely balance matter. As the Reporting Officer said in his HS2 Reply Evidence, the categorisation of the provisions "can easily be argued either way".
63. This Part of the Report sets out our recommendations on categorisation, and we cross-refer to this discussion in Parts B and C. This is at times repetitive, but as advised by Brookfields, it is important that Council and submitters understand the basis of our recommendations, given the complexity of the issue and consequences in terms of appeal rights.
64. Section 80A(3) of the RMA<sup>16</sup> anticipates an FPI being progressed as part of another change document. The subsection states:

A regional council must prepare a freshwater planning instrument in accordance with this subpart and Part 4 of Schedule 1. However, if the council is satisfied that only part of the instrument relates to freshwater, the council must—

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<sup>16</sup> The provision in effect at the time Proposed Change 1 was notified.

- (a) prepare that part in accordance with this subpart and Part 4 of Schedule 1; and
  - (b) prepare the parts that do not relate to freshwater in accordance with Part 1 of Schedule 1 or, if applicable, subpart 5 of this Part.
- 65. Proposed Change 1 was accordingly notified using two plan-making processes under Schedule 1, RMA:
  - a. The Freshwater Planning Process (FPP) under s 80A and Part 4, Schedule 1 for provisions that are part of the Freshwater Planning Instrument; and
  - b. The standard plan-making process in Part 1, Schedule 1 (P1S1).
- 66. The FHP must provide a recommendation on the FPI and the P1S1 panel must provide a recommendation on the non-FPI provisions.
- 67. Approximately 66% of the provisions in Change 1, were notified as part of the FPI and identified through the use of the FW symbol next to the relevant provision.
- 68. As we discuss below, Officers' recommendations on categorisation changed throughout the Hearings in response to submissions. We recommend that other than for HS5 – Freshwater and Te Mana o te Wai, either all, or the majority of provisions in the other Hearing Streams, should be categorised as part of the P1S1 process.
- 69. As Change 1 was notified on 19 August 2022, the version of the RMA that applies to the process is that which was in place at the date of notification. This means that amendments to the RMA that took effect in November 2022 do not apply, given the transitional provision incorporated into the RMA at the same time. Similarly, amendments to s80A which were inserted by s805(4) of the Natural and Built Environment Act 2023 and which allow for a broader discretion for a regional council as to when it may use the freshwater planning process for 'non-freshwater provisions' when it considers it necessary to do so to achieve integrated management, also do not apply to Proposed Change 1.<sup>17</sup>
- 70. Section 80A of the RMA sets out the planning process to be followed when preparing an FPI.

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<sup>17</sup> We note that the repeal of the Natural and Built Environment Act 2023 in December 2023 did not reverse the amendments to s 80A(3).

71. Section 80(2)A defines a FPI as follows:

**A freshwater planning instrument means—**

- (a) any part of a proposed regional plan or regional policy statement that relates to objectives that give effect to the national policy statement for freshwater management;
- (b) any provisions of a proposed regional plan or regional policy statement in relation to which the regional council has decided to use the freshwater planning process under subsection (6B)(b);
- (c) any regional policy statement (including any change or variation to the statement) in relation to which the council has decided to use the freshwater planning process under subsection (6B)(c);
- (d) any change or variation to a proposed regional plan or regional policy statement if the change or variation—
  - i. relates to objectives that give effect to the national policy statement for freshwater management; or
  - ii. relates to a provision described in paragraph (b).

72. Appendix E of the section 32 report sets out the reasons for the allocation of provisions to the FPI.

73. The Regional Council undertook a process to categorise the Change 1 provisions between the two planning processes when Change 1 was notified in August 2022.<sup>18</sup>

74. The process applied the High Court decision in *Otago Regional Council v Royal Forest & Bird Protection Society of NZ Inc.*<sup>19</sup> Each provision was assessed and if the Council considered a provision to meet at least one of the following two tests, it was notified as part of the FPI:

- a. It gives effect to parts of the NPS-FM that regulate activities because of their effect on the quality or quantity of freshwater; or
- b. It relates directly to matters that will impact on the quality or quantity of freshwater.

