

Before A Hearing Panel

Under the Resource Management Act 1991
In the matter of Proposed Change 1 to the Regional
Policy Statement for the Wellington
Region

HEARING STREAM 5

LEGAL SUBMISSIONS FOR WELLINGTON WATER LTD

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INTRODUCTION

1. These submissions are made on behalf of Wellington Water Limited.
2. Wellington Water is both a submitter (S113) and further submitter (FS19) on Plan Change 1 to the Regional Policy Statement for the Wellington Region **(PC1)**.
3. Expert evidence to support Wellington Water's position will be given by Caroline Horrox (planning) and Charlotte Lockyer (hydrology).

MATTERS THAT HAVE BEEN RESOLVED

4. In the interests of efficiency, these submissions and the evidence that supports them, will focus on the unresolved aspects of Wellington Water's submissions.
5. For completeness, I attach a table to these submissions recording other aspects of Hearing Stream 5 that Wellington Water is no longer pursuing.

OUTSTANDING MATTERS

Allocation of Functions and Responsibilities

6. Wellington Water's submission on PC1 raises concerns about the proposed RPS provisions that address the respective roles of territorial authorities and Regional Council regarding the control of land use for water quality purposes. Wellington Water strongly supports this being addressed in PC1, but is concerned that the provisions describe overlapping responsibilities, and this may result in uncertainty over who bears the responsibility, or worse may lead to individual authorities taking less responsibility due to the mutuality.
7. The overlapping provisions (such as Policies FW.6, FW.3 and 14) are addressed in more detail in Ms Horrox's evidence.
8. Wellington Water considers this uncertainty should be resolved at the RPS level, and not left to plan-making at the regional or district level, which could lead to the subject-matter being repeatedly litigated (and producing potentially different outcomes) as each plan is reviewed. This is 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 National Policy Statement for Freshwater Management 2020 (**NPS-FM**). The recently notified Plan Change 1 to the Natural Resources Plan (**NRP**) sets ambitious target attribute states, and all opportunities to achieve the targets will need to be realised. From Wellington Water's perspective these targets leave no room for error or gaps.

9. For clarity, Wellington Water does not have an opinion about where the roles and responsibilities need to sit. It's view is that the RPS is where the decision needs to be made.
10. For these reasons, Wellington Water supports refinements to the RPS as recommended by Ms Horrox to more clearly delineate the spheres of regional council and territorial authority responsibility.

Water Source Protection

11. The Natural Resources Plan identifies protection areas around community drinking water sources. A regional consent is required for any construction or excavation deeper than 5m within one of these protection areas. However, Wellington Water's experience is that land developers are often unaware of this requirement, and this presents serious risks for a critical resource.
12. Accordingly, as addressed in Ms Horrox's evidence, Wellington Water is seeking a refinement to the RPS so that it explicitly requires the protection of aquifers and Community Drinking Water Source Protection Areas within District Plans. This would not require District Plans to regulate these matters — which is for the NRP — but would require District Plans to appropriately identify and support the regulation of these matters.
13. Typically, Wellington Water understands that it would be sufficient for the provisions to sit in the Regional Plan without support from the District Plan. However, an approach that integrates management explicitly between the Plans is appropriate because the aquifer is so critical. The aquifer is the only water source for Wellington, Porirua, Hutt City and Upper Hutt in the summer low flow months. That is a population of over 400,000 people fully reliant on the aquifer for their daily water.

Hydraulic Neutrality

14. Hydraulic neutrality was not addressed in the notified provisions of PC1. It has arisen out of recommendations made in the s 42A report in response to submissions.
15. The detail of the proposed new hydraulic neutrality provisions is addressed in Ms Lockyer's evidence. Relying on that evidence Wellington Water supports the proposed hydraulic neutrality provisions subject to two refinements:
 - 15.1 The addition of a reference to an appropriate magnitude storm event; and
 - 15.2 Deletion of inappropriate references to stormwater volumes.

Hydrological Controls

16. Wellington Water supports hydrological controls. However, it does not support the form and content of hydrological controls as recommended in the s 42A report, for a range of reasons addressed in Ms Lockyer's and Ms Horrox's evidence. In summary:
 - 16.1 The controls rely on comparisons with an 'undeveloped state' that assumes pastoral or urban open space land cover, which is not appropriate for all greenfield areas.¹
 - 16.2 It is unclear whether the requirement for continuous flow modelling rests on the Regional Council or on individual developers.²
 - 16.3 The cost to develop continuous flow modelling would be prohibitive for many developments.³
 - 16.4 The continuous flow modelling would not be calibrated, resulting in a high degree of uncertainty in the results.⁴
 - 16.5 Modelling 'mean annual runoff volume' is an uncommon measure in NZ, open to misinterpretation.⁵
 - 16.6 The reference to a 2-year ARI could create misunderstanding, and would be better expressed as an AEP.⁶

¹ Ms Lockyer at [26] – [31].

