

Part C: Report and Recommendations by the Freshwater Hearings Panel on Submissions on Proposed Change 1 to the Regional Policy Statement for the Wellington Region (the Freshwater Planning Instrument)

1. Executive Summary

1. Proposed Change 1 to the Regional Policy Statement (RPS) starts the implementation of the National Policy Statement on Freshwater Management 2020, taking an integrated management approach to freshwater. Proposed Change 1 focuses on the interface between urban development and freshwater, recognising that land use and development affects the state of the Region's rivers, streams and other water bodies, and also the coast.
2. Proposed Change 1 includes a range of regulatory direction and non-regulatory methods including a new Objective and new and amended Policies articulating how *Te Mana o te Wai* will be given effect to in the Region, and how district plans are to give effect to the NPS-FM. The new and amended Methods require Freshwater Action Plans and promote increased collaboration between the Region's local authorities.
3. The provisions also aim to support the Region's Whaitua Implementation Programmes (WIPs) and the restoration of the Region's degraded water bodies. In this way, Proposed Change 1 takes a step change from the Operative RPS by directing that the health and well-being of waterbodies and freshwater ecosystems be prioritised over the needs of people and communities.
4. This Part of our Recommendation Report comprises the entirety of the Freshwater Planning Instrument (FPI). All the provisions in this Part were considered by the Freshwater Hearings Panel. Recommendations on the 're-categorisation' of numerous provisions from the Part 1 Schedule 1 (P1S1) process to the FPI were made jointly by both Panels as noted in Part A, and took place after hearings.¹ All the recommendations on the merits

¹ As required by clause 39(b), Schedule 1, RMA.

of submissions on the FPI provisions, were made by the Freshwater Hearings Panel (FHP). Our recommendations are to be read with the corresponding submission analysis tables attached and Part A (Overview) which contains information relevant to both planning processes.

5. The FHP appointed a Special Advisor under clause 46 of Schedule 1 of the RMA. Consultant planner, Ms Sylvia Allan assisted the FHP on the following issues:

- a. The drafting of Objective 12 – the expression of Te Mana o te Wai
- b. Local authority functions and responsibilities, including reviewing Policies FW.3, FW.6, 14 and 15 to ensure functions were clear and areas of overlapping responsibilities justified.
- c. Horizontal integration between the hydrological control provisions in HS5 and the nature-based solutions / water sensitive urban design provisions in HS3
- d. The definition of hydrological control
- e. The definition of hydraulic neutrality
- f. The daylighting of rivers
- g. Review of drafting of Policy 14
- h. Review of drafting of Policy 40
- i. Review of drafting of Policy 42
- j. Review of drafting of Policy FW.X
- k. Review of drafting of Method FW.2

6. The FHP was grateful for Ms Allan’s pragmatic guidance. We did not have a planner on the Panel, and in many instances, we simply required ‘plan drafting’ assistance to help us better articulate the policy intent we wanted to convey in the provisions. The Chair of the FHP met with Ms Allan in-person and over the phone / by zoom to discuss the matters listed above. We have recorded Ms Allan’s suggestions in our Report. All recommendations on provisions and the merits of submissions are ours, albeit informed by Ms Allan’s drafting suggestions and guidance. We also note here, and discuss further in Part B of this Report, that we discussed some other provisions with Ms Allan that were notified as part of the FPI, but which the Panels ultimately regarded as being ‘non freshwater’ provisions after the hearings.

7. Having heard submitters and considered evidence, legal submissions, hearing presentations, and having received planning advice and drafting guidance from Ms Allan, we recommend Council adopt the

recommendations in this Report on the submissions and provisions of Proposed Change 1. In doing so, the RPS will:

- a. Apply the Te Mana o te Wai hierarchy of obligations in the NPS-FM by first prioritising the health and wellbeing of waterbodies and freshwater ecosystems, second, the health needs of people, and third, the ability of people and communities to provide for their social, economic and cultural well-being.
- b. Include Te Mana o te Wai mana whenua / tangata whenua statements and include a policy that recognises and provides for the statements
- c. Require regional and district plans give effect to Te Mana o te Wai by taking a range of actions that will protect and restore the health and wellbeing of water bodies and freshwater ecosystems including:
 - i. Requiring urban development be appropriately located and designed to protect and enhance the health and wellbeing of waterbodies
 - ii. Promoting and enabling the daylighting of rivers
 - iii. Actively involving mana whenua / tangata whenua and incorporating mātauranga Māori to protect and restore ecosystem health
 - iv. Engaging with communities and stakeholders.
- d. Clarify functions and responsibilities of the Regional Council and city/district Councils in the Region, recognising the Regional Council's specific role in relation to maintaining and enhancing water quality, and that all Councils have responsibilities relating to managing the effects of urban development and achieving integrated management. Given the areas of overlapping functions and responsibilities, the outcomes required in national direction can only be achieved through collaboration, coordination and working together well.
- e. Protect the habitat of trout and salmon so far as this is consistent with protecting the habitats of indigenous freshwater species
- f. Provide a consent pathway for aggregates and other activities in natural inland wetlands and rivers consistent with national direction
- g. Require regional plans include provisions for hydrological control for urban development recognising that this has a different focus and purpose than achieving hydraulic neutrality

- h. Require regional resource consent applications consider the effects on freshwater and receiving environments from urban development.
 - i. In relation to the take and use of water, apply the *Te Mana o te Wai* hierarchy by prioritising the health and wellbeing of waterbodies and freshwater ecosystems above the health needs of people and other needs.
- 8. Although finely balanced, the Panels recommend that the earthworks and vegetation clearance provisions, and only some of the nature-based solutions suite (Objective CC.4, Policies CC.4, CC.4A, CC.12, CC.14, CC.14A and FW.8, and Method CC.6 and the definitions for nature-based solutions, climate resilient, water sensitive urban design) are assessed as part of the FPI given their direct relationship to water quality and quantity issues and the direction in the NPS-FM. The Panels do not recommend that the following nature-based solutions provisions proceed through the Freshwater Planning Process: Objective CC.5, Policies CC.6, CC.7 and CC.18, and Methods CC.4 and CC.9, and the definitions for highly erodible land, permanent forest and plantation forestry.
- 9. The Panels also recommend that the definitions for climate change adaptation and climate change mitigation (addressed in the Climate Change General sub-topic) proceed through the Freshwater Planning Process.
- 10. The Panels do not recommend that the Urban Development provisions proceed through the Freshwater Planning Process. We acknowledge that many of the amendments in the Hearing Stream 4 – Urban Development Topic are about ensuring improved freshwater quality and quantity outcomes from urban development. However, the provisions have broader purposes – providing well-functioning urban and rural areas – and on balance we consider they should progress through the Standard Schedule 1 process.
- 11. Officers’ recommendations on the FPI provisions were modified in the course of the submissions and hearing process. The FHP agrees with the majority of the Officers’ recommendations on the merits of submissions. Our views differ from the Reporting Officers on the following provisions:

Provision	Panel's views
Introduction	We recommend relocating a sentence from the end of the Introduction for clarity and to improve readability.
Objective 12	We recommend deleting the heading and moving the clause regarding <i>Te Mana o te Wai</i> higher up into the Objective. We recommend some drafting changes including amalgamating two clauses, adding “natural form” into clause (d), including additional regional focus, and further revisions to ensure there are not two clauses referring to ‘priorities’.
Policy 12	We recommend clause (ca) is amended to refer to engagement with communities. We recommend deleting the reference to ‘part-FMUs’ and clarifying that the NOF process steps are as set out in the NPS-FM.
Policy 14	We recommend deleting “adjacent” from clause (h) and changing “streams” to “rivers”. We also recommend that “minimise” and “maximise” are referenced as defined terms.
Policy FW.3	We recommend “other receiving environments” is added into clause (k) and a new clause (kk) be inserted requiring urban development be located and designed to protect natural flows and enable daylighting of rivers as far as practicable.
Policy FW.X	We recommend amendments to the Explanation to clarify the policy intent and reflect changes we recommend to the definition of “hydrological control”.
Policy 42	We recommend clarifying in the heading that the Policy is a “consideration” Policy. We also recommend adding “ <i>hydrological control</i> ” to clause (h) and amendments to clause (k) to refer to “natural stream values”. We recommend the addition of an explanation.
Policy FW.6	We recommend various amendments to this Policy and the explanation text for clarity and to improve readability and align with wording in Policy FW.3.

Policy 15	We recommend including reference to setbacks from wetlands and riparian margins in clause (a), and also amending clause (a) to clarify the respective responsibilities of the Regional and district/city councils. The addition of the words “except as specified in (b)(iv)” in clause a(iv) clarifies that the Regional Council’s responsibilities do not duplicate on small sites.
Policy 40	We recommend an amendment to clause (a) to more accurately reflect the direction in Policy 5 of the NPS-FM. We recommend amendments to clause (b) relating to the coast to give effect to the NZCPS, and recommend removing an inconsistency between clauses (k) and (q) to give effect to Policies 9 and 10 of the NPS-FM.
Method FW.2	We recommend amendments to further promote collaboration and integrated management, and for consistency with other provisions in Change 1
Method 48	We recommend clause (g) is amalgamated with clause (f) to better reflect the intent
Definition of <i>hydrological control</i>	We recommend amendments to ensure the provisions do not only apply at site scale, remove a potential conflict and better address, in our view, water quantity and quality issues.
Definition of <i>hydraulic neutrality</i>	We recommend amendments to ensure the provisions do not only apply at site scale
Definition of <i>nature based-solutions</i>	We recommend a drafting amendment to remove the subheadings in the list of examples in the definition, to assist the application of the definition and avoid any potential for misinterpretation of the subheadings

2. Introduction

12. As stated in Part A of our Report, in August 2022 the Wellington Regional Council published Proposed Change 1 to its Regional Policy Statement. As noted in the opening paragraph of the Proposed Change 1 document, its focus 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). It also addresses issues around climate change, indigenous biodiversity and

high natural character, which may also have some relevance to urban development and freshwater management.

13. As required by the provisions of Schedule 1, Part 4 of the Resource Management Act 1991 (RMA), the parts of Proposed Change 1 directly related to freshwater issues are to be dealt with by a Freshwater Hearings Panel (the Panel or FHP) appointed by the Chief Freshwater Commissioner. This Panel was appointed under those provisions and its processes began on 6 June 2023. Information about the FHP's Terms of Reference and the Commissioners on the Panel is set out in Part A.
14. Over the period of 26 June 2023 to 16 April 2024, the Panel heard submissions and evidence about the freshwater provisions in Proposed Change 1. This document (Part C) contains the Recommendations of the FHP to the Council about the submissions on, and contents of, Proposed Change 1 which are related to freshwater (the Freshwater Planning Instrument or FPI).
15. 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.

2.1.1 Overview

16. The geographic area covered by the RPS contains approximately 8,150 square km of land, containing some 12,300 km of rivers and streams, and around 14 lakes.² In addition to the Wellington and Hutt Valley metropolises, there are urban areas on the Kapiti Coast, as far north as Otaki, and in the Wairarapa.
17. The s 32 Report for Proposed Change 1 describes the land use changes in urban and rural settings that have led to degradation of the Region's waterbodies:³

In very simple terms there has been inadequate control of land use activities and change and on discharge of contaminants. This is highlighted in the urban sector where stormwater quality controls have been inadequate, wastewater overflows are common, as is stream loss to urban subdivision. These issues are highlighted, because the focus of this RPS change is on the interface between urban development and fresh water.

² [Land, Air, Water Aotearoa \(LAWA\) - Wellington Region.](#)

³ Section 32 Evaluation report for Proposed Variation 1 to Proposed Change 1 to the Regional Policy Statement for the Wellington Region, para 67.

18. The s 32 Report notes that urban streams and rivers are affected by stormwater discharges, especially where there is extensive impervious cover such as buildings, and sealed roads and carparks. These stormwater discharges, generally untreated before entering the streams and rivers, may contain sediments and bacteria, as well as contaminants such as heavy metals. These sediments and contaminants affect freshwater fish and invertebrates and can have chronic long-term effects on freshwater and coastal systems.
19. Integrated management of freshwater requires applying the concept of *ki uta ki tai* and recognising the interconnectedness of, and interactions between, all environmental domains. Adopting an integrated approach also requires managing freshwater and land use and development in catchments in a way that avoids, remedies or mitigates adverse effects, including cumulative effects, on the health and well-being of water bodies, freshwater ecosystems and receiving environments.⁴
20. The Operative RPS states that nearly half of the land in the Region is used for agriculture.⁵ Rivers and streams in agricultural areas are reported as having poor biological health and water quality. In summer, particularly late in the season, many suffer from algal growth. In the areas around Te Horo, Otaki and in the Wairarapa valley, groundwater is affected by land uses with some having higher nitrate levels, which could come from agriculture, or from septic tanks. In some Wairarapa aquifers, groundwater levels are declining year on year. This can affect the flow of springs, rivers and streams, and water levels in wetlands, with the potential for them to be permanently and adversely affected by the loss of habitat and the rising impact of the incoming contaminants. Pressure on water resources is likely to increase as a result of climate change.
21. The Operative RPS identified these issues over a decade ago. There continue to be numerous challenges to the health of waterways in both urban and water rural areas of the region, including as identified by mana whenua and community and expressed in the whitua implementation programmes delivered to date - Ruamāhanga, Te Awarua-o-Porirua and Te Whanganui-a-Tara. Pressure on water resources and health of waterways, fresh and coastal, will continue to increase as the impacts of climate

⁴ Clause 3.5 of the NPS-FM.

⁵ Operative RPS, chapter 3.4 Fresh water, page 40. The contents of this paragraph are drawn from this page of the Operative RPS.

change drive changes in rainfall, temperature, contaminant loss, flows and groundwater levels.

2.1.2 The statutory process and categorisation of provisions to the FPI

22. The framework of what is required in an RPS is set out in ss 59 – 62 of the RMA and has been canvassed in Part A. In summary, an RPS is required to contain an overview of the resource management issues for the affected region, and policies and methods to achieve integrated management of the natural and physical resources of the whole region.
23. As noted in the opening submissions of Ms Kerry Anderson, DLA Piper, counsel for the Council (and no party disagreed), an RPS is to give effect to, and accord with, any national policy statement, national planning standard, or any relevant regulations, and must set out the significant resource management issues for the region. It should set out the objectives and policies, and the methods to be used to achieve the objectives and implement the policies.⁶
24. Part A of our Report sets out information about the Freshwater Planning Process (FPP) and is not repeated here.
25. The FPP comprises the provisions coded to Hearing Stream 5 (HS5 – Freshwater and *Te Mana o te Wai*), and provisions that are part of the FPI that were considered in other Hearing Streams.
26. Part A of our Recommendation Report and the Appendix to Part A lists the provisions that we consider fall within the scope of the FPI, and our reasoning. We discuss some of the key aspects below.
27. The categorisation of Change 1 provisions is based on the FPP criteria in the High Court decision in *Otago Regional Council v Royal Forest and Bird*.⁷ We summarise the criteria in Part A and note the complex and subjective nature of the categorisation exercise.
28. Officers' views across Hearing Streams varied. Some Officers recommended that a provision be categorised as part of the FPP if it referred in any way to freshwater or could be said to implement the NPS-FM; while others took an approach that was based more, it seemed, on the 'extent' or degree to which a provision related to matters that impact on

⁶ Legal submissions on behalf of Wellington Regional Council – legal framework and plan change tests, 8 June 2023, para 12.

⁷ [2022] NZHC 1777.

freshwater quality and quantity, or the extent to which a provision gives effect to the NPS-FM. Officers generally did not understandably want to split a provision into different planning processes, but their views did seem to differ on whether a provision needed to have a substantial or at least reasonable focus on freshwater management, or whether only one reference in a much broader provision was enough to categorise it as part of the FPI.

29. The Panels broadly agreed with the approach the Officer took in the Integrated Management Hearing Stream (HS2).⁸ Where a provision addresses a wider range of resource management issues which are generally broader than freshwater quality and quantity, the Panels 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 on some provisions, again reflecting the subjective nature of the task.
30. The provisions that we consider to be appropriately categorised as Freshwater provisions and part of the FPI are discussed below.

2.1.3 Hearing Stream Two – Integrated Management

31. As stated in Part A, we do not consider any provisions in this Hearing Stream are part of the FPI. This is consistent with the Reporting Officer’s recommendations.⁹

2.1.4 Hearing Stream Three – Climate Change

32. The Reporting Officers recommended that all provisions coded to these subtopics, be assessed under the P1S1 process:

⁸ Reply Evidence of Jerome Wyeth on behalf of Wellington Regional Council, Hearing Stream 2 – Integrated Management, 28 July 2023, para 42.

⁹ Reply Evidence of Jerome Wyeth on behalf of Wellington Regional Council, Hearing Stream 2 – Integrated Management, 28 July 2023, para 42.

- a. General¹⁰
 - b. Agricultural Emissions¹¹
 - c. Energy, Industry and Waste¹²
 - d. Transport.¹³
33. We agree with this assessment.
34. For the Climate-Resilience and Nature-Based Solutions subtopic, the Officer recommended the following provisions be assessed as part of the FPI (consistent with their status at notification):¹⁴
- a. Objective CC.4
 - b. Objective CC.5
 - c. Policy CC.4
 - d. Policy CC.4A
 - e. Policy CC.14
 - f. Policy CC.14A
 - g. Policy CC.6
 - h. Policy CC.7 (unless the Officer’s recommendations are agreed to by the Panel, in which case it should proceed using the P1S1 process)
 - i. Policy CC.12
 - j. Policy CC.18
 - k. Policy FW.8
 - l. Method CC.4
 - m. Method CC.6
 - n. Method CC.9

¹⁰ 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.

¹¹ 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.

¹² 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.

¹³ Section 42A Hearing Report, Hearing Stream 3 – Climate Change, Subtopic Transport, 31 July 2023, para 2.

¹⁴ Section 42A Hearing Report, Hearing Stream 3 – Climate Change, Subtopic Climate-Resilience and Nature-Based Solutions, 31 July 2023, para 62 and Table 4.

- o. Definitions of *climate resilience*, *water sensitive urban design*, *highly erodible land*, *nature-based solutions*, *permanent forest and plantation forestry*.
- 35. 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 roofs) 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 to climate change.
- 36. 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.
- 37. Although finely balanced, the Panels consider that only some of 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, and are therefore appropriately categorised as part of the FPI.
- 38. The Officers in HS3 have not recommended that *all* provisions that reference nature-based solutions are included in the FPI, for instance 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*.
- 39. 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 well-being. 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.

40. We acknowledge that the climate change-related definitions of *climate change adaptation*, *climate change mitigation* and *climate change resilience* are broad terms, however given they are referred to within the *nature-based solutions* provisions, we recommend they are assessed together in the same planning process to avoid the loss of integration. The Officer recommended that Policy CC.7 should be a P1S1 provision if we recommend the amendments the Officer proposes. We are satisfied that Policy CC.7 progresses as part of the Standard Schedule 1 process for the reasons the Officer provides in the s 42A Report.¹⁵ In essence, while the Policy has freshwater ‘co-benefits’, it does not directly relate to freshwater.
41. 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:¹⁶
 - a. Issue 3
 - b. Objective 20
 - c. Policy 52
 - d. Definition of *minimise*.
42. 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 in Part A). Similarly, Policy 52, while relating to freshwater and flood management and resilience, also addresses a broader range of hazards.

¹⁵ Section 42A Hearing Report, Hearing Stream 3 – Climate Change, Subtopic Natural Hazards, 31 July 2023, para 203 and Table 4.

¹⁶ Section 42A Hearing Report, Hearing Stream 3 – Climate Change, Subtopic Natural Hazards, 31 July 2023, Tables 3 and 4 (paras 15 and 63).

43. 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 42 A Report. Therefore, we recommend that all the provisions listed in paragraph 38 above (other than the definition of “minimise”) progress as part of the Standard Schedule 1 process.
44. The conclusion we reach on the HS3 provisions (although not without considerable debate), is that only some of the *nature-based solutions* provisions and the definition of “minimise” should progress as part of the FPI.
45. Therefore, we recommend that from the HS3 topic, the following provisions relating to *nature-based solutions* and the definition of *minimise* progress as part of the FPI:
- a. Objective CC.4
 - b. Policy CC.4
 - c. Policy CC,4A
 - d. Policy CC.12
 - e. Policy CC.14
 - f. Policy CC.14A
 - g. Policy FW.8
 - h. Method CC.6
 - i. 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*
 - vi. *Minimise.*

2.1.5 Hearing Stream Four – Urban Development

46. 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.
47. 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.¹⁷

48. 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. However, 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.
49. 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.
50. We therefore recommend that all the HS4 provisions are categorised as P1S1 provisions.

2.1.6 Hearing Stream Five - Freshwater

51. 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 process¹⁸ and also the definitions used in freshwater provisions including *hydrological control*, *hydraulic neutrality*, *Te Mana o te Wai* and *nature-based solutions*.

¹⁷ Section 42A Hearing Report, Hearing Stream 4 – Urban Development, 4 September 2023, paras 69 -71.

¹⁸ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 120 – 121.

52. 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.

53. 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.¹⁹ 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.

54. 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. There was considerable discussion in HS5 about local authority functions and responsibilities, and broad agreement that these overlap in relation to the control of land use for freshwater management. The importance of local authorities collaborating and working well together to achieve improved freshwater outcomes was evident to us and a common theme in HS5. This Method will (or at least should) play an important role in that, and we consider it appropriate that it be assessed as part of the FPI.

¹⁹ Appendix 3 to the Section 42A Hearing Report, Hearing Stream 5, 20 October 2023.

2.1.7 Hearing Stream Six – Indigenous Ecosystems

55. We agree with the Reporting Officer’s final recommendations that all provisions within HS6 are assessed as part of the P1S1 process, including associated definitions.

2.1.8 Hearing Stream Seven – Small Topics, Wrap Up and Variation 1

56. Variation 1 to Proposed Change 1 to the Regional Policy Statement proposes two additional objectives providing long term visions for two Wellington Region Whaitua:
- a. 'Objective TAP' – long term visions for Te Awarua-o-Porirua Whaitua
 - b. 'Objective TWT' – long term visions Te Whanganui-a-Tara Whaitua.
57. Variation 1 gives effect to the NPS-FM and is therefore appropriately a FPI.
58. 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.

2.1.9 Structure of Part C

59. The remaining sections in Part C begin with a discussion on the regulatory framework applying to freshwater, focusing on the provisions in the NPS-FM and NPS-UD that are particularly relevant to Proposed Change 1.
60. The provision-by-provision analysis does not follow the order of the provisions in Proposed Change 1, but instead is grouped as follows:

Hearing Stream 5

- Chapter 3.4 Introduction and Table 4

Hearing Stream 7

- Variation 1 (HS7) - Freshwater visions, Objective Te Awarua-o-Porirua and Objective Te-Whanganui-a-Tara

Hearing Stream 5

- Objective 12
- *Te Mana o te Wai* Statement of Rangitāne o Wairarapa
- *Te Mana o te Wai* Statement of Kahungunu ki Wairarapa
- Policies FW.XXA and FW.XXB: Mana whenua / tangata whenua and *Te Mana o te Wai* (regional and district plans, and consideration policy)
- Policy 12: Management of water bodies – regional plans
- Policy 13: Allocating water – regional plans
- Policy 14: Urban development effects on freshwater and the coastal marine area – regional plans
- Policy FW.3: Urban development effects on freshwater and the coastal marine area – district plans
- Policy FW.X: Hydrological control for urban development – regional plans
- Policy 42: Effects on freshwater and the coastal marine area from urban development – consideration
- Policy FW.6: Allocation of responsibilities for land use and development controls for freshwater
- Policy 15: Managing the effects of earthworks and vegetation disturbance – district and regional plans
- Policy 41: Controlling the effects of earthworks and vegetation disturbance - consideration
- Policy 18: Protecting and restoring ecological health of water bodies – regional plans
- Policy 18A: Protection and restoration of natural inland wetlands – regional plans
- Policy 18B: Protection of river extent and values – regional plans
- Policy 40: Protecting and enhancing the health and well-being of water bodies and freshwater ecosystems – consideration
- Policy 40A: Loss of extent and values of natural inland wetlands – consideration
- Policy 40B: Loss of river extent and values - consideration
- Policy 17: Take and use of water for the health needs of people – regional plans
- Policy 44: Managing water takes and use to give effect to *Te Mana o te Wai* – consideration
- Policy 43: Protecting aquatic ecological function of water bodies – consideration

- Policy FW.1: Reducing water demand – regional plans
- Policy FW.2: Reducing water demand – district plans
- Policy FW.4: Financial Contributions for urban development – district plans
- Policy FW.5: Water supply planning for climate change and urban development – consideration
- Policy FW.7 - Water attenuation and retention – non-regulatory
- Method FW.1 - Freshwater Action Plans
- Method 48: Water Allocation policy review
- Method FW.2: Joint processing urban development consents
- Method 30: Implement the harbour and catchment management strategy for Porirua Harbour
- Method 34: Prepar4 a regional water supply strategy
- Method 35: Prepare a regional stormwater plan
- Method FW.X: Engagement with Water Regulators
- Method FW.X: Technical guidance for stormwater management in urban development
- Method FW.XX: Best practice guidance for managing urban development effects on freshwater
- AER: Objectives 12 (except AER 6), 13 and 14
- Definitions:
 - *Aquatic compensation*
 - *Aquatic offsetting*
 - *Community drinking water supply*
 - *Earthworks*
 - *Effects management hierarchy*
 - *Group drinking water supply*
 - *Health needs of people*
 - *Hydrological control*
 - *Hydraulic neutrality*
 - *Maximise*
 - *Minimise (HS3)*
 - *Specified infrastructure*
 - *Te Mana o te Wai*
 - *Undeveloped state*
 - *Vegetation clearance*

Hearing Stream 3

- Objective CC.4
- Policy CC.4(and CC4.A – CC14.A): Climate resilient urban areas – district and regional plans; consideration
- Policy CC.4 Climate-resilient urban areas - district and regional plans
- Policy CC.14 Climate-resilient urban areas - consideration
- Policy CC.12: Protect, enhance and restore ecosystems that provide nature-based solution to climate change - consideration
- Policy FW.8: Land use adaptation – non regulatory
- Method CC.6: Identifying nature based solutions for climate change
- Definitions:
 - *Nature-based solutions*
 - *Climate resilience / climate resilient / resilience and resilient*
 - *Water-sensitive urban design*
 - *Climate change adaptation*
 - *Climate change mitigation.*

61. As explained in Part A, the approach we took to all hearings was to ‘refine as we go’ by asking detailed questions of Officers at the end of each Hearing Stream focusing on what we considered to be the outstanding points of contention raised by submitters. This often resulted in further amendments in the Officers’ Reply Evidence. In the majority of instances, we agree with Council Officer’s Reply version of the provisions, 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:

- s 42A 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).

62. 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~~.

2.1.10 The Regulatory Framework

63. Part A of this Report outlines the key provisions in the RMA relevant to Proposed Change 1. With respect to the management of freshwater quality and quantity issues, we note the respective functions of regional councils and territorial authorities in ss 30 and 31 which include, as regional council functions:
- a. controlling the use of land for the purpose of:
 - i. soil conservation
 - ii. the maintenance and enhancement of the quality of water in water bodies and coastal water
 - iii. the maintenance of the quantity of water in water bodies and coastal water
 - iv. the maintenance and enhancement of ecosystems in water bodies and coastal water, and
 - v. the avoidance or mitigation of natural hazards (s 30(1)(c));
 - b. the control of the taking, use, damming, and diversion of water, and the control of the quantity, level, and flow of water in any water body (s 30(1)(e)); and
 - c. the control of discharges of contaminants into or onto land, air, or water and discharges of water into water (s 30(1)(f)).
64. Territorial authority functions include:
- a. the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of the avoidance or mitigation of natural hazards (s 31(1)(b)(i)); and
 - b. the control of actual or potential effects of activities in relation to the surface of water in rivers and lakes.

65. All local authorities are required to include, implement and review provisions in their planning documents to achieve integrated management (ss 30(1)(a) and 31(1)(a)).
66. Part 2 of the RMA requires, as a matter of national importance, the preservation of the natural character of the coastal environment, wetlands, and lakes and rivers and their margins, and their protection from inappropriate subdivision, use, and development (s 6(a)). In addition, persons exercising powers and functions under the Act must have particular regard to the effects of climate change (s 7(i)). The principles of Te Tiriti o Waitangi must be taken into account (s 8).
67. The Freshwater Planning Process set out in s 80A of the RMA and Part 4, Schedule 1, is discussed in Part A and not repeated here. Other relevant statutory direction is in the Climate Change Response Act 2002 which requires emissions reduction plans and national adaptation plans to reduce emissions and increase resilience and provide for adaptation to climate change.

2.1.11 The National Policy Statement for Freshwater Management 2020

68. The NPS-FM is the primary national direction applying to the FPI but, as we discussed in Part A, other national direction is also relevant and important to these provisions, including the NPS-UD. The ‘integrated frame’ approach the Council has taken to Proposed Change 1 is summarised in Part A. In essence, Change 1 aims to ensure land use activities, particularly urban development, are managed in an integrated way that considers the interactions with freshwater management, indigenous biodiversity, and climate change.
69. Proposed Change 1 is intended to give only partial effect to the NPS-FM. It incorporates amendments required to provide direction to forthcoming amendments to the Natural Resource Plan, which itself is required to give effect to the RPS.²⁰
70. Ms Pascall, the Reporting Officer for HS5, describes the important relationship between freshwater management and urban development in this way in the s 42A Report:²¹

In giving partial effect to the NPS-FM the Council has taken an integrated approach to Change 1 to not only give effect to the

²⁰ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 179.

²¹ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 178.

NPS-UD but to ensure that urban development that occurs as a result of the more permissive planning regime under the NPS-UD and medium density residential standards does not occur in isolation from broader resource management issues, such as freshwater degradation.

71. Proposed Change 1 does include some provisions that apply more broadly than urban development, including Policies 15 and 18.
72. The NPS-FM came into effect on 3 September 2020 and replaced the NPS-FM 2014 (as amended in 2017). The NPS-FM was updated in February 2023 and in January 2024, after HS5 hearings had concluded. Recent amendments to s 80A(4)(b) of the RMA extend the timeframe until 31 December 2027 for regional councils to publicly notify FPIs giving effect to the NPS-FM. Proposed Change 1 is not affected by these amendments as it was notified well in advance of this legislative change. We note the Government has introduced a Bill to the House proposing further changes to the NPS-FM. Again, we consider these not to be relevant to this process or our assessment of the provisions as they remain draft law with no legislative effect.
73. The NPS-FM sets the direction for freshwater management in Aotearoa New Zealand. The Objective of the NPS-FM in clause 2.1 is to ensure that natural and physical resources are managed in a way that prioritises the health and well-being of water bodies and freshwater ecosystems, second, the health needs of people, and third, the ability of people and communities to provide for their social, economic and cultural well-being now and in the future. Underpinning the Objective is the concept of *Te Mana o te Wai*, discussed further below.
74. Policies 1 to 5 of the NPS-FM set general direction:
 - a. Policy 1 of the NPS-FM requires freshwater to be managed in a way that gives effect to *Te Mana o te Wai*.
 - b. Policy 2 requires tangata whenua to be actively involved in freshwater management and for Māori freshwater values to be identified and provided for.
 - c. Policy 3 requires freshwater to be managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.

- d. Policy 4 requires freshwater to be managed as part of New Zealand’s integrated response to climate change.
 - e. Policy 5 requires freshwater to be managed to ensure that the health and well-being of degraded water bodies and freshwater ecosystems is improved, and the health and well-being of all other water bodies and freshwater ecosystems is maintained and (if communities choose) improved.
75. Also relevant to the provisions in Proposed Change 1 are other policies in the NPS-FM including Policies 7 – 11 which require:
- a. The loss of river extent and values to be avoided to the extent practicable.
 - b. The significant values of outstanding water bodies to be protected.
 - c. The habitats of indigenous freshwater species to be protected.
 - d. The habitat of trout and salmon to be protected insofar as this is consistent with protecting the habitats of indigenous freshwater species.
 - e. Freshwater to be allocated and used efficiently and existing over allocation to be phased out and future over allocation to be avoided.
76. Policy 15 is also relevant to Proposed Change 1. It requires that communities are enabled to provide for their social economic and cultural well-being in a way that is consistent with the NPS-FM.

2.1.12 *Te Mana o te Wai*

77. The concept of *Te Mana o te Wai* has been given strong recognition in the NPS-FM in the Objective, Policy 1 and in Clause 1.3 where it is described as the *fundamental concept* of the NPS. *Te Mana o te Wai* is defined as:

... a concept that refers to the fundamental importance of water and recognises that protecting the health of freshwater protects the health and well-being of the wider environment. It protects the mauri of the wai. *Te Mana o te Wai* is about restoring and preserving the balance between the water, the wider environment, and the community.

Te Mana o te Wai is relevant to all freshwater management and not just to the specific aspects of freshwater management referred to in this National Policy Statement.

78. Clause 1.3 goes on to describe the principles of the concept as:

- (a) *Mana whakahaere*: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater
- (b) *Kaitiakitanga*: the obligations of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations
- (c) *Manaakitanga*: the process by which tangata whenua show respect, generosity, and care for freshwater and for others
- (d) *Governance*: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future
- (e) *Stewardship*: the obligations of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations
- (f) *Care and respect*: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.

79. Subclause 1.3(5) states:

- (5) There is a hierarchy of obligations in *Te Mana o te Wai* that prioritises:
 - (a) first, the health and well-being of water bodies and freshwater ecosystems
 - (b) second, the health needs of people (such as drinking water)
 - (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

80. This hierarchy of obligations is identical to Objective 2.1 of the NPS-FM, and Subpart 1 of Part 3 – Implementation of the NPSFM places strong emphasis on engagement with “communities and tangata whenua to determine how *Te Mana o te Wai* applies to waterbodies and freshwater ecosystems in the region” (clause 3.2(1)).

81. The NPS-FM states that the fundamental concept of *Te Mana o te Wai* must inform the interpretation of the NPS-FM and the provisions required to be included in regional policy statements and regional and district plans (clause 3.2(4)).

82. Every Regional Council is required to give effect to *Te Mana o te Wai*, with the requirements of engagement set out in clause 3.2(1) and 3.2((2). Those requirements are to:

3.2 Te Mana o te Wai

- (1) Every regional council must engage with communities and tangata whenua to determine how Te Mana o te Wai applies to water bodies and freshwater ecosystems in the region.
- (2) Every regional council must give effect to Te Mana o te Wai, and in doing so must:
 - (a) actively involve tangata whenua in freshwater management (including decision-making processes), as required by clause 3.4; and
 - (b) engage with communities and tangata whenua to identify long-term visions, environmental outcomes, and other elements of the NOF; and
 - (c) apply the hierarchy of obligations, as set out in clause 1.3(5):
 - (i) when developing long-term visions under clause 3.3; and
 - (ii) when implementing the NOF under subpart 2; and
 - (iii) when developing objectives, policies, methods, and criteria for any purpose under subpart 3 relating to natural inland wetlands, rivers, fish passage, primary contact sites, and water allocation; and
 - (d) enable the application of a diversity of systems of values and knowledge, such as mātauranga Māori, to the management of freshwater; and

 - (e) adopt an integrated approach, ki uta ki tai, to the management of freshwater (see clause 3.5).

83. Subclauses 3.2(3) and (4) then go on to provide:

- (3) Every regional council must include an objective in its regional policy statement that describes how the management of freshwater in the region will give effect to Te Mana o te Wai.
- (4) In addition to subclauses (1) to (3), Te Mana o te Wai must inform the interpretation of:
 - (a) this National Policy Statement; and
 - (b) the provisions required by this National Policy Statement to be included in regional policy statements and regional and district plans.

84. Subclauses 3.4(1)(a) and (b) of the NPS-FM state:

- (1) Every local authority must actively involve tangata whenua (to the extent they wish to be involved) in freshwater management (including decision-making processes), including in all the following:
 - (a) identifying the local approach to giving effect to Te Mana o te Wai
 - (b) making or changing regional policy statements and regional and district plans so far as they relate to freshwater management

2.1.13 Integrated management, territorial authority functions and climate change response

85. Subclauses 3.5(1) and (2) of the NPS-FM state that:

- (1) Adopting an integrated approach, *ki uta ki tai*, as required by Te Mana o te Wai, requires that local authorities must:
 - (a) recognise the interconnectedness of the whole environment, from the mountains and lakes, down the rivers to hāpua (lagoons), wahapū (estuaries) and to the sea; and
 - (b) recognise interactions between freshwater, land, water bodies, ecosystems, and receiving environments; and
 - (c) manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects, on the health and well-being of water bodies, freshwater ecosystems, and receiving environments; and
 - (d) encourage the co-ordination and sequencing of regional or urban growth.
- (2) Every regional council must make or change its regional policy statement to the extent needed to provide for the integrated management of the effects of:
 - (a) the use and development of land on freshwater; and
 - (b) the use and development of land and freshwater on receiving environments.

86. Subclause 3.5(4) provides territorial authorities with a specific role in management and protecting freshwater. The subclause states:

- (4) Every territorial authority must include objectives, policies, and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.

87. Clause 3.5(3) also requires local authorities that share jurisdiction over a catchment to co-operate in the integrated management of the effects of land use and development on freshwater.

88. The NPS-FM provides strong direction to the RPS, which in turn provides direction for regional and district plans, and for resource consent assessments. The direction has driven many of the provisions in the FPI including prioritisation of the health and well-being of waterbodies and freshwater ecosystems, integrated management of the use and development of land on a catchment basis, use of nature-based solutions to support climate resilience, recognising that freshwater can be used to provide integrated management of effects, community engagement and active involvement of *mana whenua* / *tangata whenua*. Proposed Change 1 reflects this direction through regulatory and non-regulatory provisions

aimed to change the status quo²² with the anticipated environmental results describing the step change expected as a result.

2.1.14 Nature-based solutions

89. Proposed Change 1 recognises that nature-based solutions provide an important opportunity to mitigate and adapt to climate change, with co-benefits for people and the natural world.²³ The technical evidence of Mr Farrant on behalf of the Council describes how nature-based solutions can lead to improved freshwater outcomes consistent with *Te Mana o te Wai*, mitigate the impacts of high intensity rainfall events, and support stormwater and flood management. Nature-based solutions can also reduce contaminants in runoff, especially in urban areas, through the use of hydrological control, water sensitive urban design techniques and other measures.
90. The role of nature-based solutions in the integrated management of land use, development and freshwater is recognised in the NPS-FM, the Emissions Reduction Plan (ERP) and National Adaptation Plan (NAP).
91. Clause 3.5 and Policy 4 of the NPS-FM recognise that freshwater must be managed as part of climate change mitigation and adaptation, and to manage adverse effects, including cumulative effects on water bodies and freshwater ecosystems.
92. Clause 3.5(2) requires an RPS be amended “to the extent needed” to provide for the integrated management of the effects of:
- a. The use and development of land on freshwater, and
 - b. The use and development of land and freshwater on receiving environments
- (emphasis added).
93. This is a strong direction to use both land and freshwater to achieve integrated management. Also, clause 3.5(4) requires territorial authorities (TAs) to include provisions in plans to “promote positive effects” and avoid, remedy or mitigate adverse effects, including cumulative effects, of

²² The evidence of Mr Farrant for the Council talks about the ‘risks of continuing business as usual’ – Statement of Evidence of Stuart Farrant on behalf of Wellington Regional Council, Technical Evidence – Climate-Resilience and Nature-based Solutions, 7 August 2023, para 28ff, especially para 46.

²³ Section 32 Report, page 72.

urban development on the health and well-being of water bodies, freshwater ecosystems.

94. Policy 5 of the NPS-FM and the National Objectives Framework also supports provisions in plans to achieve improved environmental outcomes in freshwater management units. Policy 15 of the NPS-FM is also relevant as it states that communities are enabled to provide for their social, economic and culture well-being. Mr Farrant's evidence and the s 42A Report for the Climate-Resilience and Nature-Based Solutions Topic discuss the benefits for the environment, people and communities through increased uptake of water sensitive design techniques and other nature-based solution measures.
95. The s 42A Report also explains that the ERP, NAP and also Te Mana O Te Taiao Aotearoa New Zealand Biodiversity Strategy 2020 promote the use of nature-based solutions to address climate change, with the ERP (Action 4.1) and NAP (Action 5.9) calling for the use of nature-based solutions to be prioritised within the planning systems to address the climate and biodiversity crises together providing, where possible, for both carbon removals and climate change adaptation.²⁴
96. Chapter 7 of the ERP also recognises that infrastructure can be used and provided for in ways that lower emissions and increase resilience. Actions 5.16 and 8.7, and Chapter 6 of the NAP support working with nature to build resilience and options to be identified to increase the integration of nature-based solutions into form.²⁵

2.1.15 Variation 1

97. The RMA allows a council to initiate variations to Change 1 at any time before the Change is approved.²⁶
98. On 13 October 2023, following consultation with the Chief Freshwater Commissioner, the Regional Council notified Variation 1 to Proposed Change 1. Variation 1 is a FPI using the FPP. The purpose of the Variation is to insert two new long-term freshwater visions (Objectives) into Chapter 3.4: Freshwater which give effect to *Te Mana o te Wai* and clauses 3.2 and 3.3 of the NPS-FM. The freshwater visions are for Whaitua Te Whanganui-

²⁴ Section 42A Hearing Report, Hearing Stream 3 – Climate Change, Climate-Resilience and Nature-Based Solutions, 31 July 2023, para 77.

²⁵ Section 42A Hearing Report, Hearing Stream 3 – Climate Change, Climate-Resilience and Nature-Based Solutions, 31 July 2023, para 44; also see section 2.3 for a broader discussion of relevant national direction/management plans and strategies.

²⁶ Clause 16A, Schedule 1 of the RMA.

a-Tara and Whaitua Te Awarua-o-Porirua. Variation 1 therefore provides what the Reporting Officer Ms Pascall described as “a statutory line of sight” to Plan Change 1 to the Regional Plan (the Natural Resource Plan or NRP).²⁷ This is because Plan Change 1 includes provisions that implement (in part) the National Objectives Framework (NOF) in the NPS-FM for these two Whaitua.

99. Variation 1 only includes long-term visions for two Whaitua. The remaining three will be included in the RPS in a subsequent change process, and following further work and engagement with mana whenua and the community.²⁸

2.1.16 Whaitua Implementation Programmes

100. Ms Pascall highlighted that since 2018, the Regional Council has been progressing whaitua processes with mana whenua / tangata whenua and community representatives across the Wellington Region to develop Whaitua Implementation Programmes (WIPs) to improve the health of freshwater.²⁹ There are five Whaitua (catchments) in total being Ruamāhanga, Te Awarua-o-Porirua, Whaitua Te Whanganui-a-Tara, Kāpiti, and Wairarapa Coast. The following WIPs have been completed to date:

- a. Ruamāhanga Whaitua (2018)
- b. Te Awarua-o-Porirua Whaitua and the Statement of Ngāti Toa Rangatira (2019)
- c. Whaitua Te Whanganui-a-Tara and Te Mahere Wai o Te Kāhui Taiao (2021).

101. The WIPs include freshwater values, objectives, outcomes and recommendations which inform freshwater provisions of the RPS and the direction provided to regional and district plans.

102. The Council now seeks the inclusion of two freshwater vision objectives, one for Whaitua Te Whanganui-a-Tara and one for Te Awarua-o-Porirua

²⁷ Hearing Statement of Kate Pascall, RPS Proposed Change 1, Hearing Stream 5: Freshwater and Te Mana o te Wai, 20 November 2023, para 11.

²⁸ Hearing Statement of Kate Pascall, RPS Proposed Change 1, Hearing Stream 5: Freshwater and Te Mana o te Wai, 20 November 2023, para 12; and Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 21, lines 1029 – 1033.

²⁹ Section 42A Hearing Report, Hearing Stream 5, Freshwater and Te Mana o te Wai, 20 October 2023, para 100.

Whaitua, which have come from the relevant whaitua processes, with input from community and mana whenua/tangata whenua.

2.2 General Submissions

2.2.1 Withdraw or defer NPS-FM implementation

103. Some submitters expressed concerns as to the Proposed Change 1 process only partially addressing the requirements of the NPS-FM, and while whitua processes are incomplete across the region. Several submitters (BLNZ [S78.001], WFF [S163.001] with supporting submissions from Irrigation NZ [FS21.001] and others, requested that the freshwater component of Change 1 should be withdrawn and deferred to a later review of the RPS.
104. Section 5.0 of the s 32 Report discusses the rationale for the scope of Proposed Change 1 including the implementation timeframes in the NPS-UD, NPS-FM and other national direction, and the importance of taking an “integrated approach by considering in a holistic way the relevant provisions and their relationships to one another”.³⁰
105. We do not recommend the FPI is withdrawn or deferred. We agree with the reasons of the Hearing Stream 1 (General Submissions) Reporting Officer including:³¹
- a. When Proposed Change 1 was notified, the implementation timeframe for the FPI was 31 December 2024
 - b. There is insufficient justification to further delay implementation in the RPS given the statutory requirements and the need to support subsequent changes to the NRP and district plans in the Region
 - c. It is appropriate for the Council, given its functions in s 30 of the RMA and other statutory requirements, to take an integrated approach to implementing various higher order documents and national management plans and strategies.
 - d. Consultation was undertaken as described in section 4 of the s 32 Report
 - e. The scope of what was notified in an RPS change cannot be retrospectively altered by withdrawing amendments. It can be amended only through the submissions and hearing process.

³⁰ Section 42A Hearing Report, Hearing Stream 1, General Submissions, 26 May 2023, para 130.

³¹ Section 42A Hearing Report, Hearing Stream 1, General Submissions, 26 May 2023, in particular paras 130 – 137.

106. We also agree with the HS5 Reporting Officer’s statements on this issue. Ms Pascall stated in the s 42A Report that:³²

The freshwater provisions of Change 1 are part of an integrated approach to respond to and manage increased urban development in the region and in doing so commence the Council’s obligations to give effect to the NPS-FM by 31 December 2024. In my opinion, a delay to including these provisions would put the region on the backfoot in terms of addressing the region’s already degraded water bodies and the impacts of urban development. In my opinion, these provisions provide higher-order direction that necessitates a change in urban development practices that is already overdue.

107. We therefore reject the general submissions seeking that the freshwater component of Proposed Change 1 be deferred or withdrawn for the reasons given by the Reporting Officers in HS1 and HS5.

2.2.2 Relief sought by Muaūpoko

108. Muaūpoko [S33.001] sought acknowledgement throughout the RPS of their “connection to Te Whanganui-a-Tara”. They considered they should have been consulted by the Council under clause 3(1)(d) of Schedule 1 as part of the Change 1 preparation and sought formal recognition of their status as mana whenua including through a future plan change to the Tangata Whenua chapter. Muaūpoko’s relief was supported by Rangitāne and opposed by Ngāti Toa and Ātiawa.
109. The Reporting Officer for HS1 (General Submissions) confirms that the Council did not consult Muaūpoko during the preparation of Change 1.³³ Muaūpoko is not identified in the s 32 Report as one of the Council’s mana whenua / tangata whenua partners. We agree with the legal submissions presented by Mr David Allen, Buddle Findlay, for Council during HS1. It is not the role of the Council to confer, declare or affirm tikanga-based rights, powers or authority.³⁴ Likewise, we are not able to assess or determine mana whenua status and can only assess the merits of the relief sought by Muaūpoko on the Change 1 provisions.

³² Section 42A Hearing Report, Hearing Stream 5, Freshwater and Te Mana o te Wai, 20 October 2023, para 93.

³³ Section 42A Hearing Report, Hearing Stream 1, General Submissions, 26 May 2023, para 117.


³⁴ Wellington Regional Council Legal Submissions for Hearing Stream 1: Overview and General Submissions, Providing for Tangata Whenua / Mana Whenua in Proposed Change 1, 8 June 2023, para 5.

110. We discuss the relief sought by Muaūpoko as relevant in our provision-by-provision analysis.

3. Provision-by-Provision Analysis

3.1 Chapter 3.4 Introduction and Table 4 (HS 5)

111. The notified version of the Introductory text stated:

Chapter introduction	
<p>Fresh water is integral to our health, wellbeing, livelihood and culture. Freshwater is essential for our economy and defines our landscape and sustains ecosystems. People value clean fresh water for many reasons – economic, recreational, aesthetic, ecological and</p>	
<p>cultural. It is a matter of national importance to protect wetlands, lakes, rivers and streams from inappropriate use and development.</p> <p>The region’s fresh water has to meet a range of uses valued by the community. There is a range of differing uses and values associated with fresh water. The resource needs to be available to meet the needs of both current and future generations. This range of uses and values leads to multiple pressures on the quantity and quality of the fresh water which can cumulatively impact on the availability and value of the resource for use. This is a complex issue that involves multiple resource users with differing values. A whole of catchment approach is particularly useful for understanding and managing these complexities. It is also important that the flow of water is managed appropriately.</p> <p>Māori consider fresh water to be a significant taonga (valued resource) that plays a central role in both spiritual and secular realms. In the Māori world view, water represents the life blood of the land. The condition of water is a reflection of the state of the land, and this in turn is a reflection of the health of the people.</p> <p>In their natural state, river catchments and wetlands cleanse and purify water, recharge groundwater and reduce the extremes of flooding. Rivers, lakes and wetlands provide habitat for aquatic life, but when they and their catchments are degraded the water bodies’ ability to support healthy functioning aquatic ecosystems is reduced.</p> <p>Monitoring of the region’s rivers shows that many urban and lowland pastoral streams regularly fail water quality guidelines. The most common reasons for failing are high levels of nutrients or bacteria, or poor clarity. Biological monitoring shows that aquatic health is also poorest in these streams. The adverse effects of erosion and sediment run-off on fresh water are discussed in section 3.11 Soil and Minerals.</p> <p>Urban streams are affected by stormwater discharges, especially when there are high proportions of impervious cover – such as roofs and roads – in the catchment. Stormwater, which generally has little or no treatment, contains sediments and bacteria, as well as persistent contaminants – like heavy metals – which accumulate in stream sediments and eventually in the <i>coastal environments</i> where the streams discharge. These contaminants affect freshwater fish and invertebrates and can have chronic long-term adverse effects on river and coastal ecosystems. Urban land uses also affect water quality in rivers and streams and can cause other pressures on freshwater habitat by creating the demand to pipe or fill in small streams.</p> <p>There are eight major discharges of treated sewage to fresh water in the region – one from the treatment plant at Paraparaumu, one from Rathkeale College in Masterton, with the rest from the Wairarapa towns of Masterton, Castlepoint, Carterton, Greytown, Featherston and Martinborough. Treated sewage often contains high levels of disease-causing organisms that can make the rivers unsafe for recreational use, as well as nutrients, which can promote nuisance aquatic weed and algal growth. Discharges of wastes into water bodies are of particular concern to tangata whenua because waste, particularly sewage waste, degrades the mauri (life force) of the water body.</p>	

Land uses affect the state of rivers and streams and, consequently, the coast. Nearly half the land in the region is used for agriculture. Rivers and streams in these catchments have poor biological health and water quality, and are more likely to suffer from algal growth in late summer, when conditions are driest and warmest and river flows at their lowest. Groundwater around Te Horo, Ōtaki and in the Wairarapa valley is also affected by land uses, and in some areas has elevated levels of nitrate. This could be from farming or from septic tanks.

Accommodating people's needs for water is becoming more and more difficult because some water resources in the region are already fully allocated and others are close to full allocation. Non-consumptive uses of water can often be undertaken with negligible effects on water bodies. In the Wairarapa, the amount of water taken for farm pasture irrigation has more than doubled over the last 10 years and increasing populations in the region's urban areas means demand for water supply from rivers, lakes and groundwater is expected to increase. The pressure on water resources is also likely to increase as a result of climate change. Some predicted effects are that the central and eastern Wairarapa will become drier, and droughts will occur more frequently and persist for longer periods.

Groundwater levels in some Wairarapa aquifers are declining year by year. Lowered groundwater levels can affect the flow of springs and rivers and streams, and water levels in wetlands, which can eventually dry up. If continued *abstractions* keep the groundwater level low, the dependent ecosystems can be permanently affected.

Prolonged low flows in rivers mean there is less habitat available for aquatic life and the adverse effects of contamination are worse because of reduced dilution. Low flows in summer mean water temperatures and algal growths increase, especially if there is no riparian vegetation. Because people's need to take water is greatest at times of low rainfall, *abstractions* generally lower river flows when aquatic life is already stressed.

Existing users often have invested in infrastructure in reliance upon consents for the take and/or use of water.

All these matters should be recognised in the efficient management of water.

The introduction and spread of aquatic pests are a threat to the health of aquatic ecosystems. In wetlands, exotic plants such as willows and blackberry can displace wetland plants and do not provide suitable habitat for wetland species. Pests – such as didymo and pest fish – also have potential for significant adverse effects.

It is a matter of national importance to maintain and enhance public access to and along rivers and lakes. There is little information about the state of public access to rivers and lakes in the region. Where land is publicly owned, public access has generally been enhanced with the provision of walking tracks and recreational areas. For example, major rivers such as the Hutt, Waikanae and Ruamāhanga, which are managed for flood protection or soil conservation purposes, have good access for recreational use.

Where land is privately owned, city and district councils can take esplanade reserves or strips as part of subdivisions. On private land that is not proposed to be subdivided, however, public access is at the discretion and with the permission of the landowner. To

date, there has been no region-wide strategic planning in the region that has identified where public access should be enhanced. Where esplanade reserves and strips have been taken for public access, city and district councils sometimes struggle to maintain them. Even where there is legal access, it is not always aligned with access that is physically possible. There are circumstances where public access to the coastal marine area, lakes and rivers may not be desirable – such as to provide security for regional infrastructure, allow for farming activities and prevent harm to the public.

The *Te Mana o Te Wai* objective is required by the NPS-FM (3.2(3)). Each iwi of the region have expressed what *Te Mana o Te Wai* means to them in their own words. These expressions of *Te Mana o Te Wai* form part of this objective.

The NPS-FM requires that freshwater is managed in a way that gives effect to *Te Mana o te Wai*. The regional council “must include an objective in its regional policy statement that describes how the management of freshwater in the region will give effect to *Te Mana o te Wai*” (NPS-FM 3.2 (3)). The *Te Mana o Te Wai* objective in this RPS repeats the requirements of the NPS-FM, and then provides how each iwi of the region wishes to articulate their meaning of *Te Mana o Te Wai*.

Note: There are six iwi wishing to express their meaning of *Te Mana o Te Wai* as part of this objective. There are two expressions of *Te Mana o Te Wai* in this RPS at this time from Rangitāne o Wairarapa and Kahungunu ki Wairarapa. Others will be added either through the Schedule 1 process or in future plan changes.

112. There were 14 submissions and 21 further submissions on the introductory text to Chapter 3.4 and Table 4.

3.1.1 Submissions, Evidence and Analysis

113. Submitters sought a range of relief including clearer articulation of *Te Mana o te Wai*, and concerns by mana whenua / tangata whenua that the Introduction does not accurately reflect that Māori freshwater practices and aspirations are cultural practices.
114. The s 42A Officer recommended various amendments in response, noting that these amendments reflect that Proposed Change 1 is a first step towards full implementation of the NPS-FM in the RPS.³⁵
115. The Officer recommends including reference to the protection of the *margins* of rivers, lakes and wetlands in response to relief sought by Forest and Bird [S165.013].
116. Rangitāne [S168.031] (supported by Sustainable Wairarapa Inc [FS31.141]) considered that the text in paragraph 2 did not put the health and wellbeing of water bodies and freshwater ecosystems first and foremost. The language used reflects competing values i.e. “multiple resource users with differing values”. Rangitāne also considered that

³⁵ Section 42A Hearing Report, Hearing Stream 5, Freshwater and Te Mana o te Wai, 20 October 2023, para 116.

statements such as "Māori consider fresh water to be a significant taonga (valued resource) that plays a central role in both spiritual and secular realms" implies that Māori tikanga and mātauranga is a religious endeavour when in fact it is cultural practice from multiple generations of observing, learning and listening to te taiao.

117. Rangitāne sought amendments to the introductory text to clarify the hierarchy of obligations in Objective 2.1 of the NPS-FM and to remove implications that Māori are acting in a religious realm.
118. In response, the Officer recommends including the *Te Mana o te Wai* hierarchy of obligations to prioritise the health and wellbeing of water bodies and freshwater ecosystems. The Officer also recommends an amendment to clarify that Māori tikanga and mātauranga are cultural practices rather than religious.
119. The Officer recommends including additional background and context on the whitua process and WIPs, including to give effect to alternate relief by the Wairarapa Water Users Society [S145.001]), and more specific references to mana whenua / tangata whenua *Te Mana o te Wai* statements (Taranaki Whānui [S167.029]. MDC sought an amendment to clarify that Rathkeale College in its district, did not discharge treated sewage to freshwater [S166.011] and this has been accepted by the Officer.
120. Through her Rebuttal Evidence, Ms Pascall sought an amendment to the Introduction to refer to integrated management / *ki uta ki tai*.³⁶
121. We have considered the relief sought by Muaūpoko and agree with the approach recommended by the Council Officer (and as supported in legal submissions presented by Mr David Allen). We agree that it is appropriate for the Introductory text to remove the reference to "six iwi" and to include references to *Te Mana o te Wai* expressions at a more general level. We consider this achieves an appropriate balance between the relief sought by Muaūpoko and the Council's mana whenua / tangata whenua partners who submitted on Muaūpoko's relief (including Rangitāne [FS2.125], Ngāti Toa [FS6.068] and Ātiawa [FS20.351]) and makes no determination about Muaūpoko's request for recognition of mana whenua status, which we have no jurisdiction to do as discussed above under 'General submissions'. The provisions themselves (including new Policy FW.XXA)

³⁶ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 7.

appropriately include more specific information on the mana whenua / tangata whenua statements incorporated in the RPS to date.

122. We consider that the sentence above the “regionally significant issues” is disconnected from the text to which it relates, and should be relocated so it sits immediately beneath the discussion on *Te Mana o te Wai*.

3.1.2 Finding and s 32AA Evaluation

123. We agree with the Reporting Officer’s recommendations on the Introduction for the reasons above, and otherwise as set out in the Officer’s s 42A Report, or the Officer’s Rebuttal and Reply Evidence. In addition, we recommend the sentence in the Introduction “All policies and methods in this RPS relating to freshwater must contribute to achieving this objective” be relocated for clarity as its location in the notified Change is disconnected from the statement to which it refers. We also recommend a minor technical drafting amendment to insert “clause” before “3.2(3)”.
124. We recommend the Council make all the necessary consequential amendments to Table 4 to reflect the amendments we recommend to the provisions referred to in the Table.
125. As the Introduction text is not a provision, we do not consider that a s 32AA Evaluation is required. In any event, we note that this amendment is a minor drafting change, intended to aid the interpretation and readability of the Introduction. Any consequential changes to Table 4 arise from our recommendations on the provisions referenced in the Table and are required for consistency, readability and efficient navigation of the RPS.

3.1.3 Recommendation

Chapter Introduction

Fresh water is integral to our health, wellbeing, livelihood and culture. Freshwater is essential for our economy and defines our landscape and sustains ecosystems. People value clean fresh water for many reasons – economic, recreational, aesthetic, ecological and cultural. It is a matter of national importance to protect wetlands, lakes, rivers and streams **and their margins** from inappropriate use and development.

The region’s fresh water has to meet a range of uses valued by the community. There is a range of differing uses and values associated with fresh water. The resource needs to be available to meet the needs of both current and future generations. This range of uses and values leads to multiple pressures on the quantity and quality of the fresh water which can cumulatively impact on the availability and value of the resource for use. This is a complex issue that involves multiple resource users with differing values. A whole of catchment

approach is particularly useful for understanding and managing these complexities. It is also important that the flow of water is managed appropriately.

The concept of *Te Mana o te Wai* is central to freshwater management, as set out in the NPS-FM. *Te Mana o te Wai* includes a hierarchy of obligations, as follows:

- First, the health and wellbeing of water bodies and freshwater ecosystems as the first priority.
- Second, the health needs of people (such as drinking water)
- Third, the ability of people and communities to provide for their social, economic, and cultural wellbeing, now and in the future.

This hierarchy of obligations, and the broader concept of *Te Mana o te Wai*, demonstrates the primacy of water and that the health and wellbeing of water impacts the wider environment. Under the NPS-FM, freshwater management must be undertaken in accordance with this hierarchy and principles.