75. The categorisation was undertaken at a provision level, and provisions were not split. Therefore, the Council notified an entire provision as part of the FPI even if only a part of the provision met one of the tests in s80A(2)(c)

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<sup>18</sup> The process is discussed in the various s 42A Reports and also in the Supplementary Evidence of Jerome Wyeth on behalf of Wellington Regional Council, Hearing Stream 2 – Integrated Management, Allocation of Provisions, 10 July 2023.

<sup>19</sup> [2022] NZHC 1777.

and the rest related to ‘non-freshwater’ matters.<sup>20</sup> The relationship between provisions did not form the basis for whether a provision was included in the FPI or not.

76. Some submitters raised concerns with the categorisation of provisions. They said that certain provisions had been incorrectly identified as freshwater provisions and should in fact, be considered as part of the P1S1 process. No submitter suggested that a provision allocated to the P1S1 process should be re-allocated to the FPP.
77. Categorisation into the FPI restricts appeals rights to points of law to the High Court, makes cross-examination available (as a matter of discretion for the FHP) and does not limit the FHP’s recommendations to matters within the scope of submissions.
78. We:
- a. Heard planning evidence and legal submissions from various parties including the Council, Forest and Bird, Winstone Aggregates and WIAL;
  - b. Considered the tests in RMA s80A(2)(c);
  - c. Considered the High Court’s statements that;<sup>21</sup>
    - i. the “starting point” is that all provisions in a proposed RPS should be subject to the standard Schedule 1 process; and
    - ii. parts of a RPS cannot be included within a FPI simply because of a connection to freshwater through the concepts of *Te Mana o te Wai, ki uta ki tai* or the integrated management of natural and physical resources.
79. We understand the Council’s assessment was undertaken at a provision level without splitting provisions, therefore if part of a provision met the criteria for inclusion, the whole provision was included in the FPI even if it also related to other matters.
80. We were also mindful that Change 1 was drafted in an integrated way, and many provisions contribute to the purpose for which s80A was enacted, that is, to address the decline of freshwater quality, and to have only a few

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<sup>20</sup> Supplementary Evidence of Jerome Wyeth on behalf of Wellington Regional Council, Hearing Stream Two – Integrated Management Allocation of Provisions, 10 July 2023, para 8.

<sup>21</sup> *Otago Regional Council v Royal Forest & Bird Protection Society of NZ Inc* [2022] NZHC 1777 at [203] and [206].

provisions within a particular Topic or Subtopic be assessed in the FPI, may promote ‘disintegration’ rather than integrated management (to coin a term used by the Hearings Panel considering the Otago Regional Council RPS).<sup>22</sup>

81. Having heard submitters and Council, it is our view that a provision can be included in the FPP process if it either:
  - a. gives effect to parts of the NPS-FM that regulate activities because of their effect on the quality or quantity of freshwater; or
  - b. relates directly to matters that will impact on the quality or quantity of freshwater (“the FPP criteria”).
82. The question then was if the Panels considered that a provision had been incorrectly allocated to the FPI because it did not in fact meet the FPP criteria, could it be recategorised as P1S1 provision?
83. We set out the following proposed approach to this issue in Minute 5, dated 4 July 2023:
  - a. The P1S1 and FHP panels would sit jointly on all hearing streams and make recommendations on the classification of provisions once all submissions had been heard;
  - b. Any ‘recategorisation’ recommendations would not be made before or at the end of a particular Hearing Stream because the panels do not have the jurisdiction to do so;<sup>23</sup>
  - c. In its recommendation report, the FHP may recommend that particular provisions do not relate directly to freshwater or otherwise meet the *Otago Regional Council* High Court tests<sup>24</sup>, so they should be removed from the FPI;
  - d. Any provisions ‘removed’ from the FPI would come within the scope of the P1S1 process with the P1S1 panel then able to consider submissions and make recommendations on the merits of these provisions; and

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<sup>22</sup> Proposed Otago Regional Policy Statement 2021 Hearing Panel Report by the Freshwater and Non-Freshwater Hearings Panels, para 50: [report-and-recommendations-of-the-non-freshwater-and-freshwater-hearings-panels-to-the-otago-regional-council.pdf \(orc.govt.nz\)](https://www.orc.govt.nz/assets/Uploads/Report-and-recommendations-of-the-non-freshwater-and-freshwater-hearings-panels-to-the-otago-regional-council.pdf).