² Ms Lockyer at [33.1], Ms Horrox at [29].

³ Ms Lockyer at [33.1].

⁴ Ms Lockyer at [33.2].

⁵ Ms Lockyer at [33.5].

⁶ Ms Lockyer at [33.6].

- 16.7 The inclusion of additional terminology “channel-forming flow” and “bankfull flow” unnecessarily complicates the policy, as it is the 2-year ARI event that defines the magnitude even to be modelled.⁷
- 16.8 The policy wording of paragraphs (a)ii and (b)ii is difficult to interpret.⁸
- 16.9 If part (a)ii is to remain, then it requires amendment to address stormwater that is discharged initially to the stormwater network prior to release into a stream.⁹
- 16.10 It is unclear what is meant by the term “fully developed area” as this is undefined.¹⁰
- 16.11 There is an alternative approach — i.e. requiring retention of a specified depth of rainfall, as occurs in Auckland and Waikato — which avoids most or all of the above issues.¹¹

Policy 18(c)

17. Wellington Water’s submission raised a concern that Policy 18(c) is inconsistent with the requirements in NPS-FM clause 3.22. This is recorded in the s 42A report (at paragraph [626]), but the report appears to make no recommendation whether to accept or reject this submission point.
18. Policy 18(c) requires regional plans to ensure that there is no further loss of extent of natural inland wetlands, that the values of such wetlands are protected, and their restoration is promoted. This is a re-statement of Policy 6 of the NPS-FM. Re-stating the NPS-FM policy in the RPS is unnecessary, as regional plans are required to give effect to the NPS-FM regardless of whether those requirements are repeated in the RPS.
19. However, the more significant concern is that merely re-stating NPS-FM Policy 6 in RPS Policy 18(c) fails to properly replicate the NPS-FM’s requirements in relation to natural inland wetlands. In addition to Policy 6 the NPS-FM requires — in clause 3.22 — that regional plans must include specific policy wording that allows for the potential loss of extent or values of natural inland wetlands in certain circumstances. This tempers the requirements of Policy 6, and regional councils have no choice but to

⁷ Ms Lockyer at [33.7]. Ms Horrox at [31].

⁸ Ms Lockyer at [33.8].

⁹ Ms Lockyer at [33.10]. Ms Horrox at [30].

¹⁰ Ms Horrox at [32].

¹¹ Ms Lockyer at [33.1], [34].

include a policy in the terms directed by clause 3.22 — it is a mandatory requirement. Quite properly, this requirement has been fulfilled by Policy 110 of the NRP, which is in the exact terms required by clause 3.22 of the NPS-FM.

20. Policy 18(c) fails to reflect clause 3.22 of the NPS-FM, and the mandatory obligation to give effect to that clause, which has already occurred. This creates an unnecessary tension, as the NRP must include a policy that makes specific allowances for loss of extent or values of natural inland wetlands, but must also give effect to RPS Policy 18(c) which makes no provision for those allowances.
21. Wellington Water submits that this could be resolved by deleting paragraph (c) of Policy 18.
22. An alternative would be to amend paragraph (c) to reflect that the requirements of the paragraph are not absolute, such as by adding additional wording:

(c) ensuring, ~~where appropriate, that~~ there is no further loss of extent of natural inland wetlands and coastal wetlands, their values are protected, and their *restoration* is promoted....

This is less preferable than outright deletion, but would enable appropriateness to be assessed by reference to the allowances in NPS-FM clause 3.22 and NRP Policy 110.