Māori consider fresh water to be a significant taonga (valued resource) that plays a central role in ~~both spiritual and secular realms~~. In the Māori world view, ~~w~~Water represents the life blood of the land. The condition of water is a reflection of the state of the land, and this in turn is a reflection of the health of the people.

The management of freshwater requires an integrated approach, ki uta ki tai, that recognises the interconnectedness of the whole environment.

[...]

There are ~~eight~~ ~~seven~~ major discharges of treated sewage to fresh water in the region – one from the treatment plant at Paraparaumu, ~~one from Rathkeate College in Masterton~~, with the rest from the Wairarapa towns of Masterton, Castlepoint, Carterton, Greytown, Featherston and Martinborough. Treated sewage often contains high levels of disease-causing organisms that can make the rivers unsafe for recreational use, as well as nutrients, which can promote nuisance aquatic weed and algal growth. Discharges of wastes into water bodies are of particular concern to tangata whenua because waste, particularly sewage waste, degrades the mauri (life force) of the water body.

[...]

Since 2018, the regional council has been progressing whitua processes with mana whenua/tangata whenua and community representatives across the Wellington Region to develop Whitua Implementation Programmes (WIPs) to improve the health of freshwater. There are five whitua (catchments) in total being Ruamāhanga, Te Awarua-o-Porirua, Whitua Te Whanganui-a-Tara, Kāpiti, and Wairarapa Coast. The following WIPs have been completed to date:

- Ruamāhanga Whitua (2018)
- Te Awarua-o-Porirua Whitua and the Statement of Ngāti Toa Rangatira (2019)
- Whitua Te Whanganui-a-Tara and Te Mahere Wai o Te Kāhui Taiao (2021)

The WIPs include freshwater values, objectives, outcomes and recommendations which inform freshwater provisions of the RPS and the direction provided to regional and district plans.

The *Te Mana o te Wai* objective is required by the NPS-FM (clause 3.2(3)): requires the RPS to include an objective that describes how the management of freshwater in the region will give effect to *Te Mana o te Wai*. All policies and methods in this RPS relating to freshwater must contribute to achieving this objective.

The RPS includes several policies to give effect to *Te Mana o te Wai* including specific policy direction that the mana whenua/tangata whenua expressions of *Te Mana o te Wai* must be recognised and provided for. These expressions underpin the regional response to *Te Mana o te Wai*. The regional council “must include an objective in its regional policy statement that describes how the management of freshwater in the region will give effect to *Te Mana o te Wai*” (NPS-FM 3.2 (3)). The *Te Mana o te Wai* objective in this RPS repeats the requirements of the NPS-FM, and then provides how each iwi of the region wishes to articulate their meaning of *Te Mana o te Wai*:

Note: There are six iwi wishing to express their meaning of *Te Mana o te Wai* as part of this objective. There are two three expressions of *Te Mana o te Wai* in this RPS at this time from Rangitāne o Wairarapa, and Kahungunu ki Wairarapa, and Taranaki Whānui. Others will be added either through the Schedule 1 process or in future plan changes.

All policies and methods in this RPS relating to freshwater must contribute to achieving this objective.

Amend Table 4 [Drafting Note to Council: include any amendments consequential to our recommendations on other provisions]

Policy Titles	Page	Method titles	Implementation (*lead authority)
Policy 40: Protecting and enhancing the health and well-being of water bodies and freshwater ecosystems aquatic ecosystem health in water bodies – consideration		Method 4: Resource consents, notices of requirement and when changing, varying or reviewing plans	City and district councils Wellington Regional Council
Policy FW.1: Reducing water demand – regional plans		Method 1: District plan implementation Method 2: Regional plan implementation	City and district councils Wellington Regional Council
Policy FW.2: Reducing water demand – district plans		Method 2: Regional plan implementation Method 1: District plan implementation	Wellington Regional Council City and district councils

Each iwi of the region have can expressed what *Te Mana o te Wai* means to them in their own words and these expressions can be included in the RPS. These expressions of *Te Mana o te Wai* form part of this objective.

The RPS includes several policies to give effect to *Te Mana o te Wai* including specific policy direction that the mana whenua/tangata whenua expressions of *Te Mana o te Wai*

must be recognised and provided for. These expressions underpin the regional response to *Te Mana o te Wai*. The regional council “must include an objective in its regional policy statement that describes how the management of freshwater in the region will give effect to *Te Mana o te Wai*” (NPS-FM 3.2 (3)). The *Te Mana o te Wai* objective in this RPS repeats the requirements of the NPS-FM, and then provides how each iwi of the region wishes to articulate their meaning of *Te Mana o te Wai*.

Note: There are six iwi wishing to express their meaning of *Te Mana o te Wai* as part of this objective. There are ~~two~~ ~~three~~ expressions of *Te Mana o te Wai* in this RPS at this time from Rangitāne o Wairarapa, ~~and~~ Kahungunu ki Wairarapa, ~~and~~ Taranaki Whānui. Others will be added either through the Schedule 1 process or in future plan changes.

3.2 Freshwater Visions – Variation 1 (HS7)

126. A number of submitters noted that Proposed Change 1 does not include long term freshwater visions, as required by clause 3.3(1) of the NPS-FM. The Regional Council [S137.003] proposed vision statements be included for Whaitua Te Whanganui-a-Tara and Te Awarua-o-Porirua Whaitua that had come through the relevant whaitua processes, with input from community and mana whenua / tangata whenua. Forest and Bird [S165.019] requested an overarching vision to apply to all Freshwater Management Units (FMUs) in the Wellington Region.
127. The Reporting Officer Ms Pascall addresses this issue in her s 42A Report noting the requirement in clause 3.3 of the NPS-FM to include visions as objectives in the RPS which in turn inform the NOF process of developing environmental outcomes, identifying values, and setting target attribute states and other NPS-FM requirements.³⁷ The Officer went on to say:³⁸

... the Council is preparing to notify changes to the NRP by the end of 2023 to include environmental outcomes, values, and target attribute states which are reliant on freshwater vision objectives under the NPS-FM. It is therefore important that these vision objectives have some statutory weight in the RPS to inform the necessary changes to the NRP. This means that the vision objectives must at least be at the public notification stage of the plan change process. The submissions on Change 1 do not have statutory weight in the NRP process until such time as decisions are made on those submissions. Plan change 1 to the NRP is due to be notified in late 2023, but decisions are not expected on Change 1 to the RPS until mid-2024.

As a result of this, since the close of submissions on Change 1 the Council has considered the options available to ensure that the upcoming NRP Plan Change 1 is informed by proposed freshwater vision objectives. The Council has prepared Variation 1 to Proposed Change 1 of the RPS which includes freshwater vision objectives for Te Awarua-o-Porirua Whaitua and Te Whanganui-a-Tara Whaitua. Submissions on Change 1 in relation to freshwater visions have informed the Council's development of Variation 1 and further engagement has been undertaken with mana whenua/tangata whenua and territorial authorities throughout 2023.


³⁷ Section 42A Hearing Report, Hearing Stream 5, Freshwater and Te Mana o te Wai, 20 October 2023, paras 135 – 139.

³⁸ Section 42A Hearing Report, Hearing Stream 5, Freshwater and Te Mana o te Wai, 20 October 2023, paras 135 – 139.

128. Ms Pascall went on to explain that the Council proposed to incorporate freshwater visions to support Change 1 to the NRP through a variation to Proposed Change 1.
129. The Council publicly notified Variation 1 to Proposed Change 1 on 13 October 2023 and submissions closed on 13 November 2023.
130. Two freshwater visions for Te Awarua-o-Porirua and Te Whanganui-a-Tara as Objectives were introduced through Variation 1 and considered in HS7. In addition to the visions, Variation 1 also included a new section heading (“Long-term freshwater visions”) and the insertion of a new map (figure 3.4) showing whaitua boundaries for Te Awarua-o-Porirua and Te Whanganui-a-Tara.


3.2.1 Objective TAP: Long-term freshwater vision for Te Awarua-o-Porirua Whaitua

131. As notified the Objective read:

<u>Objective TAP: Long-term freshwater vision for Te Awarua-o-Porirua</u>	
<p><u>By the year 2100 Te Awarua-o-Porirua harbour, awa, wetlands, groundwater, estuaries and coast are healthy, wai ora, accessible, sustainable for future generations, and:</u></p> <ol style="list-style-type: none"> <u>1. The practices and tikanga associated with Te Awarua o Porirua are revitalized and protected; and</u> <u>2. Mahinga kai are abundant, healthy, diverse and can be safely gathered by Ngāti Toa Rangatira and served to Ngāti Toa Rangatira uri and manuhiri to uphold manaakitanga; and</u> <u>3. Have restored and healthy ecosystems that support an abundance and diversity of indigenous species, and have a natural water flow and energy that demonstrate kei te ora te mauri (the mauri of the place is intact); and</u> <u>4. Provide for safe access for people and communities to enjoy a range of recreational activities including fishing, fostering a strong connection to these waterbodies; and</u> <u>5. Are taken care of in partnership with Ngāti Toa Rangatira giving effect to the rights, values, aspirations and obligations of Ngāti Toa as kaitiaki for the mana of Te Awarua-o-Porirua as a taonga; and</u> <u>6. Are resilient to the impacts of climate change; and</u> <u>7. The use of water and waterways provide for social and economic use benefits, provided that such use does not compromise the health and well-being of waterbodies and freshwater ecosystems or the take and use of water for human health needs.</u> 	

3.2.2 Objective TWT: Long term vision Te Whanganui-a-Tara Whaitua

132. As notified the Objective read:

<u>Objective TWT: Long-term freshwater vision for Te Whanganui-a-Tara</u>	
<p><u>By the year 2100 a state of wai ora is achieved for Te Whanganui-a-Tara in which the harbour, rivers, lakes, wetlands, groundwater, estuaries and coast are healthy, accessible, sustainable for future generations, and:</u></p> <ol style="list-style-type: none"><u>1. The practices and tikanga associated with Te Whanganui-a-Tara are revitalized and protected; and</u><u>2. Mahinga kai are abundant, healthy, diverse and can be safely gathered by Taranaki Whānui and Ngāti Toa Rangatira and served to Taranaki Whānui and Ngāti Toa Rangatira uri and manuhiri to uphold manaakitanga; and</u><u>3. Have mauri/mouri that is nurtured, strengthened and able to flourish and restored natural character, have a natural water flow, and ecosystems that support an abundance and diversity of indigenous species; and</u><u>4. Provide for the safe access and use of all rivers, lakes, wetlands, estuaries, harbours, and the coast for a range of recreational activities including fishing, fostering an appreciation of and connection to these waterbodies; and</u><u>5. Are taken care of in partnership with Taranaki Whānui and Ngāti Toa Rangatira giving effect to the rights, values, aspirations and obligations of Ngāti Toa and Taranaki Whānui that respects the mana of Te Whanganui-a-Tara and the whakapapa connection with Taranaki Whānui and Ngāti Toa Rangatira; and</u><u>6. Are resilient to the impacts of climate change; and</u><u>7. The use of water and waterways provide for social and economic use benefits, provided that such use does not compromise the health and well-being of waterbodies and freshwater ecosystems or the take and use of water for human health needs.</u>	

133. These two long-term freshwater visions expressed as objectives in Change 1 give effect to *Te Mana o te Wai* and clauses 3.2 and 3.3 of the NPS-FM. Clause 3.3 requires that regional councils develop long-term visions for freshwater in their region and include those long-term visions as objectives in their RPS.

134. The Variation 1, s 32 Report notes that:³⁹

it is proposed that there will be a vision objective for each whaitua included within the RPS. The priority for the development of visions has been for Te Awarua-o-Porirua and Te Whanganui-a-Tara, as the change to the NRP in 2023 will

³⁹ Section 32 Evaluation report for Proposed Variation 1 to Proposed Change 1 to the Regional Policy Statement for the Wellington Region, para 18

involve the inclusion of provisions (environmental outcomes) for these two whitua. A vision is not being included for the Ruamāhanga whitua as the plan change for that whitua has not commenced yet, and therefore it is not included in this Variation. Visions are not being included for the Kāpiti or Wairarapa Coast whitua as those whitua processes have not yet concluded.

135. As discussed above under the Regulatory Framework section, Variation 1 was accepted by the Chief Freshwater Commissioner prior to public notification on 13 October 2023.

3.2.3 Submissions, Evidence and Analysis

136. There were a relatively small number of submissions to Variation 1 – a total of 9 submitters and further submitters. Most were generally supportive of the two proposed objectives. Concerns were expressed in relation to:

- a. the engagement process in the development of the objectives
- b. the content of the objectives
- c. Figure 3.4.

137. Several submitters expressed concerns at not having had opportunity to engage with the drafting of the freshwater visions and objectives, and the dislocation of this process with the Whitua processes. The s 42A Report Officer responds stating that:⁴⁰

The long-term freshwater visions are based on statements from the relevant Whitua Implementation Programmes, which were produced as part of the extensive whitua process, which engaged with tangata whenua and the wider community and which was informed by an understanding of the history of, and environmental pressures on the whitua area as required by clause 3.3 of the NPS-FM.

138. While acknowledging that wider stakeholders were not consulted during the development of Variation 1, the s 42A Officer notes that:⁴¹

The RMA requires consultation with the Minister for the Environment and other Ministers who may be affected, local

⁴⁰ Section 42A Hearing Report Hearing Stream 7 - Small topics, wrap up and Variation 1, 8 March 2024, para 48.

⁴¹ Section 42A Hearing Report Hearing Stream 7 - Small topics, wrap up and Variation 1, 8 March 2024, para 51.

authorities who may be affected, tangata whenua of the area who may be affected, and any customary marine title group in the area.

139. We explored this further at the Hearing and were assured by the Reporting Officer that the visions and objectives were drawn from the WIPs, reflecting the values statements in the WIP documents.⁴² We have considered the two WIPs and agree that the proposed Objectives reflect the Whaitua values arising from wide engagement with community and iwi through the Whaitua process.
140. There were a number of submitter suggestions to refine the wording of the Objectives and the s 42A Report proposed some amendments. Remaining concerns were in relation to the insertion of “agreement of private landowners” in clause 4 of both Objectives, that the visions should be considered in parallel with Change 1 to the NRP, whether the visions should refer to Whaitua or FMUs and whether the caveat at the end of clause 7 in relation to social and economic benefits not compromising the health and wellbeing of water bodies is appropriate in an objective.
141. The Reporting Officer at the HS7 Hearing, Mr O’Brien, agreed that it is not appropriate to require landowner agreement, noting in his Rebuttal Report⁴³ that the explicit requirement for “agreement of private landowners” has the potential to conflict with existing public access rights managed through district plans and resource consents. And further that:⁴⁴

The intent of this clause is to provide a long-term vision for freshwater and coastal water at the objective level relating to “safe and healthy access” within these two whaitua. It is not intended that these vision objectives provide direct regulation or requirements on public access. I consider that the direct reference to “agreement of private landowners” provides an unnecessary level of detail for an objective in the RPS. It also narrows the intent of Clause 4 by focusing it on the right to cross private land to access waterbodies or coastal waters when instead the emphasis should be placed on the ability of people to enjoy a recreational experience.

142. We agree with this assessment and the removal of “agreement of private landowners” in clause 4 of both Objectives. At the hearing we queried the

⁴² Hearing Transcript, HS7 – Small Topics, Wrap Up and Variation 1, Day 1, page 27, lines 1306 – 1324.

⁴³ Statement of Rebuttal Evidence of Samuel O’Brien on Behalf of Wellington Regional Council, Hearing Stream 7 – Variation 1, 4 April 2023, paras 10 - 11.

⁴⁴ Statement of Rebuttal Evidence of Samuel O’Brien on Behalf of Wellington Regional Council, Hearing Stream 7 – Variation 1, 4 April 2023, paras 10 - 11.

phrase “safe and healthy access” also in clause 4. We requested that the Officer give the issue further thought and also discuss it with Mr Brass, the planner for the DGC and Waka Kotahi who had commented on the phrase. In the Officer’s Reply, he recommends amendments to clarify the policy intent of the phrase in the Objectives.⁴⁵ We agree with those recommendations.

143. Considering the timing of the development of visions/objectives in the RPS and NRP, the s 32 Report outlines that in order to implement clauses 3.3 and 3.9(5)(b) of the NPS-FM, the RPS visions/objectives need to be developed to inform environmental outcomes and target attribute states in NRP.⁴⁶ We agree with this analysis and reject submissions that these objectives should be developed in parallel with the Change 1 NRP process.
144. Looking at the caveat at the end of clause 7 in relation to social and economic benefits not compromising the health and wellbeing of water bodies, we are of the view that this is an appropriate expression to have in the Objective. It reflects the NPS-FM prioritising the health and welfare of the river above the health needs of people and social, economic and cultural well-being. It also reflects the values in the two WIPs.
145. We are of the view that vision/objectives at the whitua level compared to FMUs or part-FMUs is the appropriate level for the RPS at this stage. NPS FM clause 3.3(2)(a) specifies that long term visions may be set at FMU, part-FMU or catchment level.

3.2.4 Finding

146. We agree with the Reporting Officer’s recommendations on Objectives TAP and TWT for the reasons above, and otherwise as set out in the Officer’s s 42A Report, or the Officer’s Rebuttal and Reply Evidence.

3.2.5 Recommendation

Objective TAP: Long-term freshwater vision for Te Awarua-o-Porirua

By the year 2100 Te Awarua-o-Porirua harbour, awa, wetlands, groundwater estuaries and coast are progressively improved to become healthy, wai ora, accessible, sustainable for future generations by the year 2100, and:

⁴⁵ Reporting Officer Right of Reply of Samuel O’Brien on behalf of Wellington Regional Council, Hearing Stream 7 – Variation 1, 30 May 2024, para 12 and Appendix A.

⁴⁶ Section 32 Evaluation report for Proposed Variation 1 to Proposed Change 1 to the Regional Policy Statement for the Wellington Region, para 15

1. The values of Ngāti Toa Rangatira are upheld by way of revitalising and protecting Ngāti Toa Rangatira practices and tikanga associated with Te Awarua o Porirua ~~are revitalized and protected~~; and
2. Mahinga kai are abundant, healthy, diverse and can be safely gathered by Ngāti Toa Rangatira and served to Ngāti Toa Rangatira uri and manuhiri to uphold manaakitanga; and
3. Have restored and healthy ecosystems that support an abundance and diversity of indigenous species, ~~and have a natural water flow have natural form and character~~ and energy that demonstrate kei te ora te mauri (the mauri of the place is intact); and
4. Where appropriate and with the agreement of private landowners, P provide for safe access and healthy access water quality for people and communities to enjoy a range of recreational activities including waka ama, swimming, and fishing, fostering a strong connection to these waterbodies; and
5. Are taken care of in partnership with Ngāti Toa Rangatira giving effect to the rights, values, aspirations and obligations of Ngāti Toa as kaitiaki for the mana of Te Awarua-o-Porirua as a taonga; and
6. Are resilient to the impacts of climate change; and
7. The use of water and waterways provide for social and economic use benefits, provided that ~~the vision for the ecological health such use does not compromise the health~~ and well-being of waterbodies, ~~and freshwater ecosystems and coastal waters is not compromised; or the take and use of water for human health needs.~~

Objective TWT: Long-term freshwater vision for Te Whanganui-a-Tara

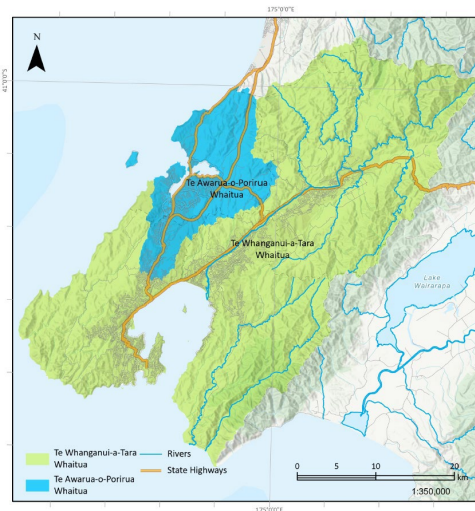
By the year 2100 a state of wai ora is achieved for Te Whanganui-a-Tara in which the harbour, awa, wetlands, groundwater estuaries and coast are healthy, accessible, sustainable for future generations, and:

1. The Mana Whenua practices and tikanga associated with Te Whanganui-a-Tara are revitalized and protected; and
2. Mahinga kai are abundant, healthy, diverse and can be safely gathered by Taranaki Whānui and Ngāti Toa Rangatira and served to Taranaki Whānui and Ngāti Toa Rangatira uri and manuhiri to uphold manaakitanga; and
3. Have mauri/mouri that is nurtured, strengthened and able to flourish and restored natural form and character, ~~have a natural water flow~~, and ecosystems that support an abundance and diversity of indigenous species; and
4. Where appropriate and with the agreement of private landowners, P provide for ~~the~~ safe access and healthy access water quality for ~~the and~~ use of all rivers, lakes, wetlands, estuaries, harbours, and the coast for a range of recreational activities including waka ama, swimming, and fishing, fostering an appreciation of and connection to these waterbodies; and

5. Are taken care of in partnership with Taranaki Whānui and Ngāti Toa Rangatira giving effect to the rights, values, aspirations and obligations of Ngāti Toa and Taranaki Whānui that respects the mana of Te Whanganui-a-Tara and the whakapapa connection with Taranaki Whānui and Ngāti Toa Rangatira; and

6. Are resilient to the impacts of climate change; and

7. The use of water and waterways provide for social and economic use benefits, provided that **the vision for the ecological health such use does not compromise the health and well-being of waterbodies, - freshwater ecosystems and coastal waters is not compromised. or the take and use of water for human health needs.**



3.3 Objective 12 (HS 5)

147. Proposed Change 1 proposes a new Objective 12 to replace Objective 12 in the Operative RPS.
148. As notified the Objective read:

Objectives			
<p>Objective 12 </p> <p><u>Natural and physical resources of the region are managed in a way that prioritises:</u></p> <p>(a) <u>first, the health and well-being of water bodies and freshwater ecosystems</u></p> <p>(b) <u>second, the health needs of people (such as drinking water)</u></p> <p>(c) <u>third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future; and</u></p> <p><u>Te Mana o te Wai encompasses six principles relating to the roles of tangata whenua and other New Zealanders in the</u></p>	<p><u>management of freshwater, and these principles inform this RPS and its implementation. The six principles are:</u></p> <p>(a) <u>Mana whakahaere: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater</u></p> <p>(b) <u>Kaitiakitanga: the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations</u></p> <p>(c) <u>Manaakitanga: the process by which tangata whenua show respect, generosity, and care for freshwater and for others</u></p> <p>(d) <u>Governance: the responsibility of those</u></p>	<p><u>with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future</u></p> <p>(e) <u>Stewardship: the obligation of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations, and</u></p> <p>(f) <u>Care and respect: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.</u></p> <p><u>And the Statements of Kahungunu ki Wairarapa and Rangitāne o Wairarapa</u></p> <p><u>The quantity and quality of fresh water:</u></p>	<p>(a) <u>meet the range of uses and values for which water is required;</u></p> <p>(b) <u>safeguard the life-supporting capacity of water bodies; and</u></p> <p>(c) <u>meet the reasonably foreseeable needs of future generations.</u></p>

149. Objective 12 as notified restated clause 2.1 of the NPS-FM (the *Te Mana o te Wai* priorities) and clause 1.3(4) (the six principles of *Te Mana o te Wai*).

3.3.1 Submissions, Evidence and Analysis

150. While there was broad support for the intent of Objective 12, submitters criticised it as repeating the NPS-FM description of *Te Mana o te Wai* and not providing regional guidance (for example HCC [S115.013]), and that it lacked clarity regarding the outcomes sought (Fish and Game [S147.007]).

151. Submitters also broadly supported the statements of Rangitāne o Wairarapa and Kahungunu ki Wairarapa but sought additional relief regarding the relationship of the statements with the Objective (for example Wellington Water [S113.005], Te Tumu Paeroa [S102.041], PCC [S30.012], and CDC [S25.010]). Taranaki Whānui sought the inclusion of its *Te Mana o te Wai* Expression into Change 1.

152. In response to these matters, Ms Pascall states:⁴⁷

In my view, both the NPS-FM clause 3.2(3) and the guidance make it clear that this objective should be regionally focused. Whilst the content from clause 1.3 of the NPS-FM, which sets out the fundamental concept of *Te Mana o te Wai*, provides a useful starting point, it is important that the RPS provides direction on how to apply this in the regional context...

153. In the s 42A Report, Ms Pascall proposes replacing the notified Objective 12 with a new, region-specific objective. She also recommends two new policies (FW.XXA and FW.XXB) are included as regulatory policies to provide direction about how mana whenua / tangata whenua statements inform decision-making on plan changes, NoRs and resource consent processes.

154. While we accept that the redrafted Objective 12 is now more specific than just repeating the NPS-FM description of *Te Mana o te Wai*, it still lacks regional focus. We recommend some minor amendments to Objective 12 to bring in more regional focus and also note that the structure and approach in new Policies FW.XXA and FW.XXB provides for new *Te Mana o te Wai* statements to be included in 'Table X' and Appendix 5 through future RPS changes. This will also provide for continuing regional focus together with additional whaitua freshwater visions / objectives which will also be included in time through future RPS changes.

155. Most submitters were generally supportive of the intent of Objective 12 other than those who considered that the freshwater component of Change 1 should be deleted and deferred to a later review of the RPS as discussed earlier.

156. Ms Burns, presenting planning evidence for Rangitāne, sought a number of amendments to Objective 12 to better incorporate the NPS-FM direction that mana whenua / tangata whenua are 'actively involved' in freshwater

⁴⁷ Section 42A Hearing Report, Hearing Stream 5, Freshwater and Te Mana o te Wai, 20 October 2023, para 168.

management and the process of defining *Te Mana o te Wai* in the Region (including that the Objective more clearly articulate the first priority within *Te Mana o te Wai* of restoring the mana of water in its own right rather than for the community's benefit).⁴⁸ Ms Burns also sought amendments to better reflect the *Te Mana o te Wai* expressions of local mana whenua / tangata whenua in Objective 12.⁴⁹

157. Ms Campbell, expert planner for Fish and Game, provided evidence that Objective 12 does not adequately recognise wider community values (in particular recreational activities), the importance of community and stakeholder engagement, and that it should include reference to protecting freshwater habitats (including supporting healthy trout populations).⁵⁰ Ms Campbell also requested a new clause be added reflecting the importance of preserving natural character in accordance with s 6(a) of the RMA.⁵¹
158. Ms Clarke, on behalf of Winstone Aggregates, provided planning evidence that the direction requiring “protecting and enhancing”, rather than “maintaining and improving”, of all waterbodies in the region is inconsistent with Policies 5 and 8 of the NPS-FM and is not supported by evidence requiring this direction or sufficient section 32 analysis.⁵² Ms Clarke seeks that “protect and enhance” is replaced with “maintain and improve” in Objective 12.
159. Ms Berkett, providing planning evidence for WFF, stated that *Te Mana o te Wai* is not a concept defined by mana whenua / tangata whenua alone, and its application to water bodies and freshwater ecosystems in the Region requires engagement with tangata whenua and communities.⁵³ Ms Berkett sought amendments to Objective 12 to reflect community engagement.
160. At the Hearing, Ms Berkett noted that Objective 12 did not recognise the economic importance of water.⁵⁴ She explained that Objective 12 did not reflect the views of the wider community and she drew our attention to the values listed in NPS-FM Appendix 1B, in particular animal drinking water,

⁴⁸ Statement of Planning Evidence of Maggie Burns, 3 November 2023, paras 26 – 55.

⁴⁹ Statement of Planning Evidence of Maggie Burns, 3 November 2023, paras 56 - 60.

⁵⁰ Statement of Planning Evidence of Lily Campbell, HS 5, 3 November 2023, paras 14 – 27.

⁵¹ Statement of Planning Evidence of Lily Campbell, HS 5, 3 November 2023, paras 28 – 32.

⁵² Statement of Evidence of Catherine Clarke on behalf of Winstone Aggregates, HS5, 3 November 2023, paras 6.9 – 6.10.

⁵³ Statement of Evidence of Natasha Berkett on behalf of Wairarapa Federated Farmers (Planning), 3 November 2023, para 20.

⁵⁴ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 62, lines 3147 – 3149.

irrigation, cultivation and production of food and beverages, and commercial and industrial use. Ms Berkett said that the mandatory values for an FMU or part-FMU, include “economic opportunities for people, businesses and industries”.⁵⁵ Ms Berkett said including these values into Objective 12 would provide for more balance between the water, the wider environment and the community, as anticipated by *Te Mana o te Wai*, but that “balance” wasn’t about signalling a trade-off but instead, emphasising that healthy freshwater is a prerequisite for a healthy side environment and community.⁵⁶

161. Ms Pascall in her Rebuttal Evidence recommends that the majority of the amendments proposed by these planners are accepted as they provide drafting clarity on the outcomes sought for freshwater management in the Region, provide more certainty for mana whenua / tangata whenua, and address gaps regarding community involvement and recreational and community values.
162. Ms Pascall did not agree in her Rebuttal Evidence that specific reference was needed in the Objective to the habitat of trout and salmon, as this specificity could occur in the related policies. Instead, she proposed that the clause read: “Supports and protects an abundance and diversity of freshwater habitat”⁵⁷. Ms Pascall’s position on this changed in her Reply evidence on the basis that the amendment proposed was too broad and went beyond the intent of the NPS-FM.
163. However, Ms Pascall considered that Ms Campbell’s suggestion of reference to “desirable species” was too subjective and instead, she proposed support and protection for the habitat of trout and salmon “where appropriate”.⁵⁸
164. Ms Pascall did not support a specific clause in the Objective relating to the natural form and character of waterbodies, as this was outside the scope of Change 1⁵⁹, and in any event, was sufficiently addressed by clause (d) which requires the individual natural characteristics and processes of

⁵⁵ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 62, lines 3256 – 3260.

⁵⁶ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 62, lines 3155 – 3164.

⁵⁷ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 24.

⁵⁸ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 24.

⁵⁹ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 69.

waterbodies and their associated ecosystems to be recognised and provided for.⁶⁰

165. We broadly agree with Ms Berkett’s evidence. Ms Pascall also agreed, at least in part, and recommended amendments in her Reply Evidence to refer in new clauses (ga) and (gd) to broader community, stakeholder and territorial authority engagement, and the addition of a new clause recognising the role of water in supporting activities that support the Region’s economic wellbeing but at the same time are a reasonable, sustainable and efficient use of water. This restriction is to ensure the use of water is undertaken within reasonable limits.⁶¹
166. In her evidence, Ms Campbell for Fish and Game said that “the individual natural characteristics” of waterbodies had a different meaning from “natural character” as that term was understood in the NZCPS and s 6(a) of the RMA.⁶² Ms Campbell preferred that a new clause was included in Objective 12 that said “Preserves the natural character and form of waterbodies”.
167. We agree with the wording proposed in Ms Pascall’s Reply Evidence with some amendments. We recommend additional references to “the Region” and that clause (d) is amended to refer to “natural form” as this appropriately supports Policy 42(j) which refers to the “natural form and flow of the waterbody” and also aligns with s 6(a). We understand Ms Campbell’s preference to refer to “natural character” and include the verb “preserve” in relation to it, and we accept that the compulsory values in Appendix 1A of the NPS-FM include “Habitat – the physical form, structure and extent of the water body, its bed, banks and margins“, but in our view the amendment we recommend achieves an appropriate balance, bearing in mind the limitations of scope Ms Pascall outlines in her Reply.⁶³
168. We had some concerns with the structure of the Objective and the references to prioritisation and *Te Mana o te Wai*. We sought advice from Ms Allan (Special Advisor appointed by the FHP) on these issues. Ms Allan broadly agreed that there could be some unintentional interpretation difficulties with the Reply version of the Objective, and she suggested that

⁶⁰ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 25.

⁶¹ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 22 – 23.

⁶² Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 62, lines 3155 – 3164

⁶³ Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, paras 69 – 70.

the words “As the first priority” are deleted from clause (ab), and that clause (h) referring to *Te Mana o te Wai* is re-located to clause (c). This would mean that the articulation of the first limb of *Te Mana o te Wai* occurs in clauses (ab) and (b) (which we suggest are renumbered to (a) and (b)), and the other limbs of *Te Mana o te Wai* which bring in the needs of people and communities, are articulated in clause (c). This re-drafting would also mean clause (b) could be shortened as clause (a) already addresses the NPS-FM requirement to “maintain the health and well-being” of waterbodies and freshwater ecosystems.

169. Ms Allan also advised that Objective 12 would be the only objective in Proposed Change 1 with a heading and she thought this should be deleted as it could lead to issues of interpretation.
170. Some submitters had queried the balance in Objective 12 with four clauses referring to mana whenua / tangata whenua. We also discussed this with Ms Allan and she suggested some amalgamation is possible without losing any of the policy intent, also noting that other policies such as Policy FW.XXA refer to mana whenua / tangata whenua partnerships.
171. We agree with the advice we received from Ms Allan.

3.3.2 Finding and s 32AA Evaluation

172. We agree with the Reporting Officer’s recommendations on Objective 12 for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal and Reply Evidence, and in addition we recommend the following amendments.
173. We recommend that the heading is deleted from the Objective, the *Te Mana o te Wai* hierarchy in (h) is moved into clause (c), and the words “As the first priority” are deleted from clause (ab). We also recommend inserting the words “the Region” in two places. We recommend the opening words of clause (b) are deleted as they are provided for in new clause (a).
174. We also recommend that the words “including their natural form” are included in clause (d) and the clauses referring to mana whenua / tangata whenua values and relationships are amalgamated, which we consider can be done appropriately and without losing any of the policy intent and meaning (particularly given new Policies FW.XXA and FW.XXB).

175. We consider that these amendments clarify the outcomes sought, give better effect to the NPS-FM, and more clearly articulate the concept of *Te Mana o te Wai* and direction in s 6 of the RMA. We consider the amendments we propose are a more appropriate way to achieve the RMA's sustainable management purpose. We also consider the amendments improve the interpretation and readability of the Objective and therefore help to achieve its intent.

3.3.3 Recommendation

Objective 12 – *Te Mana o te Wai* in the Wellington Region

The *mana* of the Region's waterbodies and freshwater ecosystems is restored and protected by ongoing management of land and water that are returned to a healthy state and the ongoing management of land and water:

- (a) As the first priority, Returns the Region's water bodies and freshwater ecosystems to, and thereafter maintains them, in a state of tūhauora/good health
- (b) Protects Maintains the health and wellbeing of waterbodies and freshwater ecosystems from further degradation and Improves the health and wellbeing of the Region's degraded waterbodies and freshwater ecosystems health Restores the mana of water and its fundamental role in providing for the current and future health and wellbeing of the environment and the community
- (c) Applies the *Te Mana o te Wai* hierarchy of obligations by prioritising:
 - i. First, the health and wellbeing of waterbodies and freshwater ecosystems,
 - ii. Second, the *health needs of people*
 - iii. Third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.
- (d) Recognises and provides for the individual natural characteristics and processes of waterbodies including their natural form, and their associated ecosystems
- (ab) As the first priority, returns water bodies and freshwater ecosystems to, and thereafter maintains them, in a state of tūhauora/good health Protects Maintains the health and wellbeing of waterbodies and freshwater ecosystems from further degradation and improves the health and wellbeing of degraded waterbodies and freshwater ecosystem health
- (e) Incorporates and protects mātauranga Māori and acknowledges and provides for the connections and relationships of mana whenua/tangata whenua with freshwater in partnership with mana whenua/tangata whenua
- (f) Re-establishes Acknowledges and provides for the connections and relationships of mana whenua/tangata whenua connections with freshwater
- (g) Provides for the ability of mana whenua/tangata whenua to safely undertake their cultural and spiritual practices associated with freshwater, including *mahinga kai*

- (h) ~~Includes Actively involves mana whenua/tangata whenua in decision-making in relation to the Region’s waterbodies~~
- (ga) ~~Includes engagement with communities, stakeholders, and territorial authorities~~
- (gab) ~~Supports the wellbeing and safety of the community, by providing for the ability to carry out recreational activities, in and around freshwater environments~~
- (gbc) ~~Supports and protects an abundance and diversity of freshwater habitats for indigenous freshwater species and, where appropriate, the habitat of trout and salmon~~
- (gd) ~~Supports the reasonable, sustainable and efficient use of water for activities that benefit the Region’s economy, including primary production activities, innovation and tourism;~~
- (i) ~~Applies the Te Mana o te Wai hierarchy of obligations by prioritising:

 - i. ~~First, the health and wellbeing of waterbodies and freshwater ecosystems;~~
 - ii. ~~Second, the health needs of people~~
 - iii. ~~Third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.~~~~

3.4 Te Mana o te Wai Statements

176. *Te Mana o te Wai* statements from Rangitāne o Wairarapa and Kahungunu ki Wairarapa were included in Proposed Change 1. Taranaki Whānui have also now provided a statement through their submission.
177. As noted above, in the s 42A Report, the Officer proposes replacing the notified Objective 12 with a new objective. She also recommends two new policies (FW.XXA and FW.XXB) are included as regulatory policies to provide direction about how mana whenua / tangata whenua statements inform decision-making on plan changes, NoRs and resource consent processes.
178. Ms Pascall recommends that the RPS require mana whenua / tangata whenua statements be “recognised and provided for” to direct action by those implementing the RPS.⁶⁴

3.4.1 Submissions, Evidence and Analysis

179. A number of submitters support the intent of including the statements (for instance UHCC [S34.071] and Forest and Bird [S165.017]) but some raised concerns about their weighting and status compared to other freshwater objectives and how conflicts would be managed (PCC [S30.012]). CDC sought better linkages between the statements and the rest of the RPS ([S25.010]), and Te Tumu Paeroa [S102.041] sought an amendment to require the statements to be “recognised and provided for”. Some

⁶⁴ Section 42A Hearing Report, Hearing Stream 5, Freshwater and Te Mana o te Wai, 20 October 2023, paras 182 – 183.

submitters (including Wellington Water and PCC) raised concerns about the contents of the statements.

180. In response to submitter concerns about the location of the statements (Wellington Water [S113.005]) and that placing them at the end of Objective 12 could cause confusion in interpretation, Ms Pascall stated:

to ensure the statements are given the consideration they require – that is to direct an action on behalf of those implementing the RPS – it is more appropriate to provide policy direction about the statements, rather than doing this through an objective. Objectives provide the outcome, whereas policies provide the means to achieve the objective. I therefore recommend two new policies are added to the RPS to provide policy direction about how the mana whenua/tangata whenua statements of *Te Mana o te Wai* must be considered.

181. Ms Pascall in her s 42A Report agreed with submitters that as notified there is a lack of clarity about how the statements are to be implemented,⁶⁵ but that it was not appropriate for anyone other than mana whenua/tangata whenua to amend the content of the statements.⁶⁶ We agree with this view, understand it is supported by Rangitāne and Kahungunu, and consider it gives appropriate effect to clauses 3.2 and 3.4 of the NPS-FM. We also consider that the content of the statements provides substance to direction in the NPS-FM (including Policy 2), and is consistent with the partnership approach the Council has taken with mana whenua / tangata whenua.
182. Ms Pascall notes the concerns of Ngāti Toa that it is not appropriate to move the location of the statements, but Ms Pascall supports linking the statements through the new policies she recommends, and locating the statements in an Appendix. Ms Pascall said she had discussed this approach with Rangitāne and Kahungunu in pre-hearing meetings and they had indicated this was a suitable solution.⁶⁷
183. At the Hearing mana whenua / tangata whenua expressed concerns about putting the statements in an Appendix. These concerns were further

⁶⁵ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 182.

⁶⁶ Section 42A Report, Hearing Stream 5, paras 182 - 184.

⁶⁷ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 185.

addressed by Ms Pascall in her Reply in Evidence. She repeated her view that:⁶⁸

putting the statement in the body of the RPS would be unworkable from an implementation perspective, largely due to the references to ‘objectives’, ‘policies’, and other content in the statements which is similar to the content in the body of the RPS. Several submitters identified that this was confusing.

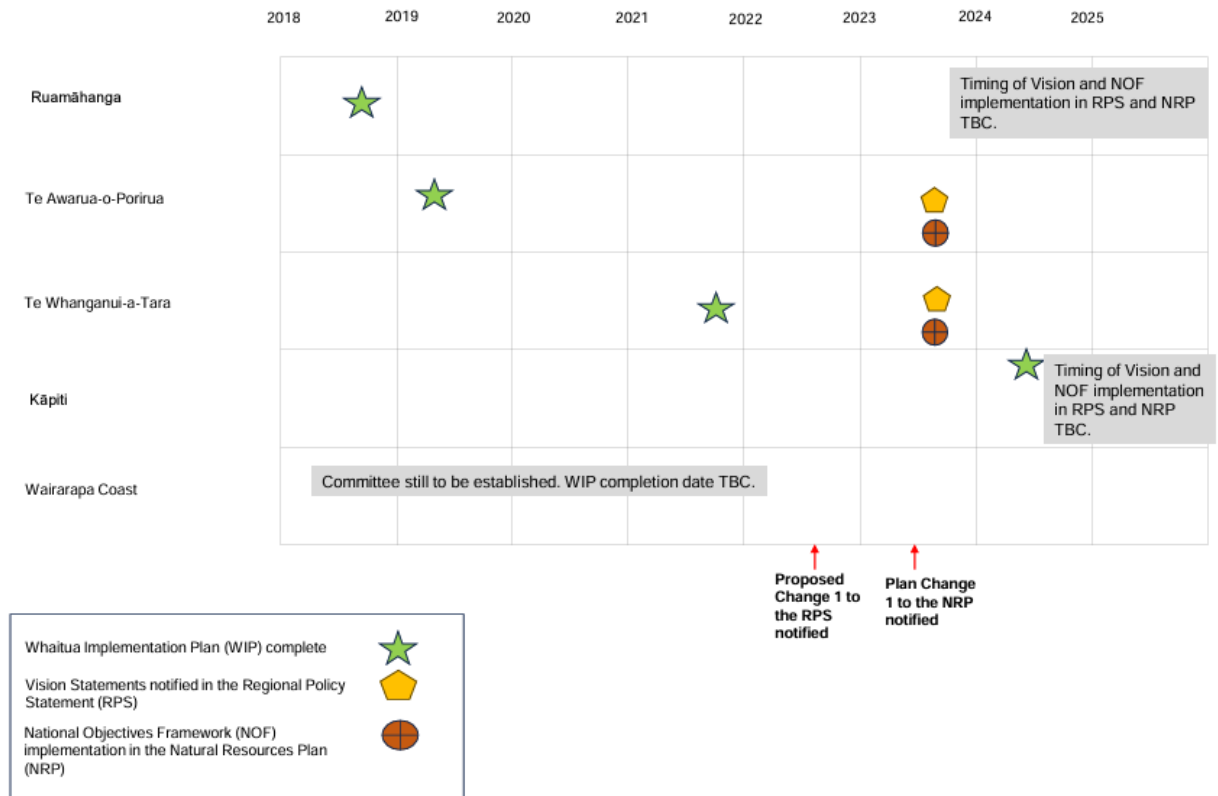
184. Ms Pascall says she does not consider locating the statements in an Appendix diminishes their importance, or that this approach is inconsistent with the *Te Mana o te Wai* principles of Mana Whakahaere, Manaakitanga, and Kaitiakitanga as stated in Ms Gibb’s evidence for Ātiawa, noting that the Appendix remains part of the statutory document of the RPS and the critical component is having the policy direction within the body of the RPS that directs how the statements are to be applied, provided in Policies FW.XXA and FW.XXB.⁶⁹
185. Ms Pascall acknowledged Ms Gibbs’ concern that the Kāpiti Whaitua process was being undertaken at present and the Te Tiriti Whare Model proposed there did not align with the approach Ms Pascall was proposing. Ms Pascall noted that that information was outside the scope of Proposed Change 1 and the Kāpiti WIP would be incorporated into the RPS through a separate Schedule 1 process.⁷⁰
186. There are 5 whaitua in the Region being Ruamāhanga, Te Awarua-o-Porirua, Whaitua Te Whanganui-a-Tara, Kāpiti, and Wairarapa Coast.
187. In Minute 18, we asked the Council to provide information on the stage of each whaitua process in the Region and to also explain the relationship between freshwater visions and mana whenua / tangata whenua statements.
188. Ms Pascall provided the following image showing the whaitua processes that have been completed to date and those anticipated. It also shows where implementation has started in the RPS and NRP.

⁶⁸ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 73.

⁶⁹ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 74 – 75.

⁷⁰ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 75.

Wellington Region Whaitua Processes and Implementation



189. The Officer said that *Te Mana o te Wai* Statements of mana whenua / tangata whenua are related, but are separate from the whaitua processes. The statements form part of the RPS and support the local expression of *Te Mana o te Wai*. This is not an express requirement of the NPS-FM but it is “part of the obligation within Clause 3.2 of the NPS-FM to actively involve, and engage with, mana whenua / tangata whenua in giving effect to *Te Mana o te Wai*”.⁷¹

190. To date, the Council has received completed statements from the following mana whenua / tangata whenua:

- a. Kahungunu ki Wairarapa
- b. Rangitāne o Wairarapa
- c. Taranaki Whānui (via submission).

⁷¹ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 9.

and the Officer understood that other mana whenua / tangata whenua may seek the inclusion of statements in the future.

3.4.2 Finding

191. We agree with Ms Pascall's view and recommend that the *Te Mana o te Wai* statements from Rangitāne o Wairarapa, Kahungunu ki Wairarapa and Taranaki Whānui are provided in Appendix 5 to the RPS, supported by Policies FW.XXA and FW.XXB for the reasons above and otherwise as set out in the Officer's s 42A Report, Rebuttal and Reply Evidence. We support the structure in the Policies which allows for other statements to be incorporated through further changes and as the statements become available.

3.4.3 Recommendation

Appendix 5: Statements of Mana Whenua/Tangata Whenua – Te Mana o te Wai expressions

Statement of Rangitāne o Wairarapa Te Mana o te Wai expression

[...]

Statement of Kahungunu ki Wairarapa Te Mana o te Wai expression

[...]

Amendment to Statement of Rangitāne o Wairarapa Te Mana o te Wai expression

...A notable example of this is from the writings of Whatahoro Jury:

Ko Waiōhine ko Ruamāhanga ēnei e wairua tipu mai i Tararua maunga e orange e te iwi.

These are Waiōhine and Ruamāhanga. They are like mother's milk flowing out of the Tararua mountains for the prosperity of the people.

Nā Whatahoro Jury 1841-1923

New Statement of Taranaki Whānui Te Mana o te Wai expression to into new Appendix 5:

Statement of Taranaki Whānui Te Mana o te Wai expression

He Whakapuaki mō Te Mana o te Wai

Te Kāhui Taiao have drafted a number of statements that outline a local approach on how to give effect to *Te Mana o te Wai* in Te Whanganui-a-Tara. With respect to Section 3.2 of the National Policy Statement for Freshwater Management 2020, the following statements are

the proffered objectives of Taranaki Whānui that describe how the management of freshwater in the region will give effect to *Te Mana o te Wai*. In Te Whanganui-a-Tara the care of freshwater gives effect to *Te Mana o te Wai* when:

1. Taranaki Whānui can exercise kaitiakitanga and lead freshwater and coastal management decision-making.
2. Taranaki Whānui can implement and practice traditional rangatiratanga management techniques, for example; rāhui to protect the mana and mōuri of water
3. Taranaki Whānui are resourced to be active and have an integral presence as Ngā Mangai Waiora (ambassadors for water) in Whaitua monitoring and management
4. Taranaki Whānui are visible in the management of mahinga kai and riparian and coastal areas through nohoanga (camp) and other cultural practices.
5. The mōuri and life-supporting capacity of water in Te Whanganui-a-Tara enables the customary practices of Taranaki Whānui such as tohi (baptism), whakarite (preparing for an important activity/event), whakawātea (cleansing) manaakitanga (hospitality) at a range of places throughout the catchment.
6. Taranaki Whānui can serve manuhiri fresh and coastal mahinga kai species by 2041.
7. The wellbeing and life of the wai is primary.
8. The mana (dignity and esteem) of water as a source of life is restored and this includes regarding and respecting all waterbodies (including āku waiheke), repo (wetland) and estuaries as living entities, and naturalising, naming, mapping, and protecting each.
9. Freshwater is cared for in an integrated way through mai i uta ki tai, from te mātāpuna (the headwaters) to the receiving environments like the Parangarehu Lakes, Hinemoana (the ocean), Te Whanganui-a-Tara (Wellington Harbour) and Raukawakawa Moana (the Cook Strait).
10. All freshwater bodies are managed holistically to allow them to exhibit their natural rhythms, natural form, hydrology, and character.
11. Freshwater bodies can express their character through a range of flows over the seasons.
12. There are sufficient flows and levels to support connectivity throughout mai i uta ki tai and between rivers and their banks to support spawning fish.
13. Key areas like te mātāpuna (headwaters), estuaries and repo (wetland) are prioritised for protection and restoration so that they are once again supporting healthy functioning ecosystems.
14. Mahinga kai species are of a size and abundance to be sustainably harvested.
15. Areas that are not currently able to be harvested (for example; coastal discharge areas and others) are able to be harvested by 2041.
16. Te Awa Kairangi, Waiwhetū, Korokoro, Kaiwharawhara, the Wainuiomata river and its aquifers are declared 'Te Awa Tupua' (an indivisible and living whole, incorporating all its physical and metaphysical elements) and given 'legal personhood' in legislation.

17. Te Awa Kairangi, Wainuiomata and Ōrongorongo are publicly acknowledged for the part they play in supporting human health through their contribution to the municipal water supply.

3.5 Policy FW.XXA: Mana whenua / tangata whenua and Te Mana o te Wai – regional and district plans

Policy FW.XXB: Mana whenua / tangata whenua and Te Mana o te Wai – consideration

192. These Policies are proposed in the s 42A Report to be included in Chapter 4.1 (Regulatory Policies), and Chapter 4.2 (Regulatory Policies – Matters to be considered)⁷² in response to submitter concerns as to how the mana whenua / tangata whenua *Te Mana o te Wai* statements should be considered by local authorities.
193. The Policies provide a regulatory basis for the statements and policy direction as to how they are to be considered and implemented in plan changes and assessed in consent applications and NoRs.
194. Policy FW.XXA requires plans to include provisions giving effect to *Te Mana o te Wai* and in doing so, “recognise and provide for” the mana whenua / tangata whenua statements in Appendix 5. The Policy includes a table with the three statements provided to date and the applicable territorial authority area. Policy FW.XXB is the equivalent regulatory policy relevant to consenting and NoRs.

3.5.1 Submissions, Evidence and Analysis

195. Muaūpoko had sought for their own expression to be included but had not provided wording for this and so this relief was not accepted by the s 42A Officer. Taranaki Whānui had provided a statement of expression with their submission, and we agree with the Officer that this to be incorporated within Proposed Change 1.⁷³
196. An explanation was added to both Policies in the Officer’s Rebuttal Evidence to provide guidance to local authorities in relation to the mana whenua / tangata whenua Statements of *Te Mana o te Wai*, and to clarify the Policies apply in accordance with local authorities’ respective functions in ss 30 and 31 of the RMA. In her Reply Evidence, Ms Pascall also recommends referencing the applicable whaitua in the tables in

⁷² Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, paras 183 and 198.

⁷³ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, paras 194 – 195.

Policy FW.XXA and Policy FW.XXB, at this stage only referencing the whaitua with a completed WIP.⁷⁴

197. We agree with Ms Pascall that it is appropriate, and gives effect to NPS-FM direction, to incorporate into the RPS the local expressions of *Te Mana o te Wai* that have been provided to date, and we support the two new policies Ms Pascall recommends. They provide clear direction to RPS users about how mana whenua / tangata whenua statements are to be considered in plan, consenting and NoR processes, and the specific jurisdictions in which they apply, which addresses at least in part, the concerns Ms Berkett raised on behalf of WFF.⁷⁵
198. We consider the direction to “recognise and provide for” the statements through the inclusion of objectives, policies, rules, and where appropriate, other methods in regional and district plans is supported by the direction in the NPS-FM, and grants the relief sought by Ms Burns for Rangitāne.⁷⁶
199. We consider the reference in the Explanation to ss 30 and 31 functions gives appropriate effect to the amendments Mr McDonnell sought on behalf of PCC.⁷⁷

3.5.2 Finding

200. We agree with the Reporting Officer’s recommendations on Policies FW.XXA and FW.XXB for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal and Reply Evidence. We recommend the Council review and update numbering and Policy references as a minor correction, and we highlight some amendments below.

3.5.3 Recommendation

Policy FWXXA – Mana whenua/tangata whenua and Te Mana o te Wai – regional and district plans

District and regional plans shall include objectives, policies, rules ~~or~~ and, where appropriate, other methods to give effect to *Te Mana o te Wai*, and in doing so:

- (a) Recognise and provide for the mana whenua/tangata whenua Statements of *Te Mana o te Wai* in Appendix 5, as applicable to the territorial authority area shown in Table X. Regional plans shall apply the mana whenua/tangata

⁷⁴ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 77.

⁷⁵ Statement of Evidence of Natasha Berkett on behalf of Wairarapa Federated Farmers (Planning), 3 November 2023, para 28.

⁷⁶ Statement of Planning Evidence of Maggie Burns, 3 November 2023, para 60.

⁷⁷ Statement of evidence of Torrey McDonnell on behalf of Porirua City Council (Planning), HS5 – 2 November 2023, para 20.

whenua statements as relevant to the scope and content of the plan change or review process.

- (b) Partner with *mana whenua/tangata whenua* in the development of the required district and regional plan objectives, policies, rules or other methods that give effect to *Te Mana o te Wai*.

Table X: Mana whenua/tangata whenua statements and applicable territorial authority areas

Mana whenua/tangata whenua statement	Territorial authority area(s)	Whaitua
Rangitāne o Wairarapa	Masterton District Carterton District South Wairarapa District	Ruamāhanga
Kahungunu ki Wairarapa	Masterton District Carterton District South Wairarapa District	Ruamāhanga
Taranaki Whānui	Wellington City Hutt City Upper Hutt City	Te Whanganui-a-Tara

Explanation

Policy FW.XXA sets out the requirements of local authorities in developing regional and district plans in relation to the Mana Whenua/Tangata Whenua Statements of *Te Mana o te Wai* in Appendix 5. These statements provide important guidance and information about what *Te Mana o te Wai* means to *mana whenua/tangata whenua* across the region. Local authorities must apply Policy FW.XXA to give effect to *Te Mana o te Wai* insofar as it relates to their respective functions under sections 30 and 31 of the RMA.

Policy FWXXB: Mana whenua/tangata whenua and Te Mana o te Wai – consideration

When considering an application that relates to freshwater for:

- (a) resource consent, have regard to; or
- (b) a notice of requirement, have particular regard to

~~or a change, variation or review of a regional or district plan, have regard to the mana whenua/tangata whenua Te Mana o te Wai Statements contained in Appendix 5, as applicable to the territorial authority area shown in Table X.~~

Table X: Mana whenua/tangata whenua statements and applicable territorial authority areas

Mana whenua/tangata whenua statement	Territorial authority area(s)	Whaitua
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Rangitāne o Wairarapa	Masterton District Carterton District South Wairarapa District	Ruamāhanga
Kahungunu ki Wairarapa	Masterton District Carterton District South Wairarapa District	Ruamāhanga
Taranaki Whānui	Wellington City Hutt City Upper Hutt City	Te Whanganui-a-Tara

Explanation

[Policy FW.XXB](#) sets out the requirements of local authorities when assessing an application for resource consent in relation to *freshwater* and how they must consider the *Mana Whenua/Tangata Whenua* Statements of *Te Mana o te Wai* in Appendix 5. These statements provide important guidance and information about what *Te Mana o te Wai* means to *mana whenua/tangata whenua* across the region. Local authorities must apply [Policy FW.XXB](#) insofar as it relates to their respective functions under sections 30 and 31 of the RMA.

3.6 Policy 12 – Management purposes for of surface water bodies – regional plans

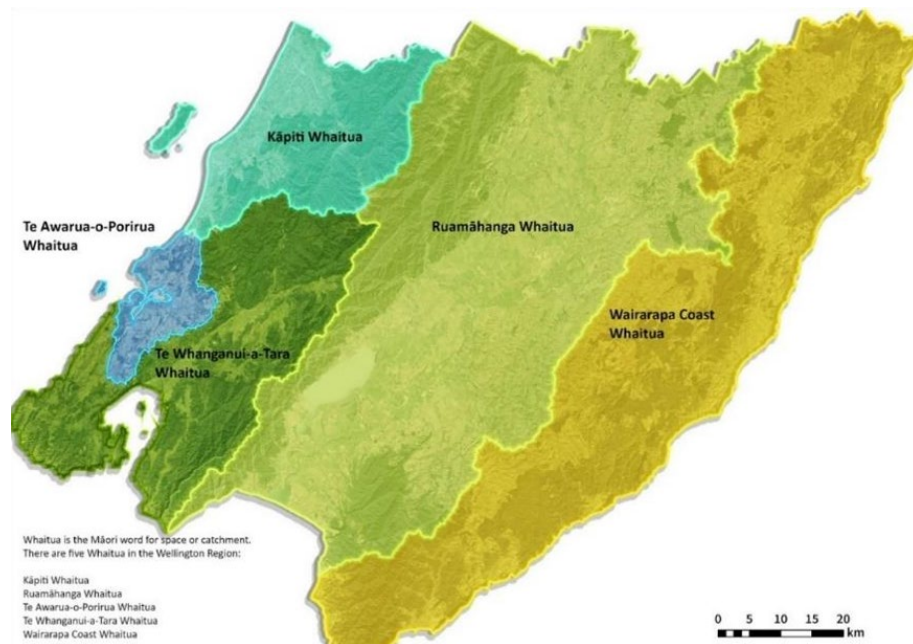
201. The notified provision of the Policy stated:

Policy 12: Management purposes for of surface water bodies – regional plans	
<p>Regional plans shall <u>give effect to <i>Te Mana o te Wai</i> and include objectives, policies, rules and/or methods that:</u></p> <ul style="list-style-type: none"> (a) require that water quality, flows and water levels, and the aquatic habitat of surface water bodies are to be managed for the purpose of safeguarding aquatic ecosystem health; and (b) manage water bodies for other purposes identified in regional plans. <ul style="list-style-type: none"> (a) <u>are prepared in partnership with mana whenua / tangata whenua;</u> (b) <u>achieve the long-term visions for freshwater;</u> (c) <u>identify freshwater management units (FMUs);</u> (d) <u>identify values for every FMU and environmental outcomes for these as objectives;</u> (e) <u>identify target attribute states that achieve environmental outcomes, and record their baseline state;</u> (f) <u>set environmental flows and levels that will achieve environmental outcomes and long-term visions;</u> (g) <u>identify limits on resource use including take limits that will achieve the target attribute states, flows and levels and include these as rules;</u> (h) <u>identify non-regulatory actions that will be included in Action Plans that will assist in achieving target attribute states (in addition to limits); and</u> (i) <u>identify non-regulatory and regulatory actions in Actions Plans required by the NPS-FM</u> <p>Explanation</p> <p><u>Policy 12 gives effect to the national direction set by the National Policy Statement for Freshwater Management 2020, including sections 3.2 and 3.8-3.17.</u></p>	
<p>Regional plans will establish management purposes for water bodies in the region and identify limits for water quality, flows and water levels, and aquatic habitat appropriate to the management purposes identified. The management purposes identified in regional plans will support the uses and values associated with those purposes. This policy does not prevent the sustainable use of water subject to any limits (including aquatic ecosystem health) established in the regional plan.</p> <p>The limits for aquatic ecosystem health will need to recognise that different types of water bodies (for example, rivers, lakes and wetlands) will require different limits. Natural environmental differences between water bodies (for example, climate, altitude and catchment geology, or a small stream in a mountain catchment versus a large lowland river) will also require different limits to be established.</p> <p>Where a water body is assigned more than one management purpose in a regional plan, the limits associated with the most stringent water quality, river flows and water levels shall apply.</p>	

202. There were 21 submission points and 27 further submission points on Policy 12.
203. Proposed Change 1 proposes amendments to the operative Policy 12 to give effect to key aspects of national direction in the NPS-FM.

