

**BEFORE THE GREATER WELLINGTON REGIONAL COUNCIL**

**IN THE MATTER** of the Resource Management Act 1991

**AND** of proposed Change 1 to the Wellington Regional Policy Statement.

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**Evidence of Murray John Brass on behalf of  
the Director-General of Conservation / *Tumuaki Ahurei*  
Hearing Stream 5 Freshwater / Te Mana o te Wai  
dated 3 November 2023**

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## **Introduction**

1. My full name is Murray John Brass.
2. I have been asked by the Director-General of Conservation / *Tumuaki Ahurei* ('the D-G') to provide planning evidence on the proposed Wellington Regional Policy Statement Change 1 ('WRPS PC1').
3. This evidence relates to Hearing Stream 5 Freshwater and Te Mana o te Wai.

## **Background information**

4. I am employed by the Department of Conservation (DOC) in Dunedin as a Senior RMA Planner. My qualifications and experience are as set out in my earlier evidence for Hearing Stream 2 Integrated Management.
5. I confirm that I have read the code of conduct for expert witnesses as contained in the Chief Freshwater Commissioner and Freshwater Hearings Panels Practice and Procedures Note 2020. I have complied with the Practice and Procedures Note when preparing my written statement of evidence and will do so when I give oral evidence before the hearing.
6. The data, information, facts, and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.
7. Unless I state otherwise, this evidence is within my sphere of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

## **Scope of evidence**

8. This evidence covers matters raised in the D-G's submission relating to freshwater management and Te Mana o te Wai.

## **Material Considered**

9. In preparing this evidence I have relied on the evidence of Dr Nixie Boddy within her area of expertise.
10. I have read the following documents:
  - Wellington Regional Policy Statement Proposed Change 1;

- The s32 Evaluation Report dated August 2022;
- The D-G's submission dated 12 October 2022;
- The D-G's further submission dated 19 December 2023;
- Other submissions where they are referred to in my evidence;
- The s42A report for Hearing Stream 5: Freshwater and Te Mana o te Wai, dated 20 October 2023.

### **Statutory considerations**

11. The s32 Report identifies the overall planning context for the Proposed Change, with further specific assessment relevant to freshwater planning provided in the s42A Report. I am generally comfortable with those assessments, and where I have specific points to make these are addressed in the content of my evidence below. I consider that the key document to consider is the National Policy Statement for Freshwater Management 2020 (NPSFM).

### **Overview of provisions**

12. The D-G's submission covered a range of matters. I have focussed my evidence on areas where the D-G sought significant changes, and where the s42A Report and/or other submitters oppose the changes sought. This includes:
  - Objective 12 and mana whenua / tangata whenua Te Mana o te Wai statements;
  - Recognition of the coastal marine area in regional plans dealing with urban development;
  - Providing for the ability of rivers and streams to move and meander naturally;
  - Encouraging daylighting of streams and rivers;
  - Control of earthworks and vegetation disturbance to minimise erosion and siltation;
  - Management of water takes and use to give effect to Te Mana o te Wai;
  - Protecting and restoring the ecological health of water bodies;
  - Ensuring that provision of fish passage is appropriate to the circumstances;
  - Appropriately protecting the habitat of trout and salmon.

13. There are also some more straightforward matters where the s42A Report has accepted the D-G's submission, or provided appropriate reasoning for not accepting the submission. I do not address those here, but remain available should the Panel have any questions on those matters.

### **Issue 5: Objective 12 and Te Mana o te Wai statements**

14. The D-G's submission and further submission supported the inclusion of Te Mana o te Wai Statements of mana whenua / tangata whenua, but sought that Objective 12 be amended to clarify how iwi statements are to apply. A number of other submitters raised similar or related concerns about the drafting of the objective.
15. The s42A Report agrees with the concerns raised by the D-G and others, and recommends a completely rewritten version of the objective which is more region-specific, as well as two new policies (FWXX in chapters 4.1 and 4.2) to help direct implementation of the objective.
16. I support the approach taken in the s42A Report, as the new Objective 12 provides clearer expectations for the management of freshwater in the Wellington Region, and the two new policies provide direction for the implementation of mana whenua / tangata whenua Te Mana o te Wai statements.
17. Given the complete re-write I am not fixed on retaining the exact wording. There may well be suggestions by mana whenua / tangata whenua themselves, and other submitters, which should be considered on the drafting.