<sup>23</sup> Clause 39(b), Part 4, Schedule 1, RMA.

<sup>24</sup> *Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Inc* [2022] NZHC 1777.



- e. If the FHP had approved a request for cross-examination regarding a provision which was subsequently re-categorised as a P1S1 provision, the P1S1 panel would disregard the evidence heard during cross-examination.
84. Our approach was informed, among other things, by a legal opinion by barrister James Winchester, dated 8 March 2023 and provided to the Chair of the Independent Hearings Panel conducting hearings on the Wellington City Proposed District Plan and the Wellington City Intensification Planning Instrument.
85. Having set out a summary of our proposed approach in Minute 5 we gave parties the opportunity to comment and present submissions on the issue during HS2. We did not agree with submitters, including Ms McGruddy for WFF, who considered that the notified FPI should be sent back to Council to reconsider the allocation of provisions between the two processes.
86. We had the benefit of comprehensive submissions from parties. We agreed with the submissions of Ms Tancock, counsel for Winstone Aggregates that:<sup>25</sup>
- a. Part of an RPS may relate to freshwater through giving effect to the NPS-FM, or by otherwise relating to freshwater;
  - b. Provisions that do not give effect to the NPS-FM may relate to freshwater in the required manner to qualify for inclusion in the FPI, by relating directly to matters that impact on the quality and quantity of freshwater, including groundwater, lakes, rivers and wetlands;
  - c. Parts of a RPS cannot be included within a FPI simply because of a connection to freshwater through the concepts of Te Mana o te Wai, ki uta ki tai or the integrated management of natural and physical resources; and
  - d. The starting point is that all provisions in a proposed RPS should be subject to the normal P1S1 process.
87. We are satisfied that the FHP and P1S1 panels have the jurisdiction to recommend to Council that a provision be re-allocated to the P1S1 process. We decided to hear submissions on the categorisation of

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<sup>25</sup> Legal submissions on behalf of Winstone Aggregates, Overview and General Submissions, 13 June 2023, para 21, citing *Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Inc* [2022] NZHC 1777 at [202], [203] and [206].

provisions throughout the individual Hearing Streams, and then make joint recommendations at the conclusion of the hearing of all submitters.

88. We note Officers took at times a different approach to categorisation between the different topics, with some recommending that a provision remain as part of the FPI if it referred in any way to freshwater or NPS-FM implementation, whereas others took an approach based on the degree or extent to which a provision related to matters that impact on freshwater quality and quantity, or the extent to which a provision gives effect to the NPS-FM.
89. We have broadly agreed with the approach of the Officer in HS2.<sup>26</sup> Where a provision addresses a wider range of resource management issues which are generally broader than freshwater quality and quantity, we preferred to categorise the provision as a P1S1 provision rather than as part of the FPI, also mindful of keeping ‘like’ provisions together as a package in the same statutory planning process so that related provisions do not take potentially different appeal routes which could lead to timing-related implementation issues and loss of integration. We agreed that a provision did need to ‘solely’ relate to freshwater quality/quantity issues or ‘only’ implement the NPS-FM; but the extent and degree of connection with freshwater did influence our approach. The Commissioners had some differing views initially on some provisions, again reflecting the subjective nature of the task.
90. We considered on balance that the approach by the Officers in the HS2, some subtopics in HS3 and HS6 Hearing Streams was appropriate. When applying the FPP criteria, we took a purposive approach and looked at the outcome sought in the provisions. Where this was much broader than addressing matters that impact on freshwater quality of quantity, we considered it more appropriate for the provision to be categorised as part of the Standard Schedule 1 process. The Reporting Officer in the HS6 s 42A Report described the application of this assessment to the Indigenous Biodiversity provisions in this way:

*“While the Indigenous Ecosystem provisions clearly apply to freshwater, they equally apply to ecosystems, habitats and species in the coastal marine area and terrestrial environment and the outcome sought is much broader than addressing matters that impact on freshwater quality or quantity, being to maintain, restore or enhance indigenous biodiversity, and the ecosystems and*

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<sup>26</sup> Reply Evidence of Jerome Wyeth on behalf of Wellington Regional Council, Hearing Stream 2 – Integrated Management, 28 July 2023, para 42

*habitats that support it. While, in achieving this outcome, there will be a number of situations which require freshwater quality and quantity to be maintained, restored or enhanced and that will have direct or consequential benefits for freshwater ecosystems, I consider that the connection to freshwater quality and quantity is one step removed because the substance of these provisions is primarily about protecting, maintaining, and restoring indigenous biodiversity across all ecosystem types.”*

91. We consider this approach appropriate, and we have sought to apply it across the Change 1 provisions. In the Appendix to Part A, we set out a table of our recommendations on the categorisation of provisions, showing the evolution of the provisions from notification through to the Officers’ final recommendations, and then the Panels’ recommendations.
92. The following discussion explains in more detail our reasoning for taking a different approach to the Reporting Officers on the categorisation of provisions.

### 2.13.1 Hearing Stream Two – Integrated Management

93. All the provisions coded to this topic were notified as part of the FPI. In response to evidence, the Reporting Officer said in a Supplementary Evidence Statement<sup>27</sup>, that the following provisions should be re-categorised as P1S1 provisions because they did not have a direct enough association to matters that impact on freshwater quality or quantity:
  - a. Overarching Resource Management Issue 2;
  - b. Overarching Resource Management Issue 3;
  - c. Policy IM.2; and
  - d. Method IM.2.
94. In his Reply Evidence, the Officer said that after further review of the provisions, and in light of parties’ legal submissions, he considered that it was more appropriate for all of the overarching resource management issues and the integrated management provisions to be considered as part of the P1S1 process. He said that by their nature, the HS2 provisions address a wide range of resource management issues that are much broader than freshwater quality and quantity. It was therefore inappropriate for them to be considered through a more streamlined statutory planning process intended for freshwater specific provisions,

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<sup>27</sup> Supplementary Evidence of Jerome Wyeth on behalf of Wellington Regional Council, Hearing Stream Two – Integrated Management Allocation of Provisions, 10 July 2023, para 14.

and it would be helpful for all parties if the integrated management provisions were considered as a package under the same statutory planning process.<sup>28</sup> We agree.

### 2.13.2 Hearing Stream Three – Climate Change

95. In the notified version of Proposed Chage 1, Regionally Significant Issues 2, 3 and 5 and Objective CC.1 were allocated to the FPP and the remaining provisions to P1S1. The Reporting Officer, Mr Wyeth, reassessed this categorisation in his s42A Report and recommended that Issues 2, 3 and 5 provisions move from the FPP into the P1S1 process. In summary, his reasons were that the Issues were focused (respectively) on:
- a. Issue 2 - the pressures of climate change on biodiversity and the range of services associated with health ecosystems;
  - b. Issue 3 – the risks of natural hazards being exacerbated by climate change and traditional approaches to development; and
  - c. Issue 5 – the impacts of climate change on Māori well-being.

And did not therefore have a direct enough association to matters that impact on water quality or quantity to be included in the FPI.

96. Mr Wyeth also found that Objective CC.1 seeks to achieve a low-emission and climate resilient region and ensure that climate change mitigation and adaptation are central considerations in resource management, development and infrastructure decisions. Mr Wyeth recommended that Objective CC.1 move to the P1S1 process as it is broader in scope than freshwater management.
97. We agree with Mr Wyeth that the three Issues and Objective CC.1 should be assessed under the P1S1 process as they involve matters and considerations that are much broader than those relating to freshwater quality and quantity. The impact of this transfer is that we recommend that all the Climate Change – General subtopic provisions are assessed under the P1S1 process.
98. A few provisions in the Energy, Waste and Industry, and Agricultural Emissions subtopics were notified as part of the FPP including Policies CC.15 and 65. The Reporting Officer recommended that all provisions coded to these subtopics, be assessed under the P1S1 process as they

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<sup>28</sup> Reply Evidence of Jerome Wyeth on behalf of Wellington Regional Council, Hearing Stream 2 – Integrated Management, 28 July 2023, para 42.

are focused on rural resilience to climate change, reduction of emissions and climate change adaptation, and do not have a direct enough association to matters that impact on freshwater quality or quantity.<sup>29</sup> We agree with this assessment.