3.6.1 Submissions, Evidence and Analysis

204. A number of revisions were made in the s 42A Report in response to submitter concerns including that the Policy did not provide sufficient clarity, direction and regional context to NPS-FM requirements. Submitters also sought amendments to acknowledge the regional council *whaitua* processes, and refer to the steps in the NOF process relating to the identification of attributes and baseline states.
205. There were also submitter concerns that the importance of *mātauranga Māori* and *ki uta ki tai* were not sufficiently recognised (Ātiawa [S131.061]). The DGC [S32.011] and Forest and Bird [S165.047] sought relief to clarify that Policy 12 is not an exhaustive list of NPS-FM requirements. They seemed concerned that by paraphrasing the NPS-FM, Policy 12 could change some of its requirements inadvertently.
206. The s 42A Officer proposed amendments describing the *whaitua* ‘super-catchments’ as Freshwater Management (FMUs) Units for the Region⁷⁸ and also amendments setting out the steps required by the NOF.⁷⁹ The *whaitua* are listed in the Policy in the Officer’s amendments, and the



⁷⁸ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, paras 216 - 218.

⁷⁹ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 233.

following map proposed to be inserted in the RPS showing the whaitua boundaries.

207. Following the amendments proposed in the s 42A Report, some experts noted unnecessary duplication with the NPS-FM requirements (such as Mr McDonnell for PCC)⁸⁰ and that a whaitua could be comprised of multiple FMUs.⁸¹ There was also concern that the policy did not adequately reflect the need for wider community/stakeholder involvement in the preparation of objectives, policies rules and/or methods to give effect to *Te Mana o te Wai* (Ms Campbell for Fish and Game),⁸² or identify appropriate management requirements for part FMUs (Ms Burns for Rangitāne)⁸³.
208. Ms Pascall agreed with these concerns in her Rebuttal Evidence and made further amendments to Policy 12. She included engagement with communities, stakeholders and territorial authorities in clause (a) and deleted “Freshwater Management Units” from clauses (c) and (ca) to acknowledge that freshwater management could occur at a smaller spatial scale. Ms Pascall also amended the description of the process steps set out in the NOF, noting that this duplicated NPS-FM direction but that in the absence of more regionally specific content, it was appropriate to repeat the NPS-FM “to ensure the statutory requirement to give effect to the national direction is met”.⁸⁴
209. We recommend an amendment in clause (ca) to refer to community engagement. Wider community engagement is not only a requirement of the NPS-FM, but it will also, as Ms Berkett explained “ensure the RPS has greater legitimacy with the wider Wellington community”.⁸⁵ Clause 3.7 requires the Regional Council to engage with communities and tangata whenua at each step of the NOF process and community and tangata whenua engagement is also referred to in clause 3.2(2)(b).
210. We also recommend clause (ca) require the identification of “FMUs” rather than “part FMUs” for consistency with clause 3.8 of the NPS-FM. The clause says the Council must identify “FMUs”. The definition of this term in cause 1.4 of the NPS-FM means “all or any part of a water body or water

⁸⁰ Statement of evidence of Torrey McDonnell on behalf of Porirua City Council (Planning), HS5 – 2 November 2023, paras 27 -28.

⁸¹ Statement of evidence of Torrey McDonnell on behalf of Porirua City Council (Planning), HS5 – 2 November 2023, paras 27 – 28.

⁸² Statement of Planning Evidence of Lily Campbell, HS 5, 3 November 2023, para 37.

⁸³ Statement of Planning Evidence of Maggie Burns, 3 November 2023, paras 70 – 83.

⁸⁴ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 72.

⁸⁵ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 63, lines 3184 – 3186.

bodies, and their related catchments, that a regional council determines under clause 3.8 is an appropriate unit for freshwater management and accounting purposes”. The definition also refers to “part of an FMU” which has a specific meaning. We consider it is more appropriate for Policy 12 to require the identification of “FMUs” and it is up to the Council, in partnership with mana whenua / tangata whenua and any broader community engagement they consider appropriate, to determine the level or extent of this identification. We recommend “and for each part FMU” is deleted from the end of clause (ca).

211. We note the s 42A Officer recommends an amendment to the explanation text of Policy 12 to state that it sets out “the key elements” of the NPS-FM. While this adopts the relief proposed by the Director-General of Conservation, we think further amendments are needed in light of Forest and Bird’s relief [S165.047] to ensure any issues of interpretation do not arise from slightly different wording in the Policy and the NPS-FM. We recommend an amendment to clause (ca) and including a new clause (cb) to clarify that the NOF process steps are as set out in the NPS-FM.

3.6.2 Finding and s 32AA Evaluation

212. We largely agree with the Reporting Officer’s recommendations on Policy 12 for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal and Reply Evidence. However, we recommend including community engagement in clause (ca), amending “part FMUs” to “FMUs”, and referring specifically to the NPS-FM requirements to align with the direction in clauses 3.2, 3.7 and 3.8 of the NPS-FM, and the definition of FMU in clause 1.4. We consider that our amendments on the whole give better effect to the NPS-FM direction as they increase the likelihood of the Policy being successfully and effectively implemented to achieve the desired outcomes. We do not consider there to be any cost implications from these changes as they reflect existing direction in the NPS-FM.

3.6.3 Recommendation

Policy 12: Management purposes for surface water bodies – regional plans

Regional plans shall give effect to *Te Mana o te Wai* and include objectives, policies, rules and/or methods that:

- ~~(a) require that water quality, flows and water levels, and the aquatic habitat of surface water bodies are to be managed for the purpose of safeguarding aquatic ecosystem health; and~~

~~(b) — manage water bodies for other purposes identified in regional plans.~~

~~(a) are prepared in partnership with mana whenua / tangata whenua, and through engagement with communities, stakeholders and territorial authorities, and enable the application of mātauranga Māori ;~~

~~(aa) adopt an integrated approach, ki uta ki tai~~

~~(b) contribute to achieving the any relevant long-term visions for freshwater ;~~

~~(c) identify freshwater management units (FMUs);~~

~~(c) manage freshwater through the following freshwater management units (FMUs) whaitua which are shown on Map X:~~

~~(i) Kāpiti Whaitua~~

~~(ii) Ruamāhanga Whaitua~~

~~(iii) Te Awarua-o-Porirua Whaitua~~

~~(iv) Te Whanganui-a-Tara Whaitua~~

~~(v) Wairarapa Coast Whaitua~~

~~(ca) identify part FMUs that require specific management within the FMUs whaitua identified in clause (c), in partnership with mana whenua/tangata whenua, and through engagement with communities and for each part FMU:~~

~~(cb) For each FMU, in accordance with the NPS-FM:-~~

~~(i) Identify values and environmental outcomes for each value as objectives~~

~~(ii) Identify attributes for each value and the baseline states for those attributes as objectives~~

~~(iii) Identify target attribute states for each attribute that achieve the environmental outcomes~~

~~(iv) Set environmental flows and levels that will achieve environmental outcomes and long-term visions for freshwater, and~~

~~(v) Identify limits on resource use, including take limits that will achieve the target attribute states, flows and levels~~

~~(d) identify values for every FMU and part FMU, and environmental outcomes for each value as objectives;~~

~~(da) For each value identified in clause (d), identify attributes and the baseline states for those attributes~~

~~(e) For each attribute identified in clause (da), identify target attribute states that achieve environmental outcomes, and record their baseline state;~~

~~(f) set environmental flows and levels that will achieve environmental outcomes and long-term visions for freshwater;~~

~~(g) identify limits on resource use, including take limits that will achieve the target attribute states, flows and levels and include these as rules;~~

(h) identify non-regulatory actions that will be included in Action Plans that will assist in achieving target attribute states (in addition to limits); and


(i) identify non-regulatory and regulatory actions in Actions Plans required by the NPS-FM

Explanation

Policy 12 ~~gives~~ sets out the key elements of giving effect to the national direction set by the National Policy Statement for Freshwater Management 2020, including sections 2.2, 3.2 and 3.8-3.17.

3.7 Policy 13 – Allocating water – regional plans

213. The notified provision proposed deleting Policy 13 in the Operative RPS:

Policy 13: Allocating water – regional plans	
<p>Regional plans shall include policies and/or rules that:</p> <p>(a) establish allocation limits for the total amount of water that can be taken from rivers and lakes, taking into account aquatic ecosystem health; and</p> <p>(b) establish allocation limits for the total amount of water that can be taken from groundwater, taking into account the aquatic ecosystem health of rivers, lakes and wetlands, and preventing saltwater intrusion.</p> <p>Explanation</p> <p>Policy 13 directs the establishment of allocation limits for rivers and groundwater in a regional plan. Allocation limits for rivers are the total amount of water that is available to be taken from a river, including water behind any dam, while taking into account policy 12.</p> <p>Groundwater allocation limits must safeguard the needs of dependent ecosystems in groundwater fed streams and wetlands, and prevent saltwater intrusion.</p>	

3.7.1 Submissions, Evidence and Analysis

214. The Policy is proposed to be deleted because it is now largely covered by Policy 12.

215. Most submitters agreed with the deletion, but this was opposed by the DGC [S32.012] on the basis that Policy 13 provides specific guidance to take account of aquatic ecosystem health and saltwater intrusion. Policy 13 was not addressed in Mr Brass’ planning evidence or Ms Anton’s legal submissions for the DGC.

3.7.2 Finding

216. We agree that water allocation is now dealt with in Policy 12, in particular clauses (ca) (iv) and (v) regarding flows, levels and limits on resource use. We recommend that the Council agree to delete Policy 13 for the reasons set out in the s 42A report.⁸⁶

3.7.3 Recommendation

Policy 13: Allocating water – regional plans

~~Regional plans shall include policies and/or rules that:~~

⁸⁶ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, paras 239 – 243.


- (a) establish allocation limits for the total amount of water that can be taken from rivers and lakes, taking into account aquatic ecosystem health; and
- (b) establish allocation limits for the total amount of water that can be taken from groundwater, taking into account the aquatic ecosystem health of rivers, lakes and wetlands, and preventing saltwater intrusion.

Explanation

Policy 13 directs the establishment of allocation limits for rivers and groundwater in a regional plan. Allocation limits for rivers are the total amount of water that is available to be taken from a river, including water behind any dam, while taking into account policy 12. Groundwater allocation limits must safeguard the needs of dependent ecosystems in groundwater-fed streams and wetlands, and prevent saltwater intrusion.

3.8 Policy 14: Urban development effects on freshwater and the coastal marine area ~~Minimising contamination in stormwater from new development~~ – regional plans

217. The notified provision stated:

<p>Policy 14: Urban development effects on freshwater and the coastal marine area Minimising contamination in stormwater from new development – regional plans</p>	
<p><u>Regional plan objectives, policies, and methods including rules, must give effect to <i>Te Mana o te Wai</i> and in doing so must:</u></p> <ul style="list-style-type: none"> (a) <u>Enable the active involvement of mana whenua / tangata whenua in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for;</u> (b) <u>Adopt an integrated approach, ki uta ki tai, that recognises the interconnectedness of the whole environment to determine the location and form of urban development;</u> (c) <u>Require the control of both land use and discharge effects from the use and development of land on freshwater and the coastal marine area;</u> (d) <u>Achieve the target attribute states set for the catchment;</u> (e) <u>Require the development, including stormwater discharges, earthworks and vegetation clearance meet any limits set in a regional plan;</u> (f) <u>Require that urban development is designed and constructed using the principles of Water Sensitive Urban Design;</u> (g) <u>Require that urban development located and designed to minimise the extent and volume of earthworks and to follow, to the extent practicable, existing land contours;</u> (h) <u>Require that urban development is located and designed to protect and enhance gully heads, rivers, lakes, wetlands, springs, riparian margins and estuaries;</u> (i) <u>Require riparian buffers for all waterbodies and avoid piping of rivers;</u> (j) <u>Require hydrological controls to avoid adverse effects of runoff quantity (flows and volumes) and maintain, to the extent practicable, natural stream flows;</u> (k) <u>Require stormwater quality management that will minimise the generation of contaminants, and maximise, to the extent practicable, the removal of contaminants from stormwater; and</u> (l) <u>Identify and map rivers and wetlands.</u> <p>Regional plans shall include policies, rules and/or methods that protect aquatic ecosystem health by minimising ecotoxic and other contaminants in stormwater that discharges into water, or onto or into land that may enter water, from new subdivision and development.</p> <p>Explanation</p> <p><u>Policy 14 manages the effects of urban development, including the effects of contamination in stormwater, earthworks and vegetation clearance from new and existing subdivision and development to halt and reverse the degradation of freshwater and coastal water.</u></p> <p>Ecotoxic contaminants in this policy are substances that are capable of causing ill health, injury or death to any living organism – such as heavy metals, polycyclic aromatic hydrocarbons, organochlorine pesticides and antifouling compounds.</p>	

~~Carried in stormwater, ecotoxic contaminants can bind with sediment and accumulate where the sediment settles, on the seabed or the bed of a freshwater body, particularly in low energy aquatic receiving environments.~~

~~Wellington Harbour and Porirua (Onepoto Arm and Pauatahanui Inlet) Harbour are places where ecotoxic contaminants in bottom sediments have been found to occur at concentrations that exceed guidelines for aquatic life.~~

~~There may be other low energy aquatic receiving environments in the region — such as inlets, estuaries, lakes, wetlands and lowland streams — in which the sediments contain elevated ecotoxic contaminants that may threaten aquatic life, but which have not yet been monitored.~~

~~Reducing the rate of accumulation of sediment with toxic contaminants derived from surrounding catchments can be achieved by requiring stormwater treatment devices for discharges from new subdivision and development.~~

~~Discharges to land that may enter water include discharges to existing and new stormwater infrastructure.~~

~~Stormwater design features set out in policy 42 will also reduce accumulation rates of ecotoxic contaminants in the sediments of low energy aquatic receiving environments. Policy 42 is directed at city and district councils when they are considering district plan provisions and resource consents for new subdivisions and land use. This policy and policy 42 provide an integrated approach to managing the adverse effects of stormwater discharges.~~

218. Policy 14 is an existing policy within the Operative RPS. Change 1 proposes amendments to Policy 14 to give effect to the NPS-FM specifically in an urban development context. The Policy provides direction to regional plans about how the effects of urban development on freshwater and the coastal marine area should be managed. As the Reporting Officer states, Proposed Change 1 has been drafted on the basis that urban development generates a large proportion of effects on water quality in the Region.⁸⁷

3.8.1 Submissions, Evidence and Analysis

219. Submitters expressed a range of concerns in relation to Policy 14 including clarity of drafting, the roles and responsibilities of regional councils and territorial authorities (MDC [S166.026]), the incorporation of hydrological controls to reduce the adverse effects of stormwater (Wellington Water [S113.016]), application to the coastal marine area (CMA) (DGC [S32.013] and WIAL [S148.036]), natural inland wetlands (Forest and Bird [S165.049]), and the constraints to be placed on urban development to protect freshwater and receiving environments, and whether this should be extended to ‘development’ more broadly (Rangitāne [S168.038], Ngāti Toa [S170.029]). Submitters also raised issues regarding whether ‘gully heads’ are freshwater bodies (WCC [S140.040]), protection of riparian

⁸⁷ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 348.

margins (Kāinga Ora [S158.019]), and the use of *minimise* and *maximise* (Wellington Water [S113.019]).

220. Ms Pascall addressed many of these issues in the s 42A Report⁸⁸ and accompanying amendments, including a clause relating to avoiding the loss of extent or values of natural inland wetlands, a new policy to address hydrological controls, and amending the heading of Policy 14 - “Urban development effects on freshwater and receiving environments – regional plans” as the NPS-FM applies to receiving environments to the extent they are affected by freshwater (clause 1.5).⁸⁹
221. A number of remaining concerns were raised by submitters and discussed in Ms Pascall’s Rebuttal evidence. These are discussed below under these subheadings:
- a. Location and design of urban development (including discussion on ‘gully heads’ and ‘adjacent’)
 - b. Overlapping functions of local authorities
 - c. Pathways in natural inland wetlands
 - d. Daylighting of rivers.

3.8.1.1. Location and design of urban development

222. Mr McDonnell for PCC sought to remove references to lot boundaries and new roads in clause (h) on the basis they do not have adverse effects on freshwater and subdivision is a territorial authority function.⁹⁰ Similarly Mr Heale, providing planning evidence for Kāinga Ora raised concerns about overlapping responsibilities of the regional council and territorial authorities and that lot creation through subdivision (clause (h)) was a function of TAs under s 31(2) of the RMA.⁹¹
223. Conversely, Mr Brass for the Director General of Conservation, did not support clause (h) being limited to lot boundaries and roads as other urban development would not be captured.⁹² He also did not support the

⁸⁸ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, paras 315 – 363.

⁸⁹ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, paras 334.

⁹⁰ Statement of evidence of Torrey McDonnell on behalf of Porirua City Council (Planning), HS5 – 2 November 2023, para 33.

⁹¹ Statement of Primary Evidence of Matt Heale on behalf of Kāinga Ora – Homes and Communities (Planning), HS 5, 3 November 2023.

⁹² Evidence of Murray Brass on behalf of the Director-General of Conservation, HS 5, 3 November 2023, para 21.

removal of ‘gully heads’ from clause (h) as “[g]ully heads are known critical source areas for contaminant transport” and there may be water bodies within urban development, and not just adjacent to it.⁹³

224. On clause (h) the Officer notes that it is “within the remit of regional council functions under section 30 of the Act, where the regional council does have a role in managing land use for the purposes of managing water quality.⁹⁴ In her Rebuttal Evidence, Ms Pascall proposes further amendments to clauses (f), (h), (i), (k), (l), (m) and (n) in response to submitter concerns including replacing “lot boundaries and new roads” with “urban development location and design”.⁹⁵
225. Ms Pascall also agreed that “gully heads” be reinstated as they have an important role in supporting freshwater ecosystems.⁹⁶ Ms Pascall also agreed with Mr Brass that clause (h) should refer to “receiving environments”.
226. At the hearing, Mr Brass said he understood Ms Pascall’s explanation that “adjacent” applies to all the water bodies listed in clause (h), but a “receiving environment” did not have to be adjacent to the urban development. He queried whether that interpretation was in fact clear from the wording, and expressed concern that someone could try to say the “receiving environment” also had to be adjacent. Counsel for the Council provided advice on the meaning of “adjacent”, and held that the word has been interpreted as meaning “near to”, and not needing to be “adjoining” or having a “touching boundary” with.⁹⁷
227. We note Mr Brass’ concern regarding the word “adjacent” in clause (h). While we do not read the provision as requiring “receiving environments” to be adjacent to a development to engage the clause, we understand the interpretation concern. In addition, we were not certain of the rationale for clause (h) using the word “adjacent” when it is not included in Policy FW.3(k) (which is the equivalent policy for district plans). We were also

⁹³ Evidence of Murray Brass on behalf of the Director-General of Conservation, HS 5, 3 November 2023, para 22, citing a Wellington Regional Council factsheet which referred to critical source areas including gullies, swales and seeps.

⁹⁴ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 87.

⁹⁵ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 86.

⁹⁶ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 88.

⁹⁷ Legal submissions in reply on behalf of Wellington Regional Council – Hearing Stream 4, 23 November 2024, paras 5 – 9.

not clear why Policy FW.3(k) does not refer to “receiving environments”. In our view, it is useful to have consistent drafting in these clauses.

228. We note the similarities between Policies 14(h) and FW.3(k) and recommend amendments to align and recognise the respective councils’ mutual responsibilities. In particular, we recommend deleting “adjacent” from Policy 14(h) on the basis of evidence presented on behalf of the DGC that gully heads may be located within a site. We discussed with Ms Allan (Special Advisor) our concerns with the word “adjacent” and the different approach in Policy FW.3(k). Ms Allan said that in her experience, urban development can have downstream effects and regional council responsibilities are not limited to effects that happen “close by”. In addition, if a gully head was in a site that was being developed, it would be appropriate to take that into account. Ms Allan also commented that based on the proposed drafting of Policy 14(h) in the Reply version, it was not clear whether “adjacent” also applied to rivers and the other waterbodies mentioned, although they would be captured by “receiving environments”.
229. In response to some submitter concerns about the scope of the Policy, the Officer did not support broadening Policy 14 to development more generally as the changes in Proposed Change 1 respond primarily to the NPS-UD and the anticipated increased intensification in the Region’s urban areas as a result.⁹⁸

3.8.1.2 Overlapping functions and responsibilities

230. Mr Jeffries and Ms Cook for WCC sought that clause (f) in Policy 14 be deleted as it duplicated matters in clause (k) (water sensitive design and stormwater quality management) and was impractical in requiring adverse effects of contaminants to be avoided rather than minimised.⁹⁹ Ms McPherson for the Fuel Companies raised similar concerns, including that the requirement to avoid effects was onerous and set an unrealistic direction.¹⁰⁰

⁹⁸ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 67; and Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 349.

⁹⁹ Joint statement of planning evidence of Joe Jeffries and Maggie Cook on behalf of Wellington City Council, HS 4, 3 November 2023, para 30 – 33.

¹⁰⁰ Joint Hearing Statement on behalf of the Fuel Companies, HS5, 3 November 2023, Ms McPherson, paras 2.5 – 2.7.

231. Mr Lewandowski for PPFL raised similar concerns about duplication of functions,¹⁰¹ and Ms Horrox for Wellington Water also sought clarity on the division of responsibilities.¹⁰² Mr Lewandowski said that specific clauses relating to urban development should be removed from the Regional Council responsibilities in Policy 14. In particular, he noted that water sensitive urban design techniques are not within the remit of regional plans and that clause (f) should be deleted. In her Rebuttal Evidence, Ms Pascall disagreed and said:¹⁰³

Water sensitive urban design techniques can be applied to address matters that fall within the functions of both regional council and territorial authorities. The RPS policy direction provides for these situations by requiring these techniques to be applied through both regional and district plans. In a practical implementation sense, the respective local authorities will have to apply these techniques to urban development within their respective functions under the Act and to the relevant context.

232. Mr Lewandowski similarly raised a concern about Policy 14(m) and the requirement to include riparian buffers adjacent to urban development as a matter more appropriate for district plans to address. In response, Ms Pascall said:¹⁰⁴

The management of riparian buffers can be undertaken by both regional council and territorial authorities, within their respective functions under the RMA. I consider that Policy FW.3 allows for this in clause (k). However, I consider that to provide more clarity, clause (i) of Policy 14 could be amended to be clearer about the matters that the regional council will manage within the riparian buffer, being the protection and enhancement of these margins for the purpose of managing the health and wellbeing of waterbodies and freshwater ecosystem health.

233. The Officer acknowledges that there is some overlap between regional council and territorial authority responsibilities in clause (f) – in relation to

¹⁰¹ Statement of Evidence of Maciej Lewandowski on behalf of Peka Peak Farm Limited, HS 5, 3 November 2023, paras 4.2 – 4.7

¹⁰² Statement of evidence of Caroline Horrox on behalf of Wellington Water (Planning), HS 5, 3 November 2023, para 18.

¹⁰³ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 90.

¹⁰⁴ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 93.

water sensitive design techniques, and clause (h) – in relation to urban development locations protecting and enhancing water ways.

234. As we discuss further in our analysis of Policy FW.6, regional councils have functions regarding discharges and managing contaminants, and territorial authorities have functions regarding stormwater management from land use.

235. We accept the evidence of Mr Farrant for the Regional Council, discussing the context and drivers for hydrological controls. Mr Farrant states that:¹⁰⁵

Development activities across the Wellington region result in stormwater runoff which discharges to fresh and coastal waters at a range of scales and with varying levels of cultural, ecological and social significance. Discharge of inappropriately managed urban stormwater therefore has the potential to adversely impact on streams, rivers, wetlands, lakes, estuaries and the open coast.

236. Ms Pascall supported amendments to “minimise” adverse effects of contaminants rather than avoid them outright; and to combine clauses (f) and (k) to remove duplication. Ms Pascall did not incorporate “maximise” and “minimise” as defined terms in the Policy. We recommend the defined terms are used. Commenting on concerns regarding overlapping functions, Ms Pascall recommended some changes to clarify functions, including in clause (i) regarding the protection and enhancement of riparian margins.

237. We discussed overlapping council responsibilities with Ms Allan (Special Advisor). Ms Allan agreed with Ms Pascall that there are overlapping functions regarding the control of land use for water quality, and provisions addressing the overlap should be clear about the extent of mutual responsibilities. This point was also raised in Wellington Water’s submission [S113.020] where they said that the risk of regional or territorial authorities individually taking less responsibility due to mutual obligations should be avoided.

238. Ms Allan supported Ms Pascall’s statements about local authorities needing to work together to achieve a coordinated approach and carry out their mutual responsibilities in ss 30 and 31 of the RMA in relation to the

¹⁰⁵ Statement of Evidence of Stuart Farrant for Wellington Regional Council – Technical Evidence – Hearing Stream 5, 30 October 2023, para 17.

location and design of urban development as it may impact water bodies and receiving environments.

3.8.1.3 Consent pathways in natural inland wetlands

239. Mr McDonnell for PCC sought that Policy 14 provide a consent pathway for works with a functional or operational need within a wetland.¹⁰⁶ Other submitters similarly raised concerns about lack of consistency between the NPS-FM and NES-F in relation to urban development and natural inland wetlands (clause (m)), and the practicality of requiring mapping of rivers and wetlands within areas proposed for urban development (clause (l)).

240. In her Reply Evidence Ms Pascall further considers clause (ia) relating to urban development and piping of rivers and clause (m) natural inland wetlands. She recommends deleting both these clauses from Policy 14 consequential on a recommendation for new Policies 18A and 18B¹⁰⁷ which respectively provide a consenting pathway for specific activities in or near natural inland wetlands and rivers. We consider these amendments grant relief sought by various submitters including Winstone Aggregates and PPFL.

3.8.1.4 Daylighting of rivers

241. Another integration related issue that we discuss briefly here, but go on to discuss in more detail in relation to Policies FW.3 and 42, concerns the daylighting of streams / rivers. We recommend Policy 14(n) regarding the daylighting of streams is retained, but we note that similar clauses in Policies FW.3 (with our recommended amendments) and 42 refer to the daylighting of “rivers”.

242. A “river” is defined in the RMA to mean “a continually or intermittently flowing body of fresh water; and includes a stream and modified watercourse; but does not include any artificial watercourse ...”. On this basis, and in light of our recommended amendments to Policies FW.3 and 42, we also recommend a consequential amendment to Policy 14(n) to replace “streams” with “rivers”. Finally, we recommend that the words “minimise” and “maximise” are italicised as defined terms (discussed in the Definitions section of this Part).

¹⁰⁶ Statement of evidence of Torrey McDonnell on behalf of Porirua City Council (Planning), HS5 – 2 November 2023, paras 36 – 42.

¹⁰⁷ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 64.

3.8.2 Finding and s 32AA Evaluation

243. We largely agree with the Reporting Officer’s recommendations on Policy 14 for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal and Reply Evidence. We recommend an amendment to delete “adjacent” from Policy 14(h) as this will better manage potential adverse effects from urban development on the health and well-being of water bodies and receiving environments in accordance with the NPS-FM. We agree with Mr Brass that the Officer’s proposed wording in clause (h) could lead to interpretation issues, and we consider it appropriate that the clause is consistent with the similar provision in Policy FW.6. This is a good example in our view, of where mutual responsibilities that are identified in ss 30 and 31, will need to be discussed between the councils involved and their approach coordinated to achieve integrated management and appropriate management of any adverse effects in accordance with statutory functions and direction in the NPS-FM, NPS-UD and ss 30 and 31. We support the associated Methods that are aimed at fostering collaboration (discussed later in this Part).
244. We recommend replacing “streams” with “rivers” in clause (n) as a consequential change to our recommendations in Policies FW.3 and 42. We consider this is important for consistency, integration and interpretation of the concept of ‘river daylighting’ as it applies in the RPS. Recognising “minimise” and “maximise” as defined terms will assist the interpretation and application of the Policy.
245. We consider the amendments we recommend provide clearer direction on the policy intent and clarify terms which will assist with the interpretation and application of the Policy. The amendments will help to achieve the outcomes sought under Objective 12 of the RPS (as proposed to be amended), the NPS-FM, NPS-UD, and also the sustainable management purpose of the Act.

3.8.3 Recommendation

Policy 14: Urban development effects on freshwater and the coastal marine area receiving environments Minimising contamination in stormwater from new development – regional plans

Regional plans shall give effect to Te Mana o te Wai and include objectives, policies, rules and methods for urban development including rules, must that give effect to Te Mana o te Wai and in doing so must:

- (a) Enable the active involvement of mana whenua / tangata whenua in

freshwater management (including decision-making processes); and

- ~~(ab) Identify and provide for Māori freshwater values are identified and provided for;~~
- (b) Adopt an integrated approach, ki uta ki tai, that recognises the interconnectedness of the whole environment to determine the location and form of *urban development*;
- (c) ~~Require the cControl of both land use and discharge effects from use and development of land~~ *urban development* on freshwater and ~~the coastal marine area receiving environments;~~
- (d) ~~Identify how to A~~ achieve the target attribute states and environmental flows and levels set for the catchment;
- (e) Require ~~the urban development~~, including stormwater discharges, earthworks and vegetation clearance to meet any limits set in a regional plan;
- (f) Require ~~that urban development to incorporate water sensitive urban design water sensitive urban design techniques to minimise the generation of contaminants from stormwater runoff, and maximise, to the extent practicable, the removal of contaminants from stormwater avoid adverse effects of contaminants on waterbodies from the use and development of the land is designed and constructed using the principles of Water Sensitive Urban Design;~~
- ~~(g) Require that urban development located and designed to minimise the extent and volume of earthworks and to follow, to the extent practicable, existing land contours;~~
- (h) Require that ~~urban development lot boundaries and new roads for are urban development urban development is is appropriately located and designed and designed~~ to protect and enhance the health and wellbeing of adjacent ~~gully heads; gully heads~~, rivers, lakes, wetlands, springs, riparian margins and estuaries and other receiving environments including the natural form and flow of the waterbody;
- (i) Require *urban development* adjacent to natural waterbodies to protect and enhance ~~include~~ riparian margins buffers; ~~for all waterbodies and avoid piping of rivers;~~
- ~~(ia) avoid the piping of rivers for urban development urban development unless:
(i) there is a functional need for the activity in that location; and
(ii) the effects of the activity are managed by applying the effects management hierarchy;~~
- ~~(j) Require hydrological controls in urban development to avoid adverse effects of runoff quantity (flows and volumes) and maintain, to the extent practicable, natural stream flows;~~
- ~~(k) Require urban development to adopt stormwater quality management measures that will minimise the generation of contaminants, and maximise, to the extent practicable, the removal of contaminants from stormwater; and~~
- ~~(l) Identify and map rivers and wetlands within the area proposed for urban development in partnership with mana whenua/tangata whenua and affected landowners;~~

- ~~(m) require that urban development *urban development* avoids the loss of extent or values of natural inland wetlands, unless; and~~
- ~~(i) the *urban development* will contribute to a well-functioning urban environment; and~~
 - ~~(ii) the *urban development* will provide significant national, regional, or district benefits; and~~
 - ~~(iii) the *urban development* occurs on land identified for urban development *urban development* in operative provisions of a regional or district plan; and~~
 - ~~(iv) the land proposed for *urban development* is not zoned general rural, rural production, or rural lifestyle; and~~
 - ~~(v) there is no practicable alternative location for the activity within the area of the development; or~~
 - ~~(vi) every other practicable alternative location in the area of the development would have equal or greater adverse effects on a natural inland wetland; and~~
 - ~~(vii) the effects of the activity are managed by applying the *effects management hierarchy*; and~~
- ~~(n) promoting and enabling the daylighting of streams rivers.~~


Regional plans shall include policies, rules and/or methods that protect aquatic ecosystem health by minimising ecotoxic and other contaminants in stormwater that discharges into water, or onto or into land that may enter water, from new subdivision and development.

Explanation

Policy 14 manages the effects of ~~urban development~~ *urban development*, including the effects of *contamination in stormwater, earthworks and vegetation clearance* from new and existing subdivision and development to halt and reverse the degradation of *freshwater* and ~~coastal water in receiving environments~~.

3.9 Policy FW.3 Urban development effects on freshwater and the coastal marine area – district plans

246. The notified provision stated:

Policy FW.3: Urban development effects on freshwater and the coastal marine area – district plans	
<u>District plans shall include objectives, policies, and methods including rules, that give effect to <i>Te Mana o te Wai</i> and section 3.5(4) of the NPS-FM, and in doing so must:</u>	
<ul style="list-style-type: none"> (a) <u>Partner with mana whenua / tangata whenua in the preparation of district plans;</u> (b) <u>Protect and enhance Māori freshwater values, including mahinga kai;</u> (c) <u>Provide for mana whenua / tangata whenua and their relationship with their culture, land, water, wāhi tapu and other taonga;</u> (d) <u>Incorporate the use of mātauranga Māori to ensure the effects of urban development are considered appropriately;</u> (e) <u>Adopt an integrated approach, ki uta ki tai, that recognises the interconnectedness of the whole environment to determine the location and form of urban development;</u> (f) <u>Integrate planning and design of stormwater management to achieve multiple improved outcomes – amenity values, recreational, cultural, ecological, climate, vegetation retention;</u> (g) <u>Consider the effects on freshwater and the coastal marine area of subdivision, use and development of land;</u> (h) <u>Consider the use and development of land in relation to target attribute states and any limits set in a regional plan;</u> (i) <u>Require that Water Sensitive Urban Design principles and methods are applied during consideration of subdivision, the extent of impervious surfaces and in the control of stormwater infrastructure;</u> (j) <u>Require that urban development is located and designed to minimise the extent and volume of earthworks and to follow, to the extent practicable, existing land contours;</u> (k) <u>Require that urban development is located and designed to protect and enhance gully heads, rivers, lakes, wetlands, springs, riparian margins and estuaries;</u> (l) <u>Require riparian buffers for all waterbodies and avoid piping of rivers;</u> (m) <u>Require hydrological controls to avoid adverse effects of runoff quantity (flows and volumes) and maintain, to the extent practicable, natural stream flows;</u> (n) <u>Require efficient use of water;</u> (o) <u>Manage land use and development in a way that will minimise the generation of contaminants, including building materials, and the extent of impervious surfaces;</u> (p) <u>Consider daylighting of streams, where practicable; and</u> (q) <u>Consider the effects of land use and development on drinking water sources.</u> 	
<p><u>Explanation</u></p> <p><u>Policy FW.3 requires district plans to manage the effects of urban development on freshwater and the coastal marine area.</u></p>	

247. Policy FW.3 is a proposed new regulatory Policy requiring district plans to manage the effects of urban development on freshwater and the coastal marine area.

3.9.1 Submissions, Evidence and Analysis

248. Submitters raised concerns in relation to jurisdictional issues and duplication with other policies (for instance WCC [S140.046], KCDC [S16.080] and UHCC [S34.056]), clarity of direction as to how district plans provide for tangata whenua / mana whenua and their relationships with their culture, land, water, wāhi tapu and other taonga (for instance Taranaki Whānui [S167.085] and Te Tumu Paeroa [S102.047]), integrated planning and design of stormwater management (Wellington Water [S113.017]), avoiding loss of river extent and values and natural wetlands (Fish and Game [S147.016]), protection of freshwater species, hydrological controls, application to the CMA (WIAL [S148.038]), the ability of streams and rivers to move and meander naturally (DGC [S32.033]), and suggested deletion of the Policy (Best Farm Limited/Hunters Hill Ltd/Lincolnshire Farm Ltd/Stebbing's Farmlands Ltd [S135.006]). Wellington Water also sought that clause (k) be amended to require district plans to identify water source protection requirements.

249. The s 42A report addressed many of these concerns with several amendments to the provisions, including revising the wording of the title to “Urban development effects on freshwater and receiving environments – district plans”.

3.9.1.1 Overlapping council functions and responsibilities

250. The Reporting Officer agreed that Policy FW.3 included some requirements that did not sit within the responsibilities of TAs and there was some duplication with Policy 14 (for instances clauses (b), (h), (l) and (p)), and also duplication with Policy 15(j) and Policy FW.3(n) and (q) so it was recommended that these clauses be deleted.¹⁰⁸
251. We discuss overlapping council responsibilities further in relation to Policy FW.6.
252. Among other amendments, Ms Pascall proposed changes to clause (g) to clarify the policy intention of ensuring that the location, layout and design of urban development occurs in a way that minimises effects on

¹⁰⁸ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 364.

freshwater.¹⁰⁹ Ms Pascall noted that this direction in the RPS is consistent with clause 3.5(4) of the NPS-FM which requires TAs to include provisions in district plans to promote positive effects, and avoid, remedy or mitigate adverse effects of urban development on freshwater.¹¹⁰ Ms Pascall noted that the chapeau to the Policy provides flexibility to TAs in how they address these matters as it allows for district plans to include rules or other methods to implement Policy FW.3.¹¹¹ Ms Pascall supported relief seeking to strengthen clause (c) to provide stronger direction for how district plans should provide for mana whenua / tangata whenua relationships.¹¹²

253. Ms Pascall agreed with PCC that clause (o) duplicated clause (i) in relation to impervious surfaces and so this part of the clause could be deleted, but it was appropriate for clause (o) to require district plans to manage land use and development in a way that minimises the generation of contaminants, including in relation to the choice of building materials. Ms Pascall said that WCC had included some provisions in its proposed District Plan that control the use of copper and zinc building materials for the sole purpose of preventing contaminants entering the stormwater system without proper treatment.¹¹³ The changes that Wellington Water sought regarding hydrological controls were better addressed, according to Ms Pascall, in a new Policy.
254. In her Rebuttal Evidence Ms Pascall combines clauses (a) and (c) to reduce duplication in relation to working with tangata whenua / mana whenua, and adds clause (ka) requiring identification of aquifers and drinking water sources further to Wellington Water's relief. At the hearing, Wellington Water confirmed that this addition in new clause (ka), and information about the management of urban development in these areas, addressed the relief they had sought.¹¹⁴

¹⁰⁹ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 364.

¹¹⁰ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 364.

¹¹¹ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 373.

¹¹² Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 367.

¹¹³ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 364.

¹¹⁴ Wellington Water, Speaking Notes, presented by Mr Slyfield, HS5, Hearing Day 1, 20 November 2023, page 1.

255. Ms Pascall does not agree with submitters' concerns that there is still duplication with Policy 14 and lack of clarity of responsibilities across the regional council and territorial authorities. A number of amendments were made in her s 42A Report to clarify respective responsibilities. In response to submissions that clauses (g), (k) and (o) be deleted as they reflect regional council rather than territorial authority responsibilities, she refers back to her s 42A Report.¹¹⁵

256. On clause (g), she states in the s 42A Report that:¹¹⁶

the intention is to ensure that urban development and proposals to rezone land for urban development are planned in a way that minimises effects on freshwater. I consider that it is appropriate that urban development is planned in such a way, and I note that this would likely require an integrated approach alongside the regional council at the early development planning or rezoning stage. This could occur through structure planning for large scale development or rezoning, for example. On this basis, I consider it is appropriate for the RPS to include direction for district plans on this matter, and that this is in line with clause 3.5(4) of the NPS-FM, which requires territorial authorities to include objectives, policies, and methods in district plans to promote positive effects, and avoid, remedy or mitigate adverse effects of urban development on freshwater.

257. The Reporting Officer recommended clause (ia) be added requiring urban development to be designed, constructed and maintained to achieve hydraulic neutrality, and also a definition of "hydraulic neutrality" as a consequential amendment, using the same definition in the WCC Proposed District Plan. Clause (ia) responds to relief requested by KCDC to include hydraulic neutrality in Policy 15 regarding managing the effects of earthworks and vegetation clearance, with the Officer considering that the amendment is better placed within Policy FW.3.¹¹⁷ At the hearing, Mr McDonnell for PCC supported the wording of clause (ia) and said it aligned with the approach TAs are taking in Wellington and their functions under s 31.¹¹⁸

¹¹⁵ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 364.

¹¹⁶ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 364.

¹¹⁷ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, paras 472 – 474.

¹¹⁸ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 15, lines 694 – 696.

258. On clause (k) the Officer notes in her Rebuttal Evidence:¹¹⁹

....in my experience, territorial authorities are well placed to ensure urban development is located and designed to protect and enhance the waterbodies listed in the clause. District plans manage the location and design of urban development and implementation of this clause could involve the inclusion of buffers or setbacks from these waterbodies (as one example) in their zone rules or through natural environment provisions of their district plans.

259. On clause (o), the s 42A Officer's comment is:¹²⁰

the clause requires district plans to manage land use and development to minimise the generation of contaminants. In my opinion, this is a matter district plans can address under clause 3.5(4) of the NPS-FM...

260. More broadly in relation to division of responsibilities between regional and district plans the Officer acknowledges in her Rebuttal Evidence that:

¹²¹

in some instances there may be overlap in the requirements of the regional and district plans, however I consider that this remains appropriate insofar as these matters relate to the respective functions of regional councils and territorial authorities. At the implementation stage, it will require coordination between the councils and I consider this is part and parcel of integrated management.

261. Mr McDonnell for PCC maintained at the hearing that clauses (g), (i), (k) and (o) should be deleted as they are regional council functions under s 30, most relate to the discharge of contaminants to land and water,¹²² and Policy 14 requires that regional plans regulate most of these same matters.¹²³ Mr McDonnell also said that requiring district plans to regulate these matters would duplicate provisions in Plan Change 1 to the NRP, at least for Te Awarua o Porirua and Te Whanganui a Tara Whaitua.

¹¹⁹ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 109.

¹²⁰ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 364.

¹²¹ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 114.

¹²² Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 15, lines 696 – 700.

¹²³ Statement of evidence of Torrey McDonnell on behalf of Porirua City Council (Planning), HS5 – 2 November 2023, para 46.

262. In her Reply Evidence, in response to questions we posed in Minute 18, Ms Pascall said she remained of the view that protecting the “natural form and flow of the waterbody” is not a function of territorial authorities and is best managed through the regional plan. Ms Pascall did agree that clause (k) should include reference to “health and wellbeing” for consistency with clause 3.5(4) of the NPS-FM,¹²⁴ and that clause (g) should be amended to refer to the “effects of” urban development on freshwater and receiving environments.
263. We agree with the majority of Ms Pascall’s views on these clauses and consider they are appropriate requirements for district plans, are consistent with clause 3.5(4) of the NPS-FM, and that effective management of urban development impacts on freshwater will require ongoing coordination between the Regional Council and territorial authorities (as we noted earlier in relation to Policy 14). We acknowledge and accept Ms Pascall’s evidence that a MOU between the respective councils would be challenging to administer in the Wellington context with eight TAs and that the more efficient way of addressing allocation of responsibilities is through polices and methods in the RPS.¹²⁵
264. Other submitters suggested that clauses (h), (m) and (n) of Policy 14 should be duplicated in this Policy. Ms Pascall’s view is that these clauses in Policy 14 are clear Regional Council water quality responsibilities. She is also of the view that natural form and flow of waterbodies and daylighting of streams are appropriately identified as Regional Council responsibilities in accordance with sections 30 and 31 of the RMA.¹²⁶
265. As we stated above in the discussion on Policy 14, we are persuaded by the evidence and submissions of the Director-General of Conservation that territorial authorities have jurisdiction to ensure urban development is located and designed to protect and enhance the waterbodies in clause (k), including through the use of buffers or setbacks in zone rules or in the natural environment provisions in district plans. We also support in part the amendment sought to include “the natural form and flow of the waterbody” in a new clause (kaa). Ms Pascall said in her Rebuttal Evidence that this did not fit within the responsibilities of territorial

¹²⁴ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 92 – 93.

¹²⁵ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 50 – 51.

¹²⁶ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, paras 112 – 113.

authorities.¹²⁷ However, in our view, territorial authorities are best placed to influence the location and design of urban development to achieve improved water quality outcomes.

266. We think the analysis in para 109 of Ms Pascall’s Rebuttal evidence applies equally to this issue of the “natural form and flow of the waterbody” as it does to protecting and enhancing gully heads, rivers, lakes and so on. This will require coordination between the Regional Council and city and district councils, but this is expected and required through Method IM.1. We recommend the “protection of natural flows” is included in a new clause (kaa) which we discuss further below.
267. We note that, as discussed above, Policy 14(h) which is a similar policy for regional plans, requires urban development be located etc to protect and enhance the health and wellbeing of “adjacent gully heads, rivers and so on. At the hearing, Ms Pascall confirmed that word “adjacent” applied to all of the waterbodies/areas listed in the Policy, but that “receiving environment” was broader and did not have to be adjacent. The word “adjacent” is not in Policy FW.3(k) and we think this is appropriate. However, we see no reason why “receiving environments” is not included in Policy FW.3(k) and recommend an amendment to that effect.

3.9.1.2. Daylighting of rivers

268. We were persuaded by Mr Brass’ evidence that:¹²⁸

From a practical point of view, district plans control zoning and rules for land use adjacent to rivers and streams (including setbacks), which can either provide for or preclude the ability for them to move naturally.

269. Similarly, Mr Brass was of the view that district plans should include provisions to “promote and enable the daylighting of streams”.¹²⁹ In his view, “land use matters such as subdivision design and layout, setback requirements, and location of services, can directly provide space for daylighting or block off options”.¹³⁰ Territorial authorities are tasked under s 31 of the RMA with achieving integrated management of the effects of

¹²⁷ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 112.

¹²⁸ Evidence of Murray Brass on behalf of the Director-General of Conservation, HS 5, 3 November 2023, para 31.

¹²⁹ Evidence of Murray Brass on behalf of the Director-General of Conservation, HS 5, 3 November 2023, para 38.

¹³⁰ Evidence of Murray Brass on behalf of the Director-General of Conservation, HS 5, 3 November 2023, para 35.

the use, development, or protection of land and associated natural and physical resources of the district and it is therefore appropriate to provide for the daylighting of streams through provisions in district plans. Mr Brass said that the Policy could not require daylighting of streams as that was not realistic given the streams and pipes under Wellington City as an example. However, as he explained it, “it is about having provisions that encourage it, so that things are moving in the right direction”.¹³¹

270. Mr Brass’ planning evidence was supported by Dr Boddy’s technical evidence outlining the impacts on habitat and biodiversity from hard-engineered structures and riverbanks for erosion control and flood protection. Dr Boddy said that:¹³²

Re-establishing or avoiding further loss of meanders, braided river plains, and connection between wetlands and rivers throughout the catchment may slow sediment movement, reduce flooding, increase climate change resilience and improve biodiversity.

271. Dr Boddy presented images showing how the natural flow of the Hutt River has been constrained by urban development over the decades, and how subdivision developments have impacted the natural flow and character of rivers and streams. She emphasised that there were around 700km of piped streams just within the Wellington City limits.¹³³ Dr Boddy acknowledged there are conflicts between restoring natural flow and character and protecting existing communities and infrastructure, but opportunities do exist for ‘win-win’ outcomes.¹³⁴

272. Dr Boddy also talked about the benefits of daylighting streams, which is the practice of removing rivers and streams from underground pipe networks and restoring them to open air.¹³⁵ This can restore streams to a naturalised state and bring about environmental improvements (improved habitat, increase biodiversity and improved water quality) and reduce flash flooding.¹³⁶ Having rivers exposed to daylight will aid photosynthesis, and algae can feed the invertebrates which then feed the

¹³¹ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 35, lines 1769 – 1775.

¹³² Evidence of Dr Nixie Boddy on behalf of the Director-General of Conservation, HS5, 3 November 2023, para 19 (citing Clearwater et al. 2022).

¹³³ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 31, lines 1538 – 1539.

¹³⁴ Evidence of Dr Nixie Boddy on behalf of the Director-General of Conservation, HS5, 3 November 2023, para 24.

¹³⁵ Evidence of Dr Nixie Boddy on behalf of the Director-General of Conservation, HS5, 3 November 2023, para 34.

¹³⁶ Evidence of Dr Nixie Boddy on behalf of the Director-General of Conservation, HS5, 3 November 2023, para 34.

fish and you start to establish a food web.¹³⁷ Dr Boddy did however note the connectedness of river networks and that a catchment approach should be taken to maximise benefits.¹³⁸ Mr Brass view was that this evidence justifies including active and positive direction on daylighting of streams in the RPS.¹³⁹ Ms Downing for Forest and Bird also supported territorial authorities having a role in promoting the daylighting of streams, and said this was consistent with clause 3.5(4) of the NPS-FM which requires district plans to promote positive effects.¹⁴⁰

273. We agree and consider, based on Dr Boddy’s evidence regarding the Regional Council’s role in catchment management and the information provided by Mr Brass and Ms Downing, that it is appropriate and within the RMA’s jurisdiction for territorial authorities to consider opportunities to daylight streams in land use, subdivision and development proposals.

274. During the hearing, we asked Ms Cook and Mr Jeffries (planners for WCC) about their approach regarding the daylighting of streams. Ms Cook said that the issue has come up in higher strategic directions for Wellington City Council, however:¹⁴¹

it is considered harder for the daylighting of streams and Wellington City boundaries because the majority of them are connected up into our stormwater network.... Putting a stream underground there is also a function for them being part of our stormwater network as well. So, while I don’t believe it’s against the strategic direction WCC is going in, however it is going to be materially more difficult to achieve than in other places... just [with] the level of development that we have in places such as the city centre. Where the stream paths currently go in relation to building, such as parliament. There’s a fair few of the piped streams around there.

275. Having considered all submitters on this issue, we recommend that Policy FW.3 is amended to include a clause requiring urban development to be located and designed to protect natural flows and enable the daylighting of rivers as far as practicable. We consider this amendment is justified on the basis of the evidence and submissions we heard, it gives appropriate

¹³⁷ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 36, lines 1788 – 1791.

¹³⁸ Evidence of Dr Nixie Boddy on behalf of the Director-General of Conservation, HS5, 3 November 2023, para 38.

¹³⁹ Evidence of Murray Brass on behalf of the Director-General of Conservation, HS 5, 3 November 2023, para 34.

¹⁴⁰ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 59, lines 2971 – 2992.

¹⁴¹ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 55, lines 2796 – 2811.

effect to clause 3.5(4) of the NPS-FM, and is aligned with TA functions in s 30.

276. As we discussed earlier in relation to Policy 14(n), we consider it appropriate for the provisions to refer to the “daylighting of rivers” given the definition of “river” in the RMA includes “streams”. We recommend consistent drafting is used across the Change 1 provisions that refer to the daylighting of streams/rivers. We prefer to use the term “rivers” rather than “streams” given the RMA definition of the term.
277. Policy 14(a) appropriately requires that mana whenua / tangata whenua are actively involved in freshwater management. We consider that this wording is also appropriate in Policy FW.6 including on the basis of Policy 2 and clause 3.2(2)(a) of the NPS-FM.
278. We otherwise consider that Policy FW.3 (in the Officer’s Reply Evidence) appropriately identifies the requirements of district plans for implementation of the NPS-FM in relation to managing urban development impacts on freshwater.

3.9.2 Finding and s 32AA Evaluation

279. We largely agree with the Reporting Officer’s recommendations on Policy FW.3 for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal and Reply Evidence. We recommend amendments to refer to the active involvement of mana whenua / tangata whenua in clause (c), “other receiving environments” in clause (k), and also a new clause (kaa) (with numbering to be reviewed and modified as required by Council) requiring urban development to be located and designed to protect natural flows and enable daylighting of rivers as far as practicable.
280. We consider that the amendments we have recommended align with territorial authority functions in s 31 of the RMA and give better effect to Policy 2, and clauses 3.2(2)(a) and 3.5(4) of the NPS-FM (the latter referring to district plans promoting positive effects). The amendments will appropriately manage potential adverse effects on freshwater and receiving environments from urban development, in line with TA functions and help to achieve Objective 12 and the sustainable management purpose of the Act.

3.9.3 Recommendation

Policy FW.3: *Urban development effects on freshwater and the coastal marine area receiving environments* – district plans

District plans shall include objectives, policies, and methods including rules *for urban development*, that give effect to *Te Mana o te Wai* and section 3.5(4) of the NPS-FM, and in doing so must:

- ~~(a) Partner with mana whenua / tangata whenua in the preparation of district plans;~~
- ~~(b) Protect and enhance Māori freshwater values, including mahinga kai;~~
- (c) ~~Partner with~~ Provide for mana whenua / tangata whenua and recognise and provide for their relationship with their culture, land, water, wāhi tapu and other taonga;
- (d) Incorporate the use of mātauranga Māori to ensure the effects of urban development urban development are considered appropriately;
- (e) Adopt an integrated approach, ki uta ki tai, that recognises the interconnectedness of the whole environment to determine the location and form of urban development urban development;
- (f) Integrate planning and design of stormwater management to achieve multiple improved outcomes – amenity values, recreational, cultural, ecological, climate, vegetation retention;
- (g) Consider the effects of the location, layout and design of urban development urban development in relation to effects on on freshwater and the coastal marine area receiving environments of subdivision; use and development of land;
- ~~(h) Consider the use and development of land in relation to target attribute states and any limits set in a regional plan;~~
- (i) Require that Water Sensitive Urban Design water sensitive urban design principles and methods are applied during consideration of subdivision, including the extent of impervious surfaces and in the control of stormwater infrastructure;
- ~~(ia) Require urban development urban development to be designed, constructed and maintained to achieve hydraulic neutrality.~~
- ~~(j) Require that urban development is located and designed to minimise the extent and volume of earthworks and to follow, to the extent practicable, existing land contours;~~
- (k) Require that urban development is located and designed to protect and enhance the health and wellbeing of gully heads gully heads, rivers, lakes, wetlands, springs, riparian margins and estuaries and other receiving environments;
- ~~(ka) Identify aquifers and drinking water source areas in the district and include~~

~~information about how urban development urban development in these areas is managed in the region;~~

~~(kaa) Require that urban development is located and designed to protect natural flows and enable the daylighting of rivers as far as practicable~~

~~(l) Require riparian buffers for all waterbodies and avoid piping of rivers;~~

~~(m) Require hydrological controls to avoid adverse effects of runoff quantity (flows and volumes) and maintain, to the extent practicable, natural stream flows;~~

~~(n) Require efficient use of water;~~

~~(o) Manage land use and development in a way that will minimise the generation of contaminants, including in relation to the choice of building materials, and the extent of impervious surfaces;~~

~~(p) Consider daylighting of streams, where practicable; and~~

~~(p) Consider the effects of land use and development on drinking water sources.~~

Explanation

Policy FW.3 requires *district plans* to manage the effects of **urban development urban development** on **freshwater** and **the coastal marine area** receiving environments.

Policy FW.4: Financial Contributions for urban development – district plans

~~District plans shall include policies and rules that require financial contributions to be applied to subdivision and development as a condition of the resource consent where off site stormwater quality and quantity treatment is required, as set out in a~~

~~Stormwater Management Plan (required as a condition of a network discharge consent for that catchment). The district plan policy shall outline how a fair share of the cost is determined, and the nature of the contribution. A financial contribution will not be required where a development contribution (as required by a Development Contribution Policy under the Local Government Act) has been collected from the same development for the same purpose.~~

~~Note: financial contributions cannot be imposed against Minister of Education or Minister of Defence~~

Explanation

~~Policy FW.4 requires financial contributions, or alternatively development contributions to be collected for the construction of catchment scale stormwater solutions, so that urban new urban development pays their fair share.~~

3.10 Policy FW.X – Hydrological control for urban development – regional plans

281. This Policy was not in the notified Change proposal. It is a new Policy recommend through the s 42A Report in response to submitter concerns that the proposed definition for hydrological control provides guidance for how hydrological controls should be implemented rather than simply a definition¹⁴² (WCC [S140.0123], PCC [S30.0106], and also the related relief sought by Wellington Water [S113.051]).
282. In response to these submissions, the s 42A Officer has recommended that the definition of “hydrological controls” be recast as a new Policy.¹⁴³ Ms Pascall has also recommended the definition change to “hydrological control” (ie be framed in the singular) to change the focus from the methods and devices to the outcome that is sought from stormwater management in urban development.¹⁴⁴
283. Ms Pascall explained that the purpose of the Policy is to control the hydrology of a site in order to manage stormwater runoff and volume and subsequent impacts on freshwater ecosystem health,¹⁴⁵ and therefore this was appropriate direction to regional plans.¹⁴⁶

3.10.1 Submissions, Evidence and Analysis

284. There were mixed views from submitters on the need for hydrological control in comparison to hydraulic neutrality.
285. The technical evidence of Mr Farrant discusses the need for hydrological control and the distinction between hydrological control and hydraulic neutrality,¹⁴⁷ and the importance of the former for freshwater ecosystem health. According to Mr Farrant, hydraulic neutrality in isolation does not achieve the ecological benefit that is sought from hydrological control.¹⁴⁸

¹⁴² Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 946.

¹⁴³ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 958.

¹⁴⁴ Hearing Statement of Kate Pascall, Hearing Stream 5: Freshwater and Te Mana o te Wai (opening day of hearings), 20 November 2023, para 25.

¹⁴⁵ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 959.

¹⁴⁶ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, paras 960 – 961.

¹⁴⁷ Statement of Evidence of Stuart Farrant for Wellington Regional Council – Technical Evidence – Hearing Stream 5, 30 October 2023.

¹⁴⁸ As summarised in Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 51.

286. In his opening statement Mr Farrant said:¹⁴⁹

Hydraulic neutrality is focused solely on peak flowrates from infrequent large rainfall events and is intended to provide resilience to flood events through detention whereby stormwater is held back and released over an extended timeframe at a throttled flowrate. Whilst I do not question the importance of flood mitigation, and the intent of hydraulic neutrality, it is important to recognize that it does not provide environmental benefit and in many instances can worsen outcomes through artificially extending the duration of elevated flowrates. Detention to support hydraulic neutrality also has no influence on the changed flow rate and frequency in small rainfall events which are fundamental to supporting freshwater ecosystem health.

287. Ms Pascall's s 42A Report provides a useful summary of the relationship between hydrological controls and hydraulic neutrality:¹⁵⁰

Hydrological controls manage stormwater flows and volumes to both control the amount of runoff from a site as well as managing the effects of contamination on freshwater ecosystem health ... Hydraulic neutrality is a mechanism for addressing stormwater peak flowrates to reduce the risks of flooding downstream through the use of stormwater detention, where stormwater is held back in tanks or similar and released at a later stage, to ensure the risks of flooding are no greater in a developed state than the existing situation. Hydraulic neutrality therefore addresses water quantity but does not address the effects of stormwater runoff on water quality.

288. Mr Jeffries and Ms Cook, providing joint planning evidence for WCC, stated that the new hydrological policy should apply to district plans rather than regional plans. Ms Pascall remained of the view that it was appropriate regional plan direction given the focus on freshwater ecosystem health, but that hydraulic neutrality would still be required through district plans.¹⁵¹

289. While it is the RPS that directs regional plans and not the converse, the Officer advised that a recently notified change to the NRP includes

¹⁴⁹ Hearing Statement of Stuart Farrant, Hearing Stream 5: Freshwater and Te Mana o te Wai (opening day of hearings), 20 November 2023, para 2.

¹⁵⁰ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, paras 953 – 954.

¹⁵¹ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 962.

regional rules requiring hydrological control in all scales of urban development.¹⁵²

290. In their evidence presented at the hearing, Mr Jeffries said that while they appreciated that hydraulic neutrality is a different concept to hydrological control, both involve management of run-off from urban development and requiring the former through a regional plan, and the latter through a district plan duplicates functions and would likely require separate consents from both regional and city councils to manage the same effect and would not improve freshwater outcomes.¹⁵³ In their view, hydrological control in relation to urban development would be more effectively implemented through the district plan rather than the regional plan.¹⁵⁴ They did not support Policy FW.X and sought that it be deleted also noting that a s 32 evaluation had not been provided.¹⁵⁵ On this issue, Ms Pascall directed us to her s 42A Report where a s 32AA evaluation was provided.¹⁵⁶
291. Ms Lockyer, a Principal Consultant – Hydrology, presented evidence on behalf of Wellington Water. She said that she agreed with Ms Pascall that the purpose of hydraulic neutrality is to attenuate peak flow.¹⁵⁷ The aim is to cap the peak flow from a property post-development, to that from a property pre-development, to minimise the risk of flooding to people and property downstream.¹⁵⁸ Ms Lockyer explained that Wellington Water currently requires new development (greenfield or infill development) to be hydraulically neutral in events up to a 1% annual exceedance probability (AEP) rainfall, including the predicted impacts of climate change.¹⁵⁹ This is managed through review of the 10% and 1% AEP rainfall events. However, in Ms Lockyer’s view, it was problematic to include ‘volume’ (rather than only ‘flow’) within the definition of “hydraulic neutrality”, as that requires all the runoff from the developed site to be managed via hydrological controls such as retention on-site, and this significantly reduces the ability to develop areas and meet urban growth requirements. This was because landcover and soils had been

¹⁵² Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 39.