### **Issue: 8 Urban development**

#### ***Policy 14 - Coastal Marine Area***

18. The D-G's submission sought that clause (h) ("*urban development is located and designed to protect...*") should also apply to the coastal marine area. The S42A Report agrees with the intent, but proposes instead referring to "receiving environments". I am comfortable with this change, as receiving environments will include the coastal marine area where relevant.
19. However, the s42A Report also recommends that the reference to receiving environments be in clause (c) rather than clause (h), and that clause (h) be restricted to only apply to the "location" of "lot boundaries and new roads" rather than to the "location and design" of "urban development" generally.

20. Relocating the reference to receiving environments to clause (c) significantly changes the direction that applies – from an active requirement to “*protect and enhance ... receiving environments*” to a neutral statement “*control land use and discharge effects ... on ... receiving environments*”. I consider that wording simply restates the effect of the Act, and does not address the concern raised in the D-G’s submission that the ‘protect and enhance’ requirement should reflect the NPSFM and extend into the coastal marine area. I therefore consider that, while reference to receiving environments in clause (c) is appropriate, they should also be referred to in clause (h).
21. I also disagree with restricting clause (h) to lot boundaries and new roads. There are many other aspects of urban development that could be relevant matters for a regional plan – eg providing for integrated stormwater management, restricting what types of land uses are appropriate in particular FMUs or catchments, requiring provision for land disposal of wastewater etc.
22. The s42A Report’s redrafting of clause (h) also removes reference to gully heads and restricts application of the clause to “adjacent” water bodies. Gully heads are known critical source areas for contaminant transport - the Greater Wellington Regional Council factsheet ‘Reducing the impacts of winter grazing on soil and water quality’ states<sup>1</sup> “CSAs are often persistently wet and include gullies, swales and seeps”. I also note that there may well be water bodies *within* urban development, not just adjacent to it.
23. I therefore consider that the redrafting of clause (h) has significantly reduced its likely effectiveness, and its notified drafting should largely be retained (other than reference to natural form and flow as addressed below). For completeness, I record that my preferred changes to the s42A version are as follows:

*“Require that ~~lot boundaries and new roads are~~ urban development is appropriately located and designed to protect and enhance the health and wellbeing of ~~adjacent~~ gully heads, rivers, lakes, wetlands, springs, riparian margins, and estuaries and other receiving environments, including the natural form and flow of the waterbody;”*

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<sup>1</sup> <https://www.gw.govt.nz/assets/Reducing-the-impacts-of-winter-grazing-factsheet.pdf>

***Policies 14, 42 and FW3 - Ability of streams and rivers to move and meander naturally***

24. The D-G's submission sought additional clauses to be added to each of these policies, to manage effects of urban development on the ability of streams and rivers to move and meander naturally. I note that these are equivalent provisions, with Policy 14 applying to regional plans, Policy 42 to regional consents, and Policy FW3 to district plans.
25. Dr Boddy's evidence sets out the impacts of preventing streams and rivers from being able to move naturally, which include loss of habitat, disconnection of freshwater systems, and loss of biodiversity. She also outlines benefits of maintaining or restoring meanders, braided river plains, and connection between wetlands and rivers - such measures can slow down sediment movement, reduce flooding, increase climate change resilience and improve biodiversity.
26. I consider that Dr Boddy's evidence clearly justifies protecting the ability of streams and rivers to meander and move naturally - doing so is required to give effect to Te Mana o te Wai and to NPSFM Policies 3 (integrated management), 4 (response to climate change) and 7 (loss of river extent and values). I also consider that the National Policy Statement for Indigenous Biodiversity 2023 is relevant here, as protecting the ability of streams and rivers to move naturally will help maintain biodiversity in the terrestrial environment outside the current beds of streams and rivers – see in particular Objective (1)(a) (maintaining indigenous biodiversity), Policy 4 (promoting resilience to climate change), Policies 7 and 8 (indigenous biodiversity within and outside Significant Natural Areas) and Policy 13 (restoration of indigenous biodiversity).
27. The s42A Report generally agrees with this submission point, but considers that the issue could be addressed within existing clauses 14(h) and 42(i) rather than through the addition of new clauses, and that the wording 'natural form and flow of waterbody' is more certain language in an RMA context.
28. I am generally comfortable with the approach recommended in the s42A Report, and consider that it does address the issue raised in the D-G's submission, and will support protection of the natural movement of streams and rivers.
29. However, the s42A Report appears not to have addressed the D-G's submission point on this matter for Policy FW3. My assumption is that this reflects the assessment in para 364 of the report relating to avoiding requirements for district plans that do not sit within the responsibilities of territorial authorities.