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MATTERS RAISED IN WELLINGTON WATER SUBMISSIONS THAT ARE NO LONGER PURSUED

Provisions	Summary of WWL's submission	Summary of s 42A recommendation	WWL's position
Objective 12	WWL sought that the iwi statements should be moved elsewhere, or alternatively could be separated so that only the content appropriate for objectives remained under Objective 12.	Recommends relocation of iwi statements elsewhere, and addition of new policy.	Section 42A recommendation resolves these submission points.
Policy 14(j) Policy FW.3(m) Policy 42(k)	WWL raised issues with each of these provisions, related to their dependence on the definition of hydrological controls.	Add a new policy covering hydrological controls. Consequently, delete Policy 14(j) and Policy FW.3(m). Retain Policy 42(k) with refined wording.	WWL supports the deletion of Policies 14(j) and FW.3(m) on the basis that these will be superseded by a new policy; and supports retention of Policy 42(k) as refined. The proposed new policy raises new issues, which are addressed in WWL's submissions and evidence.
Policy 14(k)	WWL supported with the proviso that 'minimise' and 'maximise' are defined in the RPS, consistent with the NRP.	Add definitions of 'minimise' and 'maximise' consistent with the NRP.	Section 42A recommendation resolves this submission point.
Policy 18(d) and (h)	WWL considered (d) and (h) lacked clarity and sought amendments.	Recommends deletion of (d) and (h).	Section 42A recommendation resolves this submission point.
Policy 18(g)	WWL opposed Fish and Game's submission, which sought an amendment to Policy 18(g) to refer to protecting the habitats of trout and salmon in reliance on NPS-FM Policy 10.	Recommends a new clause (ga) which refers to protecting the habitat of trout and salmon, insofar as this is consistent with protecting the habitats of indigenous freshwater species — which more properly	Section 42A recommendation resolves this submission point.

		reflects the requirements of NPS-FM Policies 9 and 10 together.	
Policy 40(f), (g) and (i)	WWL sought changes to (f), (g) and (i)	Recommends making the changes WWL sought to (f), but not (g) and (i)	Section 42A recommendation resolves these submission points.
Policy 42	<p>WWL sought amendments to make the policy grammatically consistent.</p> <p>WWL sought to replace "integrated management approach" in (r) with "catchment approach" and refer to ki uta ki tai.</p> <p>WWL sought the addition of definitions of minimise and maximise, consistent with NRP.</p> <p>WWL sought an additional new policy to apply (p) 'efficient end use' considerations to District Plans.</p>	<p>Changes recommended throughout policy to achieve grammatical consistency.</p> <p>Change "integrated management approach" to "catchment approach", but omit "ki uta ki tai" as it is already covered in Policy 42(a).</p> <p>Definitions of minimise and maximise recommended to be added, consistent with NRP.</p> <p>Recommends reject, as this is dealt with in Policy 44 and via the NRP/regional consents.</p>	Section 42A recommendation resolves these submission points.
Policy 44(d) and (h)	WWL sought amendment to (d) to reflect variation in flow levels across seasons and amendment to (h) for clarity and public health outcomes	Recommends rejecting amendment to (d) — unnecessary as there is already definition of take limits in NPS-FM — and accepting amendment to (h).	Section 42A recommendation resolves these submission points.
Policy FW.1 Policy FW.2	WWL suggested GW may wish to align the language of the explanations with other GW documents, and proposed some additional wording to clarify FW.1 (d).	Recommends accepting submission points in part.	Section 42A recommendation resolves this submission point.
Policy FW.3(h)	WWL sought amendment to (h) so that developments consider the expectations of the stormwater management strategy and plan.	Recommends rejecting submission point, because recommends deletion of (h): matters better left addressed through NRP, and (h) duplicates Policy 14.	Section 42A recommendation resolves this submissions point.

Policy FW.5	WWL sought amendment to clause (a) to reflect potential for saline intrusion into aquifer; amendment to clause (d) to reflect ki uta ki tai for protection of water sources; and a new clause to support water demand management.	Recommends accepting submission on clause (a), partial acceptance on clause (d), and rejecting submission on new clause on the basis that water demand management is inappropriate to address in the RPS.	Section 42A recommendation resolves these submission points
Policy FW.7(b)	WWL sought an amendment to support public health outcomes.	Agrees with submission and recommends an amendment to refer to consideration of the health needs of people.	Section 42A recommendation resolves these submission points.
Method 34	WWL sought a variety of additional matters to be added to the regional water supply strategy	Recommends amendments materially consistent with WWL's submissions	Section 42A recommendation resolves this submission point.
Method 48	WWL raised a number of questions and proposals for refinement	Recommends some refinements consistent with WWL's submission	Section 42A recommendation resolves this submission point.
New Method 57	WWL sought a new method to respond to increased urban development and the implications for water quality.	Recommend reject as it will duplicate ongoing work through the Waitua Implementation Programme and Freshwater Action Plans	Section 42A recommendation resolves this submission point.
New Method 58	WWL sought a new method to promote engagement with Taumata Arowai and the anticipated new water services economic regulator.	Recommends accepting submission and including the new method.	Section 42A recommendation resolves this submission point.