¹⁵³ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 48, lines 2420 – 2429.

¹⁵⁴ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 48, lines 2430 – 2431.

¹⁵⁵ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 48, lines 2444 – 2450.

¹⁵⁶ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 52, lines 2617 – 2619.

¹⁵⁷ Statement of Evidence of Charlotte Lockyer on Behalf of Wellington Water Ltd, HS 5, 3 November 2023, paras 18 – 19.

¹⁵⁸ Statement of Evidence of Charlotte Lockyer on Behalf of Wellington Water Ltd, HS 5, 3 November 2023, para 13.

¹⁵⁹ Statement of Evidence of Charlotte Lockyer on Behalf of Wellington Water Ltd, HS 5, 3 November 2023, para 14.

significantly altered overtime and have reduced capacity to retain this volume, and the required storage volume and site area would be large and often prohibitive to development.¹⁶⁰

292. Ms Lockyer suggested amendments to the definition of “hydraulic neutrality” to delete references to “volumes” and include magnitude events (10% AEP and 1% AEP).
293. We found Mr Farrant’s evidence on the impacts on freshwater health, the receiving environment, and resultant decline of indigenous biodiversity from inappropriately managed urban development which causes increases in the discharge of contaminants, runoff volumes and flowrates, and disruption of natural flow patterns/variability persuasive.¹⁶¹ He stated that:¹⁶²

Future greenfield and infill redevelopment without robust and resilient mitigation of stormwater impacts through hydrological controls will contribute to and exacerbate ongoing decline in waterway health and will not support the intent of regulatory drivers of the NPS-FM.

294. He also said that continuing with existing development practices without requiring hydrological controls “will accelerate the decline in environmental and social outcomes across the Wellington Region”.¹⁶³ In particular, Mr Farrant said that continuing existing practices would result in the following:¹⁶⁴

- a. Ongoing loss of indigenous biodiversity in waterbodies due to persistent scour and disturbance of natural stream form
- b. Reduced quality of water in waterways due to instream sediment mobilisation and discharge of urban contaminants adversely impacting on cultural, ecological and social values

¹⁶⁰ Statement of Evidence of Charlotte Lockyer on Behalf of Wellington Water Ltd, HS 5, 3 November 2023, paras 23 – 24.

¹⁶¹ Statement of Evidence of Stuart Farrant for Wellington Regional Council – Technical Evidence – Hearing Stream 5, 30 October 2023, paras 18 – 19.

¹⁶² Statement of Evidence of Stuart Farrant for Wellington Regional Council – Technical Evidence – Hearing Stream 5, 30 October 2023, para 37.

¹⁶³ Statement of Evidence of Stuart Farrant for Wellington Regional Council – Technical Evidence – Hearing Stream 5, 30 October 2023, para 39.

¹⁶⁴ Statement of Evidence of Stuart Farrant for Wellington Regional Council – Technical Evidence – Hearing Stream 5, 30 October 2023, para 39.

- c. Ongoing loss of terrestrial biodiversity through reducing riparian habitat and fragmented connections or ecological corridors
- d. Reduced resilience to future climate change including both large shocks (floods/droughts) and changing seasonal patterns
- e. Increased costs and further loss of freshwater values through the construction of instream retaining structures to ‘control’ ongoing scour and erosion resultant from modified hydrology
- f. Continuing disconnect between communities and the natural environment.

295. Given the focus of this issue in the Hearing, we provide further comments and analysis on hydrological control.

3.10.1.1 Hydrological control and water sensitive design in managing contaminants in stormwater runoff

296. From the evidence there were two main points of contention. First, the metric to be used for achieving hydrological control and the level of detail or perceived prescription in new Policy FW.X; and second, whether the HS 5 provisions duplicated related provisions within HS 3. We also consider this latter issue in the discussion on the ‘Policy CC.4 and CC.14 suite’ of provisions in HS3.

297. Mr Farrant, presenting technical evidence for the Council, supported the version of Policy FW.X in Ms Pascall’s Rebuttal evidence. He said that this provision expressed the outcome sought, rather than the methods to achieve it.¹⁶⁵

298. Other experts disagreed. Ms Lockyer, for Wellington Water, said that the Policy should require hydrological controls, but the way the Policy prescribed how these controls should be set was unclear and difficult to interpret.¹⁶⁶ In her view, the outcome should focus on freshwater ecosystem health and scale prevention, but the Policy as supported by Council in its Rebuttal Evidence, was “detailing a methodology that you

¹⁶⁵ Right of Reply of Stuart Farrant on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater, 20 December 2023, para 12.

¹⁶⁶ Statement of Evidence of Charlotte Lockyer on behalf of Wellington Water Ltd, HS5, 3 November 2023, paras 32 – 34.

need to employ, rather than [the] outcome that was trying to be achieved”.¹⁶⁷

299. Among other things, Ms Lockyer did not support the need for continuous flow modelling as this could be cost prohibitive and it was unclear whether the modelling was the responsibility of Council or the developer.
300. Ms Horrox supported a simpler version of the Policy to require retention of rainfall to manage the effects of stormwater runoff (volume and quality) on freshwater ecosystem health.¹⁶⁸
301. In her Rebuttal Evidence, Ms Pascall, relying on Mr Farrant’s technical evidence, continued to support retaining clauses (a) and (b) with some amendments, to clarify the outcome sought from hydrological control.¹⁶⁹
302. In his Speaking notes, Mr Slyfield summarised Wellington Water’s key concerns with Policy FW.X in this way:¹⁷⁰

The policy contains more specificity than necessary for an RPS. This level of specificity is more appropriate to rules, which can be developed in the NRP. Notably, the policy is more specific than any of the NRP provisions regarding hydrological controls under NRP PC1. The policy should require hydrological controls, but should not prescribe how hydrological controls must be set, given the extent of expert disagreement. Ms Lockyer and Mr Farrant do not agree on the technical foundations of the policy. The RPS is not the place to resolve these technical matters, given the RPS—in comparison to the regional plan—provides less scope for the testing of expert opinions, less opportunity for interaction between experts, and less opportunity for future refinement by privately-initiated change.

303. At the hearing, Wellington Water requested deletion of clauses (a) and (b) from the Policy because:¹⁷¹

an attempt to resolve all the technical points of difference between Ms Lockyer and Mr Farrant is unlikely to be able to be

¹⁶⁷ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 44, lines 2221 – 2224.

¹⁶⁸ Statement of Evidence of Caroline Horrox on behalf of Wellington Water Ltd, HS5, 3 November 2023, para 33.

¹⁶⁹ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, paras 59 – 60.

¹⁷⁰ Wellington Water, Speaking Notes, presented by Mr Slyfield, HS5, Hearing Day 1, 20 November 2023, page 2.

¹⁷¹ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 40, lines 1998 – 2006.

done in this forum in a way that does justice to the science behind their respective positions.

304. In response to our questioning at the Hearing and in Minute 18, Ms Pascall responded in her Reply Evidence that there are two key issues;¹⁷² first, disagreement between the experts about the metric to be used for achieving hydrological control and the detailed nature of the policy, given this is in a RPS context. She further comments:¹⁷³

I have concerns about retaining the methodology in the new policy at this stage. Wherever the methodology is located, experts need to be confident that it can be implemented and is achievable.... this is a very detailed policy for a RPS. I have reviewed the content of Plan Change 1 to the NRP, which includes requirements for hydrological control through the rules and standards. That content is less prescriptive than the recommended RPS policy, which is inconsistent with the plan hierarchy. This could create a scenario where technically the NRP is not giving full effect to the RPS. Moreover, users of the NRP should not have to look to the RPS for this type of detail.

305. Ms Pascall recommends deleting clauses (a) and (b) of Policy FW.X and retaining the chapeau which requires regional plans to include policies, rules and methods for urban development that require hydrological control. She further opines that further discussion is needed between the Councils, Mr Farrant and other experts about the appropriate metric for hydrological control and how this should be reflected in the NRP.
306. Ideally these discussions would take place prior to the hearings for Plan Change 1 to the NRP, assuming that there is sufficient scope in submissions. Mr Slyfield commented on the need for more time to ensure robust testing of the approach.¹⁷⁴ Ms Lockyer also said that a lot of work should be done on developing an effective implementation approach that also allowed innovation and flexibility.¹⁷⁵
307. We support the approach recommended in Ms Pascall's Reply Evidence given the extent of disagreement between the technical experts and the

¹⁷² Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 78.

¹⁷³ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 79 – 80.

¹⁷⁴ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, pages 42 – 43; lines 2132 – 2142.

¹⁷⁵ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 43, lines 2184 – 2186.

need for more time to refine the details of how hydrological controls should be set.

3.10.1.2 Relationship with hydraulic neutrality

308. Some presenters at the Hearing observed that Plan Change 1 to the NRP (which was notified recently) includes a regional rule about hydrological control.¹⁷⁶ As Ms Cook for WCC said, “now [hydrological control has] been completely removed from the district plan [there is now an] overlap of consenting processes being for hydrological controls and other stormwater management systems that we are requiring to the PDP.”¹⁷⁷
309. We rely on the Reporting Officer’s and Mr Farrant’s evidence, and the legal submissions and evidence presented by Wellington Water which confirm that hydrological control through regional plans is an important, justified and appropriate regional council function and a means to manage the health and wellbeing of water bodies and freshwater ecosystems from the stormwater runoff. We are satisfied from the evidence that hydraulic neutrality does not achieve the same ecological benefits, even if discharges are to a stormwater network. We understand that an increased volume of stormwater runoff into waterbodies can change the natural processes and characteristics of these waterbodies, but we have some concerns with the definition of *hydrological control* supported by the Officer. The intended outcomes in the Policy can be better achieved in our view, if it is clear that stormwater flows and volumes from a site, sites or area can be assessed and managed. We discuss this further in the Definitions section of our Report but set out below the amendments we recommend to the definition:

Hydrological controls: means the management of a range of stormwater flows and volumes, and the frequency and timing of those flows and volumes, from a site, ~~or sites, or area~~ into rivers, lakes, wetlands, springs, riparian margins, and other receiving environments ~~in a way that replicates natural processes for the purpose of reducing bank erosion, slumping, or scour,~~ to help protect freshwater ecosystem health and wellbeing. Hydrological control may also include methods or techniques to limit bank erosion, slumping or scour.

¹⁷⁶ For instance, Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 52, lines 2650 – 2652, per Mr Jeffries for WCC.

¹⁷⁷ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 53, lines 2663 - 2665.

310. We recommend some minor amendments to the Explanation which align with the amendments we recommend to the definition of *hydrological control*.

3.10.2 Finding and s 32AA Evaluation

311. We agree with the Reporting Officer's recommendations on Policy FW.X for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal and Reply Evidence. We recommend some relatively minor amendments to the Explanation to align with our recommended amendments to the definition of *hydrological control* and to clarify that stormwater runoff may not just occur from the site or sites being developed. These amendments will help to clarify the policy intent and the expected outcomes from hydrological control provisions which will give better effect to direction in the NPS-FM.

3.10.3 Recommendation

Policy FW.X Hydrological Control for urban development – regional plans

Regional plans shall include policies, rules and/or methods for urban development urban development that require hydrological control to avoid adverse effects of runoff quality and quantity (flows and volumes) and maintain, to the extent practicable, natural stream flows. Hydrological control standards must be set for greenfield, brownfield, and infill development. as follows:

(a) — For greenfield development:

- i. — the modelled mean annual runoff volume generated by the fully developed site area must not exceed the mean annual runoff volume modelled from the site in an undeveloped state
- ii. — the modelled mean annual exceedance frequency of the 2-year Average Recurrence Interval (ARI) 50% annual exceedance probability (AEP) so-called 'channel forming' (or 'bankfull') flow for the point where the fully developed area discharges to a stream, or via a stormwater network that discharges to a a stream, must not exceed the mean annual exceedance frequency modelled for the same site and flow event arising from the area in an undeveloped state.

(b) — For brownfield and infill development:

- i. — the modelled mean annual runoff volume generated by the fully developed area site must *minimise* any increase from the mean annual runoff volume


- modelled for the site in an undeveloped state, as far as practicable
- ii:—the modelled mean annual exceedance frequency of the 50% annual exceedance probability (AEP) peak flow event 2-year ARI so-called ‘channel forming’ (or ‘bankfull’) flow for the point where the fully developed area discharges to a stream, or stormwater network, shall be reduced to minimise any increase from the mean annual exceedance frequency modelled for the same site and flow event in an undeveloped state, as far as practicable.

Explanation

Policy ~~XX~~ FW.X requires *regional plans* to provide for ~~require~~ *hydrological control of urban development* urban development in order to manage water quantity and water quality as a result of *stormwater* runoff from impervious surfaces resulting from urban development on a site. *Hydrological control* provides multiple benefits in terms of managing the frequency of small frequent runoff events that impact on stream *resilience* and *freshwater ecosystem health*, maintaining and improving water quality through bank management and / or diverting stormwater from streams as well as supporting resilience during and after intense rainfall events. Different requirements will apply to greenfield and brownfield developments. The 2-year Average Recurrence Interval reflects ‘channel forming’ or ‘bankfull’ flows which is the flowrate that defines the stream structure. Flows in excess of this flowrate can breach stream banks and engage adjacent flood plains where present. Policy XX provides guidance about the outcomes that should be achieved from hydrological control, rather than the specific solutions that should be used. This approach enables solutions to be developed that are appropriate based on the characteristics of a particular area or site and supports flexibility and innovation.

3.11 Policy 42 - Effects on freshwater and the coastal marine area from urban development – consideration ~~Minimising contamination in stormwater from development~~ – consideration

312. The notified provision stated:

<p>Policy 42: Effects on freshwater and the coastal marine area from urban development – consideration Minimising contamination in stormwater from development – consideration</p>	
<p><u>When considering an application for a resource consent the regional council must give effect to <i>Te Mana o te Wai</i> and in doing so must have particular regard to:</u></p>	
<ul style="list-style-type: none"> (a) <u>Adopt an integrated approach, ki uta ki tai, that recognises the interconnectedness of the whole environment to determine the location and form of urban development;</u> (b) <u>Protect and enhance mana whenua /tangata whenua freshwater values, including mahinga kai;</u> (c) <u>Provide for mana whenua/tangata whenua and their relationship with their culture, land, water, wāhi tapu and other taonga;</u> (d) <u>Incorporate the use of mātauranga Māori to ensure the effects of urban development are considered appropriately;</u> (e) <u>The effects of use and development of land on water, including the effects on receiving environments (both freshwater and the coastal marine area);</u> (f) <u>The target attribute states set for the catchment;</u> (g) <u>Require that the development, including stormwater discharges, earthworks and vegetation clearance meets any limits set in a regional plan;</u> (h) <u>Require that urban development is located and designed and constructed using the principles of Water Sensitive Urban Design;</u> 	
<ul style="list-style-type: none"> (i) <u>Require that urban development located and designed to minimise the extent and volume of earthworks and to follow, to the extent practicable, existing land contours;</u> (j) <u>Require that urban development is located and designed to protect and enhance gully heads, rivers, lakes, wetlands, springs, riparian margins and estuaries;</u> (k) <u>Require hydrological controls to avoid adverse effects of runoff quantity (flows and volumes) and maintain, to the extent practicable, natural stream flows;</u> (l) <u>Require stormwater quality management that will minimise the generation of contaminants, and maximise, to the extent practicable, the removal of contaminants from stormwater;</u> (m) <u>Require riparian buffers for all waterbodies and avoid piping of rivers;</u> (n) <u>Daylighting of rivers, where practicable;</u> (o) <u>Mapping of rivers and wetlands;</u> (p) <u>Efficient end use of water and alternate water supplies for non- potable use;</u> (q) <u>protecting drinking water sources from inappropriate use and development; and</u> (r) <u>applying an integrated management approach to wastewater networks including partnering with mana whenua as kaitiaki and allowance for appropriately designed overflow points where necessary to support growth and consideration of different approaches to wastewater management to resolve overflow.</u> 	

~~When considering an application for a resource consent, notice of requirement, or a change, variation or review of a district plan, the adverse effects of stormwater runoff from subdivision and development shall be reduced by having particular regard to:~~

- ~~(a) — limiting the area of new impervious surfaces in the stormwater catchment;~~
- ~~(b) — using water permeable surfaces to reduce the volume of stormwater leaving a site;~~
- ~~(c) — restricting zinc or copper roofing materials, or requiring their effects to be mitigated;~~
- ~~(d) — collecting water from roofs for domestic or garden use while protecting public health;~~
- ~~(e) — using soakpits for the disposal of stormwater;~~
- ~~(f) — using roadside swales, filter strips and rain gardens;~~
- ~~(g) — using constructed wetland treatment areas;~~
- ~~(h) — using in situ treatment devices;~~
- ~~(i) — using stormwater attenuation techniques that reduce the velocity and quantity of stormwater discharges; and~~
- ~~(j) — using educational signs, as conditions on resource consents, that promote the values of water bodies and methods to protect them from the effects of stormwater discharges.~~

~~The stormwater design and treatment approaches set out in this policy are to reduce adverse effects of subdivision and development on the quantity and quality of stormwater. The policy only applies to regional consents.~~

~~Clauses in the policy are aimed at achieving hydraulic neutrality and aquatic ecosystem health when land is developed. It is important to take an integrated approach to management of the adverse effects of stormwater discharges, particularly on low energy aquatic receiving environments — such as Wellington Harbour, Porirua Harbour, inlets, estuaries, lakes, lowland streams and wetlands.~~

313. Policy 42 provides direction for considering an application for a regional resource consent that relates to urban development. It is an existing policy within the Operative RPS. The Policy is not intended to duplicate Policies 14 and FW.3 but instead provide regulatory direction where there is a gap in regional or district plans, or where plan changes have not yet implemented the policies of Chapter 4.1.¹⁷⁸ Change 1 proposes amendments to Policy 42 and requires that applications for resource consent relating to urban development give effect to *Te Mana o te Wai* and in doing so, have particular regard to the matters set out in the Policy.

3.11.1 Submissions, Evidence and Analysis

314. Wellington Water [S113.018] supported Policy 42 in part and sought an amendment to clause (k): “Require hydrological controls to reduce the adverse effects of excess stormwater volume on stream bank scour and aquatic ecosystem health”.

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315. Other submitters raised concerns in relation to general drafting – grammar, linking clauses with the chapeau and consistency with the RMA and Policies 14 and FW.3, whether ‘require’ is an appropriate verb within a consideration policy, the relationship to target attribute states (Rangitāne [S168.052]), partnering with tangata whenua/mana whenua (Taranaki Whānui [S167.0108]), duplication with Policy 41 in relation to earthworks and vegetation clearance (PPFL [S118.012]), application to the coastal marine area (WIAL [S148.037] and DGC [S32.024]), protection of the natural form and flow of waterbodies (DGC [S32.025]), application of the matters in Policy 42 to district plans (PCC [S30.066] and Wellington Water [S113.018]), whether “lot boundaries” and “new roads” were outside the jurisdiction of regional council functions, and definitions of minimise and maximise (Wellington Water [S113.033 – 113.035]).
316. The s 42A report discussed these concerns with several amendments recommended to the provisions, including revising the wording of the title to “Effects on freshwater and receiving environments from urban development”, amending the chapeau and linking words in the clauses, replacing the word “require” in clause (g) with the words “the extent to which” which is language more appropriate to a consenting assessment under s 104 of the Act. This amendment grants in part the relief sought by the Fuel Companies [S157.035]. The Officer has recommended a new policy on hydrological controls and this addresses, at least in part, the relief sought by Wellington Water.
317. The Officer did not support the Fuel Companies’ relief to replace “avoid” with “reduce” in clause (k) on the basis that “this would not achieve the necessary change that is required in relation to effective management of stormwater runoff and the effects this can have on freshwater ecosystem health.” The Officer recommended that the word “minimise” is used instead in the clause to ensure effects are reduced to the smallest amount possible while recognising that it may not be possible to avoid all effects.¹⁷⁹ In addition, the Officer did not think it appropriate to apply the matters in Policy 42 to district plans as sought by Wellington Water on the basis that the matters in the Policy are matters better addressed in assessing regional resource consents.¹⁸⁰
318. Remaining submitter concerns in evidence covered reference to legal boundaries being beyond regional council functions (Mr Heale for Kāinga

¹⁷⁹ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 412.

¹⁸⁰ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, paras 413 – 414.

Ora¹⁸¹ and Mr Lewandowski for PPFL¹⁸²), changes to provide consistency with Policies 14 and FW.3, an amendment to the approach of absolute avoidance in clause (h) (Ms McPherson for the Fuel Companies¹⁸³), and the requirement to map rivers and wetlands, the purpose of which was unclear in a consideration policy according to Mr Lewandowski.¹⁸⁴

319. In her Rebuttal Evidence Ms Pascall agrees with many of the changes requested by the planning experts in their evidence, and recommends various amendments to Policy 42 to provide more certainty about regional council responsibilities in relation to urban development. The Officer recommends amending clause (h) to require consideration in regional consent applications of the extent to which water sensitive urban design techniques are used to minimise the generation of contaminants from stormwater runoff and maximise the removal of contaminants. The Officer described this change as removing unnecessary barriers while continuing to have environmental benefits by requiring the minimisation of contaminants in stormwater.¹⁸⁵ The Officer also recommends using the definition in the NRP of “minimise”.¹⁸⁶ We agree this is appropriate and identify both “minimise” and “maximise” as defined terms in our recommendation on the Policy as this is captured in the s 42A Report but not transferred inadvertently into the Reply version of the Policy.
320. In her Reply Evidence Ms Pascall addresses two questions we asked in relation to this Policy. Firstly whether “giving effect to *Te Mana o te Wai*” by “having regard to” is appropriate in a consideration policy. Ms Pascall responds that:

reference to ‘giving effect to’ *Te Mana o te Wai* in the chapeau is unnecessary in Policy 42, on the basis that the policy itself already gives effect to *Te Mana o te Wai*, and therefore in

¹⁸¹ Statement of Primary Evidence of Matt Heale on behalf of Kāinga Ora – Homes and Communities (Planning), HS 5, 3 November 2023, para 18.

¹⁸² Statement of Evidence of Maciej Lewandowski on behalf of Peka Peak Farm Limited, HS 5, 3 November 2023, paras 4.26 – 4.27.

¹⁸³ Joint Hearing Statement on behalf of the Fuel Companies, HS 5, 3 November 2023, Ms McPherson, paras 2.5 – 2.7.

¹⁸⁴ Statement of Evidence of Maciej Lewandowski on behalf of Peka Peak Farm Limited, HS 5, 3 November 2023, paras 4.26 – 4.27.

¹⁸⁵ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, paras 125.

¹⁸⁶ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 402.

implementing the policy this is implicit. Policy 42 also gives effect to Objective 12 which is focused on *Te Mana o te Wai*.¹⁸⁷

321. Secondly, we questioned the apparent duplication in clauses (h) and (l) to which Ms Pascall responded that:

The key difference between clause (h) and clause (l) is that the former provides explicit reference to the use of water sensitive design techniques to minimise the generation of contaminants and to maximise the removal of contaminants from stormwater. I recommend deleting clause (l) on the basis that clause (h) is clearer about the techniques that should be used to achieve the outcome, and this is consistent with Policy 14(f).

322. We agree with Ms Pascall’s reasoning and the deletion of giving effect to *Te Mana o te Wai* in the chapeau and deletion of clause (l).

323. We support the Policy applying to freshwater “and receiving environments” as this is consistent with clause 3.5 of the NPS-FM. We agree that it is appropriate for clause (h) to be amended to fit with the regional council’s jurisdiction, namely the incorporation of water sensitive urban design techniques in urban development to minimise the generation of contaminants from stormwater runoff, and maximise the removal of contaminants from stormwater (ie managing water quality).¹⁸⁸

324. We agree with the reference to the defined term *water sensitive design techniques* in clause (h) but consider that *hydrological control* should also be added. We note the s 42A Report says Policy 42 “complements Policies 14 and FW.3 and addresses matters to be considered in assessing regional resource consents relating to urban development”. We therefore consider it appropriate to include *hydrological control*, and not only in relation to minimising adverse effects on natural stream flows (clause (k)).

325. We discussed this with Ms Allan (Special Advisor) who advised that in her view, *hydrological control* was appropriate to add to clause (h). It addresses environmental impacts and is an appropriate regional council function that is provided for in regional plans through new Policy FW.X. Ms Allan also recommended an amendment to clause (k) for clarity: “The extent to which *hydrological control minimises* adverse effects of runoff

¹⁸⁷ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 98.

¹⁸⁸ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 415.

quantity (flows and volumes) and other potential adverse effects on natural stream values”.

326. Ms Allan recommends changing “natural stream flows” to “natural stream values” to also include the water quality aspects which are in Policy FW.X. These are also present in clause (h), but the change to the definition of *hydrological control* that Ms Allan recommends, would mean the physical aspects of any bank works are taken into consideration. This amendment removes the reference to ‘replicating natural processes’ which could create a potential conflict according to Ms Allan, as the controls may in fact be intended to modify natural processes (such as flooding). In that instance, hydrological control may help to modify the natural stream flow to protect freshwater ecosystem health and wellbeing. Having discussed this further with Ms Allan, we recommend amendments to the definition of *hydrological control* in the Definition section of our Report. We note our recommended amendments below:

Hydrological controls: means the management of a range of stormwater flows and volumes, and the frequency and timing of those flows and volumes, from a site, ~~or sites, or area~~ into rivers, lakes, wetlands, springs, riparian margins, and other receiving environments ~~in a way that replicates natural processes for the purpose of reducing bank erosion, slumping, or scour,~~ to help protect freshwater ecosystem health and wellbeing.

Hydrological control may also include methods or techniques to limit bank erosion, slumping or scour.

327. We recommend “consideration” is reinstated in the Policy heading as it seems to have been inadvertently deleted. We also note that there is no explanation to this Policy as there is to other policies in Proposed Change 1. Again, following a discussion with Ms Allan, we recommend explanatory text along these lines:

Policy 42 applies to regional resource consents which relate to urban development, where the regional plan requirements or standards are not met. The range and nature of considerations reflects the regional council’s overall responsibilities relating to the management of water in relation to urban development and its effects on water.

3.11.2 Finding and s 32AA Evaluation

328. We largely agree with the Reporting Officer’s recommendations on Policy 42 for the reasons above, and otherwise as set out in the Officer’s s 42A

Report, Rebuttal and Reply Evidence. We recommend amendments to incorporate *hydrological control* into clause (h), and amend “natural stream flows” in clause (k) to “natural stream values” and also add in the words “other potential adverse effects”. We consider these amendments are supported by the evidence we heard regarding the benefits of hydrological control and reflect regional council responsibilities relating to managing the impacts on freshwater from urban development. We consider the amendments we recommend to clause (h) and (k) align with other provisions in Proposed Change 1 including Policy FW.X and will promote the Act’s sustainable management purpose. We also recommend identifying “minimise” and “maximise” as defined terms to aid interpretation and application of the Policy and for consistency with other provisions.

3.11.3 Recommendation

Policy 42 – Effects on *freshwater* and *the coastal marine area receiving environments* from *urban development* Minimising contamination in stormwater from development –~~consideration~~ consideration

When considering an application for a *regional* resource consent *that relates to urban development urban development* the regional council *must give effect to Te Mana o te Wai and in doing so* must have *particular* regard to:

- (a) *Adopting* an integrated approach, *ki uta ki tai*, that recognises the interconnectedness of the whole environment to determine the location and form of ~~urban development~~ *urban development*;
- (b) *Protecting* and *enhancing* *mana whenua / tangata whenua* Māori *freshwater* values, including *mahinga kai*, *in partnership with mana whenua / tangata whenua*;
- (c) *Providing* for *mana whenua / tangata whenua* and their relationship with their culture, land, water, *wāhi tapu* and other *taonga*;
- (d) *Incorporating* the use of *mātauranga Māori* to ensure the effects of *urban development* are considered appropriately;
- (e) The effects of use and development of *land* on water, including the effects on receiving environments (both *freshwater* and the *coastal marine area*);
- (f) The target attribute states set for the catchment;
- (g) *The extent to which* ~~Require that~~ the ~~urban development~~ *urban development*, including *stormwater* discharges, ~~earthworks and vegetation clearance~~ meets any limits set in a *regional plan* ~~and the effect of any exceedances~~;
- (h) *The extent to which* ~~Requiring that~~ ~~urban development~~ *urban development* ~~is located and designed and constructed using the principles incorporates~~ *Water Sensitive Urban Design* *water sensitive urban design techniques* ~~and hydrological control~~ *to minimise* the generation of *contaminants* from *stormwater* runoff, and *maximise*, to the extent practicable, the removal of *contaminants* from

stormwater avoid adverse effects of contaminants on water bodies from the use and development of the land;


- ~~(i) Require that urban development located and designed to minimise the extent and volume of earthworks and to follow, to the extent practicable, existing land contours;~~
- (j) Require that urban development is located and designed to protect and enhance gully heads, rivers, lakes, wetlands, springs, riparian margins and estuaries; ~~The extent to which the urban development~~ *urban development is located and designed* ~~location of lot boundaries and new roads to protect~~ and enhances the health and wellbeing of adjacent *rivers, lakes, wetlands, springs, riparian margins,* and receiving environments, including the natural form and flow of the waterbody.
- (k) ~~The extent to which Require hydrological controls to avoid~~ *minimises* adverse effects of runoff quantity (flows and volumes) ~~and other potential adverse effects on natural stream values, and maintain, to the extent practicable, on natural stream flows;~~
- (l) ~~The extent to which Requiring urban development incorporates stormwater quality management that will minimise the generation of contaminants, and maximises, to the extent practicable, the removal of contaminants from stormwater;~~
- (m) ~~Requiring The provision of riparian buffers for urban development adjacent to natural waterbodies for all waterbodies and avoid piping of rivers;~~
- ~~(ma) The extent to which the development avoids piping of rivers and whether there is a functional need for the activity in that location;~~
- (n) ~~The practicability of Daylighting rivers within the area proposed for urban development area, where practicable;~~
- (o) ~~The extent to which rivers and wetlands within the area proposed for urban development have been mapped, and whether the scale of the urban development necessitates such mapping~~ *Mapping of rivers and wetlands;*
- (p) Efficient end use of water and alternate water supplies for non- potable use;
- (q) ~~P~~rotecting drinking water sources from inappropriate use and development; and
- ~~(r) Applying a catchment an integrated management~~ approach to wastewater networks including partnering with mana whenua as kaitiaki and allowance for appropriately designed overflow points where necessary to support growth and consideration of different approaches to wastewater management to resolve overflow.

Explanation

Policy 42 applies to regional resource consents which relate to *urban development*, where the *regional plan* requirements or standards are not met. The range and nature of considerations reflects the regional council's overall responsibilities relating to the management of water in relation to *urban development* and its effects on water.

3.12 Policy FW.6 - Allocation of responsibilities for land use and development controls for freshwater

329. The notified Policy read:

<u>Policy FW.6: Allocation of responsibilities for land use and development controls for freshwater</u>	
<p><u>Regional and district plans shall recognise and provide for the responsibilities below, when developing objectives, policies and methods, including rules, to protect and enhance the health and well-being of water bodies and freshwater ecosystems:</u></p> <p>(a) <u>Wellington Regional Council has primary responsibility for freshwater. Wellington Regional Council shall be responsible for the control of the use and development of land for the purposes of water quality and quantity.</u></p>	
<p>(b) <u>In relation to wetlands, Wellington Regional Council is responsible for managing land use within, and within a 10m margin of natural wetlands as directed by the NES-F 2020, as well as areas adjoining and/or upstream for the purpose of protecting wetlands;</u></p> <p>(c) <u>city and district councils are responsible for the control of land use and subdivision. City and district councils must include objectives, policies, and methods in district plans to promote positive effects, and avoid, remedy or, or mitigate adverse effects (including cumulative effects) of land use and subdivision on the health and wellbeing of water bodies, freshwater ecosystems and receiving environments (as required by NPS-FM 3.5 (4)). They must carry out their responsibility in regard to the NPS-FM through their functions under Section 31 of the RMA.</u></p> <p>Explanation <u>Policy FW.6 outlines the allocation of responsibilities for land use and development controls for freshwater between Wellington Regional Council and territorial authorities.</u></p>	

330. This Policy aims to address the allocation of responsibilities across Wellington Regional Council and city and district councils.

3.12.1 Submissions, Evidence and Analysis

331. Submitters raised concerns about lack of clarity and overlapping responsibilities which were addressed in the s 42A Report with some amendments supported by the Officer. Submitters still had concerns with the amendments proposed in the s 42A Report in relation to clarity of roles (see for instance the planning evidence of Ms Horrox for Wellington

Water¹⁸⁹ and Mr Jeffries and Ms Cook for WCC¹⁹⁰) but their relief was initially not supported by the Officer.

332. The Officer stated she did not agree with Forest and Bird that the definition of “natural wetlands” includes coastal wetlands as the definition in clause 3.21 of the NPS-FM specifically excludes the coastal marine area. The Officer said that Policy FW.6(b) is specific to the requirements of the NES-F, which covers natural inland wetlands as defined by the NPS-FM.¹⁹¹
333. In their evidence presented at the hearing, Mr Jeffries and Ms Cook said they recommended Policy FW.6 be amended to clarify the roles and responsibilities of councils regarding freshwater. Specifically, they recommended amendments to remove the policy overlap, and remove bureaucratic burden and duplication by clarifying that:¹⁹²
- a. territorial authorities are responsible for managing land use and development that connects to the stormwater network; and
 - b. the Regional Council is responsible for discharges to land and water to maintain and enhance water quality. This includes land use activities that discharge directly to water, as well as discharges from the stormwater network.
334. In her Rebuttal Evidence, Ms Pascall said that the changes she supported essentially repeated the statutory functions in ss 30 and 31, in response to which WCC’s planners said that even if this were the case, the Policy should still adequately define responsibilities in accordance with the integrated management requirements of the NPS-FM, and that it would add little value if it simply restated the RMA provisions without offering any additional clarity.¹⁹³

¹⁸⁹ Statement of evidence of Caroline Horrox on behalf of Wellington Water (Planning), HS 5, 3 November 2023, para 15.

¹⁹⁰ Joint statement of planning evidence of Joe Jeffries and Maggie Cook on behalf of Wellington City Council, HS 4, 3 November 2023, para 37-39.

¹⁹¹ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 814.

¹⁹² Joint statement of planning evidence of Joe Jeffries and Maggie Cook on behalf of Wellington City Council, HS 4, 21 November 2023, para 31.

¹⁹³ Joint statement of planning evidence of Joe Jeffries and Maggie Cook on behalf of Wellington City Council, HS 4, 3 November 2023, para 35.

335. Ms Horrox on behalf of Wellington Water said that:¹⁹⁴

Policy FW.6 needs to distinguish more clearly at a high level, the different roles Greater Wellington and territorial authorities have in relation to managing land development effects on water quality. This would provide the necessary framework to support the more detailed breakdown of water quality related expectations for Greater Wellington and the territorial authorities as set out in FW.3 and Policy 14.

336. Some of the specific areas identified by Ms Horrox to contain similar or overlapping obligations for regional and district plans in relation to managing the effects of urban development on freshwater and receiving environments included application of water sensitive design principles and techniques, contaminant management, and protection and enhancement of rivers, lakes, wetlands, springs, riparian margins and estuaries.¹⁹⁵

337. Ms Horrox said that she agreed that both regional and district plans had a role in managing these matters, but that the division or focus of responsibility needed to be clearer to ensure these matters are managed in an efficient and integrated way. She said the RPS is the mechanism to translate RMA requirements into policy direction for the region, and there would be a missed opportunity if that did not occur.¹⁹⁶

338. We asked the Reporting Officer in Minute 18 to give further consideration to duplication of local authority functions/roles and jurisdiction. Ms Pascall agreed that greater clarification is required in Policy FW.6 and the current wording she supported in the s 42A Report (unamended in Rebuttal) did not provide sufficient direction about the split of responsibilities or guidance on how areas of overlapping responsibility should be managed.¹⁹⁷

339. Ms Pascall further comments:

There will be areas where both the Council and territorial authorities will both be responsible for managing the effects of urban development and I consider this is appropriate given the

¹⁹⁴ Statement of evidence of Caroline Horrox on behalf of Wellington Water (Planning), HS 5, 3 November 2023, para 16.

¹⁹⁵ Statement of evidence of Caroline Horrox on behalf of Wellington Water (Planning), HS 5, 3 November 2023, para 17.

¹⁹⁶ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 50, lines 2504 – 2510.

¹⁹⁷ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 45 and 47.

direction in the NPS-FM, particularly clause 3.5(4). I agree with Wellington Water that Policy FW.6 is the appropriate location for providing further clarity.

340. Amendments to the Policy provided in the Officer’s Reply Evidence provide further direction on local authority responsibilities, while also noting in the policy explanation that there are:¹⁹⁸

some areas of responsibility that overlap and in these cases the Wellington Regional Council and territorial authorities shall work together to develop plan provisions and operational arrangements to provide for the coordinated management and control of subdivision, use and development to maintain, and where required improve, the health and wellbeing of waterbodies and freshwater ecosystem health.

341. Ms Pascall recommended deleting clause (ba) because the management of earthworks within riparian margins is not solely the responsibility of the regional council, and district plans in the region also manage these activities.¹⁹⁹

342. We consider that the amendments in Ms Pascall’s relief largely accept WCC’s relief which, as we understand it, was primarily to add reference to discharges into the Policy in relation to regional council functions.²⁰⁰ This change is made in Policy FW.6(a): “[the Regional Council is] responsible for managing the direct effects of the use and development of land on waterbodies and receiving environments including discharge of contaminants...”.

3.12.2 Further comments on overlapping functions and responsibilities

343. We comment here about concerns raised about overlapping local authority functions and responsibilities as this theme came up in various provisions in HS5 and also in HS3 (the Policy ‘CC.4 – CC.14A suite’).
344. Some submitters were concerned that the provisions did not sufficiently differentiate between regional and territorial authority roles and responsibilities in accordance with their functions as expressed in ss 30 and 31 of the RMA.

¹⁹⁸ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 49.

¹⁹⁹ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 102.

²⁰⁰ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 50, lines 2508 – 2510.

345. We agree with the experts and counsel for Wellington Water that the RPS has a role in clarifying responsibilities and removing uncertainty and litigation risk at the plan change or review stage. Mr Slyfield expressed the concern well in these terms:²⁰¹

[overlapping provisions such as Policies FW.6, FW.3 and 13 are] an issue that highlights the difficulties that arise from a conventional division of responsibilities where water quality is predominantly within the Regional Council’s purview, but the land uses that give rise to potential impacts on water quality are predominantly managed at a territorial authority level. Management of freshwater issues calls for proper integration between these spheres, particularly as we strive towards target attribute states as required by the [NPS-FM].

346. At the hearing, Mr Slyfield added that overlapping responsibilities “leaves the risk that councils may not act where they perceive that it fits better in the jurisdiction of another council”.²⁰²

347. Mr McDonnell for PCC acknowledged that there is some overlap and areas where regional and district plans need to be complementary, but there was still far too much overlap between Policy FW.3 and Policy 14.²⁰³ He gave Policy FW.3(o) as an example. This clause requires district plans to “manage land use and development in a way that will minimise the generation of contaminants ... “which was, he said, very similar to the wording in s 30 of the RMA.

348. For Mr Lewandowski for PPFL, urban development is “fundamentally controlled through district plans”, therefore various clauses in Policy 14, for instance clause (f) requiring urban development to incorporate water sensitive design techniques to avoid adverse effects of contaminants on waterbodies from the use and development of land, should move to Policy FW.3 (noting that that Policy contained a similar provision), but it was not appropriate as a regional plan direction.²⁰⁴ At the hearing, Mr Lewandowski said he continued to query the appropriate line of delineation as “some of those matters around water sensitive urban design etc might create simply issues of duplication”.²⁰⁵

²⁰¹ Legal Submissions for Wellington Water Limited, HS 5, 3 November 2023, para 8.

²⁰² Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 38, lines 1896 – 1898.

²⁰³ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 19, lines 933 – 940.

²⁰⁴ Statement of Evidence of Maciej Lewandowski on behalf of Peka Peak Farm Limited, HS 5, 3 November 2023, paras 4.4 – 4.5.

²⁰⁵ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 40, lines 2013 – 2015.

349. When asked for her views regarding local authority functions and responsibilities, Ms Downing for Forest and Bird said that lack of integration was a risk and that clause 3.5(4) of the NPS-FM sends some specific direction to territorial authorities in an attempt to support better integration of their functions and roles with those of the regional council.²⁰⁶

350. In her Rebuttal evidence, when commenting on whether Policy FW.6 (district plan provisions) is the more appropriate location for Policy 14(h), Ms Pascall disagreed and said:²⁰⁷

While I acknowledge that this results in some overlap in regional council and territorial authority regulation, I consider this remains within the remit of regional council functions under section 30 of the Act, where the regional council does have a role in managing land use for the purposes of managing water quality.

351. We discussed overlapping jurisdiction with Ms Pascall at the Hearing, specifically in relation to the daylighting of streams and whether this was best provided for through Policy FW.3 (district plans), Policy 42 (regional plans), or both. Ms Pascall said that there is an area of overlap in managing freshwater effects from urban development. In her view, natural inland wetlands and the daylighting of streams were within the ambit of the Regional Council.²⁰⁸ Ms Pascall went on to say:²⁰⁹

I can't see why you would have the same provision in the Regional Plan as in the District Plan in relation to the daylighting of streams. That is a particular activity in the stream that is about the freshwater ecosystem health water quality, those kinds of things, which I think is very clearly within the Regional Council's role.

352. We asked if opportunities could be missed by removing the issue from a territorial authority's assessment. Ms Pascall responded that they could be a number of things in that same camp, and so where is the line drawn?²¹⁰

²⁰⁶ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 58, lines 2917 - 2919.

²⁰⁷ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 87.

²⁰⁸ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 59, lines 3003 – 3007.

²⁰⁹ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 59, lines 3009 – 3013.

²¹⁰ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 60, lines 3022 – 3023.

353. We were helped in our understanding of these issues by the presentation by counsel and experts for the Director-General of Conservation. Ms Anton, presenting legal submissions, said, in relation to stream daylighting and giving rivers room to meander:²¹¹

.... when it comes to the direct doing for example of stream daylighting that will be implemented by Regional Council consents. However, there won't be much opportunity for stream daylighting unless the planning for it starts with the District Council. For example, through spatial plans, through open space zoning above piped streams – which only they can do, and through general policy support to acknowledge the benefits of stream daylighting, it's the Director-General's submission that District Councils need to have that policy direction to begin planning for their part in letting stream daylighting happen in future. When it does happen, when hopefully it does happen in the future, then it will squarely be the Regional Council function to regulate how it's done and provide consents for it.

354. We found these legal submissions persuasive. The interaction between urban development and waterbodies and their margins starts, in essence, at the plan-making stage and, as Ms Anton says, if it is not done then, that could narrow the Regional Council's ability to protect, restore or manage water quality.²¹² This could happen if, for example, urban planning allows urban areas to be built up too close within certain flood margins and therefore constrain the Regional Council's ability to let rivers have room to meander.²¹³

355. Mr Brass similarly said that in his experience, “the physical location, design, servicing etc of land use and development [which are territorial authority functions] can directly constrain or provide space for rivers and daylighting” (as evidenced in Dr Boddy's evidence).²¹⁴ He went on to say that a territorial authority can require esplanade reserves for example, and zoning, setbacks, open space and so on, and these are matters that districts can and do control and they all have a role to play in allowing rivers to move.²¹⁵ A regional council may influence soft engineering solutions rather than hard engineering solutions that close off future

²¹¹ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 30, lines 1500 – 1511.

²¹² Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 30, lines 1513 – 1516.

²¹³ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 30, lines 1518 – 1520.

²¹⁴ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, pages 31 - 32, lines 1572 – 1577.

²¹⁵ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 34, lines 1702 – 1715.

options, so “while they’ve both got a role to play, it’s not so much an overlap, they just need to think through how that role applies to their own functions”.²¹⁶

356. Mr Jeffries for WCC noted the overlap in jurisdiction in ss 30 and 31 and that “they don’t entirely divide cleanly”.²¹⁷ He acknowledged that while it would be cleaner to have a clear distinction, perhaps ss 30 and 31 do not provide for this.²¹⁸
357. We asked the WCC planners further questions about this at the hearing. They said they thought an exclusion was justified if the discharges were managed through a stormwater network that is managed by a stormwater management strategy, because otherwise there would be duplication with the NRP. As Ms Cook said:²¹⁹

It’s a double-up because they’re requiring us to have it in the stormwater management strategy and through the catchment management plans and having that set up; having us give effect to the conditions of our consent. But then also having standalone resource consenting requirements that means that you have to go to both consenting authorities in order to get the same outcome.

358. In Minute 18 we directed the Reporting Officer in conjunction with the Officer for HS3 – Climate Resilience and Nature Based Solutions - to review alignment and workability of the nature-based solutions provisions in HS3 with the HS5 provisions regarding hydrological control, hydraulic neutrality and water sensitive urban design. We were also interested in the Officers’ views on whether there was any unnecessary or conflicting functions or responsibilities for local authorities.
359. The Reporting Officer stated in her Reply Evidence that while some of the concepts in HS5 such as water sensitive urban design, hydraulic neutrality, and hydrological control, do fall within the umbrella concept of nature-based solutions, that term is used in Change 1 to address broader climate-resilience issues such as reducing emissions, managing more extreme weather events, and restoration of indigenous ecosystems.²²⁰ Although water sensitive design and hydrological control are “subsets” of

²¹⁶ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 34, lines 1715 – 1720.

²¹⁷ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 53, lines 2672 – 2674.

²¹⁸ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 53, lines 2672 – 2675.

²¹⁹ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 53, lines 2743 – 2747.

²²⁰ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 56.

nature-based solutions, the Officer said that in her opinion, it was not necessary to reference ‘nature-based solutions’ in Policies 14 and FW.3 in HS5 as they already use more specific concepts that relate directly to freshwater management.²²¹

360. The Officer did state that having reviewed the provisions in HS5 and HS3 relating to nature based solutions, hydrological control, hydraulic neutrality, and water sensitive urban design, there is some duplication and conflict between the HS3 provisions and Policies 14, FW.3, FW.X and 42.²²² The Officer, in discussion with the HS3 Officer, recommends various amendments to the HS3 provisions to resolve the unnecessary duplication and conflict, including adding text into the explanations to provide appropriate linkages to the HS5 provisions.
361. Mr McDonnell on behalf of PCC suggested that clause (ba) be reallocated into clause (a) as riparian setbacks and management of sediment are regional council functions under s 30.
362. We discussed Policy FW.6 and the allocation of council responsibilities with Ms Allan (Special Advisor). In particular, we asked Ms Allan for her views on whether jurisdiction and roles could be more expressed more clearly in the RPS. Ms Allan said that in her view clause (d) – the location and design of urban development - could not be delineated more specifically and requires the councils to be working in collaboration. The matters in clause (d) do involve overlapping functions and responsibilities.
363. In relation to trying to more clearly define and delineate functions regarding stormwater management from land use, Ms Allan said that any further attempts to allocate specific tasks to specific councils could run the risk of cutting out something (which was similar to a concern raised by Wellington Water), or missing the opportunity to work well together to achieve integrated management.
364. We note Method IM.1 in Change 1 (HS2) requires the Regional Council and district and city councils to work together to ensure consistent implementation of the objectives, policies and methods of the RPS. Ms Pascall explains the level of discussion and co-operation required in these terms:

²²¹ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 36 and 56.

²²² Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 37.

[Policy IM.1 and Method IM.1] apply across the RPS and necessitate a change in approach in how the Council and territorial authorities work together. For example, where a consent is required under the regional plan and a district plan, clause (d) [of Method IM.1] requires the agencies to work together to ensure consistent implementation. This is not intended to be joint processing but requires communication between the councils about the approach, key issues and ensuring consistent advice.”

365. Ms Allan did propose some drafting suggestions to improve the readability and interpretation of Policy FW.6. Ms Allan suggested that clause (a) could be restructured, and clause (c) could refer to “layout, design and materials” which is at a level of description suitable for the RPS and also more consistent with the wording in Policy FW.3(g).

366. The amendments Ms Allan suggested are:

(a) Wellington Regional Council has primary responsibility for freshwater. Wellington Regional Council shall be responsible for the maintenance and enhancement of water quality and ecosystems in water bodies, and the maintenance of water quantity, including through:

(i) managing the direct effects of the use and development of land on waterbodies and receiving environments including discharges of contaminants,

(ii) implementing the National Objectives Framework of the NPS-FM 2020,

(iii) managing the effects of stormwater runoff volumes on freshwater ecosystem health; ;and

(iv) protecting and enhancing riparian margins ~~the control of the use and development of land for the purposes of~~ water quality and quantity ~~the maintenance and enhancement of water quality and ecosystems in water bodies, and the maintenance of water quantity.~~

~~(ba) Wellington Regional Council is responsible for earthworks and vegetation clearance in riparian margins of water bodies.~~

(c) City and district councils are responsible for managing the effects of *urban development* on the health and wellbeing of waterbodies, freshwater ecosystems and receiving environments ~~insofar as it relates to~~ including through stormwater management and managing the elements of urban development (including layout, design and materials) of development (such as roof materials and impervious surfaces) that may affect the health and wellbeing of waterbodies.

367. Having heard submitters and also having discussed Policy FW.6 with Ms Allan, we are satisfied that the Policy allocates responsibilities in accordance with ss 30 and 31 of the RMA, appropriately promotes collaboration and will support NPS-FM implementation and integrated management. We consider Ms Allan’s drafting suggestions improve the interpretation and readability of the Policy, and also appropriately link it with Policy FW.3. We also recommend a minor amendment in clause (b) to clarify the intent in the NES-F.

3.10.1 Finding and s 32AA Evaluation

368. We largely agree with the Reporting Officer’s recommendations on Policy FW.6 for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal and Reply Evidence. We recommend the Policy is amended to restructure clause (a) and align clause (c) with the wording in Policy FW.3(g). We consider these amendments convey functions in ss 30 and 31 of the RMA in a clearer way to support the effective and efficient interpretation and application of the Policy to help achieve its intended outcomes, and in turn, the outcomes directed in the NPS-FM.

3.10.2 Recommendation

Chapter 4.3: Allocation of Responsibilities

Policy FW.6: Allocation of responsibilities for land use and development controls for *freshwater*

Regional and *district plans* shall recognise and provide for the responsibilities below, when developing objectives, policies and methods, including rules, to protect and *enhance* the health and well-being of water bodies and *freshwater* ecosystems:

(a) Wellington Regional Council has primary responsibility for *freshwater*. Wellington Regional Council shall be responsible for the maintenance and enhancement of water quality and ecosystems in water bodies, and the maintenance of water quantity, including through:

(i) managing the direct effects of the use and development of *land* on waterbodies and receiving environments including discharges of *contaminants*,

(ii) implementing the National Objectives Framework of the NPS-FM 2020,

(iii) managing the effects of *stormwater* runoff volumes on *freshwater ecosystem health*; and

(iv) protecting and enhancing *riparian margins* the control of the use and development of land for the purposes of **water quality and quantity** **the maintenance and enhancement of water quality and ecosystems in water bodies, and the maintenance of water quantity.**

(b) In relation to *wetlands*, Wellington Regional Council is responsible for managing land use within, and within a 100m ~~margin~~ **setback** of natural **inland** wetlands as directed by the NES-F 2020, as well as areas adjoining and/or upstream **of a wetland** for the purpose of protecting *wetlands*;

~~(ba) Wellington Regional Council is responsible for earthworks and vegetation clearance in riparian margins of water bodies.~~

(c)

~~City and district councils Territorial authorities are responsible for the control of land use and subdivision. City and district councils Territorial authorities~~ City and district councils are responsible for managing the effects of *urban development* on the health and wellbeing of waterbodies, *freshwater ecosystems* and receiving environments **insofar as it relates to including through** *stormwater* management and managing **the elements of urban development (including layout, design and materials) of development (such as roof materials and impervious surfaces)** that may affect the health and wellbeing of waterbodies.

(d) Wellington Regional Council and city and district councils have joint responsibility for the location and design of *urban development* in relation to waterbodies and receiving environments, and the protection and enhancement of waterbodies and receiving environments from the effects of *urban development* insofar as this relates to their respective functions under section 30 and section 31 of the RMA.


Explanation

Policy FW.6 outlines the allocation of responsibilities for land use and development controls for *freshwater* between Wellington Regional Council and territorial authorities. There are some areas of responsibility that overlap and in these cases the Wellington Regional Council and territorial authorities shall work together to develop plan provisions and operational arrangements to provide for the coordinated management and control of subdivision, use and development to maintain, and where required improve, the health and wellbeing of waterbodies and *freshwater ecosystem health*. This includes working collaboratively at different scales, such as during structure planning, rezoning,

subdivision, and site-development, so that the location, layout and design of development is managed in an integrated manner.

3.13 Policy 15: ~~Managing~~ Minimising the effects of earthworks and vegetation disturbance – district and regional plans

369. The notified provision states:

Policy 15: Managing Minimising the effects of earthworks and vegetation disturbance – district and regional plans	
<p>Regional and district plans shall include policies, rules and/or methods that control earthworks and vegetation disturbance to <u>minimise the extent necessary to achieve the target attribute states for water bodies and freshwater ecosystems including the effects of these activities on the life-supporting capacity of soils, and to provide for mana whenua / tangata whenua and their relationship with their culture, land, water, sites, wāhi tapu and other taonga.</u></p> <p>(a) erosion; and</p> <p>(b) silt and sediment runoff into water, or onto land that may enter water, aquatic ecosystem health is safeguarded.</p> <p><u>Explanation</u></p> <p>An area of overlapping jurisdiction between Wellington Regional Council and district and city councils is the ability to control earthworks and vegetation disturbance, including clearance. Large scale earthworks and vegetation disturbance on erosion prone land in <i>rural areas</i> and many <i>small scale</i> earthworks in urban areas – such as driveways and retaining walls – can cumulatively contribute large amounts of silt</p>	
<p>and sediment to stormwater and water bodies. This policy is intended to minimise erosion and silt and sedimentation effects associated with these activities.</p> <p>Minimisation requires effects to be reduced to the extent reasonably achievable whilst recognising that erosion, siltation and sedimentation effects can not always be completely avoided.</p> <p>This policy is to ensure that Wellington Regional Council and district and city councils integrate the control of earthworks and vegetation disturbance in their regional and district plans. Method 31 is for Wellington Regional Council and city and district councils to develop a protocol for earthworks and erosion from vegetation disturbance. The protocol will assist with implementation of the policy.</p> <p>Some activities, such as major road construction, are likely to require resource consents from both the regional council and city or district councils, which will work together to control the effects of the activity</p> <p>Vegetation disturbance includes harvesting plantation forestry.</p>	

370. Policy 15 is an Operative RPS policy that addresses an area of overlapping jurisdiction between Wellington Regional Council and district and city councils. The Policy is intended to minimise erosion and silt and sedimentation effects associated with earthworks and vegetation disturbance.

3.13.1 Submissions, Evidence and Analysis

371. Submitters raised concerns in relation to the respective requirements of the Regional Council and district councils (including Kāinga Ora [S158.020], UHCC [S34.061] and KCDC [S16.049]), with some TAs seeking the Policy be amended to provide guidance about the types of plan provisions that can have positive impacts on freshwater.
372. Other submissions sought inclusion of hydraulic neutrality (KCDC [S16.049]) and removal of the requirement for district plans to manage earthworks and vegetation disturbance to achieve target attribute states (PCC [S30.040]).
373. The DGC [S32.014] on the other hand opposed the amendments and sought reinstatement of the operative Policy 15 because the changes did not require erosion and siltation to be minimised as long as the target attribute state had been met. WFF [S163.053] sought the amendments be deleted as it was more appropriate to address them in the NRP, and Forest and Bird [S165.050] sought changes to give better effect to national direction and s 6 of the Act. Other submissions sought the use of “avoid” rather than “manage” as the latter implies an acceptance of effects (Ngāti Toa [S170.030]), definitions for earthworks and vegetation clearance (Hort NZ [S128.026]), consideration of impacts on the coastal marine environment, clarification regarding the effects on the life supporting capacity of soils and provision for mana whenua/tangata whenua.
374. Ms Pascall addresses these concerns in her s 42A report by separating out the requirements for Regional Plans in clause (a) to control the effects of earthworks and vegetation clearance to achieve target attribute states and manage erosion. District Plan requirements are in new clause (b) and relate to managing the effects of land use and subdivision which can have positive effects on freshwater, and give effect to clause 3.5(4) of the NPS-FM.²²³
375. The Officer supports replacing vegetation disturbance with vegetation clearance (as a defined term), and definitions of earthworks and vegetation clearance are added as in the National Planning Standards and NRP respectively. Ms Pascall agrees that the Regional Council is responsible for achieving target attribute states and, responding to the Director-General of Conservation’s submission, recommends including a subclause that requires silt and sediment runoff to be minimised in the

²²³ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, paras 470 – 471.

absence of target attribute states in the regional plan.²²⁴ The Officer considers that providing for mana whenua / tangata whenua values and hydraulic control is now covered in the new policies FW.XXA and FW.XXB proposed to be added through the s 42A Report, and amendments to Policy FW.3 (discussed above).

376. In relation to effects on the life supporting capacity of soils, Ms Pascall, responding to Rangitāne’s submission [S168.040] notes:²²⁵

issues relating to the ‘life-supporting capacity’ of soils are addressed through other policies in the Operative RPS, such as Policy 59 and Policy 69. As such, I recommend deletion of this reference from Policy 15.

377. Remaining submitter concerns covered several of the subclauses of clause (b) requirements on district plans, including that clause (b) should be specific to urban development. While some of the subclauses are specific to urban development, Ms Pascall notes in her Rebuttal Evidence:²²⁶

Policy 15 is part of the Operative RPS and applies on a general basis – it is not specific to urban development. ... The policy explanation also highlights that the policy applies to rural areas stating ‘Large scale earthworks and vegetation clearance disturbance on erosion prone land in rural areas and many small scale earthworks in urban areas – such as driveways and retaining walls – can cumulatively contribute large amounts of silt and sediment to stormwater and water bodies. This policy is intended to minimise erosion and silt and sedimentation effects associated with these activities.

378. Mr McDonnell for PCC sought that clauses (b)iii. and iv. should be relocated to clause (a) – Regional Plan requirements as they are regional council functions.²²⁷ Mr Heale thought that clause (b)i. regarding urban development follow existing land contours should be deleted, and was in essence captured by clause(b)ii. Also, the steep topography in the region could mean the direction could not be achieved.²²⁸

²²⁴ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 477.

²²⁵ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 444.

²²⁶ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, paras 151.

²²⁷ Statement of evidence of Torrey McDonnell on behalf of Porirua City Council (Planning), HS5 – 2 November 2023, paras 55 - 56.

²²⁸ Statement of Primary Evidence of Matt Heale on behalf of Kāinga Ora – Homes and Communities (Planning), HS 5, 3 November 2023, paras 4.3 – 4.7.

379. Ms Pascall disagrees with this planning evidence noting in her Rebuttal:²²⁹

... requiring setbacks from riparian margins for earthworks and vegetation clearance is within the remit of district plans, given their role in managing land use and subdivision. I also consider that the management of sediment from earthworks is within the remit of district plans, and I note that some district plans already do this, such as the Wellington City Council Operative and Proposed District Plans. However, I also note that there is an overlap of functions between the regional council and territorial authorities in terms of managing earthworks. The NRP includes rules to manage earthworks, including a permitted activity rule for earthworks up to 3000m² (subject to conditions) and earthworks required for the construction of farm tracks. District plans also manage the effects of earthworks of less than 3000m². As such, I consider an additional sub-clause is required in clause (a) of Policy 15 which makes it clear that the regional plan must manage sediment associated with earthworks. I also recommend an amendment to clause (b)(iv) to clarify that district plans manage the effects of earthworks on sites less than 3000m².

380. Ms Pascall also disagreed with Mr Heale’s evidence as the requirement to follow existing land contours was only “to the extent practicable” and did not address the issues in (b)ii. which were about the quantity of earthworks required.²³⁰ There was no duplication.