99. All provisions coded to the Transport subtopic were notified as P1S1 provisions and recommended to remain as such.<sup>30</sup> We agree with this assessment.
100. For the Climate-Resilience and Nature-Based Solutions subtopic, the Officer recommended quite a few provisions be assessed as part of the FPI (consistent with their status at notification).<sup>31</sup>
101. In summary, the Officer's reasons are that many nature-based solutions directly protect, enhance or restore freshwater ecosystems, improve freshwater quality, benefit water flows and levels, and respond to climate change consistent with the direction in the NPS-FM. The Officer gives water sensitive urban design (such as rain gardens and green rooves) as an example of measures used to manage stormwater flows to improve water quality and freshwater ecosystems, while also reducing flooding risk and providing resilience.
102. We had differing views on the nature-based solutions provisions. Climate-resilience is incorporated in the NPS-FM but is also a broader concept than freshwater. It relates to freshwater quality and quantity, but also to other issues such as the design of buildings and infrastructure, efficient energy use, and climate change mitigation and adaptation. Although finely balanced, the Panels consider that because the nature-based solutions provisions are strongly associated with freshwater management and implement Policy 4 and clauses 3.5(2) and 3.5(4) of the NPS-FM, they are appropriately categorised as part of the FPI. We also recommend that definitions particularly relevant to the *nature-based solutions* provisions, also progress as part of the FPP.
103. The Officers in HS3 have not recommended that all provisions that reference nature-based solutions are included in the FPI, for instance

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<sup>29</sup> Reply Evidence of Jerome Wyeth on behalf of Wellington Regional Council, Hearing Stream 3 – Climate Change, Subtopics General, Agricultural Emissions, and Energy, Industry and Waste, 21 September 2023, para 5

<sup>30</sup> Section 42A Hearing Report, Hearing Stream 3 – Climate Change, Subtopic Transport, 31 July 2023, para 2.

<sup>31</sup> Section 42A Hearing Report, Hearing Stream 3 – Climate Change, Subtopic Climate-Resilience and Nature-Based Solutions, 31 July 2023, para 62 and Table 4.

Policy CC.7 (as recommended to be amended by the Reporting Officer), Policy CC.15 and Method CC.8 are recommended to progress through the Standard Schedule 1 process. We consider that the matters addressed in these provisions, and also in Method CC.9 are more focused on matters that are broader than freshwater quantity and quality or NPS-FM implementation, even though they all reference *nature-based solutions*.

104. Contrary to the Officers' recommendations, we recommend the 'forest cover' provisions (Objective CC.5, Policy CC.6, Policy CC.18, Method CC.4, Method CC.9 and related definitions) are assessed together as part of the Standard Schedule 1 process given their broader aims of carbon sequestration, indigenous biodiversity benefits, land stability and social and economic wellbeing. This was also a finely balanced assessment because afforestation can of course reduce sediment runoff and therefore maintain or improve the water quality of local waterbodies in line with clause 3.5(2) of the NPS-FM. On balance, we consider the 'forest cover' provisions are more appropriately categorised as P1S1 provisions because while they have co-benefits for freshwater management, they also aim to achieve a broader range of benefits.
105. For the Natural Hazards subtopic, the Officers agreed with the notification assessment, and recommended that the following provisions be assessed as part of the FPP:<sup>32</sup>
  - a. Issue 3;
  - b. Objective 20;
  - c. Policy 52; and
  - d. Definition of minimise.
106. This was another subtopic in which there were at first differing views by the Commissioners. Even though the heading and chapeau to Issue 3 refer to "natural hazard events", much of the content is focused on flood events and drought which places pressure on water resources. However, the Issue is also about sea level rise and coastal erosion and inundation. We agreed that Objective 20 was broader than freshwater issues even though it refers to Te Mana o te Wai (which in and of itself is not conclusive as to categorisation as we note above). Similarly, Policy 52, while relating to freshwater and flood management and resilience, also addresses a broader range of hazards. While again finely balanced, we preferred Policy

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<sup>32</sup> Section 42A Hearing Report, Hearing Stream 3 – Climate Change, Subtopic Natural Hazards, 31 July 2023, Tables 3 and 4 (paras 15 and 63).

