

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKĒ
TE WHANGANUI-A-TARA**

**BEFORE THE INDEPENDENT HEARING COMMISSIONERS
AT WELLINGTON**

IN THE MATTER

of the Resource Management Act 1991
(**RMA**)

AND

IN THE MATTER OF

Proposed Change 1 to the Wellington
Regional Policy Statement (**RPS**)

Legal submissions for the Royal Forest & Bird Protection Society Inc

Hearing Stream 2 (Objectives and Ecosystem Health Policies)

21 March 2025



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MAY IT PLEASE THE COMMISSIONERS

1. The Royal Forest & Bird Protection Society Inc (**Forest & Bird**) lodged submissions and further submissions on Proposed Plan Change 1 (**PC1**) to the Natural Resources Plan for the Wellington Region.
2. These legal submissions focus on Forest & Bird's submission points relating to the protection of natural character.
3. Forest & Bird is generally supportive of the recommendations in the s42A Hearing Report. Forest & Bird's case is focussed on where the s 42A Report and/or other submitters oppose the changes sought and to ensure the policy framework for natural character gives effect to the RMA and national direction.

Evidence to be called by Forest & Bird

4. Forest & Bird's case is supported by evidence from:
 - a. Ms Samantha Dowse, Senior Planner with Kāhu Environmental Limited; and
 - b. Mr Tom Kay, Freshwater Advocate employed by Forest & Bird, but in his capacity as an ecologist.

Statutory framework

RMA

5. Counsel agrees with the legal submissions for the Greater Wellington Regional Council as they relate to the framework for plan-making.¹
6. Key statutory imperatives relevant to the matters of concern to Forest & Bird in Hearing Stream 2 include:
 - a. Pursuant to section 6(a) of the RMA, the Council must, in achieving the purpose of the Act, recognise and provide for 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.
 - b. Pursuant to section 6(c), the Council must, in achieving the purpose of the Act, recognise and provide for the protection of areas of significant indigenous

¹ Legal submissions on behalf of Greater Wellington Regional Council – Hearing Stream 1, dated 3 October 2024 at [21]-[27]

vegetation and significant habitats of indigenous fauna as matters of national importance.

- c. Pursuant to section 7(c), decision-makers shall have particular regard to the maintenance and enhancement of amenity values in achieving the purpose of the RMA.
 - d. Pursuant to section 7(f), decision-makers shall have particular regard to the maintenance and enhancement of the quality of the environment in achieving the purpose of the RMA.
7. It is noted that RMA section 6(a) deals with natural character in a manner that is broader again than just 'the beds of lakes and rivers'; it applies to wetlands, and rivers and lakes and their margins.

The National Policy Statement for Freshwater Management

8. There are synergies with the above provisions. These are reflected in the following National Policy Statement for Freshwater Management (NPSFM) provisions:
- a. **2.1 Objective:** The objective of the is National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises (a) first, the health and well-being of water bodies and freshwater ecosystems.
 - b. **Policy 3:** Freshwater is 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.
 - c. **Policy 5:** Freshwater is managed (including through a National Objectives Framework) 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.
 - d. **Policy 6:** There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.
 - e. **Policy 7:** The loss of river extent and values is avoided to the extent practicable.
 - f. **Policy 8:** The significant values of outstanding water bodies are protected.
 - g. **Policy 9:** The habitats of indigenous freshwater species are protected.
9. "Loss of values" is broadly defined as follows:

Loss of value, in relation to a natural inland wetland or river, means the wetland or river is less able to provide for the following existing or potential values:

- (a) Any value identified for it under the NOF process
- (b) Any of the following values, whether or not they are identified under the NOF process:
 - (i) Ecosystem health
 - (j) Indigenous biodiversity
 - (k) Hydrological functioning
 - (l) Māori freshwater values
 - (m) Amenity values

10. Compulsory values set in Appendix 1A of the NPSFM refers to, among other values, “ecosystem health”. A component of ecosystem health is “habitat,” described as:

Habitat – the physical form, structure, and extent of the water body, its bend, banks and margins; its riparian vegetation; and its connections to the floodplain and to groundwater

11. Appendix 1B of the NPSFM also includes “natural form and character” as another value that must be considered.

Regional Policy Statement for the Wellington Region

12. The following settled² provisions of Regional Policy Statement for the Wellington Region (emphasis) also direct:
- a. Objective 12(d): The mana of the Region’s waterbodies and freshwater ecosystems is restored and protected by ongoing management of land and water that: recognises and provides for the individual natural characteristics and processes of waterbodies including their natural form, and their associated ecosystems.
 - b. Policy 18(h): Regional plans shall include policies, rules and/or methods that give effect to Te Mana o te Wai, and in doing so maintain and improve the health and wellbeing of water bodies and freshwater ecosystem health, including by: retaining natural features – such as pools, runs, riffles, and the river’s natural form to maintain in-stream habitat diversity.

Evidence

13. The evidence of Mr Kay explains the important links between natural form and character, extent (including margins), and habitat.

² Counsel understands these (Freshwater Planning Instrument) provisions are not subject to any appeals to the High Court.

14. Ms Dowse makes recommendations to ensure objectives WH.O2, PO.2, WH.O9, P.O6, WH.O10, P.O7 and polices WH.P1, and P.P1 give effect to the NPSFM. In particular:
- a. Drafting clarifications to ensure natural form and character is appropriately expressed;³
 - b. Amendments for consistency with NPSFM terminology and direction under NPSFM Policy 5 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”.⁴
 - c. Drafting to ensure consistency across PC1 objectives, including plugging missing elements including the direction to “maintain” where not degraded.⁵
15. Ms Dowse also comments on the inconsistency of Policies WH.P2 and P.P2 (use of financial contributions) with both the NPSFM and NZCPS.⁶
16. Ms Dowse’s recommended changes ensure PC1 implements higher order direction under the NPSFM, NZCPS and Wellington RPS. More broadly, the amendments are also consistent with the purpose of the RMA.

Conclusion

17. Protecting natural form and character is a matter of national importance under primary legislation (the RMA via section 6(a)) and secondary legislation (the NPSFM). It is also identified as regionally important under the RPS for Greater Wellington. Further amendments, as set out in Appendix 1 to Ms Dowse’s evidence, are necessary for PC1 to move closer to giving effect to the NPSFM and RPS.

Dated this 21st day of March 2025



M Downing

Counsel for Royal Forest and Bird Protection Society Inc

³ Dowse EIC at [20]-[35]

⁴ Dowse EIC at [21]-[30], [53]-[57]

⁵ Dowse EIC at [48]-[52], [53]-[57]

⁶ Dowse EIC at [58]-[70]