381. Mr Brass for the DGC agreed with this view. He said that in his experience, territorial authority land use consents can and do manage the risk of erosion and siltation, for example through requiring management plans.²³¹ He also noted that the Natural Resource Plan has a permitted activity standard of 3,000m² per property and, by way of comparison, the Wellington City District Plan permitted activity standard is 250m², so a much lower level. He said councils will be much more involved in actively managing earthworks.²³² Mr Brass said he concurred with Wellington Water’s statement at the hearing that it was easier to manage sediment at source rather than deal with it when it was in the stormwater network.²³³

²²⁹ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 149.

²³⁰ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, paras 150.

²³¹ Evidence of Murray Brass on behalf of the Director-General of Conservation, HS 5, 3 November 2023, para 43.

²³² Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 32, lines 1605 – 1614.

²³³ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 32, lines 1616 – 1619.

District councils do not manage the discharges from earthworks, but, as Mr Brass said, “if you don’t manage what’s done [in] the ground before it rains then it can be an awful lot harder to control the sediment that happens.”²³⁴

382. In response to a question we posed in Minute 18, the Reporting Officer advised that all district plans in the region include rules to manage earthworks of less than 3000m² although the metric varied between plans. The key point is that they all apply a threshold over which earthworks requires consent.²³⁵ We discussed this issue with Ms Allan (Special Advisor) who considered that functions and responsibilities were as clear as possible given the recognised overlaps. Ms Allan did advise that in her view there should be a link between clauses (a) and (b) for earthworks so that it is clear that the regional council’s responsibilities do not duplicate on small sites. Ms Allan suggested that the words “except as specified in (b)(iv)” are included after clause (a)(iv). We agree with this suggestion and consider it adds clarity to the Policy and supports Mr Brass’ statement at the Hearing about the need for councils to have an understanding of “the different parts of their roles”.²³⁶
383. We consider the main outstanding issue in Policy 15 is the relief discussed by Ms Downing for Forest and Bird at the hearing. She said that a reference to wetlands should also be included in the Policy because the definition of “water body” in the RMA only refers to freshwater and geothermal water and therefore, as Downing expressed it, “what will slip through the gaps are those wetlands that are subject to saline and estuarine influence”²³⁷ and the preservation of their natural character from inappropriate subdivision, use and development is a matter of national importance under s 6 of the RMA.
384. Section 2 of the RMA defines “water body” as:
- fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area.
385. Policy 15 is a general policy that is not restricted to freshwater. We consider it appropriate to provide for Forest and Bird’s relief to include

²³⁴ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 37, lines 1846 – 1849.

²³⁵ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 105.

²³⁶ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 37, lines 1861 – 1862.

²³⁷ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 54, lines 2715 – 2720.

coastal wetlands in receiving environments, and noting Ms Pascall's comments about wetland protection being primarily a regional council function, we recommend the amendments below to Policy 15(a).i (for regional plans) which we consider give appropriate effect to the RMA and the NPS-FM as sought by Forest and Bird.

3.13.2 Finding and s 32AA Evaluation

386. We largely agree with the Reporting Officer's recommendations on Policy 15 for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal and Reply Evidence. We recommend clause (a) is amended to refer to setbacks from wetlands and riparian margins and that the relationship between regional and district council functions for managing sediment from earthworks is clarified through a small drafting amendment to reflect the policy intent. This will improve the interpretation and application of the Policy.
387. The amendment we recommend to clause (a).i. is appropriate to achieve the sustainable management purpose of the RMA in that it gives expression to s 6(a) which directs the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development. The amendment also gives effect to s 6(c) of the RMA regarding the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna and policies in the NPS-FM regarding loss of river extent and values (to the extent practicable), the protection of habitats of indigenous freshwater species and integrated management that consider impacts on receiving environments (Policies 7, 9 and 3 of the NPS-FM).

3.13.3 Recommendation

Policy 15: Managing Minimising the effects of earthworks and vegetation disturbance clearance – district and regional plans

Regional and *district plans* shall ~~include policies, rules and/or methods that control earthworks and vegetation disturbance to~~ minimise ~~the extent necessary to achieve the target attribute states for water bodies and freshwater ecosystems including the effects of these activities on the life-supporting capacity of soils, and to provide for mana whenua / tangata whenua and their relationship with their culture, land, water, sites, wāhi tapu and other taonga~~ manage the effects of *earthworks and vegetation clearance*, as follows:

- (a) *Regional Plans* shall include policies, rules and/or methods that:
- i. ~~Control the effects of earthworks and vegetation clearance~~ including

through setbacks from wetlands and riparian margins, to achieve the target attribute states for water bodies and freshwater ecosystems, including receiving environments

- ii. In the absence of target attribute states, minimise silt and sediment runoff into freshwater and receiving environments, or onto land that may enter water; and
- iii. Minimise erosion.
- iv. manage sediment associated with earthworks except as specified in clause (b)iv.

(b) District Plans shall include policies, rules and/or methods that:

- i. Require ~~urban development~~ urban development to follow existing land contours, to the extent practicable;
- ii. Minimise the extent and volume of earthworks required for urban development
- iii. Require setbacks from waterbodies and other receiving environments for vegetation clearance and earthworks activities;
- iv. Manage sediment associated with earthworks less than 3000m²;
- v. Manage subdivision layout and design.

~~(a) — erosion; and~~


~~(b) — silt and sediment runoff into water, or onto land that may enter water, aquatic ecosystem health is safeguarded.~~

Explanation

An area of overlapping jurisdiction between Wellington Regional Council and district and city councils is the ability to control *earthworks* and *vegetation clearance disturbance, including clearance*. Large scale *earthworks* and *vegetation clearance disturbance* on erosion prone land in rural areas and many small scale *earthworks* in urban areas – such as driveways and retaining walls – can cumulatively contribute large amounts of silt and sediment to stormwater and water bodies. This policy is intended to minimise erosion and silt and sedimentation effects associated with these activities.

3.14 Policy 41 - ~~Controlling~~ Minimising the effects of earthworks and vegetation disturbance – consideration

388. As notified, the Policy said:

Policy 41: Controlling Minimising the effects of earthworks and vegetation disturbance – consideration	
<p>When considering an application for a resource consent, notice of requirement, or a change, variation or review of a regional or district plan, particular regard shall be given to controlling earthworks and vegetation disturbance by to minimise:</p> <p>(a) erosion; and</p> <p>(a) <u>considering whether the activity will achieve environmental outcomes and target attribute states; silt and sediment runoff into water, or onto or into land that may enter water, so that healthy aquatic ecosystems are sustained; and</u></p> <p>(b) <u>avoiding discharges to water bodies, and to land where it may enter a waterbody, where limits for suspended sediment are not met.</u></p> <p>Explanation</p> <p>An area of overlapping jurisdiction between Wellington Regional Council and district and city councils is the ability to control earthworks and vegetation disturbance, including clearance. Large scale earthworks and vegetation disturbance on erosion prone land in <i>rural areas</i> and many <i>small scale</i> earthworks in urban areas – such as driveways and retaining walls – can cumulatively contribute large amounts of silt</p>	
<p>and sediment to stormwater and water bodies. This policy is intended to minimise erosion and silt and sedimentation effects associated with these activities.</p> <p>Minimisation requires effects to be reduced to the extent reasonably achievable whilst recognising that erosion, siltation and sedimentation effects can not always be completely avoided.</p> <p>This policy provides for consideration of earthworks and vegetation disturbance to minimise erosion and sediment runoff prior to plan controls being adopted by regional and district plans in accordance with policy 15. This policy shall cease to have effect once method 31 is implemented and policy 15 is given effect to in regional and district plans.</p> <p>Policies 15 and 41 are to ensure that Wellington Regional Council and district and city councils integrate the control earthworks and vegetation disturbance in their regional and district plans. Method 31 is for Wellington Regional Council and district and city councils to develop a protocol for earthworks and erosion from vegetation disturbance. The protocol will assist with implementation of policies 15 and 41.</p> <p>Some activities – such as major road construction – are likely to require resource consents from both Wellington regional council and district or city councils, which will work together to control the effects of the activity.</p> <p>Vegetation disturbance includes harvesting plantation forestry.</p>	

389. Policy 41 is an Operative RPS policy that applies to regional resource consents that involve earthworks and vegetation clearance

3.14.1 Submissions, Evidence and Analysis

390. Submitters raised concerns in relation to the word “controlling” in the title (Winstone Aggregates [S162.014]) and the application of the Policy to district resource consents (including SWDC [S79.043]). They also sought deletion of references to target attribute states, silt and sediment run off (UHCC [S34.063]), and amendments to ensure the operative Policy applies until outcomes and targets are identified in the NRP (DGC [S32.023]).
391. A number of amendments to the Policy have been made in the s 42A report in response to submitter concerns, including limiting the application of the Policy to regional resource consents, and reinstating consideration of erosion impacts (which accepts Ātiawa’s relief) and supports the implementation of Objective 29 of the RPS.²³⁸ The Officer did not support including reference to *Te Mana o te Wai* in the Policy on the basis that the Policy applies more broadly in the RPS than only to freshwater.
392. Fulton Hogan [S114.005] was concerned about the use of “avoid” in clause (c), whereas Ātiawa [S131.090] sought that all discharges to water are avoided regardless of whether suspended sediment limits are exceeded
393. HortNZ [S128.042] and others were concerned about the implications of the Policy given outcomes, target attribute states and limits for suspended sediment have not yet been set. There were also concerns about alignment with national direction and the RMA (Forest and Bird [S165.070]), and *Te Mana o te Wai* and mana whenua values and relationships (Ātiawa [S131.090]). Rangitāne [S168.050]. was concerned that the Policy did not set a ‘maintain’ framework where target attribute states have not yet been set.
394. Remaining submitter concerns were the need to address habitat removal associated with vegetation clearance, potential conflict/interpretation issues with the NRP, and that the Policy should be deleted or only apply until Policy 15 is implemented (Ms Landers for Hort NZ²³⁹), and

²³⁸ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 503.

²³⁹ Statement of Evidence by Jordyn Landers for Horticulture NZ (Planning), HS5, 3 November 2023, para 18.

inconsistency of clause (c) with s 107 of the RMA (Ms Clarke for Winston Aggregates).²⁴⁰ Mr Brass, providing planning evidence for the DGC, considered that the Policy should apply to territorial authorities as well, because in his experience “most consents for the actual earthworks and vegetation disturbance sit with the territorial authority as land use matters, while regional consents are generally focussed on discharges.”²⁴¹

395. In her Rebuttal Evidence Ms Pascall has added a clause requiring consideration of the extent to which the activity results in adverse effects on aquatic ecosystem health, indigenous biodiversity in water bodies and receiving environments. Ms Pascall also recommends deleting clauses (b) and (c) as she considers “that Policy 41 should focus on situations where the regional plan has not yet set environmental outcomes, target attribute states, or limits”.²⁴² Ms Pascall considered that deleting clause (c) responds to the concerns Ms Clarke raised.

396. At the hearing, Ms Landers said that Policy 41 should cease to have effect once Policy 15 is given effect to in the NRP.²⁴³ Ms Pascall agreed that Policy 41 applies to consenting until Policy 15 is implemented for all FMUs in the region, noting that the whitua are being implemented in stages.²⁴⁴ Ms Pascall recommends including explanatory text to that effect,²⁴⁵ noting that Plan Change 1 to the NRP only includes environmental outcomes, target attribute states and suspended sediment limits for Te Awarua-o-Porirua Whitua and Te Whanganui-a-Tara Whitua.

397. Ms Downing was concerned that Policy 41 is not directive enough and should also apply to district councils.²⁴⁶ Ms Pascall did not agree stating:

²⁴⁷

the primary purpose of Policy 41 is to manage the effects of earthworks and vegetation clearance on waterbodies until the

²⁴⁰ Statement of Evidence of Catherine Clarke on behalf of Winstone Aggregates, HS5, 3 November 2023, para 10.3.

²⁴¹ Speaking notes of Murray Brass for the DGC, HS5, para 9.

²⁴² Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 159.

²⁴³ Hearing Statement of Elizabeth Mc Gruddy on behalf of Wairarapa Federated Famers, HS5, 15 November 2023, para 20.

²⁴⁴ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 26, lines 1275 – 1283.

²⁴⁵ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 109.

²⁴⁶ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 54, lines 2722 – 2726.

²⁴⁷ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 161.

regional plan has set target attribute states and other requirements of the NOF.

398. We agree that the appropriate place for district council direction on this issue is Policy FW.3 (regulatory requirements for district plans), which includes provisions for managing urban development to protect and enhance the health and wellbeing of waterbodies including wetlands (Policy FW.3(k)).
399. In our view Policy 41(e) as proposed in Ms Pascall’s Rebuttal is appropriate as a consideration requirement in consenting and that jurisdiction is retained with the regional council. Concerns about whether the Policy applies to coastal wetlands are addressed, in our view, by the wording of clauses (d) and (e) which refer to runoff “into water” and effects in “water bodies and receiving environments”. Coastal wetlands would therefore be within scope.
400. In Minute 18, we asked the Officer if the ‘minimise erosion’ provision in Policy 41 could cause workability or interpretation issues. We also queried the relationship of the provision with Policy 15(a)iii which directs the regional plan to include provisions minimising erosion. The Officer noted that Policy 41 requires a consent applicant demonstrate the extent to which the proposed activity is minimising erosion and effects on aquatic ecosystem health and indigenous biodiversity.²⁴⁸ The Officer stated:²⁴⁹

In implementing the RPS and subsequent lower order documents, in theory it should be clear whether Policy 15 has been given effect to or not, and whether you need to refer to Policy 41.

401. In her Reply Evidence, the Officer also added that the direction to minimise erosion is in the Operative RPS, and that while the NRP includes a number of provisions to manage the effects of earthworks, it has not yet been updated to give full effect to the NPS-FM. The Officer recommended that Policy 41 be retained but that would no longer have effect once the NRP is updated to give full effect to Policy 15 for all FMUs.²⁵⁰ We agree with this recommendation.

²⁴⁸ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 27, line 1312.

²⁴⁹ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 27, lines 1312 – 1314.

²⁵⁰ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 109.

3.14.2 Finding

402. We agree with the Reporting Officer's recommendations on Policy 41 for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal and Reply Evidence.

3.14.3 Recommendation

Policy 41: ~~Managing~~ ~~Controlling~~ Minimising the effects of earthworks and vegetation clearance disturbance – consideration

When considering an application for a regional resource consent, ~~notice of requirement,~~ or a change, variation or review of a regional or district plan, for earthworks or vegetation clearance particular have regard ~~shall be given~~ to ~~controlling earthworks and vegetation disturbance by~~ to minimise:

- ~~(a) — erosion; and~~
- (a) the extent to which the activity *minimises* erosion;
- ~~(b) — the extent to which considering whether the activity will achieve any relevant environmental outcomes and target attribute states set for the FMU or part-FMU; silt and sediment runoff into water, or onto or into land that may enter water, so that healthy aquatic ecosystems are sustained; and~~
- ~~(c) — where suspended sediment limits have been set in a regional plan, and the activity cannot meet those limits, avoiding discharges to water bodies, and to land where it may enter a waterbody; where limits for suspended sediment are not met.~~
- ~~(ed) — in the absence of environmental outcomes, target attribute states, or limits for suspended sediment for the relevant FMU or part-FMU, the extent to which silt and sediment runoff into water, or onto or into land that may enter water, will be *minimised*.~~
- (e) the extent to which the activity results in adverse effects on *aquatic ecosystem health, indigenous biodiversity* in water bodies and receiving environments.

Explanation

Policy 41 applies to regional resource consents that involve *earthworks and vegetation clearance*. The policy intent is to manage both rates of erosion and sediment runoff into waterbodies. The policy recognises that it may not be possible in all cases to avoid the effects of these activities, but nevertheless requires that the effects be *minimised*. The policy also recognises that there may be a period of time where *environmental outcomes and target attribute states* for a FMU have not yet been set in the regional plan, and in these cases, there remains a requirement to minimise silt and sediment runoff into water. Policy 41 shall cease to have effect once Policy 15(a) has been given effect in the Regional Plan for all FMUs in the region.

~~An area of overlapping jurisdiction between Wellington Regional Council and district and city councils is the ability to control earthworks and vegetation disturbance, including~~

~~clearance. Large scale earthworks and vegetation disturbance on erosion prone land in rural areas and many small scale earthworks in urban areas – such as driveways and retaining walls – can cumulatively contribute large amounts of silt.~~

~~Minimisation requires effects to be reduced to the extent reasonably achievable whilst recognising that erosion, siltation and sedimentation effects can not always be completely avoided.~~

~~This policy provides for consideration of earthworks and vegetation disturbance to minimise erosion and sediment runoff prior to plan controls being adopted by regional and district plans in accordance with policy 15. This policy shall cease to have effect once method 31 is implemented and policy 15 is given effect to in regional and district plans.~~


~~Policies 15 and 41 are to ensure that Wellington Regional Council and district and city councils integrate the control earthworks and vegetation disturbance in their regional and district plans. Method 31 is for Wellington Regional Council and district and city councils to develop a protocol for earthworks and erosion from vegetation disturbance. The protocol will assist with implementation of policies 15 and 41.~~

~~Some activities – such as major road construction – are likely to require resource consents from both Wellington regional council and district or city councils, which will work together to control the effects of the activity.~~

~~Vegetation disturbance includes harvesting plantation forestry.~~

3.15 Policy 18 - Protecting and restoring aquatic ecological function health of water bodies – regional plans

403. The notified Policy said:

Policy 18: Protecting and restoring aquatic ecological function health of water bodies – regional plans	
<p>Regional plans shall include policies, rules and/or methods that <u>protect and restore the ecological health of water bodies, including:</u></p> <ul style="list-style-type: none"> (a) <u>managing freshwater in a way that gives effect to Te Mana o te Wai;</u> (b) <u>actively involve mana whenua / tangata whenua in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for;</u> (c) <u>there is no further loss of extent of natural inland wetlands and coastal wetlands, their values are protected, and their restoration is promoted;</u> (d) <u>achieving environmental outcomes, target attribute states and environmental flows and levels;</u> (e) <u>avoiding the loss of river extent and values;</u> (f) <u>protecting the significant values of outstanding water bodies;</u> (g) <u>protecting the habitats of indigenous freshwater species are protected;</u> (h) <u>Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided;</u> (i) <u>promoting the retention of in-stream habitat diversity by retaining natural features – such as pools, runs, riffles, and the river’s natural form;</u> (j) <u>promoting the retention of natural flow regimes – such as flushing flows;</u> (k) <u>promoting the protection and reinstatement of riparian habitat;</u> (l) <u>promoting the installation of off-line water storage;</u> (m) <u>measuring and evaluating water takes;</u> (n) discourage <u>restricting</u> the reclamation, piping, straightening or concrete lining of rivers; (o) discourage <u>restricting</u> stock access to estuaries, rivers, lakes and wetland; (p) discourage <u>restricting</u> the diversion of water into or from wetlands – unless the diversion is necessary to restore the hydrological variation to the wetland; (q) discourage <u>restricting</u> the removal or destruction of indigenous plants in wetlands and lakes; and (r) <u>restoring and maintaining</u> fish passage. <p>Explanation</p> <p><u>Policy 18 lists a range of actions that will protect and restore the ecological health of water bodies. Habitat diversity, which is described in clauses (a), (b) and (c), is essential for aquatic ecosystems to survive and be self-sustaining. When areas of habitat in one part of the river, lake or wetland are degraded or destroyed by activities described in clauses (e), (f), (g) and (h), critical parts of the ecosystem may be permanently affected with consequent effects elsewhere in the ecosystem.</u></p> <p>Habitat diversity, which is described in clauses (a), (b) and (c), is essential for aquatic ecosystems to survive and be self-sustaining. When areas of habitat in one part of the</p>	

~~river, lake or wetland are degraded or destroyed by activities described in clauses (e), (f), (g) and (h), critical parts of the ecosystem may be permanently affected with consequent effects elsewhere in the ecosystem. Specific policies and regional rules can set out where it is important to retain habitat for ecological function.~~

~~Off-line water storage is constructed out of the river and do not cause adverse effects such as barriers to fish that in stream dams can.~~

404. Policy 18 is an operative RPS policy that directs regional plans to include provisions that protect and restore the ecological health of water bodies.
405. The amendments included through Proposed Change 1 aim to broaden and strengthen the policy to give effect to the NPS-FM, and in particular Policies 1, 2, 5, 6, 7, 8, 9 and 10.
406. 90 submission points and 53 further submission points were received on Policy 18.

3.15.1 Submissions, Evidence and Analysis

407. Submitters' concerns about the notified amendments to Policy 18 included drafting clarity, giving effect to national direction, and the strength of the policy direction. Drafting amendments were proposed in the s 42A Report to address these concerns including:²⁵¹
- a. Referencing *Te Mana o te Wai* in the chapeau so it is clear it is the overarching purpose (Rangitāne relief accepted)
 - b. Protecting the habitat of trout and salmon so far as this is consistent with protecting the habitat of indigenous freshwater species (Fish and Game relief accepted in part)
 - c. Amending clause (e) for consistency with Policy 7 of the NPS-FM regarding the loss of river extent and values (HortNZ relief accepted)
 - d. Removing duplication in the clauses (PCC relief accepted in part)
 - e. Retaining clause (c) regarding the protection and restoration of natural inland wetlands to give effect to Policy 6 of the NPS-FM (MPFG, Philip Clegg, Dr Sarah Kerkin relief rejected)
 - f. Retaining reference to "off-line" water storage in clause (l) as the clause is intended to promote storage alternatives such as water

²⁵¹ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, paras 652 – 679.

storage lakes that are outside of rivers, rather than online options such as damming, which would be inconsistent with Policy 7 of the NPS-FM (HortNZ relief rejected)

- g. Including an ‘avoid’ directive in clause (n) other than for activities with a functional need and where the effects management hierarchy is applied (Ātiawa and Forest and Bird relief accepted), and a consequential amendment to include the NPS-FM definition of “effects management hierarchy”, and
- h. Including “adopting an integrated approach, *ki uta ki tai*” in new clause (bb) and “the use of mātauranga Māori” in new clause (bc) (Ātiawa relief accepted).

408. In evidence, Mr McDonnell for PCC sought amendments to align clause (c) with the NES-F and allow a pathway for urban development that demonstrates a functional or operational need and applies the effects management hierarchy.²⁵² Legal submissions and evidence presented by Wellington Water said that clause 3.22 of the NPS-FM allows for the potential loss of extent or values of natural inland wetlands in certain circumstances, but Policy 18(c) made no provision for these allowances.²⁵³ Mr Slyfield noted that clause 3.22 has been implemented by Policy 110 of the NRP.²⁵⁴

409. Some planning experts sought the removal of coastal wetlands in clause (c);²⁵⁵ further clarification of clause (r) to reflect NPS-FM clause 3.26 in relation to fish passage;²⁵⁶ amendments to align Policy 18 with the directive language in Policy 14 (effects of urban development);²⁵⁷ replacing “protect and enhance” in the chapeau with “maintain and improve” for consistency with Policy 5 of the NPS-FM and on the basis that there is no direction in the NPS-FM requiring enhancement of all water bodies, but rather improvement where the water body is degraded or if desired by the

²⁵² Statement of evidence of Torrey McDonnell on behalf of Porirua City Council (Planning), HS5 – 2 November 2023, para 72.

²⁵³ Legal Submissions for Wellington Water Limited, HS 5, 3 November 2023, paras 19 - 20; Evidence of Ms Horrox for Wellington Water.

²⁵⁴ Legal Submissions for Wellington Water Limited, HS 5, 3 November 2023, para 19.

²⁵⁵ Primary Statement of evidence of Catherine Heppelthwaite for Waka Kotahi, Hearing Stream 5, 3 November, para 5.3j.i.

²⁵⁶ Evidence of Murray Brass on behalf of the Director-General of Conservation, HS 5, 3 November 2023, para 22, paras 55 – 59; Statement of Planning Evidence of Lily Campbell, HS 5, 3 November 2023 and also Forest and Bird submission and Ms Downing’s legal submissions for HS5, 3 November 2023 paras 36 – 43.

²⁵⁷ Statement of Planning Evidence of Maggie Burns, 3 November 2023, paras 99 – 103.

community.²⁵⁸ Ms Clarke observed that Proposed Change 1 lacked policy direction recognising and providing for the use and development of water and waterbodies for beneficial activities beyond urban development and this did not support an integrated approach²⁵⁹ (in particular significant quarrying benefits where it is not functionally or operationally practicable to avoid waterbodies and wetlands).

410. In her Rebuttal Evidence, Ms Pascall agreed with Ms Clarke that “protect” and “enhance” in the chapeau should be replaced with “maintain” and “improve” to give better effect to the NPS-FM. The Officer also said she agreed that the RPS should be consistent with the NPS-FM and NES-F in providing a consenting pathway for urban development, but she did not think Policy 18 needed to be amended as Policy 14 already set out the requirements for regional plans in managing urban development and the Officer had proposed amendments to Policy 14 in her Rebuttal for providing for the national direction consenting pathways.²⁶⁰

411. During the hearing, we queried Ms Pascall on the absolute expression in Policy 18(c), that regional plans must include provisions to ensure there is no further loss of extent of natural inland wetlands and that their values are protected. Ms Pascall said there was a question about how specific the RPS policies needed to be as the consent pathways in clauses 3.22 and 3.24 had to be included directly in Regional Plans.²⁶¹ In response, we commented that if the RPS policy is expressed in definitive terms, then the consent pathway may only be provided for when it is included in the NRP.²⁶² Ms Pascall acknowledged this potential.²⁶³

412. Another key point was the one made by Mr Lewandowski in his evidence for PPFL:²⁶⁴

In section 104D terms, the policy gateway will be informed through the change required by the NPS-FM to the regional plan. However, if the higher order RPS contains matter (m) as presently drafted, this creates an inconsistency. I therefore

²⁵⁸ Statement of Evidence of Catherine Clarke on behalf of Winstone Aggregates, HS5, 3 November 2023, para 6.3

²⁵⁹ Statement of Evidence of Catherine Clarke on behalf of Winstone Aggregates, HS5, 3 November 2023, paras 8.6.

²⁶⁰ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 195.

²⁶¹ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 31, lines 1524 – 1527.

²⁶² Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 31, lines 1539 – 1543.

²⁶³ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 31, lines 1549.

²⁶⁴ Statement of Evidence of Maciej Lewandowski on behalf of Peka Peak Farm Limited, HS 5, 3 November 2023, para 4.14.

consider that it is appropriate for the RPS to reference the direction of the NPS-FM. An equivalent change to Policy 40(n) and (p) would also be required.

413. At the hearing, Mr Lewandowski expressed the issue in this way.²⁶⁵

The PPFL submission or my evidence highlighted that in the absence of that you were creating a situation where the NPS made that provision. It was directive to a regional plan two tiers below, but the intervening tier simply took an avoid position, so you created an inconsistency or a clash in that subsequent jump down the hierarchy.

414. We were persuaded by this evidence. There was in our view, a disconnect between the RPS directive and NPS-FM directive, and this had the potential to cause implementation issues for the NRP. Ms Pascall referred to the points made by the HS1 Officer regarding the aggregate and mineral resources consenting pathway being out of scope of Proposed Change 1, and on this basis, she did not support the amendments sought by Ms Clarke.²⁶⁶

415. Legal advice was received on the issue and in her Reply Evidence, Ms Pascall recommends two new Policies to provide a pathway for certain activities in natural inland wetlands and rivers to give effect to clauses 3.22 – 3.24 of the NPS-FM. These Policies are considered in the following section.

416. Consequential to these new Policies, the Officer recommends removing clause (c) from Policy 18 referring to inland and coastal wetlands, clause (e) referring to river extent and values, and clause (n) referring to reclamation, piping, straightening etc of rivers.²⁶⁷

417. The Officer noted that Policy 18 applies to all use and activity, and so is not limited to effects from urban development (c.f. Policy 14), and it was therefore logical to address the issue of a pathway for aggregates and other limited activities in Policy 18 rather than in the Soils and Mineral chapter of the RPS. This is discussed further under Policies 18A and 18B.

²⁶⁵ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 40, lines 2034 – 2038.

²⁶⁶ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, paras 196 – 197.

²⁶⁷ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 118.

418. The Officer recommended granting the amendment sought to clause (r) regarding fish passage, agreeing with the amendments proposed by Ms Downing in her legal submissions on behalf of Forest and Bird.²⁶⁸

3.15.2 Finding

419. We agree with the Reporting Officer's recommendations on Policy 18 for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal and Reply Evidence.

3.15.3 Recommendation

Policy 18: ~~Maintaining Protecting and enhancing improving restoring ecological health~~ the health and wellbeing of water bodies and freshwater ecosystem health of water bodies – regional plans

Regional plans shall include policies, rules and/or methods that ~~give effect to Te Mana o te Wai~~, and in doing so ~~protect maintain and improve enhance restore~~ the ~~ecological health~~ ~~health and wellbeing of water bodies and freshwater ecosystem health~~ of water bodies, including by:

- ~~(a) — managing freshwater in a way that gives effect to Te Mana o te Wai;~~
- ~~(b) actively involving mana whenua / tangata whenua in freshwater management (including decision-making processes), and~~
- ~~(ba) identifying and providing for Māori freshwater values are identified and provided for;~~
- ~~(bb) adopting an integrated approach, ki uta ki tai, that recognises the interconnectedness of the whole environment to ensure that ecological health of freshwater is managed using an integrated, ecosystem wide approach~~
- ~~(bc) incorporating the use of mātauranga Māori to protect and restore ecosystem health,~~
- ~~(c) — ensuring there is no further loss of extent of natural inland wetlands and coastal wetlands, their values are protected, and their restoration is promoted;~~
- ~~(d) — achieving environmental outcomes, target attribute states and environmental flows and levels;~~
- ~~(e) — avoiding the loss of river extent and values to the extent practicable;~~
- ~~(f) protecting the significant values of outstanding water bodies~~
- ~~(g) protecting the habitats of indigenous freshwater species are protected;~~
- ~~(ga) protecting the habitat of trout and salmon, insofar as this is consistent with clause (g).~~
- ~~(h) — Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided;~~
- ~~(i) promoting the retention of retaining in-stream habitat diversity by retaining natural features – such as pools, runs, riffles, and the river's natural form to~~

²⁶⁸ Legal submissions for the Royal Forest & Bird Protection Society Inc, HS5, 3 November 2023 paras 36 – 43; Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 195.

- ~~(i)~~ ~~promoting the retention of retaining~~ *maintain in-stream habitat diversity;* natural flow regimes – such as *flushing flows*;
- ~~(k)~~ ~~promoting the protection and reinstatement of riparian habitat;~~
- ~~(l)~~ ~~promoting the installation of off-line water storage;~~
- ~~(m)~~ ~~measuring and evaluating water takes;~~
- ~~(n)~~ ~~discourage restricting avoiding the reclamation, piping, straightening or concrete lining of rivers unless:~~
 - ~~(i) there is a functional need for the activity in that location; and~~
 - ~~(ii) the effects of the activity are managed by applying the effects management hierarchy~~
- ~~(o)~~ ~~discourage restricting stock access to estuaries, rivers, lakes and wetland;~~
- ~~(p)~~ ~~discourage restricting the diversion of water into or from wetlands – unless the diversion is necessary to restore the hydrological variation to the wetland;~~
- ~~(q)~~ ~~discourage restricting the removal or destruction of indigenous plants in wetlands and lakes; and~~
- ~~(r)~~ ~~restoring and maintaining fish passage where appropriate. except where it is desirable to prevent the passage of some fish species in order to protect indigenous species, their life stages, or their habitats.~~

Explanation

Policy 18 lists a range of actions that will protect and restore the health and wellbeing of water bodies and freshwater ecosystem the ecological health of water bodies. The ecosystem health of water bodies is dependent on water quality, water quantity, habitat, aquatic life, and ecological processes. To be a healthy freshwater ecosystem, all five components support and sustain indigenous aquatic life. Habitat diversity, which is described in clauses (a), (b) and (c), is essential for aquatic freshwater ecosystems to survive and be self-sustaining. When areas of habitat in one part of the river, lake or wetland are degraded or destroyed by activities described in clauses (e), (f), (g) and (h), critical parts of the ecosystem may be permanently affected with consequent effects elsewhere in the ecosystem.

3.16 Policy 18A - Protection and restoration of natural inland wetlands – regional plans

Policy 18B - Protection of river extent and values – regional plans

420. As noted above in the discussion for Policy 18, Policies 18A and 18B are new policies proposed in the Reporting Officer’s Reply Evidence to give effect to NPS-FM clause 3.22 (Natural Inland Wetlands) and 3.24 (Rivers).²⁶⁹

3.16.1 Submissions, Evidence and Analysis

421. The Policies set out requirements in relation to activities resulting in the loss of extent or values of natural inland wetlands and rivers. Ms Pascall states that these policies adopt the same wording and approach as the relevant clauses of the NPS-FM, to provide certainty and clarity for all users of the RPS.
422. Initially Ms Pascall did not support including the NPS-FM pathways due to scope restrictions. Counsel for the Council provided legal submissions addressing the issue of whether Winstone Aggregate’s relief seeking the inclusion of a consenting pathway for quarrying activities, was within the scope of Proposed Change 1.²⁷⁰ Counsel helpfully set out the timeline of the relevant NPS-FM amendments including the quarrying and other consenting pathways. These amendments were gazetted on 8 December 2022, and came into force on 5 January 2023.²⁷¹ They direct the regional council to make specific amendments to the NRP without using a Schedule 1 process. Those amendments have not yet been made, but it was noted that policy direction in the RPS to support those forthcoming amendments may be appropriate.²⁷² The NPS-FM did not direct such changes to the RPS, but they could be made if that was considered appropriate and if there was scope to do so.²⁷³

²⁶⁹ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 59 – 64.

²⁷⁰ Legal submissions in reply on behalf of Wellington Regional Council – HS5, 20 December 2023.

²⁷¹ Legal submissions in reply on behalf of Wellington Regional Council – HS5, 20 December 2023, para 4.

²⁷² Legal submissions in reply on behalf of Wellington Regional Council – HS5, 20 December 2023, para 9.

²⁷³ Legal submissions in reply on behalf of Wellington Regional Council – HS5, 20 December 2023, para 10.

423. We are not limited by the scope of submissions, but we are still limited to the scope of Change 1 itself, and the matter must have been raised during hearings, which of course it has been in Ms Tancock's and Ms Clarke's presentations. We are satisfied there is scope within Change 1 to recommend that the new Policies 18A and 18B recommended by Ms Pascall are adopted. Change 1 addresses the degradation of freshwater, and Policy 18 included a clause relating to loss of natural inland wetlands (clause (c)). Therefore, the issue of limitations and protections has been fairly 'put on the table' as the Counsel's legal submissions state.²⁷⁴ Winstone Aggregate's relief is accordingly within scope of what can be granted in Change 1. Other submitters who were interested in the issue had the opportunity to submit on the relief sought as it was included in Winstone's submission.
424. The Officer says she reviewed her previous position on Winstone Aggregate's relief for new consenting pathways being out of scope, and considers it is appropriate to grant the relief.²⁷⁵ Ms Pascall said she agreed with Ms Clarke and Ms Tancock, presenting evidence and legal submissions on behalf of Winstone Aggregates, that not giving proper effect to clauses 3.22 and 3.24 in Policy 18 will create an inconsistency in the hierarchy between the NPS-FM, the RPS and NRP.²⁷⁶ At the hearing, we noted that there was a role for the RPS in terms of being a bridge between the NPS-FM and the NRP.²⁷⁷
425. Ms Pascall therefore supports including new Policies 18A and 18B, drawing closely on the wording in the NPS-FM. Ms Pascall also recommended including the definition of "specified infrastructure" from clause 3.21 of the NPS-FM, as this activity is provided for in the consent pathways now included in Policies 18A and 18B.²⁷⁸ Ms Pascall recommends a similar provision in relation to resource consents (Policies 40A and 40B) but provides for the Policies to cease to have effect once

²⁷⁴ Legal submissions in reply on behalf of Wellington Regional Council – HS5, 20 December 2023, para 17.

²⁷⁵ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 59.

²⁷⁶ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 60 -61.

²⁷⁷ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 42, lines 2140 – 2141.

²⁷⁸ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 64.

Policies 18A and 18B have been given effect to in the regional plan. This signals that they have interim effect until the NRP is updated.²⁷⁹

426. Another option for the policy direction to support clauses 3.22 (and 3.24) was set out in Mr Lewandowski's evidence for PPFL. He proposed that Policy 14(m) be amended to require urban development to avoid the loss of extent of values of natural inland wetlands unless there is a functional need for the activity in that location, or the activity is otherwise identified in the NPS-FM and the effects of the activity are managed by applying the effects management hierarchy.
427. While we appreciate the more simple approach of this suggested amendment, we do not consider it gives appropriate effect to the NPS-FM as it provides broad discretion for an activity to locate if there is a functional need. Instead, the 'exemptions' are more narrowly constrained as set out in clause 3.22 of the NPS-FM. For instance, clause 3.22(1)(c) does not specify a 'functional need' test for urban development, instead there are 'higher tests' that must be met.
428. On balance, we are satisfied that Ms Pascall's proposed amendments in her Reply Evidence are appropriate, even though they restate the NPS-FM clauses. The risk with this approach is that the 'restatement' does not occur accurately, creating further potential tensions or implementation difficulties. This has occurred in our view, and in Minute 28 we asked Ms Pascall to review the cross-references and other drafting matters. Ms Pascall provided an updated version of Policies 18A and 40A with the cross-references corrected and some drafting corrections to more accurately reflect the national direction consenting pathways (shown in purple non-shaded text below).

3.16.2 Finding

429. We agree with the Reporting Officer's recommendations on Policies 18A and 18B for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal and Reply Evidence, including the Officer's response to the questions we posed in Minute 28 (and amendments shown in purple non-shaded text).

²⁷⁹ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 65.

3.16.3 Recommendation

Policy 18A: Protection and restoration of natural inland wetlands – regional plans

Regional plans shall include policies, rules and/or methods to protect the values of natural inland wetlands, promote their restoration, and avoid the loss of extent of natural inland wetlands, unless:

- (a) the loss of extent or values arises from any of the following:
 - (i) the customary harvest of food or resources undertaken in accordance with tikanga Māori
 - (ii) wetland maintenance, restoration, or biosecurity (as defined in the National Policy Statement for Freshwater Management)
 - (iii) scientific research
 - (iv) the sustainable harvest of sphagnum moss
 - (v) the construction or maintenance of wetland utility structures (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020)
 - (vi) the maintenance or operation of specified infrastructure, or other infrastructure (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020
 - (vii) natural hazard works (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020); or
- (b) the loss of extent or values is a result of use and development within natural inland wetlands that:
 - (i) is necessary for the purpose of the construction or upgrade of specified infrastructure that will provide significant national or regional benefits; or
 - (ii) is necessary for the purpose of urban development that contributes to a well-functioning urban environment (as defined in the National Policy Statement on Urban Development 2020), and:
 - a. the urban development will provide significant national, regional or district benefits; and
 - b. the activity occurs on land that is identified for urban development in operative provisions of a regional or district plan; and
 - c. there is no practicable alternative location for the activity within the area of the development, or every other practicable location in the area of the development would have equal or greater adverse effects on a natural inland wetland; or
 - (iii) is necessary for the purpose of quarrying activities and the extraction of the aggregate will provide significant national or regional benefits; or
 - (iv) the activity is for the purpose of the extraction of minerals (other than coal) and ancillary activities and the extraction of the mineral will provide significant national or regional benefits; or
 - (v) the activity is necessary for the purpose of constructing or operating a new or existing landfill or cleanfill area and:
 - a. The landfill or cleanfill area:
 - b. will provide significant national or regional benefits; or
 - c. is required to support urban development as referred to in Policy 14(m) Policy 18A(b)(ii); or
 - d. is required to support the extraction of aggregates as referred to in clause (b)(ii),(iii),

- e. is required to support the extraction of *minerals* as referred to in clause (b)(iii)(iv); and
- f. there is either no practicable alternative location in the region, or every other practicable alternative location in the region would have equal or greater adverse effects on a natural inland *wetland*; and
- (vi) in relation to clauses (b)(i), ~~to (b)(iii), and (b)(iv)~~ there is a *functional need* for the activity to be done in that location; and
- (vii) in all cases, the effects of the activity will be managed through applying the *effects management hierarchy*; and
- (viii) where the activity will result (directly or indirectly) in the loss of extent or values of a natural inland *wetland*:
 - a. require an assessment of the loss of extent or values of the *wetland* in relation to the values of: *ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, and amenity values*; and
 - b. if *aquatic offsetting or aquatic compensation* is applied, require compliance with principles 1 to 6 in Appendix 6 and 7 of the National Policy Statement of Freshwater Management 2020, and have regard to the remaining principles in Appendix 6 and 7, as appropriate; and
 - c. ensure that the offsetting or compensation will be maintained and managed over time to achieve the conservation outcomes; and
 - d. ensure that any conditions of consent apply the *effects management hierarchy* including conditions that specify how the requirements in clause (b)(vii)(viii)c. will be achieved.

Explanation

Policy 18A gives effect to clause 3.22 of the National Policy Statement for Freshwater Management 2020 by setting out the circumstances under which the loss of extent and values of natural inland *wetlands* may be appropriate.

Policy 18B: Protection of river extent and values – regional plans

Regional plans shall include policies, rules and/or methods to avoid the loss of *river* extent and values, unless:


- (a) there is a *functional need* for the activity in that location; and
- (b) the effects of the activity are managed by applying the *effects management hierarchy*; and
- (c) where clauses (a) and (b) apply, and the activity will result (directly or indirectly) in the loss of extent or values of a *river*:
 - (i) require an assessment of the loss of extent or values in relation to the values of: *ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, and amenity*; and
 - (ii) if *aquatic offsetting or aquatic compensation* is applied, require compliance with principles 1 to 6 in Appendix 6 and 7 of the National Policy Statement for Freshwater Management 2020, and have regard to the remaining principles in Appendix 6 and 7, as appropriate; and
 - (iii) ensure that the offsetting or compensation will be *maintained and managed over time* to achieve the conservation outcomes; and
 - (iv) ensure that any conditions of consent apply the *effects management hierarchy* including conditions that specify how the requirements in (c)(iii) will be applied.

Explanation

Policy 18B gives effect to clause 3.24 of the National Policy Statement for Freshwater Management 2020 and provides direction for the content of *regional plans* in managing the loss of *river* extent and values. The policy requires the avoidance of the loss of *river* extent and values, unless there is a *functional need* and the *effects management hierarchy* has been applied.

3.17 Policy 40 – ~~Maintaining~~ Protecting and enhancing the health and well-being of water bodies and freshwater ecosystems
~~aquatic ecosystem health in water bodies~~ – consideration
 Policy 40A – Loss of extent and values of natural inland wetlands – consideration
 Policy 40B – Loss of river extent and values - consideration

430. The notified version of Policy 40 states:

Policy 40: Maintaining Protecting and enhancing the health and well-being of water bodies and freshwater ecosystems aquatic ecosystem health in water bodies – consideration	
<p>When considering an application for a regional resource consent, particular regard shall be given to:</p> <ul style="list-style-type: none"> (a) requiring that water quality, flows and water levels and aquatic habitats of surface water bodies are managed in a way that gives effect to <i>Te Mana o Te Wai</i> and protects and enhances the health and well-being of waterbodies and the health and wellbeing of freshwater ecosystems for the purpose of safeguarding aquatic ecosystem health; (b) that, requiring as a minimum, water quality in the coastal marine area is to be managed in a way that protects and enhances the health and well-being of waterbodies and the health and wellbeing of marine ecosystems.; for the purpose of maintaining or enhancing aquatic ecosystem health; and (c) managing water bodies and the water quality of coastal water for other purposes identified in regional plans. (c) <u>providing for mana whenua / tangata whenua values, including mahinga kai;</u> (d) <u>maintaining or enhancing the functioning of ecosystems in the water body;</u> (e) <u>maintaining or enhancing the ecological functions of riparian margins;</u> (f) <u>minimising the effect of the proposal on groundwater recharge areas that are connected to surface water bodies;</u> (g) <u>maintaining or enhancing the amenity and recreational values of rivers and lakes, including those with significant values listed in Table 15 of Appendix 1;</u> (h) <u>protecting the significant indigenous ecosystems and habitats with significant indigenous biodiversity values of rivers and lakes, including those listed in Table 16 of Appendix 1;</u> (i) <u>maintaining natural flow regimes required to support aquatic ecosystem health;</u> (j) <u>maintaining or enhancing space for rivers to undertake their natural processes;</u> (k) <u>maintaining fish passage;</u> (l) <u>protecting and reinstating riparian habitat, in particular riparian habitat that is important for fish spawning;</u> (m) discouraging restricting stock access to estuaries rivers, lakes and wetlands; and (n) discouraging avoiding the removal or destruction of indigenous wetland plants in wetlands. 	

Explanation

~~Policy 40 provides criteria for considering regional consents to protect the health and wellbeing of waterbodies, particularly during the transition period before regional plans are changed to give effect to the NPS-FM.~~

~~Clause (a) identifies ecosystem health as a water management purpose for surface water bodies and clause (b) identifies water quality in the coastal marine area is to be managed for the purpose of aquatic ecosystem health. Other water management purposes for water bodies and coastal waters in clause (c) are to be established in regional plans as required by policies 5 and 12.~~

~~Application for a resource consent refers to all types of resource consent. Policy 40 shall cease to be considered for resource consents processed by the Wellington Regional Council once policy 5 and 12 are given effect to in a regional plan. Policy 40 shall continue to be considered by city and district councils when processing resource consents, notices of requirement and making changes, variations or reviews of district plans.~~

~~District and city councils could implement this policy by requiring setback distances between buildings and rivers, wetlands and the coastal marine area to protect riparian areas, limiting the amount of impervious surfaces allowed in new developments in some catchments, requiring rooftop rainwater collection for gardens, requiring roadside swales, filter strips and 'rain gardens' for stormwater runoff instead of kerb and channelling, encouraging advanced community sewerage schemes rather than septic tanks in areas where groundwater is vulnerable, and encouraging the treatment of stormwater at source in car parks and industrial yards.~~

431. Policy 40 is an Operative RPS Policy that provides criteria for considering regional consents to protect the health and wellbeing of waterbodies. Proposed Change 1 broadens and strengthens the Policy to give effect to the NPS-FM, particularly during the transition period before regional plans are changed to give effect to the NPS-FM.
432. Policies 40A and 40B are new policies proposed in the Reporting Officer's Reply evidence to give effect to NPS-FM clause 3.22 and 3.24 in regional resource consenting. They will cease to have effect when Policies 18A and 18B respectively are given effect to in the regional plan.

3.17.1 Submissions, Evidence and Analysis

433. Submitters raised a number of drafting concerns and clarification queries. These included that the Policy does not require that *Te Mana o te Wai* is given effect to (Forest and Bird [S165.069] and Rangitāne [S168.048]) and clause (d) should be deleted as it duplicates clauses (a) and (b) (PCC [S30.064]). Powerco [S134.015] considered the requirement to enhance as well as protect the health and wellbeing of water bodies and freshwater ecosystems in all situations is onerous and does not recognise regionally significant infrastructure (RSI).

434. Many of these concerns were addressed in the s 42A Report. Remaining submitter concerns with the s 42A provisions included the absolute avoidance approach in Policy 40(n) going beyond the NPS-FM in requiring avoidance of all effects on indigenous wetland plants, including in constructed or artificial wetlands, and lack of application of the effects management hierarchy of the NPS-FM.²⁸⁰ Other experts and counsel sought that clauses (n) and (p) should align with the NES-F and allow a pathway for urban development that demonstrates a functional or operational need and which applies the effects management hierarchy;²⁸¹ consistency with Policy 18(c) in relation to obligations to coastal wetlands which are part of the “receiving environment” in the NPS-FM;²⁸² the use of the phrase ‘to the extent practicable’ in clause (o);²⁸³ a link to the pathways in clauses 3.22(1) and 3.24(1) of the NPS-FM,²⁸⁴ and reference to maintain/maintained/maintenance due to impracticalities of applying the defined term of “maintaining” in the RPS.²⁸⁵
435. In her Rebuttal Evidence, Ms Pascall removes the italicising of “maintenance”, noting that where this term is used in Policy 40, the term has its ordinary meaning.²⁸⁶ She acknowledges concerns with going beyond the requirements of the NPS-FM and not providing for functional or operational need and application of the effects management hierarchy in clause (n).
436. In response to questions from the Panel in Minute 18 and after hearing submitters, the Officer recommends:
- a. Amending the chapeau to read “have regard to” rather than “have particular regard to”, consistent with the s 104 RMA consenting assessment,²⁸⁷

²⁸⁰ Statement of Evidence of Christine Foster called by Meridian Energy Limited, HS5, 2 November 2023, paras 3.9 – 3.10.

²⁸¹ Statement of evidence of Torrey McDonnell on behalf of Porirua City Council (Planning), HS5 – 2 November 2023, para 75.

²⁸² Legal submissions for the Royal Forest & Bird Protection Society Inc, HS5, 3 November 2023 paras 45 – 49.

²⁸³ Statement of Planning Evidence of Lily Campbell, HS 5, 3 November 2023, paras 43 – 50.

²⁸⁴ Statement of Evidence of Catherine Clarke on behalf of Winstone Aggregates, HS5, 3 November 2023, para 9.4 and section 8.

²⁸⁵ Statement of Evidence of Catherine Clarke on behalf of Winstone Aggregates, HS5, 3 November 2023, section 7.

²⁸⁶ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 217.

²⁸⁷ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 112.

- b. Including two new policies (Policy 40A and 40B) to provide consenting pathways for certain activities in natural inland wetlands in accordance with the effects management hierarchy and clauses 3.22 and 3.24 of the NPS-FM,²⁸⁸
- c. Including reference to the “coastal marine area” in clause (b) in order to give effect to Objective 6 of the Operative RPS which states that the quality of coastal waters is maintained or enhanced to a level that is suitable for the health and vitality of coastal and marine ecosystems.²⁸⁹

437. During the hearing, we queried with Ms Pascall whether it was appropriate for Policy 40, being a consenting policy, to require the regional council to “give effect to *Te Mana o te Wai*” and in doing so “have particular regard to” the matters listed in the Policy.

438. In her Reply Evidence, Ms Pascall agreed that “have regard to” was more appropriate and she recommended that amendment. She commented on the words “give effect to *Te Mana o te Wai*” in Policies 44 and FW.5 which are also consenting policies. She said:²⁹⁰

the reference to ‘giving effect to’ *Te Mana o te Wai* in the chapeau is unnecessary in these policies because the policies themselves already give effect to *Te Mana o te Wai*, and therefore in implementing the policy this is implicit. These policies also give effect to Objective 12 which is focused on *Te Mana o te Wai*.

439. We think that this same reasoning applies to Policy 40. The Policy itself gives effect to *Te Mana o te Wai*, and therefore the chapeau should be consistent with the requirements of s 104 of the RMA, which require a consent authority to “have regard to” the provisions of the RPS.

440. We agree that amending Policy 40 to state “maintains and improves” rather than “protects and enhances”, gives better effect to Policy 5 of the NPS-FM. However, in our view, Policy 5 requires degraded water bodies and freshwater ecosystems to be improved, and others to be maintained, and if communities choose, improved (which is the process that will be

²⁸⁸ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 113 – 116; para 65.

²⁸⁹ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 25 – 27.

²⁹⁰ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 33.

undertaken through implementing the NOF through the whitua process). We recommend an amendment to Policy 40(a) to better reflect this wording in Policy 5 of the NPS-FM.

441. In her legal submissions, Ms Downing sought that Policy 40(b) be retained largely as notified as the changes in the Officer's s 42A and Rebuttal Evidence no longer directed the protection or maintenance and enhancement of coastal water. In her Reply Evidence, Ms Pascall accepted that amendments were needed to Policy 40(b) to implement Objective 6 of the RPS. We agree with Ms Pascall's amendments but consider a further amendment is needed to address the policy gaps Ms Downing identifies.
442. There are two gaps in our view. Clause (b) would implement Objective 6 more appropriately if it referred to the need to "protect and enhance health and wellbeing" where "coastal waterbodies" were degraded. We note that "water body" is defined in the RMA (s 2) to exclude the CMA. Clause (b) (as Ms Pascall now supports it) is specific to the CMA, so the addition of "coastal" before "waterbodies" is perhaps unnecessary but may assist readability.
443. Also, Objective 6 of the RPS requires coastal water quality to be maintained or enhanced to a level that is suitable for the health and vitality of coastal and marine ecosystems. We consider that the wording we recommend, to "protect and enhance where degraded" is an appropriate cascade from Objective 12.
444. We make further comments in relation to coastal wetlands as this issue came up in various provisions in HS5.

3.17.1.1 Coastal wetlands

445. Forest and Bird sought greater protection for coastal wetlands, including in Policies 40, 41 and FW.6. They were concerned that the provisions in Proposed Change 1 did not give appropriate effect to the NZCPS.
446. Similarly, Ms Anton, counsel for the DGC said that the Council needed to take care when implementing the NPS-UD and NPS-FM, that NZCPS implementation did not "fall through the cracks"²⁹¹ or that any existing RPS provisions that are amended by Proposed Change 1, do not have the coastal provisions diluted as a consequence.²⁹² Ms Anton gave the

²⁹¹ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 29, lines 1446 – 1447.

²⁹² Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 29, lines 1455 – 1458.

specific example of Policy 40(b), which in the s 42A and Rebuttal version, had specific reference to the coastal marine area deleted, and instead captured as part of the “receiving environment”. “Coastal marine area” was restated in the Officer’s Reply Evidence, something which Ms Anton, accurately in our view, said was required as a matter of law in order to not lose the NZCPS-implementation that had existed with the operative provision.²⁹³

447. Objective 1 of the NZCPS is:

To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land by [among other things] maintaining coastal water quality, and enhancing it where it has deteriorated from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity.

448. We also note, as Ms Downing directed us to, Policy 22(3) of the NZCPS, which requires the sedimentation impacts of vegetation removal to be controlled.²⁹⁴ In addition, Policy 22(3) requires local authorities to ensure that subdivision, use or development will not result in a significant increase in sedimentation in the coastal marine area, or other coastal water.

449. In response to our question about Proposed Change 1 giving effect to the NZCPS, Ms Pascall at the hearing, said that the NPS-FM and NES-F only apply to the coastal environment in so far as it is a receiving environment, and if a provision applies directly to the coast, it should locate in the coastal chapter of the RPS²⁹⁵ (which was of course outside the scope of Proposed Change 1).

450. The NES-F applies to natural inland wetlands, which are defined in the NPS-FM to exclude the coastal marine area.

451. This does not mean that the regional council has no obligations relating to coastal wetlands (see for instance Objective 6 in Chapter 3.2 of the Operative RPS and also Method 53).

²⁹³ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 30, line 1495.

²⁹⁴ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 54, lines 2732 - 2740.

²⁹⁵ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 55, lines 2789 – 2820.

452. Provisions within Proposed Change 1 only reference the coastal marine area insofar as they are part of the receiving environment of freshwater bodies.²⁹⁶
453. We recommend amendments to Policy 40 to appropriately address and manage potential effects on wetlands, including coastal wetlands as receiving environments. We also recommend that the consenting pathways provisions the Officer recommends (Policies 40A and 40B are also adopted) as these give appropriate effect to national direction. We recommend a minor amendment to clause (k) to ensure alignment with Policies 9 and 10 of the NPS-FM and other provisions in the Change 1.
454. We note that following questions we posed in Minute 28, the Officer issued a replacement 'Reply Evidence' version of Policy 40A correcting some incorrect cross-references and articulation of the national direction. We recommend this version is accepted including the Officer's purple non-shaded amendments below.

3.17.2 Finding and s 32AA Evaluation

455. We largely agree with the Reporting Officer's recommendations on Policies 40, 40A and 40B for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal and Reply Evidence, including the Officer's response to the questions we posed in Minute 28. We recommend some amendments to Policy 40 to delete the reference to *Te Mana o te Wai* for consistency with Policies 44 and FW.5 and because the Policy itself gives expression to *Te Mana o te Wai* therefore it does not need to be referenced in the chapeau. We also recommend amendments to clause (a) to align with the NPS-FM, in particular Policy 5 which requires the health and well-being of degraded water bodies to be improved. These amendments give effect to higher order direction in the NZCPS and NPS-FM, they provide clarity on the outcomes sought, and are more effectively and efficiently integrated with other provisions in Proposed Change 1.

3.17.3 Recommendation

Policy 40: Maintaining ~~Protecting~~ Maintaining and improving enhancing the health and well-being of water bodies and freshwater ecosystems aquatic ecosystem health in water bodies – consideration

When considering an application for a regional resource consent, ~~the regional council must give effect to *Te Mana o te Wai* and in doing so must have particular~~ regard shall be given to:

²⁹⁶ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 815.

- (a) requiring ~~that managing~~ water quality, flows and water levels and aquatic habitats of surface water bodies ~~are managed~~ in a way that ~~gives effect to Te Mana o te Wai and~~ ~~maintains protects and improves~~ ~~enhances~~ the health and well-being of ~~degraded~~ waterbodies and ~~freshwater ecosystems, and at least maintains~~ the health and wellbeing of ~~all other water bodies and freshwater ecosystems~~ for the purpose of safeguarding aquatic ecosystem health;
- (b) ~~that, requiring managing as a minimum, freshwater quality in the coastal marine area in the coastal marine area is to be managed~~ in a way that ~~protects maintains and, where degraded, protects and enhances~~ ~~improves enhances~~ the health and well-being of ~~coastal waterbodies and the health and wellbeing of marine ecosystems~~ ~~waterbodies and the health and wellbeing of marine ecosystems receiving environments.~~; for the purpose of maintaining or enhancing aquatic ecosystem health; and
- (c) — managing water bodies and the water quality of coastal water for other purposes identified in regional plans:
- (c) providing for mana whenua / *tangata whenua* values, including *mahinga kai*;
- ~~(ca) — partnering with mana whenua/tangata whenua~~
- ~~(d) — maintaining or enhancing the functioning of ecosystems in the water body;~~
- (e) ~~maintaining~~ ~~maintaining~~ or enhancing the ecological functions of *riparian* margins;
- (f) minimising the effect of ~~the proposals such as gravel extraction, exploratory drilling, flood protection and works in the beds of lakes and rivers~~ on ~~groundwater~~ recharge areas that are connected to surface water bodies;
- (g) ~~maintaining~~ ~~maintaining~~ or enhancing the amenity and recreational values of *riparian* rivers and lakes, including those with significant values listed in Table 15 of Appendix 1;
- (h) protecting the ~~values of rivers and lakes that have~~ significant indigenous ecosystems and habitats with significant indigenous biodiversity values ~~of rivers and lakes, including those listed as identified~~ in Table 16 of Appendix 1;
- (i) ~~maintaining~~ ~~maintaining~~ natural flow regimes required to support aquatic *ecosystem health*;
- (j) ~~maintaining~~ ~~maintaining~~ or enhancing space for *riparian* rivers to undertake their natural processes;
- (k) ~~maintaining~~ ~~maintaining~~ fish passage ~~except when this conflicts with clause (q)~~;
- (l) protecting and reinstating *riparian habitat*, in particular *riparian habitat* that is important for fish spawning;
- (m) ~~discouraging~~ restricting stock access to estuaries *riparian*, *lakes* and *wetlands*;
- and
- (n) ~~discouraging~~ avoiding the removal or destruction of *indigenous wetland* plants in *wetlands*;
- ~~(o) — avoiding the loss of river extent or values, to the extent practicable~~
- ~~(p) — ensuring there is no further loss of extent of natural inland wetlands, and their values are protected;~~
- ~~(q) — protecting the habitat of indigenous freshwater species~~
- ~~(r) — protecting the habitat of trout and salmon, insofar as this is consistent with clause (q).~~

Explanation

Policy 40 provides criteria for considering regional consents to protect the health and wellbeing of waterbodies, particularly during the transition period before *regional plans* are changed to give effect to the NPS-FM.