30. I consider that this is a matter which sits squarely within the functions of territorial authorities. From a regulatory point of view those functions include “... *integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district*” (s30(1)(a)) and “*the control of any actual or potential effects of the use, development, or protection of land*” (s30(1)(b)). Those actual and potential effects must include effects on rivers and streams.
31. 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.
32. I therefore consider that including an equivalent provision in Policy FW3 is within jurisdiction, and is justified in terms of both efficiency and effectiveness. I recommend that the s42A Report recommended drafting for Policy FW3(k) should be amended along the same lines as is recommended for Policy 14(h), and should also retain reference to gully heads as discussed above in para 22, i.e.:

*“Require that urban development is located and designed to protect and enhance gully heads, rivers, lakes, wetlands, springs, riparian margins and estuaries, including the natural form and flow of the waterbody,”*

***Policies 14, 42 and FW3 – Daylighting of streams and rivers***

33. The D-G’s submission sought an amendment to Policy FW3 (p) to provide stronger direction on daylighting of streams, as follows:
- “(p) ~~Consider~~ Encourage and support daylighting of streams, ~~where practicable~~”*
34. Dr Boddy’s evidence outlines a range of benefits of daylighting streams, which include both environmental improvements (habitat, biodiversity and water quality) and flood risk reduction. Her evidence also shows that a very significant proportion of streams within Wellington city have been piped. I consider this evidence clearly justifies the RPS providing active and positive direction on daylighting - and that doing so is required to give effect to Te Mana o te Wai, to NPSFM Objective 2.1(a) (prioritising the health and well-being of water bodies and freshwater ecosystems) and Policy 3 (integrated management), and the National Policy Statement for Indigenous Biodiversity 2023 Policy 4 (promoting resilience to climate change) and Policy 13 (restoration of indigenous biodiversity).

35. The s42A Report has largely accepted this submission point, but considers that the provision is better located in Policy 14 (as a new clause (n)) as a regional plan matter, rather than in Policy FW3. I disagree with this – as addressed above in para 30, integrated management of the effects of land use and development and associated natural and physical resources is a specific function of territorial authorities. 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. I therefore consider that an equivalent provision is still required in FW3.
36. The Report also uses slightly different wording (“*promoting the daylighting of streams*”). I consider that to ‘promote’ is similar in effect to ‘encourage’, so am comfortable with that element of the change. I also support removal of the term “where practicable” as it is redundant in the context of promotion or encouragement.
37. However, I have some uncertainty about not including reference to “support”. This is because, even where some plan provisions promote something, there can be other provisions which have the effect of discouraging the same thing. Even if the regional plan contained objectives or policies promoting daylighting, there could well also be other provisions (especially rules) which make it difficult to gain consent to undertake the disturbance, construction, or alteration of the bed that is required.
38. I recognise there is an argument that effective implementation of the recommended Policy 14 (n) in the regional plan should flow through to all provisions, including rules, and not just be a restatement of the policy. However, for the sake of certainty I would still prefer that this matter be expressly addressed. With the change from encouragement to promotion, I consider that the most appropriate additional reference would be to “enabling”, so I recommend the following amendment to the s42A Report drafting, to be included in both Policy FW3 and Policy 14:
- “promoting and enabling the daylighting of streams”*
39. I note that there is a parallel provision in Policy 42 (n) requiring consideration of the practicality of daylighting as part of decisions on regional consents. The s42A Report recommends some drafting changes intended to better align with the overall drafting approach – I support retention of the provision but am neutral on those changes.