52 to be considered in the same planning process as Policy 29 which is about managing areas at risk from natural hazards. It could lead to implementation and loss of integration to have the two provisions assessed and determined through potentially different appeal pathways.

107. The term “minimise” occurs in both the natural hazard provisions and also HS5 provisions. Again, although finely balanced, we recommend it proceed as part of the FPI together with the definition of “maximise” which was proposed to be included in Change 1 through the HS5 s 42A Report.
108. The conclusion we reach on the HS3 provisions (although not without considerable debate), is that only the nature-based solutions provisions and the definition of “minimise” and “maximise” should progress as part of the FPI. Therefore, as set out in Appendix A to Part A, we recommend that the following provisions in the HS3 Hearing Stream progress as part of the FPI:
  - a. Objective CC.4;
  - b. Policy CC.4 suite;
  - c. Policy CC.12;
  - d. Policy FW.8;
  - e. Method CC.6; and
  - f. The definitions of:
    - i. *nature-based solutions*;
    - ii. *climate resilience / climate resilient / resilience and resilient*;
    - iii. *water-sensitive urban design*;
    - iv. *climate change adaptation*;
    - v. *climate change mitigation*; and
    - vi. *minimise and maximise*.

### 2.13.3 Hearing Stream Four – Urban Development

109. Most of the provisions in this topic were notified as part of the FPI, with the key exceptions being Policies 30, 67 and UD.1. Policy UD.4 which was recommended for inclusion in the s 42A Report, was categorised as a P1S1 provision. The approach the Council took, and which the Reporting Officer largely supported, was that the HS4 provisions contribute to achieving the NPS-FM objective and policies, and even if only part of a provision gave effect to the NPS-FM or related directly to matters that

impact on the quality or quantity of freshwater, it could still be included in the FPI as provisions should not be split between planning processes.<sup>33</sup>

110. We understand the NPS-FM recognises and provides direction on the integration of land use and urban development so as to manage impacts on freshwater quality and quantity. We also acknowledge that well-functioning urban environments and areas incorporate water sensitive urban design to manage stormwater flows to reduce flooding and retain natural stream-flows to protect communities and freshwater ecosystems. Further, we acknowledge, as the Reporting Officer states, that Proposed Change 1 has been drafted on the basis that urban development generates a large proportion of effects on water quality in the Region.
111. However, in our view, the provisions in HS4 address issues that are broader than freshwater quality and quantity and NPS-FM implementation. We do not consider that references in the provisions to well-functioning urban areas, climate resilience and Te Mana o te Wai, provide enough of a direct connection to freshwater management. Standing back and viewing the provisions objectively, we do not regard the urban development provisions as freshwater provisions that justify inclusion in the streamlined planning process. We do not consider that it would lead to loss of integration for the HS4 provisions to proceed through the Standard Schedule 1 process, while the HS5 provisions (or at least the majority if our recommendations are accepted) proceed through the streamlined process. We therefore recommend that all the HS4 provisions are categorised as P1S1 provisions.

#### 2.13.4 Hearing Stream Five – Freshwater

112. We consider it appropriate and consistent with the FPP criteria identified in Part A, for the majority of provisions within the HS5 topic to be included in the FPI. This includes Method FW.2 which the Reporting Officer recommended be assessed in the P1S1 process<sup>18</sup>, and also the definitions used in freshwater provisions including *hydrological control*, *hydraulic neutrality*, *Te Mana o te Wai* and *nature-based solutions*.

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<sup>33</sup> Section 42A Hearing Report, Hearing Stream 4 – Urban Development, 4 September 2023, paras 69-71.