Policy 40A: Loss of extent and values of natural inland wetlands – consideration

When considering an application for a regional resource consent for use and development within natural inland *wetlands* the regional council must not grant consent unless:

- (a) there will be no loss of extent of natural inland *wetlands* and their values will be protected; or
- (b) any loss of extent or values, arises from any of the following:
 - (i) the customary harvest of food or resources undertaken in accordance with *tikanga Māori*
 - (ii) *wetland* maintenance, restoration, or biosecurity (as defined in the National Policy Statement for Freshwater Management)
 - (iii) scientific research
 - (iv) the sustainable harvest of sphagnum moss
 - (v) the construction or maintenance of *wetland* utility structures (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020)
 - (vi) the maintenance or operation of *specified infrastructure*, or other *infrastructure* (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020)
 - (vii) natural hazard works (as defined in the Resource Management (National Environmental Standards for Freshwater) Regulations 2020); or
- (c) any loss of extent or values is a result of use and development within natural inland *wetlands* that:
 - (i) is necessary for the purpose of the construction or upgrade of *specified infrastructure* that will provide significant national or regional benefits; or
 - (ii) is necessary for the purpose of *urban development* that contributes to a well-functioning urban environment (as defined in the National Policy Statement on Urban Development 2020), and:
 - a. the *urban development* will provide significant national, regional or district benefits; and
 - b. the activity occurs on *land* that is identified for *urban development* in operative provisions of a regional or *district plan*; and
 - c. the activity does not occur on land that is zoned in a *district plan* as general rural, rural production, or rural lifestyle; and
 - d. there is no practicable alternative location for the activity within the area of the development, or every other practicable location in the area of the development would have equal or greater adverse effects on a natural inland *wetland*; or
 - (iii) is necessary for the purpose of quarrying activities and the extraction of the *aggregate* will provide significant national or regional benefits; or

- (iv) is for the purpose of the extraction of *minerals* (other than coal) and ancillary activities and the extraction of the *mineral* will provide significant national or regional benefits; or
 - (v) is necessary for the purpose of constructing or operating a new or existing landfill or cleanfill area and:
 - a. The landfill or cleanfill area:
 - b. will provide significant national or regional benefits; or
 - c. is required to support *urban development*; or
 - d. is required to support the extraction of *aggregates* as referred to in clause ~~(b)(ii), (c)(iii)~~
 - e. is required to support the extraction of *minerals* as referred to in clause ~~(b)(iii) (c)(iv)~~; and
 - f. there is either no practicable alternative location in the region, or every other practicable alternative location in the region would have equal or greater adverse effects on a natural inland *wetland*; and
 - (vi) in relation to clauses (c)(i) ~~to (b)(iii), (c)(iii), and (c)(iv)~~ there is a *functional need* for the activity to be done in that location; and
 - (vii) in all cases, the effects of the activity will be managed through applying the *effects management hierarchy*; and
- (d) For any activity listed in clauses (b)-(c), other than sub-clause (b)(i), the council is satisfied that:
- (i) The applicant has demonstrated how each step of the *effects management hierarchy* will be applied to any loss of extent or values of the *wetland* (including cumulative effects and loss of potential value), particularly (without limitation) in relation to the values of *ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, and amenity values*; and
 - (ii) Where *aquatic offsetting* or *aquatic compensation* is applied, the applicant has complied with principles 1 to 6 in Appendix 6 and 7 of the National Policy Statement ~~of for~~ Freshwater Management 2020, and has had regard to the remaining principles in Appendix 6 and 7, as appropriate; and
 - (iii) There are methods or measures that will ensure that the offsetting or compensation will be maintained and managed over time to achieve the conservation outcomes; and
 - (iv) Suitable conditions will be applied to the consent (if granted) that apply the *effects management hierarchy*, require the monitoring of the *wetland* at a scale commensurate with the risk of the loss of extent or values of the *wetland*, and specify how the requirements in clause (d)(iii) will be achieved.

Explanation

Policy 40A sets out the matters that must be considered and applied when assessing a resource consent for activities within natural inland *wetlands* and when loss of extent and values of natural inland *wetlands* will be considered. In all other cases the loss of extent and values must be avoided. The policy gives effect to Clause 3.22 of the NPS-FM but will cease to have effect when Policy 18A has been given effect in the regional plan.

Policy 40B: Loss of river extent and values

When considering an application for a regional resource consent for use and development within *rivers* the regional council must not grant consent unless:


- (a) There will be no loss of *river* extent and values; or
- (b) There is a *functional need* for the activity in that location; and
- (c) the activity will be managed by applying the *effects management hierarchy*; and
- (d) the applicant has demonstrated how each step in the *effects management hierarchy* will be applied to any loss of extent or values of the *river* (including cumulative effects and loss of potential value), particularly (without limitation) in relation to the values of: *ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, and amenity*; and
- (e) if *aquatic offsetting or aquatic compensation* is applied, the applicant has complied with principles 1 to 6 in Appendix 6 and 7 of the National Policy Statement for Freshwater Management 2020, and has had regard to the remaining principles in Appendix 6 and 7, as appropriate; and
- (f) there are methods or measures that will ensure that the offsetting or compensation will be maintained and managed over time to achieve conservation outcomes; and
- (g) Suitable will be applied to the consent (if granted) that:
 - (i) apply the *effects management hierarchy*
 - (ii) specify how the requirements in clause (f) will be achieved.

Explanation

Policy 40B applies to resource consents for activities in *rivers* and aims to ensure these activities result in no loss of extent of rivers unless there is a *functional need* for the activity in that location and the *effects management hierarchy* has been applied. Policy 40B gives effect to clause 3.24 of the NPS-FM but will cease to have effect when Policy 18B has been given effect in the *regional plan*.

3.18 Policy 17 – ~~Water allocation~~ Take and use of water for the health needs of people – regional plans

456. As notified, the Policy read:

Policy 17: Water allocation Take and use of water for the health needs of people – regional plans	
<p>Regional plans shall include policies, rules and/or methods to ensure the allocation that prioritises the health and wellbeing of the waterbody and freshwater ecosystems first, and then prioritises any take and use of water from any river or groundwater source provides sufficiently for the health needs of people, including: <u>The health needs of people include:</u></p> <ul style="list-style-type: none"> (a) the taking of water by any statutory authority that has a duty for public water supply under any Act of Parliament; (b) the taking of water for reticulation into a public water supply network; (c) the taking of water for community supplies; <u>and</u> (d) <u>the taking of water for marae.</u> <p>Explanation <u>Policy 17 gives effect to the objective of the National Policy Statement for Freshwater Management 2020 by prioritising the health and wellbeing of waterbodies first, and then providing for the take and use of water for the health needs of people, before other uses of water.</u></p> <p>This policy recognises the need to ensure that the health needs of people when allocating and using water are paramount.</p> <p>The Resource Management Act, in section 14, enables water to be taken for fire fighting purposes, an individual's reasonable domestic needs and the needs of an individual's animals for drinking water, provided there are no, or not likely to be any, adverse effects on the environment.</p>	

457. Policy 17 gives effect to the objective of the NPS-FM (clause 2.1) by prioritising the health and wellbeing of waterbodies first, and then providing for the take and use of water for the health needs of people, before other uses of water.

3.18.1 Submissions, Evidence and Analysis

458. Submitters generally supported Policy 17 as notified, although several of those submitters (including Rangitāne [S168.041]) sought amendments including clarifying that second priority water takes are only for drinking water and sanitation and then only as needed for the health needs of

people, and that all other uses are within the third priority of the *Te Mana o te Wai* hierarchy.

459. Forest and Bird sought that clause (c) is amended to refer to community drinking water supplies [S165.051]. MDC [S166.028] requested inclusion of economic and cultural needs, Te Tumu Paeroa [S102.046] supported by Ngāti Toa, sought an amendment to the Policy to include papakāinga in clause (d) to ensure water can be provided to such developments.
460. These submissions were addressed in the s 42A and Rebuttal Evidence by inserting the NRP definition of the “health needs of people” into Proposed Change 1. The definition excludes the use of water outside except for water for animal consumption, and water used by industry as process water or cooling water.²⁹⁷ The definition includes drinking water and sanitation and so therefore accepts the relief sought at least in part, by Rangitāne. The Officer considered there was scope to include the definition from the NRP through PCC’s relief in relation to definitions.²⁹⁸ The Officer did not agree that consideration of the health needs of people was limited to drinking water as limb (b) of *Te Mana o te Wai* states that drinking water is an example of health needs.²⁹⁹ The Officer supported including papakāinga in clause (d) of Policy 17.
461. The Officer did not agree with Ms Berkett’s proposal to include all the priorities from the *Te Mana o te Wai* hierarchy into Policy 17. It was appropriate for the RPS to direct the regional plan as to the priorities for water take and use, but this did not mean that other takes could not be considered.³⁰⁰ As Ms Pascall explained in response to questions on this point in the Hearing, the purpose of Policy 17 is “to reiterate what the priorities are in allocating takes and use of water”,³⁰¹ but this does not mean that the third limb in *Te Mana o te Wai* does not apply at all, it is just not prioritised above the health and wellbeing of water or the health needs of people.³⁰²

²⁹⁷ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, paras 562 – 563.

²⁹⁸ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 564.

²⁹⁹ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 561.

³⁰⁰ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 167.

³⁰¹ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 27, lines 1327 – 1328. Note there is a typo / error in the transcript which refers to “taken use of water”, which we understand should have read “takes and use of water”.

³⁰² Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 27, lines 1323 – 1328; and lines 1202 – 1203.

462. Ms Pascall confirmed this position in her Reply Evidence having heard WFF’s presentation at the hearing.³⁰³ Ms Pascall agreed with Ms Landers for Hort NZ and Mr Brass that the chapeau to the Policy needed amendment so that the “health needs of people” was not defined differently both times it was mentioned.
463. HortNZ sought relief to add food production that contributes to domestic food supply as a new clause to the list of matters that are considered ‘the health needs of people’. This submission was supported by Ms Landers’ planning evidence and the industry statement filed by Ms Levenson.³⁰⁴ HortNZ sought support for their position from clause 3.33 of the NPS-FM which sets out specific provisions for two identified Specified Vegetable Growing areas. We note these provisions were removed from the NPS-FM in December 2023, and in any event, applied to areas outside the Wellington Region. However, it is the s 42A Officer’s view that it is not appropriate to recognise the domestic supply of fruit and vegetables as a ‘priority 2’ *Te Mana o te Wai* issue, and instead it is part of the third priority in the hierarchy – the ability of people and communities to provide for their social, economic and cultural wellbeing, now and in the future.³⁰⁵
464. In the Officer’s Reply Evidence, she states that following the Hearing, her view had not changed and that the domestic supply of fruit and vegetables should come within the third priority.³⁰⁶ She also notes the relief sought would cause a conflict with the NRP.
465. WFF sought to delete the notified amendments to Policy 17 and defer these changes to 2024. This relief was rejected as Ms Pascall considered the amendments are necessary to give effect to the NPS-FM and implement the *Te Mana o te Wai* hierarchy of obligations.
466. We agree with Ms Pascall’s analysis and think it is appropriate for Policy 17 to specify a priority for water take and use, and this priority gives appropriate regional expression to the direction in the NPS-FM. The Policy does not say that other takes and use of water cannot be provided for. We

³⁰³ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 42 – 43.

³⁰⁴ Industry Statement by Emily Levenson for Horticulture New Zealand, HS5, 2 November 2023, para 42.

³⁰⁵ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, paras 565.

³⁰⁶ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 111.

also consider it appropriate to cross reference the NRP definition of “health needs of people”.

467. Ms Downing for Forest and Bird supported the definition of “health needs of people” but noted that it extended to water consumed by animals, but this was not needed because drinking water for livestock was already allowed for by s 14(3)(b)(ii) of the RMA and didn’t sit well with the second-order *Te Mana o te Wai* priority which targets the health needs of people.³⁰⁷ We agree that water for livestock is covered in the Act, however we see no risk with it also being addressed in the definition of “health needs of people” and think it is a useful reference there for RPS-users.

3.18.2 Finding

468. We agree with the Reporting Officer’s recommendations on Policy 17 for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal and Reply Evidence.

3.18.3 Recommendation

Policy 17: ~~Water allocation~~ Take and use of water for the *health needs of people* – regional plans

Regional plans shall include policies, rules and/or methods ~~to ensure the allocation that prioritises the health and wellbeing of the waterbody and *freshwater* ecosystems first, and then prioritises any take and use of water from any river or groundwater source provides sufficiently for the *health needs of people, including:*~~ *including: The health needs of people include:*

- (a) the taking of water by any statutory authority that has a duty for public water supply under any Act of Parliament;
- (b) the taking of water for reticulation into a public water supply network;
- (c) the taking of water for community supplies; and
- (d) the taking of water for marae and papakāinga.


Explanation

Policy 17 gives effect to the objective of the National Policy Statement for Freshwater Management 2020 by prioritising the health and wellbeing of waterbodies first, and then providing for the take and use of water for the *health needs of people*, before other uses of water.

³⁰⁷ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 54, lines 2750 – 2754.

3.19 Policy 44 - Managing water takes and use to give effect to *Te Mana o te Wai* ensure efficient use – consideration

469. The notified Policy stated:

Policy 44: Managing water takes and use to give effect to <i>Te Mana o te Wai</i> ensure efficient use – consideration	
<p>When considering an application for a resource consent, notice of requirement, or a change, variation or review of a regional plan to take and use water, <i>Te Mana o te Wai</i> must be given effect to so that: particular regard shall be given to:</p> <ul style="list-style-type: none"> (a) <u>Māori freshwater values, including mahinga kai are provided for;</u> (b) <u>sites of significance, wāhi tapu and wāhi tupuna are protected;</u> (c) <u>Environmental flows and levels, including variability of flows, are achieved;</u> (d) <u>Take limits are achieved that provide for flow or level variability, safeguard ecosystem health, provide for the life cycle needs of aquatic life, and take into account environmental outcomes;</u> (e) whether the applicant has demonstrated that the volume of water sought is reasonable and justifiable for the intended use, including consideration of soil and crop type when water is taken for irrigation purposes; (f) requiring the consent holder to measure and report the actual amount of water taken; and (g) requiring the consent holder to adopt water conservation and demand management measures and demonstrate how water will be used efficiently; <u>and</u> (h) <u>there is consideration of alternate water supplies such as storage or capture of rainwater for use during the drier summer months</u> <p>Explanation Efficient water use relies on people taking only the amount of water that is needed and having systems in place to avoid waste. The amount of water taken should be measured and reported on to allow assessment as to whether allocation limits and permissible low flows have been set at appropriate levels. <u>Appropriate consideration of mana whenua values has been added. Consideration of alternative water supplies is also required.</u></p>	

470. Policy 44 is a consideration policy in the Operative RPS. It was amended in the notified Change to give effect to *Te Mana o te Wai*.

3.19.1 Submissions, Evidence and Analysis

471. Various submitters supported the Policy but sought amendments, including to give effect to Policies 9 and 10 of the NPS-FM regarding the habitat of trout and salmon (Fish and Game [S147.015]), and amendments regarding take limits (including Hort NZ [S128.043]. Wairarapa Water

Users Society [S157.044] was concerned that clause (h) placed additional requirements for new consents and the renewal of existing consents. PCC [S30.067] sought an amendment to clarify that the Policy only addresses regional council matters; Ātiawa sought a reference to *ki uta ki tai* and Taranaki Whānui to partnering with mana whenua / tangata whenua.

472. The Reporting Officer accepted many of these submission points, including limiting the Policy to regional consents or changes, variation or review of a regional plan, including reference to *ki uta ki tai*, the habitat of trout and salmon provided protection of this habitat was also consistent with the protection of the habitat of indigenous freshwater species. The Officer agreed with Taranaki Whānui's relief in part and recommended a new clause regarding early engagement with mana whenua / tangata whenua which she considered to be appropriate for a consenting process and other decision-making.
473. In response to submitters who were concerned that the proposed clause imposes a requirement for water storage, Ms Pascall said the amended clause requires a consideration of this solution through the assessment of a resource consent on a case-by-case basis, and considers that this would be a suitable alternative where water allocation is close to over-allocation.³⁰⁸ In Ms Pascall's opinion, clause (h) gives effect to Policy 11 of the NPS-FM which states "Freshwater is allocated and used efficiently, all existing over-allocation is phased out, and future over-allocation is avoided". Ms Pascall also recommended an amendment to clause (h) to include reference to alternate water supplies for non-potable use.
474. In light of Ms Berkett's planning evidence for WFF, the Officer recommended an amendment to the chapeau to clarify that the Policy applies to plan changes, variations or a review of a regional plan that relate to the take and use of water. The Officer recommended retaining the reference to plan changes, variation and review processes because the Policy will assist in addressing any time lag between Proposed Change 1 becoming operative and the Council giving full effect to Policy 12 which directs the setting of limits on resource use, including take limits.³⁰⁹
475. At the hearing, we asked Ms Coughlan, Resource Officer for Wellington Fish and Game who presented evidence on the habitat of trout and salmon and interaction with indigenous species, to talk more about how

³⁰⁸ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 583.

³⁰⁹ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 175.

co-habitation of species works in practice. Ms Coughlan said that based on her research and others, it is:³¹⁰

really clear that [species] co-exist in a vast majority of places, but we do have some incredibly special unique treasure species that we would need to make sure aren't being impacted by gradation of trout or salmon or birds. Protection of the habitat in those spaces would require some sort of nuance look at species interaction.

476. Ms Coughlan said that in her research, that would be about 10% of waterways and for the rest, it would be a matter of habitat restoration.
477. After hearing submitters' presentations at the hearing and reviewing the Policy further, Ms Pascall advised in her Reply Evidence that the reference to "giving effect to" *Te Mana o te Wai* in the chapeau is unnecessary (as she had also considered it to be in both Policies 44 and FW.5) because the Policies themselves already give effect to *Te Mana o te Wai*, and therefore it was not necessary for them to state this; it was implicit. Ms Pascall recommended deleting the reference to *Te Mana o te Wai* from the Policy (as well as Policies 41, 42, 44 and FW.5 to provide a consistent approach).³¹¹
478. We are comfortable with this amendment and also note that the heading of the Policy includes "to give effect to *Te Mana o te Wai*" and it also cascades from Objective 12 which is focused on *Te Mana o te Wai*. We also support the amendments proposed to align the Policy better with a consideration Policy (eg through the addition of the words "the extent to which" and "whether").
479. Irrigation New Zealand supported in part Policy 44 and sought an amendment to give effect to the National Policy Statement on Highly Productive Land (NPS-HPL). This relief was not accepted by Ms Pascall saying the NPS-HPL came into effect after Change 1 was notified and the Council has signalled through its s 32 report that amendments to the RPS to give effect to the NPS-HPL will be undertaken through a future change to the RPS.

³¹⁰ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 4, lines 165 – 172.

³¹¹ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 33 – 34.

3.19.2 Finding

480. We agree with the Reporting Officer's recommendations on Policy 44 for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal and Reply Evidence.

3.19.3 Recommendation


Policy 44: Managing water takes and use to give effect to *Te Mana o te Wai* ensure efficient use – consideration

When considering an application for a **regional** resource consent to **take or use water; notice of requirement**, or a change, variation or review of a **regional plan that relates to the take and use water, *Te Mana o te Wai* must be given effect to so that have regard to:** particular regard shall be given to:

- (a) **The extent to which** Māori freshwater values, including *mahinga kai* are provided for;
- (ab) **The extent to which** **Early engagement has occurred** with mana *whenua/tangata whenua*;
- (b) **Whether** **s**sites of significance, wāhi tapu and wāhi tupuna **will be** **are** protected;
- (ba) **The extent to which** **integrated management, ki uta ki tai** **is** **has been considered**
- (bb) **Whether** **The** **habitats of indigenous freshwater species** are protected,
- (bc) **Whether** **The** **habitat of trout and salmon is protected, insofar as this is consistent with clause (bb)**
- (c) **Environmental flows and levels, including variability of flows, are achieved;**
- (d) **Where take limits have been set, whether take limits will be** **are achieved not exceeded; Take limits are achieved that provide for flow or level variability, safeguard ecosystem health, provide for the life cycle needs of aquatic life, and take into account environmental outcomes;**
- (e) **whether the applicant has demonstrated that whether** **t**the volume of water sought is reasonable and justifiable for the intended use, including consideration of soil and crop type when water is taken for irrigation purposes;
- (f) **requiring the whether the** **c**consent holders **will are required to** measure and report the actual amount of water taken; **and**
- (g) **requiring the whether the** **c**consent holders **to will** adopt water conservation and demand management measures and **will** demonstrate how water will be used efficiently; **and**
- (h) **whether** **t****There is consideration of** alternate water supplies for non-potable water use such as storage or capture of rainwater for use during the drier summer months **has been considered.**

3.20 Policy 43 – Protecting aquatic ecological function of waterbodies – consideration

481. The notified Policy read:

Policy 43: Protecting aquatic ecological function of water bodies – consideration	
<p>When considering an application for a resource consent, notice of requirement, or a change, variation or review of a district or regional plan, particular regard shall be given to:</p> <ul style="list-style-type: none"> (a) — maintaining or enhancing the functioning of ecosystems in the water body; (b) — maintaining or enhancing the ecological functions of riparian margins; (c) — minimising the effect of the proposal on groundwater recharge areas that are connected to surface water bodies; (d) — maintaining or enhancing the amenity and recreational values of rivers and lakes, including those with significant values listed in Table 15 of Appendix 1; (e) — protecting the significant indigenous ecosystems and habitats with significant indigenous biodiversity values of rivers and lakes, including those listed in Table 16 of Appendix 1; (f) — maintaining natural flow regimes required to support aquatic ecosystem health; (g) — maintaining fish passage; (h) — protecting and reinstating riparian habitat, in particular riparian habitat that is important for fish spawning; (i) — discouraging stock access to rivers, lakes and wetlands; and (j) — discouraging the removal or destruction of indigenous wetland plants in wetlands. <p>Explanation</p> <p>This policy identifies key elements of habitat diversity that are essential for healthy aquatic ecosystems to survive and be self-sustaining.</p> <p>When areas of habitat in one part of a river or lake are degraded or destroyed by people’s activities, critical parts of the ecosystem may be permanently affected, with consequential effects elsewhere in the ecosystem. Specific policies and regional rules can set out where it is important to retain habitat for ecological function. Remedying and mitigating of effects can include offsetting, where appropriate.</p> <p>Application for a resource consent refers to all types of resource consent. Policy 43 shall cease to be considered for resource consents processed by the Wellington Regional Council once policies 18 and 19 are given effect to in a regional plan. Policy 43 shall continue to be considered by city and district councils when processing resource consents, notices of requirement and making changes, variations or reviewing district plans.</p> <p>The rivers and lakes with significant amenity and recreational values listed in Table 15 of Appendix 1 were identified by the community as places that are regularly used for recreational activities.</p> <p>The rivers and lakes with significant indigenous ecosystems were selected using indicators of aquatic invertebrate community health, the diversity of indigenous migratory fish species, the presence of nationally threatened fish species and the location of inanga spawning habitat. The criteria used to assess rivers and lakes with significant indigenous ecosystems are given in Appendix 1.</p>	

3.20.1 Submissions, Evidence and Analysis

482. Proposed Change 1 proposes deletion of Policy 43 as new and updated policies are proposed that give effect to the NPS-FM, therefore Policy 43 is no longer required.
483. The majority of submissions were supportive of its deletion including HCC [S115.068] and Ātiawa [S131.092].
484. We agree with the Officer that the deletion of Policy 43 is appropriate as Change 1 is proposing new and updated policies that give effect to the NPS-FM.

3.20.2 Finding

485. We agree with the Reporting Officer's recommendations on Policy 43 for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal and Reply Evidence.

3.20.3 Recommendation

~~Policy 43: Protecting aquatic ecological function of water bodies – consideration~~

~~When considering an application for a resource consent, notice of requirement, or a change, variation or review of a district or regional plan, particular regard shall be given to:~~

- ~~(a) — maintaining or enhancing the functioning of ecosystems in the water body;~~
- ~~(b) — maintaining or enhancing the ecological functions of riparian margins;~~
- ~~(c) — minimising the effect of the proposal on groundwater recharge areas that are connected to surface water bodies;~~
- ~~(d) — maintaining or enhancing the amenity and recreational values of rivers and lakes, including those with significant values listed in Table 15 of Appendix 1;~~
- ~~(e) — protecting the significant indigenous ecosystems and habitats with significant indigenous biodiversity values of rivers and lakes, including those listed in Table 16 of Appendix 1;~~
- ~~(f) — maintaining natural flow regimes required to support aquatic ecosystem health;~~
- ~~(g) — maintaining fish passage;~~
- ~~(h) — protecting and reinstating riparian habitat, in particular riparian habitat that is important for fish spawning;~~
- ~~(i) — discouraging stock access to rivers, lakes and wetlands; and~~
- ~~(j) — discouraging the removal or destruction of indigenous wetland plants in wetlands.~~

Explanation

This policy identifies key elements of habitat diversity that are essential for healthy aquatic ecosystems to survive and be self-sustaining.

When areas of habitat in one part of a river or lake are degraded or destroyed by people's activities, critical parts of the ecosystem may be permanently affected, with consequential effects elsewhere in the ecosystem. Specific policies and regional rules can set out where it is important to retain habitat for ecological function. Remedying and mitigating of effects can include offsetting, where appropriate.


Application for a resource consent refers to all types of resource consent. Policy 43 shall cease to be considered for resource consents processed by the Wellington Regional Council once policies 18 and 19 are given effect to in a regional plan. Policy 43 shall continue to be considered by city and district councils when processing resource consents, notices of requirement and making changes, variations or reviewing district plans.

The rivers and lakes with significant amenity and recreational values listed in Table 15 of Appendix 1 were identified by the community as places that are regularly used for recreational activities.

The rivers and lakes with significant indigenous ecosystems were selected using indicators of aquatic invertebrate community health, the diversity of indigenous migratory fish species, the presence of nationally threatened fish species and the location of inanga spawning habitat. The criteria used to assess rivers and lakes with significant indigenous ecosystems are given in Appendix 1.

3.21 Policy FW.1 - Reducing water demand – regional plans

486. The notified Policy read:

Policy FW.1: Reducing water demand – regional plans	
<p>Regional plans shall include policies, rules and/or methods to reduce demand of water from registered water suppliers and users, including:</p> <ul style="list-style-type: none">(a) <u>provisions addressing public and private water losses, including leaks;</u>(b) <u>provisions requiring efficient end use of water for new developments;</u>(c) <u>provisions addressing alternate water supplies for non-potable uses, particularly in the summer months; and</u>(d) <u>water conservation measures, particularly in the summer months.</u>	
<p>Explanation <u>Policy FW.1 requires regional plans to address the reduction of demand in municipal water supplies.</u></p>	

487. This is a new policy providing direction to regional plans to address water demand in the Region and to give effect to Policies 4 and 11 of the NPS-FM.³¹²

3.21.1 Submissions, Evidence and Analysis

488. The policy is supported as notified by a range of submitters (KCDC [S16.054], PCC [S30.043], PPFL [FS25.076], Ātiawa [S131.067], Ngā Hapu [FS29.337], WCC [S140.044], Fish and Game [S147.056], BLNZ [FS30.225]) and Forest and Bird [S165.053].

489. UHCC [S34.068] said the issue of leaks was a maintenance concern. Other submitters expressed concern over its breadth of application, clarity and the extent of its direction. SWDC [S79.031] sought that the words “increase efficiency” replace “reduce demand”. Others raised concerns about the terms “registered water supplies and users” and “municipal water supplies”.

490. Many of these concerns were addressed in the s 42A Report and revisions to the Policy were recommended. The Officer recommended the direction change from “addressing” to “promoting” to clarify the intent. The Officer also agreed with Wellington Water to align terminology and definitions with the NRP and Taumata Arowai. The NRP has a definition of *community drinking water supply* and *group drinking water supply* and the Officer recommended these definitions are included. These terms would also

³¹² Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 733.

provide clarity that the Policy does not apply to activities like irrigation and is limited to drinking water supply.³¹³

491. In response to relief sought that the Policy should be deleted, the Reporting Officer notes:³¹⁴

the policy is appropriate to include in the RPS, with my recommended amendments. The policy provides appropriate direction in order to give effect to the NPS-FM and address water demand in the region. The policy supports other provisions relating to freshwater and the broader integrated approach the Council has taken in Change 1 to manage the effects of urban development and a growing population.

492. Concerns raised in submitter evidence included in relation to monitoring, enforcement and the cost of compliance (Ms Rojas on behalf of UHCC). The Reporting Officer responded that she did not consider that the Policy would place additional costs or requirements on territorial authorities because it only applies to regional plans.³¹⁵

493. We agree with the Officer's recommendations and consider that the Policy is appropriate regulatory direction for regional plans to support Policy 11 of the NPS-FM and reduce water demand in the Region.

3.21.2 Finding

494. We agree with the Reporting Officer's recommendations on Policy FW.1 for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal and Reply Evidence.

3.21.3 Recommendation

Policy FW.1: Reducing water demand – regional plans

Regional plans shall include policies, rules and/or methods to reduce demand of for water from ~~registered water suppliers and users community drinking water supplies and group drinking water supplies~~, including:

- (a) ~~provisions addressing requiring a reduction in public and private water losses, including leaks targets for the reduction of water losses and leaks from community drinking water supplies and group drinking water supplies;~~
- (b) ~~provisions~~ requiring efficient end use of water for new developments;
- (c) ~~provisions addressing promoting~~ alternate water supplies for non-potable uses, particularly in the summer months; and

³¹³ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 736.

³¹⁴ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 744.

³¹⁵ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 127.

(d) requiring water conservation measures, particularly in the summer months.

Explanation

Policy FW.1 requires regional plans to address the reduction of demand in *community drinking water supplies or group drinking water supplies* ~~municipal water supplies~~.

3.22 Policy FW.2 - Reducing water demand – district plans

495. The notified Policy stated:

Policy FW.2: Reducing water demand – district plans	
<p>District plans shall include policies, rules and/or methods to reduce demand of water from registered water suppliers and users, including where practicable:</p> <p>(a) <u>provisions improving the efficiency of the end use of water on a per capita basis for new developments; and</u></p> <p>(b) <u>provisions requiring alternate water supplies for non-potable use in new developments.</u></p>	
<p>Explanation</p> <p><u>Policy FW.2 requires district plans to address the reduction of demand in municipal water supplies.</u></p>	

496. This is a new Policy requiring district plans to include provisions to reduce water demand.

3.22.1 Submissions, Evidence and Analysis

497. Some submitters (eg KCDC [S16.055] and Kāinga Ora [S158.021] expressed concerns that measures to improve efficiency (as required by clause (a)) are outside the scope of RMA s 31 or cannot be addressed by territorial authorities. Wellington Water [S113.025] sought clarity about what water supplies the Policy applies to and it also sought consistency across policies. Ms Pascall acknowledged that:³¹⁶

improving the efficiency of the end use of water is an important part of reducing demand, [and] this is a very challenging issue to address through RMA mechanisms.

498. Ms Pascall said this issue is more appropriately addressed under the Building Act and non-regulatory methods outside of the RMA and therefore recommended deleting clause (a). However, Ms Pascall said the requirement in clause (b) to include provisions in district plans requiring alternative water supplies for non-potable use was appropriate but that the verb “promoting” was appropriate instead of “requiring”. The Officer recommended consistent terminology to that recommended in Policy FW.1.

499. Mr Jeffries and Ms Cook on behalf of WCC recommended that the Policy be deleted as the issue was better addressed out of the District Plan including through water pricing, addressing leaks, and infrastructure investment as identified through Council’s Long Term Plan and other

³¹⁶ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 746.

funding mechanisms.³¹⁷ They also said it duplicated the hydrological control policy.

500. Ms Pascall responded that:³¹⁸

The two policies are required for a different purpose one possible method for achieving hydrological control is the use of rainwater tanks for retention, and this could also be used to meet Policy FW.2. I also do not agree that clause (b) is better addressed through other avenues outside of the district plan. While those tools can and should be used, there is still a role for the district plan in promoting alternate supplies to support resilience and climate change adaptation.

3.22.2 Finding

501. We agree with the Reporting Officer's recommendations on Policy FW.2 for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal and Reply Evidence.

3.22.3 Recommendation

Policy FW.2: Reducing water demand – district plans

District plans shall include policies, rules and/or methods to reduce demand ~~offor~~ water from ~~registered water suppliers and users~~ *community drinking water supplies and group drinking water supplies*, including where practicable:

- (a) ~~provisions improving the efficiency of the end use of water on a per capita basis for new developments; and~~
- (b) *provisions* requiring *promoting* alternate water supplies for non-potable use in new developments, *such as the requirement to install rainwater tanks.*

Explanation


Policy FW.2 requires district plans to address the reduction of demand in *community drinking water supplies or group drinking water supplies* ~~municipal~~ water supplies.

³¹⁷ Joint statement of supplementary planning evidence of Joe Jeffries and Maggie Cook on behalf of Wellington City Council, 21 November 2023, paras 26 – 27.

³¹⁸ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 131.

3.23 Policy FW.4 - Financial contributions for urban development – district plans

502. The notified Policy read:

Policy FW.4: Financial contributions for urban development – district plans	
<p><u>District plans shall include policies and rules that require financial contributions to be applied to subdivision and development as a condition of the resource consent where off site stormwater quality and quantity treatment is required, as set out in a Stormwater Management Plan (required as a condition of a network discharge</u></p>	
<p><u>consent for that catchment). The district plan policy shall outline how a fair share of the cost is determined, and the nature of the contribution. A financial contribution will not be required where a development contribution (as required by a Development Contribution Policy under the Local Government Act) has been collected from the same development for the same purpose.</u></p>	
<p><i><u>Note: financial contributions cannot be imposed against Minister of Education or Minister of Defence</u></i></p>	
<p>Explanation</p> <p><u>Policy FW.4 requires financial contributions, or alternatively development contributions to be collected for the construction of catchment scale stormwater solutions, so that urban new urban development pays their fair share.</u></p>	

503. This is a new Policy supporting the inclusion of financial contributions in district plans.

3.23.1 Submissions, Evidence and Analysis

504. While submitters were generally not opposed to financial contributions, many, including most territorial authorities requested its deletion for reasons such as financial contributions are inefficient and duplicate the existing approach of requiring development contributions and developer agreements administered under the Local Government Act 2002 (PCC [S30.046]). HCC [S115.046] said that how stormwater is funded is a decision for territorial authorities and their communities under the LGA.

505. Kāinga Ora [S158.022] considered that financial contributions for stormwater mitigation should be limited to the effects at point of connection for a development allotment, and alternative solutions for stormwater treatment should be provided for to manage quality and quantity of stormwater within a development, which would then offset the payment of financial contributions.

506. In response to submitters' concerns, the Reporting Officer recommended the Policy be deleted, stating:³¹⁹

I consider that the policy is unnecessary and, as noted by some territorial authorities, there are a range of funding tools available to territorial authorities for this purpose. Many councils already charge development contributions which is a more development-specific response. I consider flexibility should be retained for territorial authorities to choose the right funding tools and mechanisms for the local situation, and it is unnecessary for the RPS to specify which tools to utilise.

3.23.2 Finding

507. We agree with the Reporting Officer's recommendations on Policy FW.4 for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal and Reply Evidence.

3.23.3 Recommendation

~~Policy FW.4: Financial Contributions for urban development – district plans~~

~~District plans shall include policies and rules that require financial contributions to be applied to subdivision and development as a condition of the resource consent where off site stormwater quality and quantity treatment is required, as set out in a Stormwater Management Plan (required as a condition of a network discharge consent for that catchment). The district plan policy shall outline how a fair share of the cost is determined, and the nature of the contribution. A financial contribution will not be required where a development contribution (as required by a Development Contribution Policy under the Local Government Act) has been collected from the same development for the same purpose.~~

~~Note: financial contributions cannot be imposed against Minister of Education or Minister of Defence~~


~~Explanation~~

~~Policy FW.4 requires financial contributions, or alternatively development contributions to be collected for the construction of catchment scale stormwater solutions, so that urban new urban development pays their fair share.~~

³¹⁹ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 770.

3.24 Policy FW.5 - Water supply planning for climate change and urban development

The notified Policy read:

<u>Policy FW.5: Water supply planning for climate change and urban development – consideration</u>	
<u>When considering a change, variation or review of a regional or district plan particular regard shall be given to:</u>	
(a) <u>climate change impacts on water supply, including water availability and demand;</u>	
(b) <u>demand from future population projections;</u>	
(c) <u>development of future water sources, storage, treatment and reticulation;</u> <u>and</u>	
(d) <u>protection of existing and future water sources.</u>	
Explanation	
<u>Policy FW.5 requires water supply planning to adequately considered including the impacts of climate change and new urban development.</u>	

508. This is a new policy requiring consideration of climate change impacts and new urban development in any change, variation or review of a regional or district plan.

3.24.1 Submissions, Evidence and Analysis

509. UHCC [S34.048] supported the intent but considered the Policy should be specific to changes, variations or reviews which deal with public potable supply only. Wellington Water [S113.039 and S113.040] sought reference to the potential for saline intrusion into the aquifer and also *ki uta ki tai* for protection of water sources. A number of submitter concerns are addressed in the s 42A Report, with several wording changes proposed to the Policy. Mr McDonnell on behalf of PCC queried whether the Policy can be given effect to through a district plan as the supply of water and protection of sources of water supply are addressed through other regulatory and funding mechanisms. Ms Landers on behalf of PCC sought clarification in the chapeau that the Policy specifically applies to urban development.

510. The Reporting Officer, Ms Pascall agreed with the relief sought as it provided drafting clarity and supports the efficient and effective application of the Policy.³²⁰

³²⁰ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 135..

511. In her Reply Evidence she further comments that:³²¹

the reference to ‘giving effect to’ Te Mana o te Wai in the chapeau is unnecessary because the policies themselves already give effect to Te Mana o te Wai, and therefore in implementing the policy this is implicit. These policies also give effect to Objective 12 which is focused on Te Mana o te Wai.

512. Therefore, the Reporting Officer recommends removal of “give effect to Te Mana o te Wai” in the chapeau. As we have stated elsewhere in this Report, we agree with this recommendation.

3.24.2 Finding

513. We agree with the Reporting Officer’s recommendations on Policy FW.5 for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal and Reply Evidence.

3.24.3 Recommendation

Policy FW.5: Water supply planning for climate change and urban development – consideration

When considering a change, variation or review of a regional ~~or district~~ plan ~~that relates to urban development~~ *urban development*, ~~local authorities~~ the regional council ~~must give effect to Te Mana o te Wai, and particular regard shall be given to~~ have regard to:

- (a) climate change impacts on *community drinking water supplies and group drinking water supplies*, including water availability and demand ~~and the potential for saline intrusion into aquifers~~;
- (b) demand from future population projections;
- (c) development of future water sources, storage, treatment and reticulation; and
- (d) ~~an integrated approach, ki uta ki tai, in the~~ protection of existing and future water sources.


Explanation

Policy FW.5 requires water supply planning to adequately considered including the impacts of climate change and new ~~urban development~~ *urban development*.

³²¹ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 33.

3.25 Policy FW.7 - Water attenuation and retention – non regulatory

514. The notified Policy stated:

Policy FW.7: Water attenuation and retention – non-regulatory	
Promote and support water attenuation and retention including:	
(a) <u>nature based solutions including slowing water down in the landscape and increasing groundwater recharge (riparian management, wetland enhancement/restoration, flood management); and</u>	
(b) <u>built solutions including storage at community, farm, and domestic (rain tanks) scales, groundwater augmentation, built retention (wetlands, bunds).</u>	
Explanation	
<u>Policy FW.7 promotes and supports natural and built solutions to attenuate and retain water.</u>	

515. This new Policy was initially intended to apply to the rural sector and in particular to support the implementation of the Wairarapa Water Resilience Strategy (WWRS).

3.25.1 Submissions, Evidence and Analysis

516. The notified Policy was supported by BLNZ [S78.002], Wairarapa Water Users Society [S145.003], Fish and Game [S147.080] and others. It was opposed by Wellington Water, and KCDC [S16.073] considered that water attenuation and retention should be required via regulatory methods. WFF [S163.083] sought that the Policy be expressed as an objective given the scale and urgency of the water resilience challenge. Wellington Water [S113.045] sought that clause (b) should be amended to say, “while ensuring appropriate consideration of public health outcomes”.

517. In the s 42A Report, the Officer said that clause (b) was an inclusive rather than an exclusive list, and so other solutions could also be considered. The Officer supported Wellington Water’s relief for the provision to support public health outcomes, but it should, instead, refer to the “health needs of people” to be consistent with amendments proposed to Policy 17.³²²

518. Ms McGruddy in her evidence statement said the provision should be reframed as an objective and state (or words to this effect): “Provide for secure and reliable access to water to provide for social, economic and cultural wellbeing.”³²³

³²² Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 840.

³²³ Hearing Stream 5, Hearing Statement of Elizabeth McGruddy on behalf of Wairarapa Federated Farmers, 15 November 2023, para 33.

519. The Officer did not support Ms McGruddy’s request for the Policy to be reframed as an objective as the Policy supports the implementation of Objectives 12 and 20 (relating to natural hazard and climate change mitigation and adaptation) and therefore there was already support at an objective level for the matters addressed in the Policy.³²⁴
520. Ms Landers for HortNZ said that the Policy is relevant for rural areas outside of the Wairarapa and there was no rationale for limiting it to this area. Ms Pascall agreed in her Rebuttal Evidence that the Policy should be broadened to apply to all rural areas and recommended that the reference to “Wairarapa” be removed.³²⁵
521. At the hearing, Ms McGruddy said WFF wanted the Policy “to enable” both nature-based solutions and built solutions. The Officer considered that more directive wording was not appropriate for a non-regulatory policy and she recommended the words “promote and support” be retained.³²⁶ Both Ms Landers and Ms McGruddy considered that the “health needs of people” should be deleted from clause (b). At the hearing, Ms Landers said she was concerned that the Policy may be ‘read down’³²⁷ and therefore that water attenuation and retention may only be promoted “where it’s for drinking water”.³²⁸
522. In her Reply Evidence, Ms Pascall acknowledged the concerns raised in relation to water storage and said that the new consenting pathway in Policy 18A would apply to ‘water storage’ as specified infrastructure within natural inland wetlands. She also said that it was appropriate to consider the health needs of people (as defined) when undertaking built solutions, but that this did not mean other considerations (which we understood would include the third priority limb of *Te Mana o te Wai*) could not also be considered.³²⁹ The Officer also noted that Policy FW.7 gives effect to a broader range of objectives and not just those in the Freshwater chapter,

³²⁴ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 842.

³²⁵ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, paras 141.

³²⁶ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 58.

³²⁷ This was not Ms Lander’s term, but instead our understanding of the evidence she presented at the hearing, Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 23, lines 1142 – 1144.

³²⁸ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 23, line 1144.

³²⁹ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, paras 141 – 142.

and it was therefore appropriate to use the broader term *nature-based solutions* in the Policy.³³⁰

523. We do not interpret Policy FW.7 to be limited to only storage for drinking water purposes or for only other “health needs of people”. Clause (b) states that attenuation and retention are to be promoted and supported including for built solutions while ensuring appropriate consideration of the health needs of people. We do not consider this wording to be inconsistent with *Te Mana o te Wai* or other provisions in the NPS-FM.

3.25.2 Finding

524. We agree with the Reporting Officer’s recommendations on Policy FW.7 for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal and Reply Evidence.

3.25.3 Recommendation

Policy FW.7 – Water attenuation and retention in Wairarapa rural areas

Promote and support water attenuation and retention *in rural areas of the Wairarapa* including:

- (a) *nature based solutions* including slowing water down in the landscape and increasing groundwater recharge (*riparian management, wetland enhancement/restoration, flood management*); and
- (b) built solutions including storage at community, farm, and domestic (rain tanks) scales, *groundwater augmentation, built retention (wetlands, bunds) while ensuring appropriate consideration of the health needs of people.*


Explanation

Policy FW.7 ~~supports the implementation of the Wairarapa Water Resilience Strategy by promoting~~*sing*es and supports ~~ing~~*s* natural and built solutions to attenuate and retain water *in rural areas.*

³³⁰ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 57.

3.26 Method FW.1 - Freshwater Action Plans

525. The notified Method stated:

Method FW.1: Freshwater Action Plans	
<p><u>Prepare Freshwater Action Plans in partnership with mana whenua / tangata whenua, as required by the NPS-FM to contribute to achieving the target attribute states set in the NRP, for each whatua no later than December 2026. The freshwater action plans will outline non-regulatory measures, which, along with limits and other rules, will achieve target attribute states. Where an action plan is required by the NPS-FM it shall contain both regulatory and non-regulatory actions.</u></p>	
<p><i>Implementation: Wellington Regional Council</i></p>	

526. This is a new regulatory Method aimed at achieving target attribute states and environmental outcomes through action plans (clauses 3.12(1), 3.12(2)(a) and 3.12(4) of the NPS-FM).³³¹

3.26.1 Submissions, Evidence and Analysis

527. Submitter concerns including that the Method should include communities and stakeholders in the preparation of Freshwater Action Plans in accordance with cause 3.15 of the NPS-FM were addressed in the s 42A Report with the addition of “engagement with communities and stakeholders and territorial authorities”.³³² This was amended to city and district councils in the Officer’s Reply Evidence for consistency across the document. Clarification was also sought and provided that Freshwater Plans may include both regulatory and non-regulatory methods.

528. There were other concerns raised with timing and funding which were addressed in the s 42A Report but no changes made.³³³

529. There were no further submitter concerns presented at the Hearings.

3.26.2 Finding

530. We agree with the Reporting Officer’s recommendations on Method FW.1 for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal and Reply Evidence.

³³¹ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 855.

³³² Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 857.

³³³ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, paras 858-862.

3.26.3 Recommendation


Method FW.1: Freshwater Action Plans

Prepare Freshwater Action Plans in partnership with mana whenua / tangata whenua, and through engagement with communities, stakeholders and territorial authorities city and district councils, as required by the NPS-FM to contribute to achieving the target attribute states set in the NRP, for each whitua no later than December 2026. The freshwater action plans may describe both regulatory and non-regulatory measures to achieve target attribute states. will outline non-regulatory measures, which, along with limits and other rules, will achieve target attribute states. Where an action plan is required by the NPS-FM it shall contain both regulatory and non-regulatory actions.

Implementation: Wellington Regional Council

3.27 Method 48 - Water allocation policy review

531. The notified Method stated:

Method 48: <u>Water allocation policy review</u> Investigate the use of transferable water permits	
<p><u>Review water allocation policy in the regional plan so that:</u></p> <ul style="list-style-type: none">(a) <u>Freshwater is allocated and used efficiently;</u>(b) <u>All existing over-allocation is phased out and future over-allocation is avoided;</u>(c) <u>Avoid allocating water beyond a limit;</u>(d) <u>improve water allocation efficiency- including transferable permits;</u>(e) <u>provide for iwi and hapū rights and interests;</u>(f) <u>alternatives to first in first served are considered;</u>(g) <u>provide for equitable allocation;</u>(h) <u>adapt to climate change;</u>(i) <u>land use change to more climate resilient uses is promoted;</u>(j) <u>government direction on water allocation is considered; and</u>(k) <u>all matters regarding giving effect to the NPS-FM are considered</u> <p>Investigate whether allowing water permits to be transferred will provide a more equitable use of allocated water.</p> <p><i>Implementation: Wellington Regional Council</i></p>	

532. Method 48 is a non-regulatory method requiring Wellington Regional Council to review water allocation policy in the regional plan. It replaces Operative RPS Method 48 “Investigate the use of transferable water permits”. In her s 42A Report, Ms Pascall notes that “Method 48 is an important method to implement Policies 17 and 44, and give effect to the NPS-FM as it directs a change in approach for water allocation across the region.”³³⁴

3.27.1 Submissions, Evidence and Analysis

533. Wellington Water proposed various amendments to the Method, including that clause (a) refer to “appropriate” allocation rather than “efficient”. The Officer preferred the word “efficient” as it better conveys the policy intent that where water is allocated, that allocation is being fully utilised, which then allows for other ‘new’ users to use the resource.³³⁵ We agree with this assessment.

³³⁴ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 592.

³³⁵ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 595.

534. The Officer also recommended, based on Wellington Water’s relief, that clause (c) is amended to refer to the (forthcoming) limits which will be set in the NRP. We also agree with this amendment. The Officer did not agree that clauses (f) and (g) are duplicates but did recommend that the clauses are combined as alternatives to first in first served do not necessarily mean that those alternatives will result in equitable allocation.³³⁶ We also support this amendment but note that it is not carried through into the track changed provisions the Officer supports. We incorporate the amendment in our recommendations below.
535. The HortNZ submission sought an amendment to clause (i) of Method 48 to include reference to lower emissions and to correct grammatical errors in other clauses of the Method. Ms Landers, presenting planning evidence for Hort NZ, did not agree with the s 42A Officer³³⁷ that the need for land use change to lower emissions is not related to how water is allocated.³³⁸ Ms Levenson presenting the industry statement for Hort NZ discussed in her evidence that horticulture is low emissions land use but that the availability of water can be a barrier to land use change.³³⁹ Citing research, Ms Levenson said that “Domestically produced fruits and vegetables have far lower lifecycle emissions than processed foods, which are often imported, and New Zealand-produced animal products”.³⁴⁰ On this basis, Ms Landers supported Method 48 being amended to refer to “lower emissions” and that this should not be a matter that is only addressed in the Hearing Stream 3 provisions.³⁴¹ She notes the amendment was also supported by Policy 4 of the NPS-FM which says that “Freshwater is managed as part of New Zealand’s integrated response to climate change”.
536. In her Rebuttal Evidence, Ms Pascall supported Ms Lander’s suggested amendment to clause (i). Ms Levenson had also sought clarification on the difference between “climate resilient uses” (clause (i)) and “climate change adaptation” (clause (j)), and suggested using the phrase “lower emissions or more climate resilient uses” to provide clarification.

³³⁶ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 595.

³³⁷ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 597.

³³⁸ Statement of Evidence by Jordyn Landers for Horticulture NZ (Planning), HS5, 3 November 2023, para 42.

³³⁹ Industry Statement by Emily Levenson for Horticulture New Zealand, HS5, 2 November 2023, para 42.

³⁴⁰ Above.

³⁴¹ Statement of Evidence by Jordyn Landers for Horticulture NZ (Planning), HS5, 3 November 2023, paras 44 – 46.

537. Ms Pascall informed us that the s 42A Reporting Officer for the Climate Change: Climate Resilience and Nature-Based Solutions topic, recommended the addition of a new definition of ‘climate-resilience/resilient’, as follows:³⁴²

The capacity and ability of natural and physical resources, including people, communities, businesses, infrastructure, and ecosystems, to withstand the impacts and recover from the effects of climate change, including natural hazard events.

538. Ms Pascall said the National Adaptation Plan (NAP) defines ‘adaptation’ as follows:³⁴³

In human systems, the process of adjusting to actual or expected climate and its effects, to moderate harm or take advantage of beneficial opportunities. In natural systems, the process of adjusting to actual climate and its effects. Human intervention may help these systems to adjust to expected climate and its effects

539. Ms Pascall considered the term “climate change adaptation” is a broader term that refers to society’s ability to change systems, processes and lifestyles to prepare for the effects of a changing climate, and “climate-resilient” is a narrower term referring to the capacity for systems and processes to change.

540. Ms Pascall supported Ms Levenson’s amendment to clause (i).

541. Rangitāne raised various concerns with Method 48. Ms Burns, presenting planning evidence for Rangitāne sought, among other things, that clauses (f) and (g) are combined, that clause (c) duplicates clause (b) and so should be deleted, and that clause (h) takes climate change adaptation into account rather than supporting it as otherwise this could allow inefficient water use and the continuation of existing climate-impacted activities.³⁴⁴

542. We understand Ms Burns’ concerns and note that the NPS-FM (Policy 4) requires freshwater to be managed as part of New Zealand’s integrated

³⁴² Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 181 (footnotes omitted).

³⁴³ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 182 (footnotes omitted).

³⁴⁴ Statement of Planning Evidence of Maggie Burns, 3 November 2023, paras 111 -112.

response to climate change, and clause 3.16 requires the Regional Council to have regard to the foreseeable impacts of climate change when setting environmental flows and levels. However, we agree with the Reporting Officer that Ms Burns' amendments predetermine the outcome of the water allocation policy review which Method 48 requires (albeit as a non-regulatory method).³⁴⁵ We also agree with the Officer that clause (b) relates to existing allocation and clause (c) relates to future allocation (and non-exceedance of limits that have not yet been set in the NRP). Deleting clause (c) would therefore leave a gap.

543. Te Tumu Paeroa, in Method 48(e) considers “rights and interests” do not recognise the full extent of Māori rights, interests and responsibilities in freshwater, including the preservation of those rights and interests. Te Tumu Paeroa submits, there is an express need to include 'responsibilities' to guarantee Māori rights, interests and responsibilities in freshwater are appropriately recognised and provided for. Te Tumu Paeroa seek the following specific amendment to clause (e):

provide for iwi, hapū and Māori landowners [sic] rights, and interests and responsibilities.

544. Ms Pascall agreed that clause (e) should also refer to “responsibilities” in addition to ‘rights and interests’ of iwi and hapū. However, she disagreed with the inclusion of reference to “Māori landowners” as it would broaden the scope and intent of the application beyond those who whakapapa to the area.³⁴⁶ She therefore agreed to accept the relief sought by Te Tumu Paeroa in part.
545. Wellington Water sought clarification as to the alternatives to ‘first in, first served’ in clause (f). At the Hearing, Ms McGruddy sought an amendment to clause (f) to include consideration of the efficiency of use of existing investments in water supply/reticulation/irrigation systems.³⁴⁷ Wellington Water confirmed at the Hearing that the Officer’s amendments addressed the relief they had sought.³⁴⁸

³⁴⁵ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 185.

³⁴⁶ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 596.

³⁴⁷ The submission point was to delete Method 48 or defer to a future review in 2024 [S163.0101] but para 11.14 of the submission did set out detailed reasons for this relief and the efficiency of use of existing investments as a key consideration.

³⁴⁸ Legal Submissions for Wellington Water, 3 November 2023, page 9.

3.27.2 Finding and s 32AA Evaluation

546. We agree with the Reporting Officer's recommendations on Method 48 for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal or Reply Evidence. We recommend the Method is amended to combine clauses (f) and (g) as recommended by the Officer in the s 42A Report (although inadvertently not reflected in the recommended drafting). This amendment improves clarity and the effectiveness of the Method.

3.27.3 Recommendation

Method 48: Water allocation policy review Investigate the use of transferable water permits

Review water allocation policy in the *regional plan* so that:


- (a) ~~_____ Freshwater is allocated and used efficiently;~~
- (b) ~~_____ All existing over-allocation is phased out and future over-allocation is avoided;~~
- (c) ~~_____ Avoid allocating w~~ **Water allocation limits set in the regional plan are not exceeded beyond a limit;**
- (d) ~~_____ improve water allocation efficiency~~ **is improved, -including consideration of transferable permits;**
- (e) ~~_____ provide for~~ **iwi and hapū rights, and interests and responsibilities are provided for;**
- (f) ~~_____ alternatives to the first in first served approach to water allocation are considered and equitable allocation of water is provided for;~~
- (g) ~~_____ provide for equitable allocation of water is provided for;~~
- (h) ~~_____ water allocation policy supports~~ **adapt to climate change adaptation;**
- (i) ~~_____ land use change to lower emission or more climate resilient uses is promoted;~~
- (j) ~~_____ government direction on water allocation is considered; and~~
- (k) ~~_____ all matters regarding giving effect to the NPS-FM are considered~~

~~Investigate whether allowing water permits to be transferred will provide a more equitable use of allocated water.~~

Implementation: Wellington Regional Council

3.28 Method FW.2 - Joint processing urban development consents

547. As notified, the Method stated:

<u>Method FW.2: Joint processing urban development consents</u>		
<u>The Wellington Regional Council, district and city councils shall:</u>		
(a)	<u>jointly process notified resource consents (where both regional and district consents are notified) for urban development and regionally significant infrastructure;</u>	
(b)	<u>encourage resource consent applicants to engage with mana whenua / tangata whenua early in their planning</u>	
(c)	<u>collaborate on pre-application processes;</u>	
(d)	<u>collaborate on the processing of non-notified resource consents;</u>	
(e)	<u>collaborate on monitoring of consent conditions; and</u>	
(f)	<u>exchange information and data to support integrated management.</u>	
<u>Implementation: Wellington Regional Council, district and city councils</u>		

548. Method FW.2 was introduced in Proposed Change 1. It is a non-regulatory, integrating method that implements Policy 14, Policy FW.3 and Policy 42. It directs the joint processing of notified resource consents for urban development or regionally significant infrastructure consents that relate to freshwater, where both the regional and district consents are notified.

3.28.1 Submissions, Evidence and Analysis

549. Submitters raised concerns in relation to requirements to engage with mana whenua / tangata whenua (Ngāti Toa [S170.069], with Taranaki Whānui seeking that the engagement be a ‘requirement’ rather than something which councils ‘encourage’ - [S167.0152]). HCC sought that the Method be deleted as they opposed the inclusion of non-regulatory policies and methods applying to territorial authorities [S115.099]. PCC sought clarity about the interpretation of the Method and when it applies [S30.093].

550. Ms Pascall addressed these issues in the s 42A Report by adding an additional clause requiring early engagement by the Regional Council and territorial authorities with mana whenua / tangata whenua, and by clarifying that the requirement for joint processing only applies to publicly notified consents for urban development and RSI that affect freshwater.³⁴⁹

³⁴⁹ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 419.

551. Ms Pascall rejected HCC’s relief and did not agree that the Method should be deleted because even though it was a non-regulatory method, it provided useful direction about how local authorities can work together to achieve their obligations for integrated management under the RMA.³⁵⁰ Ms Pascall recommended that the title to the Policy be amended to read “Joint processing of resource consents for urban development or regionally significant infrastructure that relate to freshwater.”
552. No submitter presented evidence on Method FW.2.
553. The Reporting Officer recommended in her Reply Evidence that Method FW.2 be categorised as a P1S1 provision because it relates to operational processes of territorial authorities and the Regional Council.³⁵¹ However, as we discuss earlier in this Report, the Panels consider that the provision is appropriately categorised as part of the FPI because the chapeau refers to the processing of consents “that affect freshwater”.
554. For consistency with provisions in HS2, Ms Pascall recommends in her Reply Evidence that “city and district councils” be reinstated.³⁵² The FHP agrees with this change and recommends it is also transferred over to the ‘Implementation’ line (which seems to be an inadvertent omission).
555. In light of HCC’s and PCC’s relief sought, we queried the practical application of the Method with Ms Allan (Special Advisor). Ms Allan reviewed the provision and advised that clause (e) should provide for collaboration on monitoring except where specific responsibilities are specific in consent conditions. Ms Allan also queried the word “exchange” in clause (f) and said that “share” would be more appropriate as ‘exchange’ could just involve handing documents to each other rather than actually sharing information to support integrated management.
556. Having considered the Method further in light of Ms Allan’s suggestions, we recommend that clause (e) is amended to note that collaboration on monitoring is to occur except where specific responsibilities are specified in consent conditions; and clause (f) is recommended to read “share information” rather than “exchange information”.

³⁵⁰ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 428.

³⁵¹ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 121.

³⁵² Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 48.

3.28.2 Finding and s 32AA Evaluation

557. We largely agree with the Reporting Officer's recommendations on Method FW.2 for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal and Reply Evidence. We recommend the amendments below to clauses (e) and (f) to improve the workability of the Method and ensure it achieves its intent of fostering collaboration where required and the sharing of information to support integrated management. We consider that our recommended amendments will help to achieve integrated management and the respective councils' functions in ss 30 and 31 of the RMA, and improve the practical interpretation and implementation of the Method. The amendment to the 'Implementation' line corrects an inadvertent omission.

3.28.3 Recommendation

Method FW.2: Joint processing of resource consents for urban development or regionally significant infrastructure consents that relate to freshwater

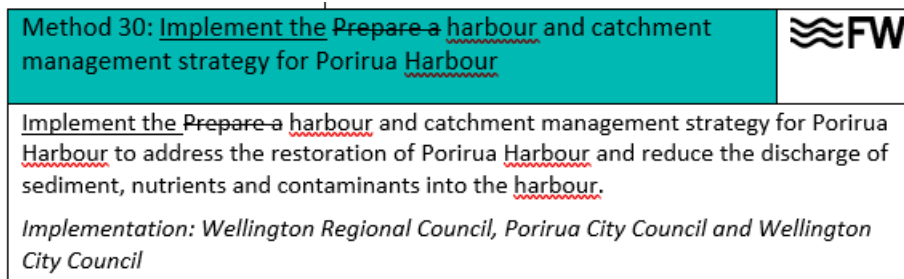
When processing resource consents for urban development or regionally significant infrastructure that affect freshwater, the Wellington Regional Council, ~~district and city councils and territorial authorities~~ city and district councils shall:

- (a) jointly process publicly notified resource consents (where both regional and district consents are publicly notified) for *urban development* and *regionally significant infrastructure*;
(ab) engage early with mana whenua/tangata whenua about the effects of the proposal on freshwater
- (b) encourage resource consent applicants to engage with mana whenua/tangata whenua early in their planning
- (c) collaborate on pre-application processes;
- (d) collaborate on the processing of non-notified resource consents;
- (e) collaborate on monitoring of consent conditions **except where specific responsibilities are specified in consent conditions**; and
- (f) **exchange share** information and data to support integrated management.