## Issue 9: Earthworks and vegetation disturbance – Policies 15 and 41

40. The D-G's submission raised concern that the notified versions of these policies would leave two gaps in the management of erosion and siltation:
- No requirements would apply until Target Attribute States are set; and
  - As long as Target Attribute States are being met, there would be no requirement to minimise erosion and siltation.
41. The s42A Report has agreed with these concerns, and recommends changes to both policies as a result.
42. While the changes are different to the specific relief sought by the D-G, I have reviewed them and am comfortable that they address the relevant issues, so I support those changes.
43. However, the s42A Report also recommend a change to Policy 41 to restrict it to regional consents, on the basis that territorial authorities are not responsible for ensuring Target Attribute States are met. I disagree with this analysis – although Target Attribute States *per se* are a regional council responsibility, territorial authorities still have responsibility for managing the effects of land use (see para 30 above). In my experience, territorial authority land use consents can and do manage the risk of erosion and siltation – e.g. through requiring management plans, minimising disturbed area, requiring progressive rehabilitation etc.
44. This is exemplified by the fact that in a recent Environment Court hearing for Plan Change 8 to the Regional Plan: Water for Otago, developers argued there was no need for the regional plan to manage sedimentation from residential development in the Queenstown Lakes District as the district plan adequately controlled it. The argument was unsuccessful, and the Court concluded that while only regional councils control actual discharges, both councils have functions relevant to the management of sediment<sup>2</sup>.
45. I therefore consider that Policy 41 should equally apply to territorial authorities, and recommend the following change to the s42A Report recommended drafting:

*“When considering an application for a ~~regional~~ resource consent for earthworks or vegetation clearance...”*

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<sup>2</sup> Decision No [2022] NZEnvC 101 <https://www.environmentcourt.govt.nz/assets/2022-NZEnvC-101-Otago-Regional-Council-Urban-Provisions.pdf> - see [161-175], in particular [171]

## Issue 10: Managing water takes and use – Policy 17

46. The D-G's submission sought that reference to the health needs of people in terms of water takes be limited to the drinking water component, to clarify that this would not include industrial and farming use which are lower priorities under Te Mana o te Wai.
47. The s42A Report recommends addressing this matter by adding a definition of "health needs of people", with the definition taken from the current Wellington Natural Resources Plan.
48. I confirm that I support this approach, as an effective way of dealing with the D-G's concern. However, there is potentially a tension in the drafting, which now seems to define "health needs of people" differently in two places. Policy 17 sets out the types of take that might provide for the health needs of people. However, my understanding is that the intent of this is not to therefore include these types of takes in the definition of "health needs of people". In addition, the recommended definition expressly excludes water used outside or for industry, whereas the policy specifically includes public water supply - which can be partly or predominantly used outside or for industry. To resolve this, I suggest a slight change to the policy wording:

*"Regional plans shall include policies, rules and/or methods that prioritise the health and wellbeing of the waterbody and freshwater ecosystems first, and then prioritise any take and use of water for the health needs of people, that may include the following: ~~The health needs of people can include~~:*

*(a)...."*

49. The S42A Report refers to a submission by Porirua City Council on definitions to give scope for this change. However, I point out that the D-G's submission expressly states that "*alternative wording of like effect may be equally acceptable*", and I am comfortable that the recommended definition would come within that scope.

## Issue 11: Protecting and restoring the ecological health of water bodies

### ***Policy 18 – regional plans – drafting certainty***

50. The D-G's submission sought a suite of changes to this policy. Some of these related to simple drafting corrections in clauses (b) and (g) which are accepted in the s42A Report, so I do not address those any further. The D-G also sought a similar change to clause (h) relating to allocation, to re-word the clause as an action rather than an outcome - the s42A Report recommends that that clause be deleted, but I have been

unable to find the reasoning for this, so cannot say whether or not I support that deletion.