113. However, we recommend that:

- a. Method 31; and
- b. Objective 12 AER 6;

are assessed as ‘non-freshwater provisions’ as they relate to matters that are broader than freshwater.

114. We recognise that Policies 15 and 41 apply more broadly across the RPS and in addition to Objective 12, they also give effect to Objective 29 (which relates to soil erosion and is not within the scope of Proposed Change 1). The Officer recommended they progress through the P1S1 process.<sup>34</sup> However, the amendments proposed in Change 1 to these operative Policies:

- a. for Policy 15 - refer directly to controlling earthworks and vegetation clearing to achieve target attribute states for water bodies and freshwater ecosystems, which links directly to the NPS-FM; and
- b. for Policy 41 – include a set of considerations directly related to management of water quality and quantity including a reference in clause (d) to future NRP controls, so there is a close relationship to achieving what the NPS-FM seeks to achieve.

115. It was a finely balanced decision, but the FHP and P1S1 Panels considered that because Method FW.2 applies to consents relating to freshwater, it was appropriate that it be included in the FPI even though it relates to operational processes. Implementing the Method will, in our view, relate directly to matters that impact on the quality of freshwater.

### 2.13.5 Hearing Stream Six – Indigenous Ecosystems

116. We agree with the Reporting Officer’s recommendation that all provisions within HS6 are assessed as part of the P1S1 process, including associated definitions.<sup>35</sup>

### 2.13.6 Hearing Stream Seven – Variation 1, Small Topics and Wrap 1

117. Variation 1 to Proposed Change 1 to the Regional Policy Statement proposes two additional objectives providing long term visions for two Wellington Region Whaitua (Te Awarua-o-Porirua Whaitua and Te

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<sup>34</sup> Appendix 3 to the Section 42A Hearing Report, Hearing Stream 5, 20 October 2023

<sup>35</sup> Section 42A Hearing Report, Hearing Stream 6, Indigenous Ecosystems, 11 December 2023, paras 74 – 75.

Whanganui-a-Tara Whaitua). Variation 1 gives effect to the NPS-FM and is therefore appropriately an FPI.

118. The Reporting Officer recommended that Methods 1, 2, 4 and 5 within the 'Consequential amendments' subtopic in HS7, be assessed as part of the FPI as they implement policies that give effect to parts of the NPS-FM. We agree with this but note that the majority of the provisions address broader matters than those impacting on the quality or quantity of freshwater. Again, this was a finely balanced issue with differing views from Commissioners, but we recommend that the Methods all proceed through the P1S1 process given the broad range of matters they relate to.

### 3. Statutory Framework

119. Sections 59 to 62 of the RMA set out the legal framework for an RPS.
120. Change 1 was notified on 19 August 2022. Counsel for the Regional Council advised that the version of the RMA that applies to the Change 1 process is that which was in place at the date of notification. We accept this.
121. Section 59 of the RMA states:
- “The purpose of a regional policy statement is to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.”
122. Counsel for the Regional Council referred in opening legal submissions to the legal tests for plan preparation set out in *Long-Bay Okura Great Park Society v North Shore City Council*<sup>36</sup> and subsequent line of authorities. Counsel submitted that the principles in these cases apply to changes to an RPS with the appropriate modifications and no party disagreed. We accept this and summarise the approach below.
123. The RPS must:
- a. Give effect to any national policy statement, the New Zealand Coastal Policy Statement and national planning standards;
  - b. State the significant resource management issues for the region;
  - c. State the resource management issues of significance to iwi authorities in the region;
  - d. State the objectives sought to be achieved by the RPS;
  - e. State the policies for those issues and objectives and an explanation of those policies;
  - f. State the methods (excluding rules) used, or to be used, to implement the policies; and
  - g. Not be inconsistent with any water conservation order.

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<sup>36</sup> A 78/08, EnvC, Auckland, 16 July 2008 at [34].