Implementation: Wellington Regional Council; **and territorial authorities** **city and district councils** ~~district and city councils~~.

3.19 Method 30 - Implement the ~~Prepare~~ a harbour and catchment management strategy for Porirua Harbour

558. The notified Method stated:



559. This is an amendment to Method 30 in the Operative RPS to change the direction from “prepare” to “implement” in both the heading and Method.

3.28.4 Submissions, Evidence and Analysis

560. Submitters requested the addition of the words “in partnership with mana whenua / tangata whenua”, and that the partnership be enabled by funding and resourcing. The Reporting Officer agreed to include a partnership approach for the implementation of the Method but notes that because the Council has now established Kaupapa Funding Agreements with mana whenua/tangata whenua partners in the Region, the Method did not need to refer to funding or resourcing.

3.28.5 Finding

561. We agree with the Reporting Officer’s recommendations on Method 30 for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal and Reply Evidence.

3.28.6 Recommendation


Method 30: Implement the ~~Prepare~~ a harbour and catchment management strategy for Porirua Harbour

Implement the ~~Prepare~~ a harbour and catchment management strategy for Porirua Harbour, in partnership with mana whenua/tangata whenua, to address the restoration of Porirua Harbour and reduce the discharge of sediment, nutrients and *contaminants* into the harbour.

Implementation: Wellington Regional Council, Porirua City Council and Wellington City Council

3.29 Method 34 - Preparing a regional water supply strategy

562. The notified Method stated:

Method 34: Prepare a regional water <u>supply</u> strategy	
<p>With interested parties, prepare a regional water <u>supply</u> strategy, in partnership with mana whenua / tangata whenua, to guide local authorities on how to:</p> <ul style="list-style-type: none">(a) <u>improve and maximise efficient allocation of water including economic, technical and dynamic efficiency; sustainable water use</u>(b) reduce leakage and wastage from reticulation <u>systems</u>;(c) encourage efficient use of water including through onsite <u>storage</u>;(d) <u>secure sustainable water supplies for communities across the region, preparing for climate change</u>;(e) <u>plan additional sources of water, including through storage (including raintanks), treatment, and distribution systems</u>;(f) demand management and water conservation programmes and security of <u>supply</u>; and(g) <u>developing methods to protect future and existing sources, rural and urban water quality</u> <p><i>Implementation: Wellington Regional Council* and city and district councils, and water infrastructure providers</i></p>	

563. This is an existing non-regulatory method in the Operative RPS that directs the preparation of a water strategy. Proposed Change 1 proposes to amend this Method so that it is specific to water supply along with several other amendments to give effect to the NPS-FM and support the implementation of other provisions in Change 1.

3.29.1 Submissions, Evidence and Analysis

564. Submitters raised a number of issues, many of which were addressed in the s 42A Report with a number of revisions proposed.³⁵³ This included removal of the Method’s application to territorial authorities, amending the chapeau to refer to communities, and adding “water scarcity, population growth and operational resilience” in clause (d) as sought by Wellington Water [S113.046].

565. The Officer also recommended that the Method cease to have effect on the date that the Wellington Water Services Entity is established.

566. In her evidence statement, Ms McGruddy for WFF sought that clause (d) refer to “urban and rural” communities, the words “while considering the health needs of people” be deleted from clause (e), a date be added for preparation/ completion of the strategy, and a clause be inserted to

³⁵³ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, paras 904 – 913.

provide for prioritising the collection of real-time data to support dynamic management of water.³⁵⁴

567. The Officer supported retaining the words “health needs of people” and including it as a defined term to ensure health outcomes are considered. We recommend the amendments the Officer proposes are accepted.
568. The Water Services Entity Act 2022 was repealed by the Water Services Act Repeal Act 2024. We recommend that as a minor amendment, the Note to the Method is deleted or amended to reflect the appropriate water infrastructure provider.

3.29.2 Finding

569. We largely agree with the Reporting Officer’s recommendations on Method 30 for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal and Reply Evidence. We recommend for clarity and efficiency, that the Note below the Method is either deleted or amended as appropriate to reflect the appropriate water infrastructure provider.

3.29.3 Recommendation

~~With interested parties p~~ Prepare a regional water supply strategy, in partnership with mana whenua / tangata whenua; **and consultation with communities**, to guide local authorities on how to:

- (a) improve and maximise efficient allocation of water including economic, technical and dynamic efficiency; sustainable water use
- (b) reduce leakage and wastage from reticulation systems;
- (c) encourage efficient use of water including through onsite storage;
- (d) secure sustainable water supplies for communities across the region, preparing for climate change, water scarcity, population growth and improving operational resilience;
- (e) plan additional sources of water, including through storage (including raintanks), treatment, and distribution systems, while considering the health needs of people;
- (f) manage water demand including through demand management and water conservation programmes and security of supply; and
- (g) developing methods to protect future and existing sources, taking into account the requirements of Taumata Arowai. rural and urban water quality

³⁵⁴ Hearing Statement of Elizabeth McGruddy on behalf of Wairarapa Federated Farmers, Hearing Stream 5, 15 November 2023, para 35.


- (h) implement water safety plans and other requirements of Taumata Arowai as appropriate
- (i) Apply ki uta ki tai to source protection.

Implementation: Wellington Regional Council ~~and city and district councils,~~ and water infrastructure providers*

Note: Method 34 shall cease to have effect on the date that the Wellington Water Services Entity is established, under the Water Services Entity Act 2022. [Either delete or amend to reflect the appropriate water infrastructure provider]

3.30 Method 35 – Prepare a regional stormwater plan

570. The notified proposal was to delete Operative Method 35:

Method 35: Prepare a regional stormwater action plan	
Prepare a regional stormwater action plan that is developed and agreed to by the region's local authorities.	
<i>Implementation: Wellington Regional Council* and city and district councils</i>	

3.30.1 Submissions, Evidence and Analysis

571. Most submissions on this provision supported its deletion. Ātiawa [S131.0132] expressed concern that with the deletion of this Method there will be no mechanism to prepare a regional approach to stormwater management. The s42A Officer responded that the Method will be unnecessary given the direction to prepare Freshwater Action Plans under the NPS-FM and proposed Method FW.1. The Officer said these action plans will set out the steps required to achieve target attribute states and that the more directive policies proposed in the RPS in relation to urban development and the management of stormwater will remove the need for specific action planning in relation to stormwater.

572. We recommend the Method is deleted.

3.30.2 Finding

573. We agree with the Reporting Officer's recommendations on Method 35 for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal or Reply Evidence.

3.30.3 Recommendation

~~Method 35: Prepare a regional stormwater action plan~~

~~Prepare a regional stormwater action plan that is developed and agreed to by the region's local authorities.~~

Implementation: Wellington Regional Council and city and district councils

3.31 Method FW.X – Engagement with water regulators

574. This is a new Method proposed in the s 42A Report in response to relief sought by Wellington Water [S113.048] that it would be beneficial for water services regulators to work together in an integrated manner.³⁵⁵
575. The Officer agreed that a Method that directs engagement with Taumata Arowai and the water services economic regulator would be useful in the RPS.³⁵⁶

3.31.1 Finding

576. We agree with the Reporting Officer’s recommendations on Method FW.X for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal or Reply Evidence.

3.31.2 Recommendation

Method FW.X: Engagement with Water Regulators

Engage with Taumata Arowai and the water services economic regulator (when established) to ensure a consistent approach to *Te Mana o te Wai*, including consideration of limits, measures, targets and relationships, particularly where there are overlaps in functions and roles.

Implementation: Wellington Regional Council

³⁵⁵ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 919.

³⁵⁶ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 921.

3.32 Method FW.X – Technical guidance for stormwater management in urban development

577. This is a new non-regulatory– information and guidance Method proposed in the s 42A Report for the Regional Council to provide technical guidance for stormwater management in urban development, in collaboration with territorial authorities and Wellington Water. The purpose of the guidance is to addresses hydrological control and hydraulic neutrality processes, methods, devices, and outcomes.

578. In the s 42A Report, Ms Pascall states:³⁵⁷

I note that the requirement to achieve hydrological control in the regional plan and requirements to achieve hydraulic neutrality in district plans may create an overlap between the requirements of the two plans and ultimately the solutions that are required to achieve both. To assist plan users and those undertaking urban development where these devices will be required, I recommend a new method is added to the RPS that directs the development of technical guidance on these stormwater management techniques. I consider that such guidance is necessary in this relatively new area of resource management in the Region.

579. This Method will support Policy FW.X – Hydrological control for urban development, acknowledging that more work is needed on hydrological control and neutrality outcomes and methodology.

3.32.1 Submissions, Evidence and Analysis

580. Ms Pascall noted that the new Method she proposed was not within the scope of submissions, but that the FHP was able to make recommendations that go beyond the scope of submissions in respect of matters raised at the hearing. The issue of the respective functions of territorial authorities and the Regional Council in respect of hydrological control was raised in many hearing presentations. For instance, Ms Cook and Mr Jeffries on behalf of WCC said that they were concerned that the proposed hydrological control provision duplicated the provisions in the Wellington Proposed District Plan which require development to achieve hydraulic neutrality through on-site stormwater management methods in addition to Water Sensitive Urban Design and minimum permeable

³⁵⁷ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 970.

surfaces.³⁵⁸ They said at the Hearing that “on a practical level it is also difficult to see how private developers could respond to these requirements other than through on-site methods.”³⁵⁹

581. We consider that the issue of respective roles and functions of local authorities has been sufficiently canvassed at the Hearing and the Technical Guidance developed through Method FW.X will be useful in clarifying these roles and functions.
582. Ms Pascall recommended in the s 42A Report that “city and district councils” be replaced with “territorial authorities”. However, for consistency with provisions in HS 2, Ms Pascall recommended in her Reply that “city and district councils” be reinstated.³⁶⁰
583. We note that the Proposed Change 1 now includes two Methods titled ‘Method FW.X’, but this can be corrected as a minor amendment when Council is finalising the provisions and issuing its decisions.

3.32.2 Finding

584. We agree with the Reporting Officer’s recommendations on Method FW.X for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal and Reply Evidence. We recommend that the numbering is corrected when the Council issues its decisions as Proposed Change 1 includes two methods numbered FW.X.

3.32.3 Recommendation

Method FW.X: Technical Guidance for Stormwater Management in Urban Development

Prepare technical guidance for stormwater management in ~~urban development~~ urban development, in collaboration with ~~territorial authorities~~ city and district councils and Wellington Water, that addresses hydrological control and hydraulic neutrality processes, methods, devices, and outcomes for application in the integrated planning and design of ~~urban development~~ urban development.

Implementation: Wellington Regional Council.

³⁵⁸ Joint statement of supplementary planning evidence of Joe Jeffries and Maggie Cook on behalf of Wellington City Council, 21 November 2023, para 16;

³⁵⁹ Joint statement of supplementary planning evidence of Joe Jeffries and Maggie Cook on behalf of Wellington City Council, 21 November 2023, para 22; Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 2, page 48, lines 2444 – 2445.

³⁶⁰ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, para 48.

3.33 Method FW.XX: Best practice guidance for managing urban development effects on freshwater

585. This is a new non-regulatory method proposed in the s 42A Report for Wellington Regional Council to provide guidance in relation to the matters set out in Policy 14.

3.33.1 Submissions, Evidence and Analysis

586. The inclusion of the Method grants relief sought by SWDC [S79.028] seeking non-regulatory guidance on the matters in Policy 14. In recommending the inclusion of the Method, Ms Pascall notes:³⁶¹

The requirements of the NPS-FM and subsequent changes to the regional and district planning framework to give effect to it [Policy 14] will necessitate a significant change in urban development practice. I consider non-regulatory best practice guidance will assist in implementing this change and achieving the outcomes sought by the RPS.

587. No submitters presented evidence on Method FW.XX.

3.33.2 Finding

588. We agree with the Reporting Officer's recommendations on Method FW.XX for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal or Reply Evidence.

3.35.3 Recommendation

Method FW.XX: Best practice guidance for managing urban development effects on freshwater

Develop best practice guidance for managing the effects of ~~urban development~~ urban development on waterbodies and freshwater ecosystems.

Implementation: Wellington Regional Council

³⁶¹ Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 333.

3.34 Freshwater Anticipated Environmental Results – Objective 12 (except AER 6)

589. The notified Objective 12 AER stated:

Objective 12

Natural and physical resources of the region are managed in a way that prioritises:

- (a) first, the health and well-being of water bodies and freshwater ecosystems
- (b) second, the health needs of people (such as drinking water)
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future; and

Te Mana o te Wai encompasses six principles relating to the roles of tangata whenua and other New Zealanders in the management of freshwater, and these principles inform this RPS and its implementation.

The six principles are:

- (a) Mana whakahaere: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater
- (b) Kaitiakitanga: the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the



1. Freshwater quality and quantity in the Wellington Region is managed in accordance with the principles of Te Mana o Te Wai and over allocation in relation to both the quantity and quality of freshwater is phased out over time.

1. Water quality in lakes, rivers and aquifers is supporting healthy functioning aquatic ecosystems or any other management purposes identified in regional plans.



2. River flows and lake levels support healthy functioning aquatic ecosystems or any other management purposes identified in regional plans.



3. Groundwater is managed to support healthy functioning aquatic ecosystems or any other purpose for managing water bodies identified in regional plans.



4. Erosion, silt or sediment has not adversely affected the healthy functioning of aquatic ecosystems.



5. The water catchments for public water supply are protected so that public health is safeguarded.





6. Eighty per cent of residents perceive that water pollution is not a problem.



7. A regional plan contains policies, rules and/or methods that:

- (a) require, as a minimum, that water quality, flows and water levels are managed for the purpose of maintaining or enhancing aquatic ecosystem health; and
- (b) manage water bodies for other identified purposes.

benefit of present and future generations	
(c) <u>Manaakitanga: the process by which tangata whenua show respect, generosity, and care for freshwater and for others</u>	8. A regional plan contains policies and/or rules that: (a) establish allocation limits for the total amount of water that can be taken from surface water; and (b) establish allocation limits for the total amount of water that can be taken from groundwater.
(d) <u>Governance: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future</u>	
(e) <u>Stewardship: the obligation of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations, and</u>	9. A regional plan contains policies, rules and/or methods that reduce ecotoxic contaminants in stormwater that discharge into water, or onto or into land that may enter water, from new subdivision and development.
(f) <u>Care and respect: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.</u>	
<u>And the Statements of Kahungunu ki Wairarapa and Rangitāne o Wairarapa</u>	10. Regional and district plans contain policies, rules and methods that control earthworks and vegetation disturbance.
	
	11. A regional plan contains policies, rules and/or methods to: (a) promote discharges of human and/or animal waste to land rather than water, particularly discharges of sewage; and (b) promote the use of collective sewage treatment systems that discharge to land.

590. The Operative RPS has a list of 11 detailed Objective 12 AERs. Change 1 proposes to replace these with one overarching AER referring to the principles of *Te Mana o te Wai* and over allocation. We note that all AERs other than AER 6 are considered through the FPP process.

3.34.1 Submissions, Evidence and Analysis

591. There was general support by submitters for the new AER with several submissions requesting addition of a timeframe and some seeking an additional AER on partnership with mana whenua.

592. In relation to the timeframe, the s 42A Reporting Officer responded there should be more specificity than the current reference to “over time” but noted that imposing specific timeframes in the RPS at this stage may be premature. The Officer said she considered this matter could be addressed through the upcoming NRP changes where the detail on water allocation will be provided. However, the Officer recommended replacing the words “over time” with “as soon as practicable”.³⁶²

³⁶² Section 42A Hearing Report, Hearing Stream 5, 20 October 2023, para 937.

593. Considering an additional AER on partnership with mana whenua, the Officer comments that she agrees that this partnership approach is necessary and a fundamental part of *Te Mana o te Wai* and giving effect to the NPS-FM. However, she did not consider that this AER is necessary on the basis that this partnership approach has been woven into the objectives and policies of Change 1, including in Objective 12 and the related policies.
594. In Minute 23, we asked the Council Officers to review all the AERs in Change 1. The Officer recommended including the *Te Mana o te Wai* principles which were included in the notified version of Objective 12 but not in the proposed replacement Objective. The Officer also recommended moving the reference to over allocation to a separate AER. We agree with the proposed amendments.

3.34.2 Finding

595. We agree with the Reporting Officer's recommendations on the Objective 12 AERs (other than AER 6 which is considered in the P1S1 process) for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal or Reply Evidence.

3.34.3 Recommendation

1. Freshwater quality and quantity in the Wellington Region is managed in accordance with the following principles of Te Mana o Te Wai: and

(a) Mana whakahaere: the power, authority and obligations of tangata whenua to make decisions that maintain, protect and sustain the health and well-being of, and their relationship with, freshwater

(b) Kaitiakitanga: the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations

(c) Manaakitanga: the process by which tangata whenua show respect, generosity, and care for freshwater and for others

(d) Governance: the responsibility of those with authority for making decisions about freshwater to do so in a way that prioritises the health and well-being of freshwater now and into the future

(e) Stewardship: the obligation of all New Zealanders to manage freshwater in a way that ensures it sustains present and future generations

(f) Care and respect: the responsibility of all New Zealanders to care for freshwater in providing for the health of the nation.

2.2 Over allocation in relation to both the quantity and quality of freshwater is phased out as soon as practicable over time.

3.35 Objective 13 AER

596. Notified Objective 13 AER stated:

Objective 13

The region’s rivers, lakes and wetlands support healthy functioning ecosystems.



1. Macro-invertebrate diversity in rivers and lakes is ~~maintained~~ improving across the Region.



2. Flow regimes in, and discharges to, rivers and lakes are not resulting in algal cover and/ or biomass that is adversely affecting aquatic ecosystems.



3. There are no new barriers to fish passage and the number of existing impediments is reduced.



4. There is no loss of existing fish habitat, nor reduction in fish populations and diversity



5. There is no loss of the significant amenity and recreational values or significant indigenous ecosystems associated with the rivers and lakes identified in Appendix 1.



6. ~~There is no decline in~~ The condition and extent of wetlands is improving across the Region.



7. ~~A regional plan contains policies, rules and/ or methods to protect aquatic ecological function.~~



8. ~~A regional plan contains policies and rules to protect: (a) the significant amenity and recreational values associated with the rivers and lakes listed in Appendix 1; and (b) the significant indigenous ecosystems of the river and lakes listed in Appendix 1.~~

597. The Operative Plan includes 8 Objective 13 AERs. These are reduced to 6 in Change 1.

3.35.1 Submissions, Evidence and Analysis

598. Submitters proposed adding sensitive macroinvertebrate taxa abundance as well as macro-invertebrate diversity to AER 1, and revisions to provide more clarity of outcomes for AER4. Amendments taking account of these concerns were made in the s 42A Report, with further refinements in the Officer’s Rebuttal Evidence.

599. Fish and Game sought an amendment to AER 4 to give better effect to the NPS-FM, especially Policy 10. They sought the AER read “The protection of existing Existing fish habitat supports healthy fish populations.. “. The

Officer supported the amendment but proposed to delete the word “existing”.³⁶³

600. At the hearing we asked Mr Malone, counsel for Fish and Game whether the deletion of “existing” was material, and he confirmed that it was not.

3.35.2 Finding

601. We agree with the Reporting Officer’s recommendations on the Objective 13 AERs for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal or Reply Evidence.

3.35.3 Recommendation

1. Macro-invertebrate diversity ~~and sensitive macroinvertebrate taxa abundance~~ in rivers and lakes is ~~maintained~~ improving; improved where degraded, or otherwise maintained, across the Region.
4. ~~There is no loss of existing fish habitat, nor reduction in fish populations and diversity. The protection of Existing fish habitat supports healthy, fish populations, and the diversity of valued fish fauna is maintained or increased across the region.~~

Objective 14 Freshwater Anticipated Results

1. Freshwater quality and quantity in the Wellington Region is managed in accordance with the principles of Te Mana o Te Wai and over allocation in relation to both the quantity and quality of freshwater is phased out as soon as practicable over time.

³⁶³ Appendix 2 to the Supplementary Evidence of Ms Pascall, HS5 – Freshwater and Te Mana o te Wai Rebuttal, page 22.

3.36 Objective 14 AER

602. The Operative Plan includes 4 Objective 14 AERs. These are reduced to 1 in Change 1, with the same AER as for Objective 12, referring to the principles of *Te Mana o te Wai* and over allocation.
603. As with Objective 12 AER “as soon as practicable” was added in the s42A Report, with the same rationale.

3.36.1 Finding

604. We agree with the Reporting Officer’s recommendations on the Objective 14 AER for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal or Reply Evidence.

3.36.2 Recommendation

Freshwater quality and quantity in the Wellington Region is managed in accordance with the principles of *Te Mana o Te Wai* and over allocation in relation to both the quantity and quality of *freshwater* is phased out **as soon as practicable over time.**

3.37 Definitions (HS5)

605. Other than in relation to the definitions of “hydrological controls” and “hydraulic neutrality”, we agree with the Reporting Officer’s recommendations on the definitions coded to HS5 for the reasons below, and otherwise as set out in the Officer’s s 42A Report, Rebuttal or Reply Evidence.

3.37.1 *Aquatic compensation and aquatic offset*

606. In her Rebuttal Evidence, the Officer recommends including definitions of “aquatic compensation” and “aquatic offset” in response to Ms Clarke’s Evidence (on behalf of Winstone Aggregates). The definitions are the same as those in the NPS-FM and support the definition of *effects management hierarchy*.
607. The definitions seem appropriate to us and are aligned with definitions in the NPS-FM. We recommend they are included in Proposed Change 1.

3.37.2 Recommendation

Aquatic compensation

A conservation outcome resulting from actions that are intended to compensate for any more than minor residual adverse effects on a *wetland* or *river* after all appropriate avoidance, minimisation, remediation, and aquatic offset measures have been sequentially applied.

Aquatic offset

A measurable conservation outcome resulting from actions that are intended to:

(a) redress any more than minor residual adverse effects on a *wetland* or *river* after all appropriate avoidance, minimisation, and remediation, measures have been sequentially applied; and

(b) achieve no net loss, and preferably a net gain, in the extent and values of the *wetland* or *river*, where:

(i) no net loss means that the measurable positive effects of actions match any loss of extent or values over space and time, taking into account the type and location of the *wetland* or *river*; and

(ii) net gain means that the measurable positive effects of actions exceed the point of no net loss.

3.38 *Community drinking water supply and Group drinking water supply*

608. These definitions are introduced in the HS5 s 42A Report. The terms are in Policies FW.1 and FW.2. Wellington Water [S113.024] sought alignment of terminology used by Taumata Arowai and the NRP. The NRP has a definition of *Community drinking water supply* and the Officer recommends in the s 42A that the same definition is used in the RPS.

609. We recommend that the definitions are approved.

3.38.1 Recommendation

Community drinking water supply

A drinking-water supply that is recorded in the drinking-water register maintained by the Chief Executive of the Ministry of Health (the Director-General) under section 69J of the Health Act 1956 that provides no fewer than 501 people with drinking water for not less than 60 days each calendar year.

Group drinking water supply

A registered drinking water supply that is recorded in the drinking water register maintained by the Ministry of Health (the Director-General) under section 69J of the Health Act 1956 that provides more than 25 people with drinking water for not less than 60 days each calendar year.

3.40 *Effects Management hierarchy*

610. This definition is in new Policies 18A, 18B, 40A and 40B. The Reporting Officer recommended a definition be included through the s 42A Report as a consequential amendment to a change recommended in clause (n) in Policy 18. This clause is now reflected in the new Policies recommended in the Officer's Reply Evidence (Policies 18A, 18B, 40A and 40B). The definition proposed for "effects management hierarchy" is the same definition in the NPS-FM. The Officer considered PCC's general submission on definitions provided scope [S30.099].

611. We recommend the definition is adopted.

3.38.2 Recommendation

Effects management hierarchy

In relation to natural inland *wetlands* and *rivers*, means an approach to managing the adverse effects of an activity on the extent or values of a *wetland* or *river* (including cumulative effects and loss of potential value) that requires that:

(a) adverse effects are avoided where practicable; then

(b) where adverse effects cannot be avoided, they are minimised where practicable; then

(c) where adverse effects cannot be minimised, they are remedied where practicable; then

(d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, *aquatic offsetting* is provided where possible; then

(e) if *aquatic offsetting* of more than minor residual adverse effects is not possible, *aquatic compensation* is provided; then

(f) if *aquatic compensation* is not appropriate, the activity itself is avoided.

3.39 *Health needs of people*

612. The second limb of Te Mana o te Wai refers to the “health needs of people” but the phrase is not defined in the NPS-FM. Operative Policy 17 includes the phrase. Various submitters had queried its meaning and where other uses sit within the Te Mana o te Wai hierarchy.
613. In her s 42A Report, the Officer recommended including a definition of “the health needs of people” that aligned with the definition in the NRP. The Officer considered there was scope to do under PCC’s general submission on definitions (PCC [S30.099]).
614. Ms Levenson on behalf of HortNZ sought an amendment to the proposed decision to include water used to enable the supply of fresh fruit and vegetations. Ms Berkett for WFF sought a grammatical correction to the definition to clarify the status of water consumed by animals. Mr Brass for the DGC also recommended amendments as he considered the water takes in Policy 17 were not included in the definition.
615. In the Officer’s Rebuttal Evidence, she agrees that Ms Berkett’s grammatical correction is required for clarity. As set out in the analysis for Policy 17, the Officer also recommends an amendment to the chapeau to provide a clearer connection with clauses (a) to (d), and to ensure the ‘health needs of people’ is not defined differently in two different places.³⁶⁴
616. We agree with the Officer’s recommendations to the definition of “health needs of people” for the reasons given in the s 42A Report and Rebuttal Evidence. The definition is very similar to the NRP definition but with a minor amendment to improve the interpretation and application of the definition.

3.39.1 Recommendation

Health needs of people

The amount and quality of water needed to adequately provide for people’s hygiene, sanitary and domestic requirements. It does not include:


(a) water used outside, (e.g. for irrigation, vehicle or house washing or hosing), other than but not including water consumed by animals, or

(b) water used by industry as process water or cooling water.

³⁶⁴ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, paras 168 and 170.

3.41 Hydrological control

617. The notified definition read:

Hydrological controls	
<p><u>For greenfield development:</u></p> <p>(a) <u>the modelled mean annual runoff volume generated by the fully developed area must not exceed the mean annual runoff volume modelled from the site in an undeveloped (pastoral) state</u></p> <p>(b) <u>the modelled mean annual exceedance frequency of the 2-year Average Recurrence Interval (ARI) so-called 'channel forming' (or 'bankfull') flow for the point where the fully developed area discharges to a stream must not exceed the mean annual exceedance frequency modelled for the same site and flow event arising from the area in an undeveloped (pastoral) state.</u></p> <p><u>For brownfield and infill development:</u></p> <p>(a) <u>the modelled mean annual runoff volume generated by the fully developed area must, when compared to the mean annual runoff volume modelled for the site prior to the brownfield or infill development, be reduced as far as practicable towards the mean annual runoff volume modelled for the site in an undeveloped state</u></p> <p>(b) <u>the modelled mean annual exceedance frequency of the 2-year ARI so-called 'channel forming' (or 'bankfull') flow for the point where the fully developed area discharges to a stream, or stormwater network, shall be reduced as far as practicable towards the mean annual exceedance frequency modelled for the same site and flow event in an undeveloped state.</u></p>	

3.39.2 Submissions, Evidence and Analysis

618. In the s 42A Report, the Officer said that hydrological controls manage stormwater flows and volumes to both control the amount of runoff from a site as well as managing the effects of contamination on freshwater ecosystem health.³⁶⁵ Submitters had concerns that the definition was unclear read as a rule or policy (WCC [S140.0123], PCC [S30.0106], and Wellington Water [S113.051]). The Officer agreed and re-cast the definition as proposed new Policy FW.X.

619. The Officer recommended changing the definition to the singular – “hydrological control” – because it is about managing “the hydrology of the site(s) in order to manage stormwater runoff and volume and subsequent impacts on freshwater ecosystem health”.³⁶⁶ It is not about the specific methods, mechanisms or devices to be applied to achieve this outcome.

³⁶⁵ Section 42A Hearing Report, Hearing Stream 5, Freshwater and Te Mana o te Wai, 20 October 2023, para 953.

³⁶⁶ Section 42A Hearing Report, Hearing Stream 5, Freshwater and Te Mana o te Wai, 20 October 2023, para 959.

620. Given the Officer’s recommended changes to Policy FW.X (which we recommend are adopted – see the discussion above of Policy FW.X), we asked Ms Allan (Special Advisor) for her views on whether the definition of “hydrological controls” worked with the amended Policy.
621. Ms Allan reviewed the definition in the context of recommended Policy FW.X. Ms Allan said that the recommended Policy FW.X provides the responsibility to the Regional Council to develop regional plan provisions including standards for hydrological control for greenfield, brownfield and infill. Ms Allan said she did not think the current definition worked well with the rewritten policy or explanation, which implies provisions which address both water quality and quantity, and need not be limited to “site” scale. Ms Allan said that while the proposed definition has taken a site-based approach which aligns with WCC’s PDP definition of “hydraulic neutrality” which relates to sites, this is perhaps expected from a territorial authority, but the RPS need not be restricted to a cadastral base if it wanted to achieve the freshwater outcomes in the Objective and as described in Mr Farrant’s evidence. Ms Allan advised that if there had been an unsuitable subdivision pattern, then it would not be appropriate to treat stormwater management on a site-by-site basis but a larger area should be taken into account.
622. Ms Allan also said the reference in the definition to “replicating natural processes” could create a potential conflict as the controls would usually be intended to modify natural processes (eg flooding). In addition to broadening the definition so it applies to flows and volumes from a wider area than the “site”, Ms Allan suggested that the reference to replicating natural processes is removed and instead, the potential for hydrological control to limit bank erosion, slumping or scour is also referenced in the definition.
623. Ms Allan therefore suggested that the definition read:

Hydrological control: means the management of a range of stormwater flows and volumes, and the frequency and timing of those flows and volumes, from a site, or sites, or area into rivers, lakes, wetlands, springs, riparian margins, and other receiving environments ~~in a way that replicates natural processes for the purpose of reducing bank erosion, slumping, or scour,~~ to help protect freshwater ecosystem health and well-being. Hydrological control may also include methods or techniques to limit bank erosion, slumping or scour.

624. Ms Allan said these amendments address water quantity and also water quality to the extent that bank management influences water quality (by limiting sedimentation, etc) and also allows control to be applied for a logical or larger area (not confined by reference to “site or sites”). The removal of reference to replicating natural processes gets rid of a potential conflict, as the controls would usually be intended to modify natural processes. Ms Allan also said that these changes would work better with proposed Policy 42(k) and Method FW.X. We discuss these provisions above. Our recommendations on Policy 42(k) are: “The extent to which *hydrological control minimises* adverse effects of runoff quantity (flows and volumes) and other potential adverse effects on natural stream ~~flows~~ values”. We recommend Method FW.X is adopted as recommended by the Officer.
625. In light of our recommendations on Policies 42, FW.X and Ms Allan’s advice, we recommend that the definition of *hydrological control* is amended to include reference to “area”. We consider there is appropriate scope for this from the discussion during the hearing on undeveloped state and in particular brownfield developments as we discuss further below in relation to *hydraulic neutrality*.

3.39.3 Finding and s 32AA Evaluation

626. We largely agree with the Reporting Officer’s recommendations on the definition of *hydrological control* for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal or Reply Evidence. We recommend that the definition is amended so that it refers to stormwater flows and volumes from a site, sites or area as this will help to achieve the freshwater outcomes in Objective 12 and give effect to the NPS-FM. The reference to replicating natural processes in the Officer’s recommended definition has the potential to cause interpretation issues given that a river in flood could be regarded as a natural process albeit exacerbated by higher intensity rainfall and storm events caused by climate change. We recommend a change to address this which we consider retains the policy intent but removes the potential interpretation issue/tension. We recommend retaining reference to bank erosion, slumping or scour in a new sentence in the definition.
627. The amendments we recommend will enhance the effectiveness and efficiency of the provisions they relate to. We do not consider there to be additional costs associated with the amendments as the Officer had recommend the definition include “site or sites” and we consider the

addition of “area” conveys the same policy intent, that is, that stormwater flows and volumes are assessed from a broader area than just the ‘subject site’ to achieve the freshwater outcomes stated in the Proposed Change 1 and the step change required to improve freshwater quality and quantity management as explained in Mr Farrant’s evidence.

3.39.4 Recommendation

Definition of ‘Hydrological controls’

Hydrological control: means the management of a range of *stormwater flows and volumes, and the frequency and timing of those flows and volumes, from a site, or sites, or area into rivers, lakes, wetlands, springs, riparian margins, and other receiving environments in a way that replicates natural processes for the purpose of reducing bank erosion, slumping, or scour, to help protect freshwater ecosystem health and well-being.* Hydrological control may also include methods or techniques to limit bank erosion, slumping or scour.

Hydrological controls

~~For greenfield development:~~

- ~~(a) — the modelled mean annual runoff volume generated by the fully developed area must not exceed the mean annual runoff volume modelled from the site in an undeveloped (pastoral) state~~
- ~~(b) — the modelled mean annual exceedance frequency of the 2-year Average Recurrence Interval (ARI) so-called ‘channel forming’ (or ‘bankfull’) flow for the point where the fully developed area discharges to a stream must not exceed the mean annual exceedance frequency modelled for the same site and flow event arising from the area in an undeveloped (pastoral) state.~~

~~For brownfield and infill development:~~

- ~~(a) — the modelled mean annual runoff volume generated by the fully developed area must, when compared to the mean annual runoff volume modelled for the site prior to the brownfield or infill development, be reduced as far as practicable towards the mean annual runoff volume modelled for the site in an undeveloped state~~
- ~~(b) — the modelled mean annual exceedance frequency of the 2-year ARI so-called ‘channel forming’ (or ‘bankfull’) flow for the point where the fully developed area discharges to a stream, or stormwater network, shall be reduced as far as practicable towards the mean annual exceedance frequency modelled for the same site and flow event in an undeveloped state.~~

3.40 *Hydraulic neutrality and undeveloped state*

628. We consider these two defined terms together as “undeveloped state” now occurs only in the proposed definition of “hydraulic neutrality” (if the Officer’s recommendations on Policy FW.X, which we agree with, are adopted by Council – see the earlier discussion under Policy FW.X).
629. Originally, UHCC [S34.0101] had sought a definition of “undeveloped state” as the term is referred to in the definition of “hydrological controls”. In the s 42A Report, the Officer proposed in the s 42A Report a definition of “undeveloped state” to assist interpretation of proposed new Policy FW.X relating to hydrological control for urban development. The Policy had proposed modelling for greenfield and brownfield/infill developments based on the baseline of the “undeveloped state” rather than the existing state of the site in order to provide opportunity to improve freshwater outcomes as a result of stormwater management from that site.³⁶⁷ Through the course of the hearings, the Officer recommended simplifying the Policy and removing references to greenfield and brownfield developments and also the reference to “undeveloped state”.
630. We agree with this recommendation (see Policy FW.X analysis above). If our recommendation is adopted, this means that “undeveloped state” is no longer referred to in the Policy. However, the term is used in the definition of “hydraulic neutrality” and in the same context, that is, managing stormwater runoff so that peak flows are released at a rate that does not exceed the modelled peak flow from the site in an “undeveloped state” in specific modelled rainfall events.
631. The Officer confirmed at the hearing that the definition of “undeveloped state” should also apply to “hydraulic neutrality”.³⁶⁸
632. Mr McDonnell for PCC said that the definition of “hydraulic neutrality” should refer to “pre-development peak run-off” because:³⁶⁹

the comparison of post-development runoff to land in “an undeveloped state” is not practical. For example, for brownfield development it is unclear how far back in time you would need to go for “undeveloped state”, this could be especially problematic in urban areas that are heavily

³⁶⁷ Statement of Supplementary Evidence of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 13 November 2023, para 56.

³⁶⁸ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 34, lines 1691 – 1694.

³⁶⁹ Statement of evidence of Torrey McDonnell on behalf of Porirua City Council (Planning), Hearing Stream 5, 2 November 2023, para 41.

modified, for example large parts of downtown Wellington and Porirua are on reclaimed land. I consider it would be better to refer to the state of the land prior to the development in question.

633. Mr McDonnell said that he preferred the definition in the Porirua PDP:³⁷⁰

Hydraulic neutrality: means managing stormwater runoff from all new lots or development areas through either on-site disposal or storage, so that stormwater is released from the site at a rate that does not exceed the pre-development peak stormwater runoff.

634. Mr Lewandowski on behalf of PPFL had similar concerns and said that “hydraulic neutrality” should refer to modelled peak flows and volumes from the site “prior to development”.³⁷¹

635. We asked Mr Farrant for his views on this during the Hearing. He said:³⁷²

I guess that’s really a question around flood resilience and whether we want to improve the resilience of future communities, or keep it the same as it currently is. But, that comes back to those situations where you might have a site that’s fully sealed. I’ll just use a carpark as an example, where it may be a hundred percent impervious at the moment. When a development starts that will be contributing to flooding, so is there an expectation for a developer to improve on those current conditions or not? Obviously also on the back of that is climate change projections with changing rainfall intensity and things. That’s really a question for flood modelling really.

636. Wellington Water confirmed at the hearing that it had no remaining concerns with the definition of “undeveloped state”.³⁷³

637. In Minute 18 we asked the Officer whether referring to the state of the land prior to the development in question (as suggested by PCC and others) was appropriate or whether that could lock in flows from impervious areas that could prevent effective hydrological control. Mr Farrant presented expert technical evidence on this question in Reply. Although commenting

³⁷⁰ Statement of evidence of Torrey McDonnell on behalf of Porirua City Council (Planning), Hearing Stream 5, 2 November 2023, para 42.

³⁷¹ Statement of Evidence of Maciej Lewandowski on behalf of Peka Peak Farm Limited, HS 5, 3 November 2023, para 4.20.

³⁷² Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 34, lines 1680 – 1689.

³⁷³ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 38, lines 1880 – 1881, per Mr Slyfield, and see also Wellington Water Hearing Speaking Notes.

on the term as it was proposed to be used in Policy FW.X, Mr Farrant’s comments also apply to the term as used in the definition of “hydraulic neutrality”. He noted that some submitters preferred the “pre-development” state to be either based on a detailed analysis of the vegetated landscape (such as mapping areas of grass, scrub and forest) in greenfield development or based on the pre-development condition of existing urban areas for infill development scenarios. Mr Farrant discussed the two options further and said that it was important to get an appropriate balance between ease of application and the importance of providing meaningful freshwater protections.

638. He concluded that in his view, basing the controls on existing urban landcover would either “add significant complexity or lock in the poor freshwater outcomes we see now for another full development cycle”.
639. We are persuaded by Mr Farrant’s evidence and also Wellington Water’s position on the issue. The proposed definition of “undeveloped state” will help to achieve the freshwater outcomes in Objective 12 and give effect to Te Mana o te Wai.
640. We asked Ms Allan (Special Advisor) to review the definition of *hydraulic neutrality* as proposed by the Officer and particularly in light of her comments and suggestions on the definition of *hydrological control*.
641. Ms Allan said that similar to her comments on *hydrological control*, she did not think a regional council should be tied into provisions that apply only at site scale (on a cadastral base using the definition of “site” in the National Planning Standards), when a larger area may throw up other practicable options for hydraulic neutrality (such as local open spaces, reserves, school playing fields, etc). Ms Allan commented that a pre-existing site pattern may not be the best way to achieve hydraulic neutrality. A TA may decide to assess hydraulic neutrality on a site-by-site basis but a regional council may choose to look at a larger group of sites, or a developer may choose to define the geographic area in agreement with the council.
642. Therefore, for the reasons described above in relation to *hydrological control*, Ms Allan suggested that the definition of *hydraulic neutrality* also refer to “area” and not just “the site”. Ms Allan also suggested that disposal or storage could practically occur either on-site or in the local area, and also suggested an amendment to reflect this. Ms Allan suggested that the definition therefore read along these lines:

Hydraulic neutrality: managing stormwater runoff from subdivision, use and development through either on-site or local area disposal or storage, so that peak stormwater flows and volumes are released from the site or defined area at a rate that does not exceed the modelled peak flows and volumes from the site or defined area in an undeveloped state, in the 10% AEP and 1% AEP modelled design rainfall events including the predicted impacts of climate change.

643. Mr Farrant’s technical evidence is clear that the status quo has not achieved the desired freshwater quality and quantity outcomes expected from the NPS-FM and to give effect to *Te Mana o te Wai*. We consider that the desired policy outcomes can be better achieved through the drafting amendments Ms Allan suggests, and we recommend those amendments are adopted.

3.40.1 Finding and s 32AA Evaluation

644. We largely agree with the Reporting Officer’s recommendations on the definition of *hydraulic neutrality* and *undeveloped states* for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal or Reply Evidence. We recommend that the definition of *hydraulic neutrality* is amended so that it refers to stormwater flows from a site or defined area as this will help to achieve the freshwater outcomes in Objective 12 and give effect to the NPS-FM. The recommended amendment to insert “or local area” reflects the practical situation that disposal or storage of runoff may occur within the area near the site.
645. We consider these recommended amendments are a more efficient and effective way to achieve Objective 12 and the NPS-FM direction. They provide more clarity as to the practical application of the provisions they relate to. We do not understand there to be a cost implication as the amendments proposed convey the policy intent for improved management of stormwater runoff in urban developments.

3.40.2 Recommendation

Hydraulic neutrality: managing stormwater runoff from subdivision, use and development through either on-site or local area disposal or storage, so that peak stormwater flows and volumes are released from the site or area at a rate that does not exceed the modelled peak flows and volumes from the site or area in an ~~undeveloped state~~ *undeveloped state*, in the 10% AEP and 1% AEP modelled design rainfall events including the predicted impacts of climate change.

Undeveloped state: The modelled grassed (pastoral or urban open space) state of the site prior to ~~urban development~~ urban development

3.41 *Maximise and Minimise*

646. Policy 14 uses the terms “maximise” and “minimise” in clause (g) and (k). Wellington Water [S113.033, S113.034, S113.035] sought amendments to align “maximise” and “minimise” with definitions in the NRP.
647. The Reporting Officer agreed and considered that the NRP definition of “maximise” is appropriate in the context of the freshwater provisions of the RPS. The Officer noted that the word is in Objective 9 of the Operative RPS, but that including a definition would not change the intent or interpretation of this Objective.³⁷⁴
648. The Reporting Officer for the Natural Hazards topic (HS3) recommended that the NRP definition of “minimise” be adopted in the RPS. The HS5 Officer considered that definition was also appropriate in the context of the freshwater provisions and recommended it is adopted.³⁷⁵
649. We agree with the Officer’s recommendations for the reasons given for the reasons given in the s 42A Report and Rebuttal Evidence.
650. We note that “maximise” is in Policy 42, and “minimise” is in Policies 15, FW.3, 41, 42 and in the definition of “Effects management hierarchy”. The words are not shown as defined terms in these provisions. We consider it is appropriate for the defined term to be used and recommend this is incorporated as a consequential amendment.

3.41.1 Recommendation

Maximise: Means to make as large or great as reasonably practicable. Maximised and maximising have the corresponding meaning.

Minimise: Reduce to the smallest amount reasonably practicable. Minimised, minimising and minimisation have the corresponding meaning.

³⁷⁴ Section 42A Hearing Report, Hearing Stream 5, Freshwater and Te Mana o te Wai, 20 October 2023, paras 355 – 357.

³⁷⁵ Section 42A Hearing Report, Hearing Stream 5, Freshwater and Te Mana o te Wai, 20 October 2023, paras 353 – 354.

651. We recommend that other provisions in Proposed Change 1 are amended as appropriate to reflect these defined terms, including in Policies 42, 15, FW.3, 41, 42 and the definition of “effects management hierarchy”. We recommend that this occur as a consequential amendment to the inclusion of the defined terms “maximise” and “minimise”, and consider there is scope from PCC’s general relief on definitions, and also Wellington Water’s relief.

3.42 *Specified infrastructure*

652. The Reporting Officer recommended in her Reply Evidence that a definition of “specified infrastructure” be included to assist interpretation of the consenting pathways in new Policies 18A and 40A, also proposed to be included through her Reply Evidence. The Officer proposed that the definition align with the same definition in clause 3.21 of the NPS-FM.
653. We agree that inclusion of the definition will assist interpretation of Policies 18A and 40A and recommend it is adopted.

3.42.1 Recommendation

specified infrastructure means any of the following:

(a) infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002)

(b) regionally significant infrastructure

(c) any water storage infrastructure

(d) any public flood control, flood protection, or drainage works carried out:

(i) by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or

(ii) for the purpose of drainage by drainage districts under the Land Drainage Act 1908

(e) defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990

(f) ski area infrastructure

3.43 *Te Mana o te Wai*

654. Proposed Change 1 includes the following definition of Te Mana o te Wai: “Te Mana o te Wai has the meaning set out in clause 1.3 of the NPS-FM”.
655. The HS5 s 42A Report did not address the definition of Te Mana o te Wai. However, in HS7 (Small topics, Wrap up and Variation 1) in the ‘Omitted Submission Points’ subtopic, the Officer said that Forest and Bird [S165.013] supported the definition of Te Mana o te Wai and sought that it be retained. The HS7 Reporting Officer recommended that the definition gives useful meaning to the provisions where the term is used and should be retained. The Officer did recommend however that instead of referring to ‘NPS-FM’ in the definition of Te Mana o te Wai, the full name of the NPS be set out together with the year of gazettal. This supports clarity and certainty for plan users according to the Officer, and is consistent with relief sought by Kāinga Ora that definitions are consistent with the relevant NPS or the National Planning Standards.
656. It is appropriate for the FHP to consider this issue. Our review of Change 1 and the Operative RPS showed that the “NPS-FM” is not defined. We recommend that the HS7 Officer’s recommendation is adopted and that the definition of Te Mana o te Wai refers to the NPS-FM 2020, and also that a definition is included in Change 1 of the National Policy Statement for Freshwater Management 2020. We consider there to be appropriate scope including through PCC’s general relief on definitions, Kāinga Ora’s relief seeking consistency between definitions and NPS’. We also note that the issue of the NPS-FM and *Te Mana o te Wai* was comprehensively discussed in the Hearing.

3.43.1 Recommendation

New definition for National Policy Statement for Freshwater Management

National Policy Statement for Freshwater Management or NPS-FM means the National Policy Statement for Freshwater Management 2020.

Te Mana o te Wai

Te Mana o te Wai has the meaning set out in clause 1.3 of the ~~NPS-FM~~ **National Policy Statement for Freshwater Management 2020.**

3.44 *Vegetation clearance and earthworks*

657. These terms are in Policy 15. In the s 42A Report, the Officer proposed a definition of “vegetation clearance” consistent with the definition in the NRP to aid interpretation of Policy 15. The Officer had recommended that the word “vegetation disturbance” in the Policy 15 amendments as notified be replaced with “vegetation clearance” on the basis that it is intended to have the same meaning and consistency with the NRP is useful.
658. Ms Clarke for Winstone Aggregates drew the Officer’s attention to an error in the wording of the definition. Ms Clarke said the “and” at the end of each clause should read “or”. The Officer agreed that the change was needed but for consistency with other provisions in the RPS, recommended that the word “or” is only included at the end of clause (c) and “and” is deleted in between clauses.
659. The Officer also recommended a definition of “earthworks” be included that is the same definition in the National Planning Standards, again to aid interpretation.
660. We recommend that these definitions are adopted as recommended by the Officer for the reasons in the s 42A Report and Rebuttal Evidence.

Vegetation clearance: The clearance or destruction of woody vegetation (exotic or native) by mechanical or chemical means, including felling vegetation, spraying of vegetation by hand or aerial means, hand clearance, and the burning of vegetation.

Vegetation clearance does not include:

(a) any vegetation clearance, tree removal, or trimming of vegetation associated with the Electricity (Hazards from Trees) Regulations 2003, and

(b) any vegetation clearance or vegetation disturbance covered by the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017, and

(c) any vegetation clearance associated with the repair and maintenance of existing roads and tracks, and or


(d) the removal of an individual shrub or tree or a standalone clump of trees or shrubs no larger than 20m².

Earthworks: means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock); but excludes gardening, cultivation, and disturbance of land for the installation of fence posts.

Nature-Based Solutions provisions

3.45 Objective CC.4 (HS3)

661. The notified Objective stated:

Objective CC.4 

Nature-based solutions are an integral part of climate change mitigation and adaptation, improving the health and resilience of people, biodiversity, and the natural environment.

662. This Objective recognises the connection between climate change and the decline of ecosystem health and biodiversity. It also recognises that nature-based solutions provide an important opportunity to mitigate and adapt to climate change, with co-benefits for the health of people and the natural environment.³⁷⁶

3.45.1 Submissions, Evidence and Analysis

663. Some submitters supported the Objective and wanted it retained (eg Rangitāne [S168.0108] and Te Tumu Paeroa [S102.007]) and others wanted it deleted or amended (eg DairyNZ [S136.012]). WIAL [S148.018] and Wellington Water [S113.004] said that NBS may not be practicable in all urban environments and could even conflict with the operation and safety of an infrastructure asset. In their view, it was appropriate to add the qualifier “where practicable”. PCC [S30.007] thought the Objective was not clear enough as to what was to be achieved. KCDC [S16.009] requested that any regulatory methods associated with the Objective are not the responsibility of city or district councils.

664. We agree with the Officer, Ms Guest, that Objective CC.4 has a resource management purpose in that nature-based solutions can contribute to achieving sustainable management by helping people and communities provide for their social, economic and cultural well-being while also safeguarding the life-supporting capacity of air, water, soil and ecosystems. The ERP, NAP and NPS-IB also contain direction regarding

³⁷⁶ Section 42A Report – Hearing Stream 3 – Climate Change: Climate Resilience and Nature-based Solutions, 31 July 2023, para 105.

the use of NBS to address the climate and biodiversity crises.³⁷⁷ Mr Rachlin for PCC confirmed in his evidence statement that the NAP and ERP seek the prioritisation of nature-based solutions.³⁷⁸

665. We also consider that direction for territorial authorities regarding NBS comes within their s 31 RMA functions to control actual or potential effects of the use, development or protection of land.

666. We also consider the evidential basis for the Objective has been adequately set out in Mr Farrant’s evidence and we do not support DairyNZ and WFF’s relief requesting the Objective is deleted. We agree with Ms Guest that:³⁷⁹

...there is clear evidence that supports the importance of using nature-based solutions to provide climate change mitigation and adaptation and that these measures must be implemented as soon as possible to avoid more costly greenhouse gas emission reductions in the future and to increase the resilience of our communities to the climate changes to come.

667. We do not support the addition of the qualifier “where practicable” as requested by some submitters. An objective is a statement of the outcome sought to be achieved for the Region, and the way it is to be achieved is set out in the cascading policies and methods.

668. Based on the evidence of Ms Woodridge for Kāinga Ora, the Officer recommends including “well-being” in the Objective to align with the language in s 5 of the RMA.³⁸⁰ Mr Rachlin for PCC sought that the Objective be rewritten to describe an outcome instead of a means to an outcome, and he also sought reference to “green infrastructure” for consistency with the direction in the National Planning Standards.³⁸¹ Ms Rushmere for UHCC asked for the word “integral” to be replaced with “important”, otherwise all solutions would require an element of nature-

³⁷⁷ Section 42A Report – Hearing Stream 3 – Climate Change: Climate Resilience and Nature-based Solutions, 31 July 2023, para 106.

³⁷⁸ Statement of evidence of Michael Rachlin on behalf of Porirua City Council (S30) – Planning, Climate Resilience and Nature Based Solutions, 14 August 2023, para 30.

³⁷⁹ Section 42A Report – Hearing Stream 3 – Climate Change: Climate Resilience and Nature-based Solutions, 31 July 2023, para 108.

³⁸⁰ Statement of Supplementary Evidence of Pamela Guest on behalf of Wellington Regional Council, Hearing Stream 3 – Climate Resilience and Nature-based Solution, 21 August 2023, para 24.

³⁸¹ Statement of evidence of Michael Rachlin on behalf of Porirua City Council (S30) – Planning, Climate Resilience and Nature Based Solutions, 14 August 2023, paras 19 – 21; 29 – 31.

based solutions.³⁸² Ms Hunter for WIAL sought a new objective and two new policies to recognise the importance of protecting infrastructure and ensuring it is resilient to the effects of climate change.³⁸³

669. In response to this evidence, Ms Guest supports amending the note to the definition of *nature-based solutions* to include a reference to “green infrastructure” which Ms Guest explained is a subset of nature-based solutions.³⁸⁴ Ms Guest did not support Ms Rushmere’s or Mr Rachlin’s amendments as she did not think they described an outcome, and she considered that other provisions in the RPS addressed the relief Ms Hunter sought.³⁸⁵
670. The Objective was discussed as ‘Topic 2’ in caucusing. All planning experts who attended the caucusing session other than Ms Rushmere for UHCC and Mr Rachlin for PCC, supported the wording in Ms Guest’s Rebuttal evidence:³⁸⁶

Objective CC.4: Nature-based solutions are an integral part of climate change mitigation and climate change adaptation, improving the health, well-being and resilience of people, indigenous biodiversity, and the natural and physical resources environment.

671. Ms O’Sullivan, who attended on behalf of WIAL, supported Objective CC.4 as drafted above, but also sought the inclusion of a new objective as set out in Ms Hunter’s evidence for WIAL. Ms Dewar, Counsel for WIAL, explained the concern with Objective CC.4 in these terms in the hearing.³⁸⁷

My concern about CC.4 is that it has the potential for unintentionally and unnecessarily making consenting more challenging by not recognising that it’s just not appropriate in

³⁸² Statement of evidence of Suzanne Rushmere on behalf of Upper Hutt City Council (Planning), 2 August 2023, paras 92 – 93.

³⁸³ Statement of Evidence by Claire Hunter, 14 August 2023, paras 55 – 61.

³⁸⁴ Statement of Supplementary Evidence of Pamela Guest on behalf of Wellington Regional Council, Hearing Stream 3 – Climate Resilience and Nature-based Solution, 21 August 2023, para 25.

³⁸⁵ Statement of Supplementary Evidence of Pamela Guest on behalf of Wellington Regional Council, Hearing Stream 3 – Climate Resilience and Nature-based Solution, 21 August 2023, paras 26 – 28.

³⁸⁶ We note that the JWS states in para 24 that the planners in agreement supported Ms Guest’s Rebuttal version of Objective CC.4, however the wording in para 24 of the Objective differs from the wording in the Rebuttal Evidence (para 27). We have quoted the version in Ms Guest’s Rebuttal Evidence.

³⁸⁷ Hearing Transcript, HS3 – Climate Change, Day 2, page 23, lines 1153 – 1158.

all circumstances, particularly at the airport where they're on the coast and there are particular management perspectives of an airport which don't allow some nature-based solutions for obvious reasons – aircraft safety; and that that should be recognised in this document.

672. Ms Hunter also explained that plantings and wetlands (which are *nature-based solutions*) could potentially attract bird life which could present potential significant safety hazards for aircraft.³⁸⁸ Ms Raeburn for WIAL also explained the constraints at Wellington Airport given the land footprint:³⁸⁹

There isn't always a lot of space for some of the planting and biodiversity projects that other airports would be able to undertake. That said, we do engage in a lot of projects off-site in our immediate local community to support biodiversity, natural projects, tree planting and those kinds of things where we can.

673. Ms Rushmere for UHCC did not support the use of the word “integral” in Objective CC.4 and preferred that the Objective included a reference to whether NBS was practicable in the circumstances. Mr Rachlin for PCC considered that the words after “adaptation” were superfluous, and he preferred the wording set out in paragraphs 27 – 32 of his evidence statement.
674. In response to a question we asked in Minute 12, Ms Guest supported adding the words “and communities” into Objective CC.4 to reflect that NBS provides for the well-being of people at community and city scales. This amendment is also consistent with the definition of “climate resilience” which also refers to people and communities. We support this change, and we otherwise agree with the version of Objective CC.4 set out above and supported by the majority of the planning experts who attended caucusing.
675. Ms Hunter for WIAL requested the following new Objective which would “balance the prioritisation of nature-based solutions” in Objective CC.4, while also giving weight to ensuring infrastructure assets are resilient and protected.³⁹⁰

³⁸⁸ Hearing Transcript, HS3 – Climate Change, Day 2, page 27 - 28, lines 1396 – 1401.

³⁸⁹ Hearing Transcript, HS3 – Climate Change, Day 2, page 24, lines 1200 – 1204.

³⁹⁰ Statement of Evidence by Claire Hunter, HS3, 14 August 2023, para 55.

Resilient infrastructure protects and enhances the well-being of the communities within the Wellington Region.

676. Dr Dawe in his Rebuttal evidence said that in his view, Objectives 19, 21 and CC.6 (as sought to be amended by the s 42A Report for Natural Hazards in response to submissions from WIAL) all specifically provide for the resilience of infrastructure, acknowledging its important role in communities being resilient to the effects from natural hazards and climate change.³⁹¹
677. We understand WIAL and UHCC’s concerns with Objective CC.4, but we consider the wording appropriate for an outcome statement. The implementing policies (CC.4, 4A, 14 and 14A – discussed below), all state that the prioritisation of *nature-based solutions* is “as appropriate to the scale and context of the activity”. In our view, this wording tempers the concerns about the absolute tone/language of Objective CC.4 being interpreted as nature-based solutions being the primary solution.³⁹²

3.45.2 Finding

678. We agree with the Reporting Officer’s recommendations on Objective CC.4 for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal or Reply Evidence

3.45.3 Recommendation

Objective CC.4:

Nature-based solutions are an integral part of *climate change mitigation* and *climate change adaptation*, improving the health, *well-being* and *resilience* of people and communities, *indigenous biodiversity*, and ~~the~~ natural and physical resources environment.


³⁹¹ Statement of Rebuttal Evidence of Dr Iain Dawe and James Beban on behalf of Wellington Regional Council, HS3 – Natural Hazards, 22 August 2023, para 85.


³⁹² As expressed by Ms Hunter for WIAL, Hearing Transcript, HS3 – Climate Change, Day 2, page 27, lines 1388 – 1394.

3.46 Policy CC.4: Climate resilience urban areas – district and regional plans

Policy CC.14: Climate resilient urban areas - consideration (HS 3)

679. The notified Policies stated:

<u>Policy CC.4: Climate resilient urban areas – district and regional plans</u>	
<p><u>District and regional plans shall include policies, rules and/or methods to provide for climate-resilient urban areas by providing for actions and initiatives described in Policy CC.14 which support delivering the characteristics and qualities of well-functioning urban environments.</u></p> <p><u>Explanation</u></p> <p><u>Policy CC.4 directs regional and district plans include relevant provisions to provide for climate resilient urban areas. For the purposes of this policy, climate-resilient urban areas mean urban environments that have the ability to withstand:</u></p> <ul style="list-style-type: none"> • <u>Increased temperatures and urban heat island</u> • <u>Increased intensity of rainfall and urban flooding</u> • <u>Droughts and urban water scarcity and security</u> • <u>Increased intensity of wind, cold spells, landslides, fire, and air pollution</u> <p><u>The policy is directly associated with Policy CC.14 which provides further direction on actions and initiatives to provide for climate resilient urban areas. It is noted that other policies of this RPS also provide for actions and initiatives to deliver climate resilient urban areas, including Policy FW.3.</u></p>	

<u>Policy CC.14: Climate-resilient urban areas – consideration</u>	
<p><u>When considering an application for a resource consent, notice of requirement, or a change, variation or review of a district or regional plan, provide for actions and initiatives, particularly the use of nature-based solutions, that contribute to climate-resilient urban areas, including:</u></p> <p>(a) <u>maintaining, enhancing, restoring, and/or creating urban greening at a range of spatial scales to provide urban cooling, including working towards</u></p>	

	<u>a target of 10 percent tree canopy cover at a suburb-scale by 2030, and 30 percent cover by 2050,</u>
(b)	<u>the application of water sensitive urban design principles to integrate natural water systems into built form and landscapes, to reduce flooding, improve water quality and overall environmental quality,</u>
(c)	<u>capturing, storing, and recycling water at a community-scale (for example, by requiring rain tanks, and setting targets for urban roof area rainwater collection),</u>
(d)	<u>protecting, enhancing, or restoring natural ecosystems to strengthen the resilience of communities to the impacts of natural hazards and the effects of climate change,</u>
(e)	<u>providing for efficient use of water and energy in buildings and infrastructure, and</u>
(f)	<u>buildings and infrastructure that are able to withstand the predicted future temperatures, intensity and duration of rainfall and wind.</u>
	Explanation
	<u>Climate change, combined with population growth and housing intensification, is increasingly challenging the resilience and well-being of urban communities and natural ecosystems, with increasing exposure to natural hazards, and increasing pressure on water supply, wastewater and stormwater infrastructure, and the health of natural ecosystems.</u>
	<u>This policy identifies the key attributes required to develop climate-resilience in urban areas and requires district and regional councils to take all opportunities to provide for actions and initiatives, particularly nature-based solutions, that will prepare our urban communities for the changes to come.</u>

680. Proposed Change 1 introduced new Policies CC.4 and CC.14 to require development and infrastructure to be located, designed and constructed in ways that provide for climate change mitigation, adaptation and resilience. The provisions set out the key considerations for climate-resilient development, prioritising nature based solutions.³⁹³ The clauses in the Policies respond to different climate stressors, such as increased temperature, increased intensity of rainfall and urban flooding, increased discharge of urban contaminants, droughts and urban water scarcity and security.³⁹⁴ The technical evidence of Mr Farrant discusses the significant risks for people and the environment if “business-as-usual” development continues in the face of predicted climate change.