51. A more significant element of the D-G's submission was about ensuring that provisions were certain and effective by replacing the word "restricting" in clauses (n)-(q) with "minimising".
52. The s42A Report has partly accepted this, recommending replacing "restricting" with "avoiding...unless" in clause (n), to better give effect to the NPSFM and for consistency with other policies in the RPS. I support that change. I also note that a consequential change as a result is the addition of a definition of the Effects Management Hierarchy, and I confirm that I support this addition as providing more clarity and certainty.
53. However, the s42A Report did not accept the D-G's submission for clauses (o) – (q), recommending that the word "restricting" be retained.
54. In my view that drafting remains uncertain, as it is not clear how or to what extent the activities covered by those clauses should be restricted. However, the s42A Report also recommends changes to the chapeaux of Policy 18, which makes it clear that the regional plan provisions are to give effect to Te Mana o te Wai. That will provide useful direction on how clauses (o)-(q) are to be applied, so while I would still prefer the drafting sought in the D-G's submission I now consider that the s42A Report drafting should be adequate, provided that the reference to Te Mana o te Wai is retained.

***Policy 18 - regional plans – fish passage***

55. The D-G sought an addition to clause (r) of this policy so that fish passage is to be restored and maintained "where appropriate". This is to recognise that fish passage is not necessarily appropriate in all cases, such as where it would allow predator species into the habitat of rare or threatened species.
56. This is addressed further in Dr Boddy's evidence, which outlines different circumstances where providing for fish passage can be either beneficial or harmful for threatened indigenous fish populations. I consider that her evidence clearly shows that, while providing for fish passage will be appropriate in most cases, there will be circumstances where it is not appropriate and the policy should reflect this. I consider this distinction is required to avoid the policy conflicting with s6(c) of the Act.

57. The s42A Report recommends that the D-G's submission be accepted, and I support that recommendation.
58. I note that Fish and Game has raised the same issue in its submission, but sought more detailed wording. This gives the Panel two options for addressing the issue, i.e.:

*“(r) restoring and maintaining indigenous fish passage, where appropriate”* (D-G and s42A drafting)

OR

*“(r) restoring and maintaining indigenous fish passage, 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”* (Fish and Game drafting)

59. While the Fish and Game drafting was not sought by the Director-General, in my opinion if the Panel was of a mind to adopt that version it would achieve the same effect and potentially provide additional clarity and certainty by more directly reflecting the wording in the NPSFM.

***Policy 18 – regional plans – habitat of trout and salmon***

60. The s42A Report also recommends a new clause (ga) be added to this policy to include reference to protecting the habitat of trout and salmon, as sought by Fish and Game. The Report recommends that this is adopted, but be subject to the wording *“insofar as this is consistent with clause (g)”* (where clause (g) relates to protecting the habitats of indigenous freshwater species).
61. I agree with the s42A Report that this is a necessary and appropriate addition to the wording sought, to reflect the requirements of Policies 9 and 10 of the NPSFM.



Murray Brass

DATED this 3<sup>rd</sup> day of November 2023

**Appendix 1: Consolidated changes sought (tracked against the s42A report recommended drafting)**

**Policy 14: Urban development effects on freshwater and receiving environments – regional plans:...**

- ...(h) *Require that ~~lot boundaries and new roads are~~ urban development is appropriately located and designed to protect and enhance the health and wellbeing of adjacent gully heads, rivers, lakes, wetlands, springs, riparian margins, and estuaries and other receiving environments, including the natural form and flow of the waterbody;...*
- ...(n) *promoting and enabling the daylighting of streams.*

**Policy FW3 Urban development effects on freshwater and receiving environments – district plans:...**

- ...(k) *Require that urban development is located and designed to protect and enhance gully heads, rivers, lakes, wetlands, springs, riparian margins and estuaries, including the natural form and flow of the waterbody;...*
- ...(p) *promoting and enabling the daylighting of streams.*

**Policy 41: Managing the effects of earthworks and vegetation clearance – consideration:**

*When considering an application for a ~~regional~~ resource consent for earthworks or vegetation clearance...*

**Policy 17: Take and use of water for the health needs of people – regional plans**

*Regional plans shall include policies, rules and/or methods that prioritise the health and wellbeing of the waterbody and freshwater ecosystems first, and then prioritise any take and use of water for the health needs of people, that may include the following: The health needs of people can include:*

- (a) *The taking of water...*

**Policy 18: Protecting and enhancing the health and wellbeing of water bodies and freshwater ecosystem health – regional plans**

...(r) *restoring and maintaining indigenous fish passage, where appropriate.* (D-G and s42A drafting)

OR

...(r) *restoring and maintaining indigenous fish passage, 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.* (Fish and Game drafting)