124. As stated by the High Court in *Royal Forest and Bird Protection Society of New Zealand Inc v Buller Coal Ltd*:<sup>37</sup>

*“...[the] pith and substance [of an RPS and regional plan] is directed to achieving sustainable management, via an overview of the significant resource management issues, policies and methods for the region. While regional policy statements provide normative guidance, regional plans assist regional councils to carry out their more specific functions.”*

125. The RPS sits at the head of the hierarchy of local authority planning instruments and “drives the direction” of both regional and district plans.<sup>38</sup>

126. Change 1:

- a. Should be designed in accordance with the Regional Council’s functions and Part 2 of the Act; and
- b. Must also be prepared in accordance with the obligation (if any) to prepare an evaluation report under section 32 of the Act, and in accordance with any national policy statements, New Zealand Coastal Policy Statement, national planning standard and any regulations.

127. The s32 Report states that the intent of Change 1 is to give effect to the national direction contained in the NPS-FM and NPS-UD.

128. Other national direction is also relevant, and has been implemented in part, and to the extent relevant to the regional council and the function of a RPS, and within the scope of submissions. Relevant national direction is discussed as part of specific Hearing Streams. In particular:

- a. HS2- discusses the relevance and implementation of the NPS-HPL;
- b. HS3 – discusses the Climate Change Response Act and national plans and management strategies made under it, and also the NPSET, NPS-REG and the NPS-IPH;
- c. HS4 – discusses the NPS-UD, and the NPS-FM as it is relevant to urban development;
- d. HS5 – discusses the NPS-FM and also NPS-UD;
- e. HS6 – discusses the NPS-IB, NPSET and NPSREG; and
- f. HS7 – discusses the NPS-FM and NPSET.

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<sup>37</sup> [2012] NZHC 2156 at [24].

<sup>38</sup> *Albany North Landowners v Auckland Council* [2017] NZHC 138 (HC) at [152].

## 4. Legal principles relating to scope

129. We discuss issues of scope within particular Hearing Streams as relevant, but here make some overarching comments that apply to both planning processes.
130. For both planning processes, the relief sought by submissions must be on Proposed Change 1. Neither the P1S1 Panel nor the FHP, has jurisdiction to grant any relief outside the scope of the Change.<sup>39</sup>
131. The P1S1 Panel only has jurisdiction to make a recommendation on a submission that is both within the scope of Proposed Change 1 and ‘on’ the Change.<sup>40</sup>
132. The FHP can also only make recommendations on the FPI but is not limited to making recommendations within the scope of submissions.<sup>41</sup> It may also make recommendations on any other matters related to the FPI that are identified by the FHP or any other person during the hearing.<sup>42</sup>
133. The legal principles relating to whether a submission is ‘on’ a plan change, are well-settled.<sup>43</sup>
134. As the High Court confirmed in *Palmerston North City Council v Motor Machinists Limited*, for a submission to be 'on' a change, a two-limbed test must be satisfied:
- a. The submission must address the proposed change itself, that is, the extent of the alteration to the status quo which the change entails; and
  - b. The Council must consider whether there is a real risk that any person who may be directly affected by the decision sought in the submission has been denied an effective opportunity to respond to what the submission seeks.
135. Questions relevant to the first limb include whether a submission raises matters that should be addressed in the s32 report, or whether the management regime in the plan for a particular resource is altered by the

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<sup>39</sup> Clause 6(1), Schedule 1, RMA (P1S1 Panel), and Clause 49(1), Part 4, Schedule 1, RMA.

<sup>40</sup> Clause 10, Part 1, Schedule 1, RMA.

<sup>41</sup> Clause 49(2)(a), Part 4, Schedule 1, RMA.

<sup>42</sup> Clause 49(2)(b), Part 4, Schedule 1, RMA.

<sup>43</sup> The summary here is drawn from Counsel for the Council’s legal submissions: Legal submissions on behalf of Wellington Regional Council – legal framework and plan change tests, 8 June 2023.

change. Submissions seeking relief beyond that ambit are unlikely to be 'on' the change. However, incidental or consequential extensions are permissible if they require no substantial section 32 analysis.

136. In considering the second limb, the High Court in *Motor Machinists* said that the risk that the Council must guard against is that the reasonable interests of others might be overridden by a 'submissional side-wind.' The concern identified was that a change could be so morphed by additional requests in submissions that people who were not affected by the change, as notified, became affected through a submission, which had not been directly notified to them.