³⁹³ Section 42A Report – Hearing Stream 3 – Climate Change: Climate Resilience and Nature-based Solutions, 31 July 2023, para 174.

³⁹⁴ Statement of Supplementary Evidence of Pamela Guest on behalf of Wellington Regional Council, Hearing Stream 3, Climate-Resilience and Nature-Based Solutions, 21 August 2023, para 44.

3.46.1 Submissions, Evidence and Analysis

681. There was a range of views on the provisions. Some submitters, such as HCC [S115.063], requested that duplication with the freshwater policies is removed, others requested various amendments to improve drafting clarity, and others requested the Policies are deleted due to lack of legislative mandate. KCDC [S16.027] said that the tree cover targets for suburban areas conflicted with development enabled by the Medium Density Residential Standards.
682. Some submitters were concerned about the level of direction for territorial authorities in Policy CC.4, which requires development and infrastructure to be located, designed and constructed in ways that provide for climate change mitigation, climate change adaptation and climate-resilience, prioritising the use of nature based solutions and informed by mātauranga Māori. Ms Guest and Mr Farrant explained at the hearing that the aim was to state the outcome intended, and leave some flexibility for how the outcome is achieved. Mr Farrant explained the need for clear direction for district plans to impose explicit requirements on permitted activity standards for instance. He said:³⁹⁵
- “if those standards are not clear anywhere, then that’s what currently is being observed at the moment. Many small developments are not required to do anything and therefore just continue to make, certainly from an urban water perspective, continue to make things worse.”
683. We agree with Ms Guest that the Policies have a RMA purpose and there is appropriate legislative mandate for the reasons outlined in Ms Guest’s s 42A Report³⁹⁶ and also set out in the Regulatory Framework section at the beginning of this Report. In particular, we agree that district plans can and should include provisions supporting the built environment to withstand climate change impacts and give effect to Te Mana o te Wai, as directed in clause 3.5(4) and Policy 4 of the NPS-FM, and also supported in the ERP and NAP.³⁹⁷
684. While nature-based solutions is an umbrella concept that covers a range of measures that improve resilience and mitigate climate change, it has a specific and increasingly important role in managing freshwater quality

³⁹⁵ Hearing Transcript, HS3 – Climate Change, Day 1, page 81, lines 4144 – 4148.

³⁹⁶ Section 42A Report – Hearing Stream 3 – Climate Change: Climate Resilience and Nature-based Solutions, 31 July 2023, paras 104, 150 – 151.

³⁹⁷ Section 42A Report – Hearing Stream 3 – Climate Change: Climate Resilience and Nature-based Solutions, 31 July 2023, para 152.

and quantity and hence the inclusion of these provisions in the FPI. As Mr Farrant explains in his technical evidence provided on behalf of the Council, nature-based solutions can reduce the impacts of high intensity rainfall events and manage stormwater flows to mitigate flooding risk and retain natural stream flows as much as possible through hydrological control, water sensitive urban design techniques and other measures to protect communities and ecosystems.³⁹⁸

685. As stated in the s 32 Report³⁹⁹ and Mr Farrant's evidence, natural ecosystems provide resilience including through carbon sequestration and storage, rain gardens, water sensitive urban design techniques that can act as sinks and mitigate natural hazard risk, as well as improve stormwater management which has many co-benefits for people and ecosystems.
686. Policy 4 of the NPS-FM directs freshwater to be managed as part of New Zealand's integrated response to climate change. This speaks directly to managing freshwater as part of climate change mitigation and adaptation.
687. We support Ms Guest's recommendation in the s 42A Report to separate Policies CC.4 and CC.14 into four policies to provide separate regulatory and consideration policies for territorial authorities and the regional council. This clarifies roles and responsibilities.
688. No consensus was reached on the drafting of the Policies during caucusing.⁴⁰⁰
689. Mr Rachlin for PCC agreed with the Officer that the NAP and ERP seek the prioritisation of nature-based solutions.⁴⁰¹ However, he had concerns about the workability of the policies, and considered clauses (a) to (f) in Policies CC.4 and CC.14 contained an inappropriate level of prescriptiveness and unnecessary duplication. Mr Rachlin set out in his evidence examples of the nature-based solutions contained in the Porirua Proposed District Plan.⁴⁰²

³⁹⁸ Statement of Evidence of Stuart Farrant on behalf of Wellington Regional Council, Technical Evidence – Climate-Resilience and Nature-based Solutions, 7 August 2023.

³⁹⁹ Section 32 Report, including pages 72 and 173.

⁴⁰⁰ Joint Witness Statement of Planning Experts, Climate Resilience, Nature-Based Solution & Natural Hazards, 16 October 2023, para 29.

⁴⁰¹ Statement of evidence of Michael Rachlin on behalf of Porirua City Council, Planning, Climate Resilience and Nature-Based Solutions, 14 August 2023, para 30.

⁴⁰² Statement of evidence of Michael Rachlin on behalf of Porirua City Council, Planning, Climate Resilience and Nature-Based Solutions, 14 August 2023, paras 36 – 46.

690. Some other experts were concerned about the lack of clarity as to how territorial authorities can promote clauses (d) and (e) within the context of the consenting process and they also said (for instance Ms Rushmere for UHCC and Ms Woodbridge for Kāinga Ora) that unnecessary duplication should be avoided where possible. Various experts raised other concerns with the wording in the Policies,⁴⁰³ including concern at how the active term ‘promoting’ is to be achieved in the context of the Policies, and how territorial authorities were to set targets for urban roof area rainwater collection (clause (b) in Ms Guest’s Reply version). Ms Rushmere for UHCC was concerned about duplication, the level of specificity and direction to territorial authorities, and said the tree cover targets conflict with the Medium Density Residential Standards, and the lack of space in some urban sites would mean the measures in Policy CC.14 could not be implemented.⁴⁰⁴
691. Ms Guest addressed many of these concerns in her Rebuttal Evidence. She said each of the clauses in the provisions respond to different climate stressors listed in the Explanation to Policy CC.4, and this was supported by Mr Farrant’s technical evidence.⁴⁰⁵ Ms Guest considered that the Policies give flexibility to territorial authorities to draft provisions in a way that is appropriate to their district and the specific activities being addressed,⁴⁰⁶ and that it was appropriate, and justified for plan provisions to be developed to require development and infrastructure to be located, designed and constructed in ways that are responsive to climate change (including through the use of permitted activity standards and design guides setting appropriate conditions within the planning framework).⁴⁰⁷ Ms Guest recommended various amendments to address relief sought by Ms Horrox for Wellington Water and other submitters.⁴⁰⁸ She thought there was a strong evidence base supporting the value of 30% green space in

⁴⁰³ Joint Witness Statement of Planning Experts, Climate Resilience, Nature-Based Solution & Natural Hazards, 16 October 2023, paras 31 – 39.

⁴⁰⁴ Statement of Evidence of Suzanne Rushmere on behalf of Upper Hutt City Council (Planning), 2 August 2023.

⁴⁰⁵ Statement of Supplementary Evidence of Pamela Guest on behalf of Wellington Regional Council, Hearing Stream 3, Climate-Resilience and Nature-Based Solutions, 21 August 2023, para 44.

⁴⁰⁶ Statement of Supplementary Evidence of Pamela Guest on behalf of Wellington Regional Council, Hearing Stream 3, Climate-Resilience and Nature-Based Solutions, 21 August 2023, para 45.

⁴⁰⁷ Statement of Supplementary Evidence of Pamela Guest on behalf of Wellington Regional Council, Hearing Stream 3, Climate-Resilience and Nature-Based Solutions, 21 August 2023, para 48.

⁴⁰⁸ Statement of Supplementary Evidence of Pamela Guest on behalf of Wellington Regional Council, Hearing Stream 3, Climate-Resilience and Nature-Based Solutions, 21 August 2023, paras 55 – 56.

urban areas and that this was appropriate as a 2050 target, and a 10% ‘near-term’ target was realistic.⁴⁰⁹

692. We note some experts in caucusing supported Ms Guest’s amendments to the chapeau to refer to “as appropriate to the scale and context of the activity”.
693. We agree with the Officer that both city/district and regional councils have roles to promote and support the use nature-based solutions. The NAP and ERP direct that the use of nature-based solutions be prioritised within the planning and regulatory systems to address the climate and biodiversity crises together. We agree with the amendments the Officer proposes to definitions of *climate change mitigation* and *climate change adaptation* as this will improve clarity and help to achieve the policy intent. We agree with the Officer that “climate responsive” includes adaptation, mitigation and resilience in its natural and ordinary meaning and does not require a definition.

3.46.2 Integrating the HS 5 and HS 3 provisions

694. In Minute 18, we asked Ms Pascall and Ms Guest to review alignment and workability of the nature-based solutions provisions with the HS5 provisions regarding hydrological control, hydraulic neutrality and water sensitive urban design. We asked whether the provisions and definitions collectively worked as a cohesive, easy to understand and implement suite of provisions.
695. Ms Pascall said that nature-based solutions is an umbrella term and concepts and methods such as water sensitive design and hydrological control are subsets of nature-based solutions. Hydrological control is a specific concept that is focussed on managing the effects of stormwater runoff on freshwater ecosystem health and is part of implementing Te Mana o te Wai in the RPS.⁴¹⁰
696. At the Hearing, in response to questions, Mr Farrant said that hydrological controls are a subset of water sensitive urban design. He helpfully explained the relationship in this way:⁴¹¹

⁴⁰⁹ Statement of Supplementary Evidence of Pamela Guest on behalf of Wellington Regional Council, Hearing Stream 3, Climate-Resilience and Nature-Based Solutions, 21 August 2023, para 51.

⁴¹⁰ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 35.

⁴¹¹ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 32, lines 1608 – 1620.

Water sensitive urban design is really a philosophy or set of principles around developing in a way that considers all aspects of water – so that’s water quality, water quantity in terms of hydrological controls, but also in terms of flooding and also in terms of community education and connection with waterways and things. It’s quite an all-encompassing sort of philosophy around development. Hydrological controls is then just one small subset of that. I guess nature-based solutions is probably best described as a much bigger subset of that as well. That’s where you’re then either using nature or intentionally mimicking nature to achieve those outcomes. Broadly that aligns with water sensitive urban design, but there [are] probably some examples of water sensitive urban design like education, like reducing demand on water and things that don’t also sit in the nature-based solutions suite

697. Later, Mr Farrant added to this explanation:⁴¹²

obviously the intent to either use or mimic nature is really important; so hydrological controls were trying to come up with run-off from a catchment that more or less replicates what you would have in a natural catchment. You’re using non-nature things. It might be a large concrete tank with a pump, or something, but you’re doing it intentionally to try and mimic what nature would be doing if she was left to her own devices.

698. And then further, he clarified that “... hydrological control is about water quantity in ... small rainfall events”. Ms Lockyer, presenting evidence for Wellington Water, agreed with this in her evidence presented during the hearing.⁴¹³

699. Ms Pascall said that the purpose of hydrological control is:⁴¹⁴

primarily to manage stormwater runoff volume, rather than contaminants, because the increased volume of stormwater runoff into waterbodies can change the natural processes and characteristics of these waterbodies including the habitats the freshwater ecosystems rely on.

⁴¹² Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 36, lines 1804 - 1805.

⁴¹³ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 43, lines 2156 – 2158.

⁴¹⁴ Reporting Officer Right of Reply of Kate Pascall on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater and Te Mana o te Wai, 20 December 2023, paras 55.

700. In discussing the relationship between “nature-based solutions”, “hydrological control” and “water sensitive urban design”, Mr Farrant said:⁴¹⁵

Provisions in Change 1 relating to hydrological control, water sensitive urban design and, to a lesser extent hydraulic neutrality, comprise a smaller subset of the broad suite of nature-based solutions with a specific focus on stormwater management to protect freshwater values and provide community resilience.

701. Mr Farrant also commented that the provisions of Change 1 have intentionally focussed on the outcome sought, rather than the methods to achieve this, and there will be opportunities to adopt nature-based solutions through specific implementation of water sensitive design strategies to meet proposed hydrological controls.⁴¹⁶

702. The evidence presented by Ms Penfold for Wellington Water at the Hearing was informative. She confirmed, in response to a question we posed, that there are provisions currently in district plans that require urban development to be designed, constructed and maintained to achieve hydraulic neutrality designed to a particular storm event as set out in the district plan.⁴¹⁷ Ms Penfold provided additional context regarding Wellington Water’s infrastructure:⁴¹⁸

The stormwater network is primarily at the moment there to manage flooding, which has caused problems with contamination, but that’s a separate topic. It’s there to manage flooding. We can’t keep upgrading our network and making the pipes bigger and bigger to absorb all the water flowing off as a result of increased impermeable surfaces, so we’ve been working with the councils so that we have source control in place to manage the amount of stormwater coming off the sites in the design events, so that we can continue to manage flooding through our piped network as best as we can.

703. In her Reply Evidence, and in conjunction with Ms Guest, the Reporting Officer for HS3 – Climate Resilience and Nature-Based Solutions, Ms Pascall recommended amendments to Policies CC.4, CC.4A, CC.14 and

⁴¹⁵ Right of Reply of Stuart Farrant on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater, 20 December 2023, para 10.

⁴¹⁶ Right of Reply of Stuart Farrant on behalf of Wellington Regional Council, Hearing Stream 5 – Freshwater, 20 December 2023, para 12.

⁴¹⁷ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 52 lines 2611 – 2621.

⁴¹⁸ Hearing Transcript, HS5 – Freshwater and Te Mana o te Wai, Day 1, page 52, lines 2626 – 2635.

CC.14A (coded to HS3), to remove unnecessary duplication with the HS5 provisions. These changes included:

- a. Deleting Policies CC.4(b), CC4A(a) and (b), CC.14(b), and CC.14A(a) and (b), and
- b. adding text to the policy explanations of each of the above policies to provide appropriate linkages to Policy 14, Policy FW.3, and Policy FW.XX where there are more specific requirements that also contribute to achieving climate-resilience.

704. We support the replacement of “seek” with “require” in Policy CC.14A and consider that this is appropriate to achieve the outcomes in both Objective CC.4 and Objective 12, as well as with national management plans and strategies such as the NAP. As was clarified at the Hearing, the intention is to provide for all opportunities to provide for actions and initiatives to prepare communities for climate change⁴¹⁹ and we therefore consider that the strong verb “require” is therefore appropriate. We also note the support provided by Clause 3.5(2) of the NPS-FM refers to “[RPS provisions] to the extent needed” to provide for integrated management of the effects of the use and development of land on freshwater and on receiving environments.

705. We also support Ms Guest’s recommendation to delete “urban” from the explanation, as the policy applies to other areas such as rural residential areas. We agree with the inclusion of “informed by mātauranga Māori” in the Policies and note this is supported by Ms Gibb for Ātiawa.⁴²⁰ Dr Aroha Spinks from Ngā Hapū o Ōtaki also said during the hearing that Ngā Hapū want to see consistency throughout the climate change policies with its Treaty partners, the Regional Council and Kapiti Coast District Council “that is informed by our mātauranga and expertise”.⁴²¹ Dr Spinks said:⁴²²

... we advocate that we are the best to provide the mātauranga and knowledge of our ancestral landscape and that we have expertise in climate action and adaptation strategies within our rohe. Working alongside western based knowledge systems, such as climate science and predictions, socio ecological infrastructure and economic assessments; however, we would like to highlight that kaupapa Māori and te ao Māori

⁴¹⁹ Hearing Transcript, HS3 – Climate Change, Day 1, page 83, lines 4212 - 4223.

⁴²⁰ Hearing Transcript, HS3 – Climate Change, Day 3, pages 75 – 76, lines 3843 – 3849.

⁴²¹ Hearing Transcript, HS3 – Climate Change, Day 4, page 23, lines 1152 – 1154.

⁴²² Hearing Transcript, HS3 – Climate Change, Day 4, page 24, lines 1182 - 1190.

frameworks, as well as our own science and cultural practices, are not only valid but have been successful over centuries within this country. So, therefore it would be very appropriate to be used in the future in the next phase of planning as well as climate resilience.”

706. Ms Craig for Rangitāne said:⁴²³

Mātauranga Māori is a way in which we see the world within te ao Māori. It is completely different to how you see the world in a te ao Pākehā lens and with western science. For us it is the intergenerational view of our whenua, our awa, our āngi, our taiao and our whakapapa. It is how we pay homage to our atua, all of which have a purpose. We work throughout our lives to uphold their mana.

707. We discussed the HS3 and HS5 provisions with Ms Allan and she considered they were appropriately integrated and did not contain any unnecessary duplication, and were clear as to the allocation of roles and responsibilities between local authorities.

3.46.3 Finding

708. We agree with the Reporting Officers’ recommendations on Policies CC.4 and CC.14, and the inclusion of new Policies CC.4A and CC.14A for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal or Reply Evidence.

3.46.4 Recommendation

Policy CC.4: Climate-responsive resilient development urban areas – district and regional plans

District and regional plans shall include objectives, policies, rules and non-regulatory methods to provide for climate-resilient urban areas by providing for actions and initiatives described in Policy CC.14 which support delivering the characteristics and qualities of well-functioning urban environments: require development and infrastructure to be located, designed, and constructed in ways that provide for climate change mitigation, climate change adaptation and climate-resilience, prioritising the use of nature-based solutions and informed by mātauranga Māori. This includes, as appropriate to the scale and context of the activity:

(a) requiring provision of urban green space, particularly canopy trees, to reduce urban heat and reduce stormwater flowrates:

i. prioritising the use of appropriate indigenous species, and

⁴²³ Hearing Transcript, HS3 – Climate Change, Day 4, page 33, lines 1630 – 1634.

ii. ~~working contributing towards achieving a wider target of 10 percent tree canopy cover at a suburb-scale by 2030, and 30 percent cover by 2050,~~

~~(b) requiring application of water-sensitive urban design principles, hydrological controls, and other methods to improve water quality, overall environmental quality, minimise flooding and maintain, to the extent practicable, natural stream flows.~~

~~(be) requiring methods to increase water resilience, including harvesting of water at a domestic and/or community-scale for non-potable uses (for example by requiring rain tanks, rainwater reuse tanks, and setting targets for urban roof area rainwater collection),~~

~~(cd) requiring that significant adverse effects on the climate change mitigation, climate change adaptation and climate-resilience functions and values of an ecosystem shall be avoided, and other adverse effects on these functions and values shall be avoided, minimised, or remedied,~~

~~(de) promoting efficient use of water and energy in buildings and infrastructure, and~~

~~(ef) promoting appropriate design of buildings and infrastructure so they are able to withstand the predicted future higher temperatures, intensity and duration of rainfall and wind over their anticipated life span.~~

Explanation

Policy CC.4 directs ~~regional and district plans to include relevant provisions to provide for climate-resilient development and infrastructure to respond to the predicted effects of climate change. The policy seeks that priority be given to the use of nature-based solutions, recognising the multiple-benefits they can provide for people and nature. It also seeks to manage any adverse effects of activities on the climate change functions and values of ecosystems.~~

For the purposes of this policy, climate-resilient urban areas mean urban environments that have the ability to withstand:

- ~~Increased temperatures and urban heat island~~
- ~~Increased intensity of rainfall and urban flooding and increased discharge of urban contaminants~~
- ~~Droughts and urban water scarcity and security~~
- ~~Increased intensity of wind, cold spells, landslides, fire, and air pollution~~

The policy is directly associated with Policy CC.14 which provides further direction on actions and initiatives to provide for climate resilient urban areas.

It is noted that other policies of this RPS also provide for actions and initiatives to deliver ~~climate-resilient infrastructure and development urban areas, including Policy FW.3. This includes requirements to apply water sensitive urban design principles and hydrological control in urban development in Policy 14, Policy FW.3, and Policy FW.XX (Hydrological control in urban development).~~

Policy CC.4A: Climate-responsive resilient development – regional plans

Regional plans shall include objectives, policies, rules and non-regulatory methods to require development and *infrastructure* to be located, designed, and constructed in ways that provide for *climate change mitigation, climate change adaptation and climate-resilience*, prioritising the use of *nature-based solutions* and informed by *mātauranga Māori*. This includes ~~ing by~~, as appropriate to the scale and context of the activity:

~~(a) requiring the application of water-sensitive urban design principles and methods to improve water quality and overall environmental quality, including by requiring stormwater contaminants to be avoided or minimised in discharges to the stormwater network or to water;~~

~~(b) requiring stormwater flowrates and volumes to be managed to minimise flooding and to maintain, to the extent practicable, natural stream flow rates and volumes, and~~

~~(ae) requiring significant adverse effects on the *climate change mitigation, climate change adaptation and climate-resilience* functions and values of an ecosystem be avoided, and other adverse effects on these functions and values be avoided, minimised, or remedied.~~

Explanation

Policy CC.4A directs *regional plans* to include provisions to provide for *climate-resilient development and infrastructure*. The policy seeks that priority be given to the use of *nature-based solutions*, recognising the multiple benefits they can provide for people and nature. It also seeks to manage any adverse effects of activities on the climate change functions and values of ecosystems.

It is noted that other policies of this RPS also provide for actions and initiatives to deliver *climate-resilient infrastructure* and development, including Policy FW.14 requirements to apply *water sensitive urban design principles and hydrological control* in Policy 14, Policy FW.3 and Policy FW.X~~X~~ (*Hydrological control in urban development*).

Policy CC.14: Climate-responsive resilient development urban areas – district and city council consideration

When considering an application for a resource consent, notice of requirement, or a change, variation or review of a *district or regional plan*, ~~require seek~~ that development and *infrastructure* is located, designed and constructed in ways that provide for *climate change mitigation, climate change adaptation and climate-resilience*, ~~provide for actions and initiatives~~, particularly prioritising the use of *nature-based solutions* and informed by *mātauranga Māori*. This includes ~~ing by~~, as appropriate to the scale and context of the activity:

~~(a) maintaining, enhancing, restoring, and/or creating urban green space at a range of spatial scales to provide urban cooling, including, providing urban green space, particularly canopy trees, to reduce urban heat and reduce *stormwater* flowrates;~~

i. ~~prioritising the use of appropriate *indigenous* species, and~~

ii. ~~contributing working towards~~ achieving a ~~wider~~ target of 10 percent *tree canopy* cover at a suburb-scale by 2030, and 30 percent cover by 2050,

~~(b) the application of *water-sensitive urban design* principles, hydrological controls, and other methods to integrate natural water systems into built form and landscapes, to reduce flooding, improve water quality and overall environmental quality, minimise flooding and maintain, to the extent practicable, natural stream flows;~~

~~(be) methods to increase water resilience, including by requiring harvesting of water at a domestic and/or capturing, storing, and recycling water at a community-scale for non-potable uses (for example by requiring rain tanks, *rainwater re-use tanks*, and setting targets for urban roof area rainwater collection),~~

~~(cd) protecting, enhancing, or restoring natural ecosystems to strengthen the resilience of communities to the impacts of natural hazards and the effects of climate change; avoiding significant adverse effects on the *climate change mitigation, climate change adaptation and climate-resilience* functions and values of an ecosystem, and avoiding, minimising, or remedying other adverse effects on these functions and values,~~

~~(de) providing for promoting efficient use of water and energy in buildings and infrastructure, and~~

~~(ef) promoting appropriate design of buildings and infrastructure that so they are able to withstand the predicted future higher temperatures, intensity and duration of rainfall and wind over their anticipated life span.~~

Explanation

Climate change, combined with population growth and housing intensification, is increasingly challenging the *resilience* and well-being of *urban* communities and natural ecosystems, with increasing exposure to natural hazards, and increasing pressure on water supply, wastewater and stormwater infrastructure, and the health of natural ecosystems.

This policy identifies the key attributes required to ~~ensure that development and infrastructure provide for develop~~ *climate-resilience in urban areas* and requires district ~~and regional~~ councils to take all opportunities to provide for actions and initiatives, particularly *nature-based solutions*, that will prepare our *urban* communities for the changes to come. *Managing stormwater runoff following intense rainfall events and contaminants from urban development also contributes to the achievement of Policy CC.14 and these matters are addressed through the requirements of Policies 40 and 42.*

Policy CC.14A: Climate-responsive development – regional council consideration

~~When considering an application for a resource consent, or a change, variation, or review of a regional plan, require seek that development and infrastructure is located, designed,~~

and constructed in ways that provide for *climate change mitigation, climate change adaptation and climate-resilience*, prioritising the use of *nature-based solutions* and informed by *mātauranga Māori*. This includes by, as appropriate to the scale and context of the activity:

~~(a) the application of water-sensitive urban design principles and methods to improve water quality and overall environmental quality, including by avoiding or minimising stormwater contaminants in discharges to the stormwater network or to water.~~

~~(b) managing stormwater flowrates and volumes to minimise flooding and to maintain, to the extent practicable, natural stream flows, and~~

~~(c) avoiding significant adverse effects on the *climate change mitigation, climate change adaptation and climate-resilience* functions and values of an ecosystem and avoiding, minimising, or remedying other adverse effects on these functions and values.~~

Explanation


Climate change, combined with population growth and housing intensification, is increasingly challenging the resilience and well-being of *urban* communities and natural ecosystems, with increasing exposure to natural hazards, and increasing pressure on water supply, wastewater and *stormwater infrastructure*, and the health of natural ecosystems.

This policy identifies the key attributes required to ensure that development and *infrastructure* provides for *climate-resilience* and requires the regional council to take all opportunities to provide for actions and initiatives, particularly *nature-based solutions*, that will prepare our communities for the changes to come.

It is noted that other policies of this RPS also provide regulatory requirements ~~to deliver climate-resilient infrastructure and development to apply water sensitive urban design principles and hydrological control including Policies 14, Policy FW.3, Policy FW.XX~~ (*Hydrological control in urban development*) and Policy 42.

3.47 Policy CC.12: Protect, enhance and restore ecosystems that provide nature-based solutions to climate change – consideration (HS3)

709. The notified Policy stated:

Policy CC.12: Protect, enhance and restore ecosystems that provide nature-based solutions to climate change – consideration	
<p><u>When considering an application for a resource consent, notice of requirement, or a change, variation or review of a district or regional plan, a determination shall be made as to whether an activity may adversely affect a <i>nature-based solution</i> to climate change and particular regard shall be given to avoiding adverse effects on the <i>climate change mitigation or adaptation functions</i>.</u></p> <p>Explanation <u><i>Nature-based solutions</i> are critical components of the region’s climate change response. This policy seeks to <i>protect</i> the functions that they provide to support <i>climate change mitigation</i> and/or mitigation.</u></p>	

710. The Policy aims to ensure that the impact of development on the climate change mitigation or adaptation functions of natural ecosystems are appropriately addressed.⁴²⁴

3.47.1 Submissions, Evidence and Analysis

711. There were approximately 22 submissions and 16 further submissions on this Policy.

712. Some submitters sought the Policy be strengthened and others recommended it be deleted as its application was not clear and it was not supported by the RMA or other higher-order documents.

713. The s 42A Report explains the RMA purpose and drivers for nature-based solutions and we summarise the key aspects above in relation to the CC.4-CC.14A suite and the Regulatory Framework section above. The Officer recommends in the s 42A Report that Policy CC.12 is deleted as its intent is captured in the amendments recommended to clause (d) of Policies CC.4 and CC.14, and clause (c) of new Policies CC.4A and CC.14A. These provisions are a more appropriate way, the Officer states, to ensure that development does not adversely impact nature-based functions or values of ecosystems or habitats.

⁴²⁴ Section 42A Report – Hearing Stream 3 – Climate Change: Climate Resilience and Nature-based Solutions, 31 July 2023, para 215.

714. The planning experts who attended caucusing agreed that Policy CC.12 was not in contention.⁴²⁵

3.47.2 Finding

715. We agree with the Reporting Officer’s recommendation to delete Policy CC.12 for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal or Reply Evidence.

3.47.3 Recommendation

~~Policy CC.12: Protect, enhance and restore ecosystems that provide nature-based solutions to climate change – consideration~~


~~When considering an application for a resource consent, notice of requirement, or a change, variation or review of a district or regional plan, a determination shall be made as to whether an activity may adversely affect a nature-based solution to climate change and particular regard shall be given to avoiding adverse effects on the climate change mitigation or adaptation functions.~~

~~Explanation: Nature-based solutions are critical components of the region’s climate change response. This policy seeks to protect the functions that they provide to support climate change mitigation and/or mitigation.~~

⁴²⁵ Joint Witness Statement of Planning Experts, Climate Resilience, Nature-Based Solution & Natural Hazards, 16 October 2023, para 15(d).

3.48 Policy FW.8: Land use adaptation (HS3)

716. The notified Policy stated:

<u>Policy FW.8: Land use adaptation – non regulatory</u>	
	
<u>Promote and support water resilience and <i>climate change adaptation</i> in land use practices and land use change including:</u>	
(a)	<u>Preparing and disseminating information about climate resilient practices</u>
(b)	<u>promoting water resilience in Farm Plans; and</u>
(c)	<u>supporting primary sector groups and landowners in researching and promoting climate resilient land uses and pathways to move to new land uses.</u>
<u>Explanation</u>	
<u>Policy FW.8 promotes and supports climate change adaption in land use practices and change.</u>	

3.48.1 Submissions, Evidence and Analysis

717. There were approximately 13 submissions and 12 further submissions on this Policy.

718. Some submitters requested that the Policy not apply to city and district councils (eg HCC [S115.087]) and UHCC [S34.016] said it was not clear at what scale properties are expected to require farm plans. WFF [S163.084] sought that the Policy be deleted. HortNZ [S128.053] sought an amendment to clause (c) to include research of lower emissions land uses. Sustainable Wairarapa [S148.048] sought an amendment to include prototyping, researching, and promoting nature-based solutions, such as swales, bunds, and leaky dams.

719. The role and responsibilities of territorial authorities in freshwater management is clear in clause 3.5(4) of the NPS-FM as discussed previously in this Report. Clause 3.5(3) also requires local authorities that share jurisdiction over a catchment to co-operate in the integrated management of the effects of land use and development on freshwater.

720. The Officer recommends amending Policy FW.8 to clarify that it refers to freshwater farm plans, including “lower emission” land use in clause (c), and adding a new clause (d) to support the development of practical, on-farm nature-based solutions for water resilience.

721. We agree with the Officer’s recommendations and consider that they will assist to achieve Objective CC.4 and, in turn, higher order national direction.

3.48.2 Finding

722. We agree with the Reporting Officer's recommendations on Policy FW.8 for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal or Reply Evidence.

3.48.3 Recommendation

Policy FW.8: Land use adaptation – non regulatory

Promote and support water resilience and *climate change adaptation* in land use practices and land use change including:

- a. ~~P~~reparing and disseminating information about *climate-resilient* practices,
- b. promoting water resilience in *Freshwater* Farm Plans,
- c. supporting primary sector groups and landowners in researching and promoting *climate-resilient and lower emission* land uses and pathways to move to new land uses, and
- d. *prototyping, researching, and promoting nature-based solutions that support water resilience, such as swales and bunds.*

Explanation

Policy FW.8 promotes and supports *water resilience and climate change adaptation* in land use practices and change.

3.49 Method CC.6: Identifying nature-based solutions for climate change

723. The notified Method stated:

<u>Method CC.6: Identifying nature-based solutions for climate change</u>	
<p>By 30 June 2024, the Wellington Regional Council will, in partnership with mana whenua / tangata whenua, identify ecosystems in the Wellington Region that should be <u>prioritised for protection, enhancement, and restoration for their contribution as a nature-based solution to climate change, including those that:</u></p> <ul style="list-style-type: none">(a) <u>sequester and/or store carbon (e.g., forest, peatland),</u>(b) <u>provide resilience to people and the built environment from the impacts of climate change (e.g., coastal dunelands, street trees, and wetlands),</u>(c) <u>provide resilience for indigenous biodiversity from the impacts of climate change, enabling ecosystems and species to persist or adapt (e.g., improving the health of a forest to allow it to better tolerate climate extremes).</u> <p><i>Implementation: Wellington Regional Council</i></p>	

724. The Method aims to support the implementation of the nature-based solutions provisions in Proposed Change 1 through the identification, led by the Regional Council, of priority nature-based solutions at an ecosystem scale. Clause (b) provides for the identification of nature-based solutions that will provide resilience to people and the built environment from the effects of climate change.

3.49.1 Submissions, Evidence and Analysis

725. There were approximately 11 submissions and 12 further submissions on this Method. Some submitters sought more clarity around the role of territorial authorities and others requested its deletion. Rangitāne [S168.0152] sought inclusion of ecosystems that provide nature-based solutions to natural hazard mitigation. Fish and Game [S147.098] sought reference to “valued introduced biodiversity” in addition to “indigenous biodiversity”.

726. The Officer agreed with the relief proposed by Rangitāne and recommended an amendment to clause (b) to refer to natural-hazards. The Officer did not agree with including valued introduced biodiversity, as the core principles of nature-based solutions are that they provide benefits for climate change and indigenous biodiversity.

727. In response to a question we posed in Minute 12 regarding the involvement of other stakeholders in the identification of ecosystems, the Officer said that the intent was for consultation or partnership with a range of stakeholders. The Officer recommended including “other stakeholders as appropriate” in the chapeau to the Method.
728. Method CC.6, as proposed to be amended by the Reporting Officer, will help achieve Objective CC.4 and provide resilience from the impacts of climate change and natural hazards consistent with the direction in the NPS-FM, NAP and ERP.

3.49.2 Finding

729. We agree with the Reporting Officer’s recommendations on Method CC.6 for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal or Reply Evidence.

3.49.3 Recommendation

Method CC.6: Identifying *nature-based solutions* for climate change


By 30 June 2024, the Wellington Regional Council will, in partnership with mana whenua/*tangata whenua* and other stakeholders as appropriate, identify ecosystems in the Wellington Region that should be prioritised for protection, *enhancement*, and *restoration* for their contribution as a *nature-based solution* to climate change, including those that:

- (a) sequester and/or store carbon (e.g., forest, peatland),
- (b) provide *resilience* to people from the impacts of climate change, including from *natural hazards* (e.g., coastal dunelands, street trees, and *wetlands*), and
- (c) provide *resilience* for *indigenous biodiversity* from the impacts of climate change, enabling ecosystems and species to persist or adapt (e.g., improving the health of a forest to allow it to better tolerate climate extremes).

Implementation: Wellington Regional Council

Definitions (HS3)

3.50 Nature-based solutions

Nature-based solutions	
<p><u>Actions to protect, enhance, or restore natural ecosystems, and the incorporation of natural elements into built environments, to reduce greenhouse gas emissions and/or strengthen the resilience of humans, indigenous biodiversity and the natural environment to the effects of climate change.</u></p>	
<p><u>Examples include:</u></p>	
<p><u>Reducing greenhouse gas emissions (climate change mitigation):</u></p>	
<ul style="list-style-type: none">• <u>planting forests to sequester carbon</u>• <u>protecting peatland to retain carbon stores</u>	
<p><u>Increasing resilience (climate change adaptation):</u></p>	
<p><u>(a) providing resilience for people</u></p>	
<ul style="list-style-type: none">• <u>planting street trees to provide relief from high temperatures</u>• <u>restoring coastal dunelands to provide increased resilience to the damaging effects of storms linked to sea level rise</u>	
<ul style="list-style-type: none">• <u>leaving space for rivers to undertake their natural movement and accommodate increased floodwaters,</u>	
<ul style="list-style-type: none">• <u>the use of water sensitive urban design, such as rain gardens to reduce stormwater runoff in urban areas</u>	
<p><u>(b) providing resilience for ecosystems and species</u></p>	
<ul style="list-style-type: none">• <u>restoring indigenous forest to a healthy state to increase its resilience to increased climate extremes</u>	
<ul style="list-style-type: none">• <u>leaving space for estuarine ecosystems, such as salt marshes, to retreat inland in response to sea level rise.</u>	

730. *Nature-based solutions* is an umbrella term for interventions designed with nature to restore ecosystems, reverse biodiversity loss, manage water and respond to climate change.⁴²⁶ It covers a broad range of measures that support climate resilience and mitigate the effects of climate change, including ‘green infrastructure’, ‘blue-green infrastructure’ and water-sensitive urban design. As Mr Farrant explains in his technical evidence provided on behalf of the Council, nature-based solutions can reduce the impacts of high intensity rainfall events and manage stormwater flows to mitigate flooding risk and retain natural stream flows as much as possible

⁴²⁶ Section 42A Report – Hearing Stream 3 – Climate Change: Climate Resilience and Nature-based Solutions, 31 July 2023, para 76.

through hydrological control, water sensitive urban design techniques and other measures to protect communities and the environment.

3.50.1 Submissions, Evidence and Analysis

731. There were 62 original and 15 further submissions on the proposed definition.
732. Rangitāne [S168.090] supported the definition and Forest and Bird [S165.0136] also supported it and requested further examples for ecosystems and species beyond forests and estuaries. Sustainable Wairarapa [S144.036] and Ian Gunn [S139.010] supported the definition in part and requested an additional example “to include nature-based solutions for water resilience, such as farm-scale structures for slowing water down (swales, bunds, leaky dams), managing flooding to increase ground water recharge and improving the water holding capacity of soils (e.g., reducing compaction)”. Genesis Energy [S99.005] considered that the development of electricity from renewable sources is an example of a nature-based solution that reduces GHGe.
733. PCC [S30.0108] opposed the definition as they thought it lacked sufficient specificity, and HCC [S115.0124] requested amendments to improve clarity. UHCC [S34.0105] requested deletion of the example of protecting peatland and sought greater clarity including on how the term relates to “green infrastructure”. MDC [S166.0006] supported the definition in part, but requested additional guidance as to what nature-based solutions are or additional examples, and why they would be chosen over other types of solutions to assist implementation by territorial authorities. Wellington Water [S163.0109] requested the addition of a reference to recognise *Te Mana o te Wai* as a benefit, and WFF [S163.0109] requested the definition is deleted or amended to provide additional clarity.
734. Most submissions were from landowners associated with the Mangaroa peatland, some of whom submitted under the Mangaroa Peatland Focus Group. They were concerned about the Council’s intent in referring to peatland and requested that “protecting peatland to retain carbon stores” be deleted as an example of a nature-based solution [including S20.004, S21.004, S23.004, S26.004, S40.004], at least until the peatlands in question are mapped and understood, and there is community consultation on the issue. Individual submitters with the same concern included Robert Anker [S31.028], Philip Clegg [S62.026] and Dr Sarah Kerkin [S96.022]. Forest and Bird [FS7.004] opposed deleting the

reference to peatland on the basis that it is an example within a definition (Forest and Bird [FS7.004]).

735. Broadly, the submitters opposed to including peatland as an example in the definition considered that the reference was an “attempt to regulate by stealth” and could interfere with the residents’ right to quiet enjoyment of their land and it could be used by Council to justify limitations on the use of the peatland (Dr Sarah Kerkin [S96.022], Mangaroa Peatland Focus Group – Gavin Kirton [S91.004], Robert Anker [S31.029] and others). Some residents said there had been a lack of consultation and including a “specific peatland example in this otherwise very broad definition” was “unnecessarily contentious” (Brendan Herder [FS5.7]).
736. As discussed in the Regulatory Framework section, the ERP, NAP and also the Biodiversity Strategy promote the use of nature-based solutions to address climate change, with the ERP and NAP calling for prioritisation of nature-based solutions in planning and regulatory systems to address the climate and biodiversity crises.
737. In the s 42A Report, the Officer reviewed the definitions of the term nature-based solutions in the NAP, ERP and Biodiversity Strategy and found they contained elements that were not appropriate for a definition in an RMA planning document. The Officer said that none of the definitions “are clear that the concept encompasses both the ‘use of’ existing natural systems and the creation of new features that mimic natural processes”.⁴²⁷ The Officer said she supported including a list of examples relevant to the Wellington Region to illustrate different types and scales of nature-based solutions, recognising this is a relatively new concept for the resource management sector in New Zealand.⁴²⁸ The Officer recommended various amendments in the s 42A Report to simplify and clarify the definition, including reference to “engineered systems that mimic natural processes” and “retaining wetlands and planting swales on farmland to slow runoff, reduce peak floods, retain base flows, and protect water quality” in response to the request by some submitters for additional farm-scale examples.
738. The Officer said the relief sought by Genesis Energy is promoted and supported in the Change 1 provisions but did not meet the definition of a

⁴²⁷ Section 42A Report – Hearing Stream 3 – Climate Change: Climate Resilience and Nature-based Solutions, 31 July 2023, para 79.

⁴²⁸ Section 42A Report – Hearing Stream 3 – Climate Change: Climate Resilience and Nature-based Solutions, 31 July 2023, para 79.

nature-based solution. The Officer did not think *Te Mana o te Wai* needed to be referenced. In response to the Mangaroa residents' submissions, the Officer said no evidence had been presented that refuted the value of peat for carbon sequestration and storage. Citing research, the Officer said that:

Peatlands are widely recognised to be a nature-based solution for climate change as their carbon-rich soils provide significant stores of CO₂. When an area of peat is drained or otherwise modified it changes from being a carbon sink to a carbon source, releasing CO₂ into the atmosphere and leading to the loss of carbon that has accumulated over centuries or millennia. The example of protecting peatland was included in the definition of nature-based solutions as it is an example of a local nature-based solution currently being implemented by the Council, using its Low Carbon Acceleration Fund to support the restoration of the 100ha peat bog in Queen Elizabeth Park to prevent continuing peat decomposition and achieve wider environmental, social, and cultural benefits. This project is estimated to avoid carbon emissions of more than 1,251 tCO₂e/yr.

739. The Officer acknowledged that “protect” could be interpreted as having regulatory meaning or inferring an active requirement, and therefore recommended that “protect” be replaced with “maintain”. The Officer also referred to the amendments she recommended to Policy CC.7 (as a non-regulatory policy) promoting collaboration between Council, landowners and other stakeholders regarding nature-based solutions.
740. Reviewing submitters' evidence, the Officer recommended further amendments in her Rebuttal Evidence to add a 'Note' clarifying that nature-based solutions are broader than “green infrastructure” (in response to Mr Rachlin's suggestion (on behalf of PCC) to include a definition of “green infrastructure”. The Officer also recommends amendments to clarify the differences between the terms “climate change adaptation” and “climate-resilience”.
741. The definition of *nature-based solutions* was discussed by planning experts at caucusing. No consensus was agreed but the majority of planners who attended agreed that the definition should refer to “use and management of natural ecosystems and processes”, whilst also retaining reference to engineered solutions mimicking natural processes, resilience and well-being of indigenous biodiversity. Mr Rachlin preferred the definition in his evidence:

Nature-based solution means the use or management of natural resources in a way that contribute to a reduction in greenhouse gas emissions and/or an increase in resilience to the effects of climate change.

742. In response to Mangaroa community residents/landowners' presentations at the hearing, the Officer said in her Reply Evidence that:⁴²⁹

- a. The examples in the definition are intended to assist understanding of the relatively new concept of nature-based solutions
- b. The word “maintaining” is intended to avoid any inference of an active requirement, but “managing” could be used instead (noting the use of the word “maintain” in the NPS-IB)
- c. The policy approach for the use of nature-based solutions at an ecosystem scale is a non-regulatory one through Policy CC.7. This Policy, as proposed to be amended by the Council, supports Council working together with mana whenua/tangata whenua to protect, restore or enhance ecosystems that provide nature-based solutions to climate change, and this requires “working with the willing” with the support of science
- d. The Council has “no intention, nor legislative ability, to require the rewetting or restoration of modified peatlands”.

743. We acknowledge the concerns raised by the Mangaroa residents/landowners but we do not consider that including an example in a definition can be interpreted as having regulatory effect, particularly in light of our recommendations on Policy CC.7 – a non-regulatory policy. We have reviewed the Court decision referred to by Dr Sarah Jenkin and others and do not consider this affects the definition or the Change 1 provisions.

We recommend a drafting amendment to remove the subheadings “Climate change mitigation” and “Strengthening resilience and providing for climate adaptation” because we do not think the subheadings greatly aid interpretation and understanding of the definition or related provisions, and could potentially cause confusion as the matters listed under the subheadings ‘strengthen resilience’ and separating them out from that

⁴²⁹ Reporting Officer Right of Reply of Pamela Guest on behalf of Wellington Regional Council, Hearing Stream 3 – Climate Change: Climate-Resilience and Nature-Based Solutions, 13 November 2023, paras 28 – 29.

subheading could lead to interpretation issues. We do not think that removing “climate mitigation” as a subheading will impact the effectiveness of the definition. The definition still refers to reducing GHGs and other provisions relating to nature-based solutions incorporate the definition of “climate change mitigation” such as Objective CC.4.

3.50.2 Finding and s 32AA Evaluation

744. We largely agree with the Reporting Officer’s recommendations on the definition of *nature-based solutions* for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal or Reply Evidence. We consider the Officer’s recommended amendments to the definition of *nature-based solutions* improve the interpretation, effectiveness and efficiency of the provisions they relate to. The amended definition will help to achieve Objective CC.4.
745. We recommend a relatively minor drafting recommendation to remove the subheadings “climate change mitigation” and “strengthening resilience and providing for climate change adaptation” as we consider these could lead to some interpretation issues and are not required in the list of examples. The outcomes sought by the definition and the provisions it relates to are clear without the inclusion of these subheadings. We consider this drafting amendment will improve the effectiveness and application of the definition and related provisions.

3.50.3 Recommendation

Nature-based solutions

~~Actions to protect, enhance, or restore~~ Use and management of natural ecosystems and processes, ~~or and the incorporation of natural elements into built environments~~ use of engineered systems that mimic natural processes, to reduce greenhouse gas emissions, support climate change adaptation and/or strengthen the resilience and well-being of humans people, indigenous biodiversity, and the natural and physical resources environment to the effects of climate change.

Note: “nature-based solutions” is an umbrella term that encompasses concepts such as green infrastructure (including as defined in the National Planning Standards), green-blue infrastructure, and water-sensitive urban design.

Note: Examples could include:

Reducing greenhouse gas emissions (Climate change mitigation):

- planting forests to sequester carbon
- protecting maintaining managing peatland in a way that ~~to~~ retains its carbon stores, avoids soil loss and associated *land* subsidence

Increasing ~~Strengthening resilience and providing for (climate change adaptation)~~

a. — ~~providing resilience for people~~

- planting street trees to ~~provide relief from high temperatures reduce urban heat~~
- restoring coastal dunelands to provide increased *resilience* to the damaging effects of storms ~~surges~~ linked to sea level rise
- leaving space for *rivers* to undertake their natural movement and accommodate increased floodwaters (also known as ‘room for the river’),
- the use of *water-sensitive urban design principles and methods*, such as rain gardens to ~~manage contaminants and reduce stormwater runoff in urban areas~~
- retaining *wetlands* and planting *swales* on farmland to slow runoff, reduce flood peaks, retain base flows, and protect water quality

b. — ~~providing resilience for ecosystems and species~~

- restoring *indigenous* forest to a healthy state to increase its *resilience* to increased climate extremes
- leaving space for estuarine ecosystems, such as salt marshes, to retreat inland in response to sea level rise.

3.51 *Water-sensitive urban design*

746. This definition was proposed in the s 42A Report.

Water-sensitive urban design -

The integration of planning, engineering design and water management to mimic or restore natural hydrological processes in order to address the quantitative and qualitative impacts of land use and development on land, water and biodiversity, and the community's aesthetic and recreational enjoyment of waterways and the coast. Water-sensitive urban design manages stormwater at its source as one of the tools to control runoff and water quality. The terms low impact design, low impact urban design and water-sensitive design are often used synonymously with water-sensitive urban design.

3.51.1 Submissions, Evidence and Analysis

747. The term is used in various provisions including Policy FW.6 and in the definition of *nature-based solutions*.

748. In the s 42A Report, the Officer recommends including the same definition as in the NRP.

749. The clauses in the Policy CC.4 – CC.14A suite that referred to the definition, are now recommended to be deleted as they are captured in other provisions such as Policy FW.6. These other provisions are part of the FPI and therefore it is appropriate that the definition is also considered in the FPI. The term *water-sensitive urban design* is used in the definition of *nature-based solutions* which is also part of the FPI.

750. Ms Horrox on behalf of Wellington Water supported the definition.⁴³⁰

751. The planning experts who attended caucusing agreed that the definition of *water-sensitive urban design* was not in contention.⁴³¹

3.51.2 Finding and s 32AA Evaluation

752. We agree with the Reporting Officer's recommendations on the definition of *water-sensitive urban design* for the reasons above, and otherwise as set out in the Officer's s 42A Report, Rebuttal or Reply Evidence.

⁴³⁰ Statement of evidence of Caroline Horrox on behalf of Wellington Water (Planning), Hearing Stream 3, 11 August 2023, para 27.

⁴³¹ Joint Witness Statement of Planning Experts, Climate Resilience, Nature-Based Solution & Natural Hazards, 16 October 2023, para 15(c).

3.51.3 Recommendation

Water-sensitive urban design

The integration of planning, engineering design and water management to mimic or restore natural hydrological processes in order to address the quantitative and qualitative impacts of land use and development on *land*, water and biodiversity, and the community's aesthetic and recreational enjoyment of waterways and the coast. Water-sensitive urban design manages *stormwater* at its source as one of the tools to control runoff and water quality. The terms low impact design, low impact urban design and water-sensitive design are often used synonymously with water-sensitive urban design.

3.52 *Climate resilience / climate resilient / resilience and resilient*

753. This definition was proposed in the s 42A Report as follows:

Climate-resilience/Climate-resilient/ Resilience and Resilient (in relation to climate change or natural hazards) –

The capacity and ability of natural and physical resources, including people, communities, businesses, infrastructure, and ecosystems, to withstand the impacts and recover from the effects of climate change, including natural hazard events.

754. The definition is used in a number of climate change provisions and is described by the Officer as the critical outcome sought by the climate change provisions in Proposed Change 1.⁴³² The term is used in the Policy CC.4 – CC.14A suite and it is therefore appropriate to consider it as part of the FPI even though it is also used in other non-freshwater provisions.

3.52.1 Submissions, Evidence and Analysis

755. The Officer notes that “climate resilience” is defined in the ERP and NAP but she does not consider these definitions are appropriate in an RMA planning document to describe development that is resilient to the impacts of climate change.

756. The Officer proposed a definition in the s 42A Report drawn in part from the dictionary definition of ‘resilience’ and also a term used in the Proposed Otago RPS.⁴³³

757. Ms Horrox on behalf of Wellington Water supported the definition.⁴³⁴ Mr Rachlin on behalf of PCC sought the following replacement definition:

Climate-resilient/climate-resilience/resilience/resilient: (in relation to climate change or natural hazards) means the region is able to respond, at any one time, to predicted changes to climate and associated effects on the severity/frequency of natural hazards in a way that maintains the function and structure of the region.

⁴³² Section 42A Report – Hearing Stream 3 – Climate Change: Climate Resilience and Nature-based Solutions, 31 July 2023, para 160.

⁴³³ Section 42A Report – Hearing Stream 3 – Climate Change: Climate Resilience and Nature-based Solutions, 31 July 2023, para 164.

⁴³⁴ Statement of evidence of Caroline Horrox on behalf of Wellington Water (Planning), Hearing Stream 3, 11 August 2023, para 26.

For the purposes of this definition, responds includes the ability to prepare for, recover from and adapt to climate change impacts.

758. In her Rebuttal Evidence, the Officer said she preferred the definition in the s 42A Report as it:⁴³⁵

specifies the attributes that the Change 1 provisions seek to be resilient (natural and physical resources, including people, communities, businesses, infrastructure, and ecosystems), rather than generally referring to “the region”, and the two key aspects of resilience; being able to withstand impacts and recover from effects. Mr Rachlin’s definition refers to “prepare for, recover from, and adapt to”. As noted in paragraph 11, adaptation is not the same as resilience and should not therefore form part of a resilience definition.

759. The Officer described resilience as “the state of being able to withstand impacts and recover from effects” and this is different from adaptation which is “the process of adjusting to actual or expected effects”.⁴³⁶ The Officer said that she did not consider it necessary to amend all references to resilience to refer to *climate-resilience*, as the definition also applies to resilience/resilient when used in relation to climate change and natural hazards.⁴³⁷

3.52.2 Finding and s 32AA Evaluation

760. We agree with the Reporting Officer’s recommendations on the definition of *climate resilience / climate resilient / resilience and resilient* for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal or Reply Evidence.

3.52.3 Recommendation

Climate-resilience/Climate-resilient/Resilience and Resilient (in relation to climate change or natural hazards)

⁴³⁵ Statement of Supplementary Evidence of Pamela Guest on behalf of Wellington Regional Council, Hearing Stream 3 – Climate Resilience and Nature-based Solution, 21 August 2023, para 59.


⁴³⁶ Statement of Supplementary Evidence of Pamela Guest on behalf of Wellington Regional Council, Hearing Stream 3 – Climate Resilience and Nature-based Solution, 21 August 2023, para 11.


⁴³⁷ Statement of Supplementary Evidence of Pamela Guest on behalf of Wellington Regional Council, Hearing Stream 3 – Climate Resilience and Nature-based Solution, 21 August 2023, para 12.

The capacity and ability of natural and physical resources, including people, communities, businesses, *infrastructure*, and ecosystems, to withstand the impacts and recover from the effects of climate change, including *natural hazard events*.

3.53 *Climate change adaptation and Climate change mitigation*

761. The notified definitions read:

Climate change adaptation	
<p><u>In human systems, the process of adjusting to actual or expected climate and its effects, in order to moderate harm or take advantage of beneficial opportunities. In natural systems, the process of adjusting to actual climate and its effects. Human intervention may help these systems to adjust to expected climate and its effects.</u></p>	

Climate change mitigation	
<p><u>Human actions to reduce <i>emissions</i> by sources or enhance removals by sinks of <i>greenhouse gases</i>. Examples of reducing <i>emissions</i> by sources include walking instead of driving, or replacing a coal boiler with a renewable electric-powered one. Examples of enhancing removals by sinks include growing new trees to absorb carbon, promoting and providing for active transport, and increasing public transport services and affordability.</u></p>	

762. The definitions are used in various Change 1 provisions including Objective CC.1, Objective CC.4, Policy CC.12, Policy CC.16, Policy CC.17 and Policies CC.4 – CC.14A.

3.53.1 Submissions, Evidence and Analysis

763. These definitions were allocated to the HS3 (General) subtopic and notified as part of the FPI. WCC [S140.0119] and Forest and Bird [S165.0128] supported the definition of *climate change adaptation* in part. Forest and Bird requested that “moderate” is replaced with “reduced”. PCC [S30.0101] opposed the definition on the basis that it lacked specificity to be effectively implemented and some of the references in it were not clear, such as “moderate harm”.

764. Some submitters supported the notified definition of *climate change mitigation* but thought the examples were confusing and requested they be amended or deleted. PCC [S30.0102] opposed the definition on the basis it described actions which are more appropriately included in a policy rather than a definition. Other submitters requested further clarity in the drafting.

765. The Officer shared submitters’ concerns that the examples in the definition of *climate change mitigation* are potentially confusing, do not assist interpretation and should be deleted.⁴³⁸

⁴³⁸ Section 42A Hearing Report, Hearing Stream 3 – Climate Change, General subtopic, para 332.

766. Mr Rachlin on behalf of PCC said the definition was unclear and should be replaced with wording along these lines which was more suitable for a resource management regulatory framework: “Means an action or series of actions that reduce emissions or provide opportunity to reduce emissions.”
767. Ms Foster on behalf of Meridian considered that the definition should refer to renewable energy generation which was critical to support reductions in GHGe. The Officer did not agree with this relief as he said that renewable energy generation is critical to support climate change mitigation (reducing emissions and increasing sinks) but is not in itself a form of climate change mitigation.⁴³⁹
768. In response to Mr Rachlin, the Officer said he preferred to retain the definition in Proposed Change 1 of *climate change mitigation* as it refers to both reducing sources of GHGe and enhancing removal by sinks of GHG.⁴⁴⁰
769. The Officer said that he discussed this with the Officers for the Nature-Based Solutions and Natural Hazard topics and it was his preference to retain the definition of *climate change adaptation* proposed in Change 1 as it refers to both human and natural systems. He recommended a change however to refer to “actions and processes” and to delete the last sentence as it was not necessary.
770. The Officer did not agree with the suggestion of Ms Foster for Meridian Energy to include renewable energy generation in the definition because even though this was critical to support GHGe reductions, it is not in itself a form of climate change mitigation.
771. The definition of *climate change adaptation* is in a number of climate change provisions in Proposed Change 1 including some non-freshwater provisions such as Policies CC.16 and CC.17, as well as freshwater provisions such as Policy CC.14. The definition is considered in Part C and as part of the FPI.
772. Forest and Bird [S165.0128] requested that “moderate” in the definition is replaced with “reduced”. PCC [S30.0101] opposed the definition on the

⁴³⁹ Statement of Rebuttal Evidence of Jerome Wyeth on behalf of Wellington Regional Council, Hearing Stream 3 – Climate Change General, 22 August 2023, para 117.

⁴⁴⁰ Statement of Rebuttal Evidence of Jerome Wyeth on behalf of Wellington Regional Council, Hearing Stream 3 – Climate Change General, 22 August 2023, para 116.

basis it lacked specificity to be effectively implemented and it was not clear what was meant by “human systems” and “moderate harm”.

773. The Officer agreed with Forest and Bird’s relief and also agreed that the definition be amended to refer to “actions and processes”. In addition, the Officer recommended deleting the last sentence but otherwise recommended retaining the drafting proposed in the s 42A Report as it was important for the definition to refer to both human and natural systems. The Officer did not think further amendments were needed as the definition was clear and would assist in interpreting the Proposed Change 1 provisions.⁴⁴¹

3.53.2 Finding and s 32AA Evaluation

774. We agree with the Reporting Officer’s recommendations on the definitions of *climate change adaptation* and *climate change mitigation* for the reasons above, and otherwise as set out in the Officer’s s 42A Report, Rebuttal or Reply Evidence.

3.53.3 Recommendation

Climate change adaptation

In human systems, ~~actions and processes to the process of~~ adjusting to actual or expected climate and its effects, in order to moderate reduce harm or take advantage of beneficial opportunities. In natural systems, the process of adjusting to actual climate and its effects. ~~Human intervention may help these systems to adjust to expected climate and its effects.~~

Climate change mitigation

Human actions to reduce *greenhouse gas emissions* by sources or enhance removals by sinks of *greenhouse gases*. ~~Examples of reducing emissions by sources include walking instead of driving, or replacing a coal boiler with a renewable electric-powered one. Examples of enhancing removals by sinks include growing new trees to absorb carbon, promoting and providing for active transport, and increasing public transport services and affordability.~~

⁴⁴¹ Section 42A Hearing Report, Hearing Stream 3 – Climate Change, General subtopic, para 329.