

**Before the Independent Hearing Panel and Freshwater Hearing Panel**

**Under the** Resource Management Act 1991

**In the matter** of submissions on proposed Change 1 to the Natural Resources Plan for the Wellington Region

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**LEGAL SUBMISSIONS ON BEHALF OF PORIRUA CITY COUNCIL**

**Hearing Stream 2 (Objectives and Ecosystem health policies)**

**21 March 2025**

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## May it please the Panel

### 1. Introduction

**1.1** Porirua City Council (**PCC**) supports the intention behind the objectives and policies in Chapter 9 of proposed Plan Change 1 (**Change 1**) that are being considered through Hearing Stream 2 (**HS2**). The overall objective of Change 1, to seek to improve the health of the Porirua Harbour, is the same as one of the four strategic priorities adopted by PCC as part of its 2024–2034 Long-term Plan process.

**1.2** PCC has significant concerns about several of the provisions that are being considered through HS2. In summary, these are that:

- (a) the Target Attribute States (**TAS**), even in their revised form, are unachievable for PCC;
- (b) there was, and remains, a lack of underlying analysis and information that provides justification to support the revised TAS, and in particular the more stringent TAS that will apply to PCC specifically; and
- (c) the proposal to introduce a prohibited activity status, and consequential requirement for dual plan changes to facilitate unplanned greenfield development, is inappropriate and inefficient, and contrary to the directions provided by National Policy Statement on Urban Development (**NPS-UD**).

**1.3** PCC is concerned about the workability and achievability of TAS generally, even at the minimum levels, but considers that these concerns can be addressed through further amendments to the Change 1 provisions. PCC's evidence supports amendments to both the TAS and timeframes to ensure that the desired improvements are achievable, while also recognising and

balancing the importance of enabling appropriate urban development and the financial impact that will, at some point, need to be borne by ratepayers.

**1.4** PCC wishes to speak to these submissions at the hearing.

## **2. Summary of PCC's position**

**2.1** In summary, PCC seeks that:

- (a) any TAS included in relation to water quality improvements, and the associated timeframes, are achievable; and
- (b) PCC retains the ability to consider greenfield development that is not currently plan-enabled, as it is required to do so by the NPS-UD.

**2.2** To that end, PCC seeks that:

- (a) the TAS found in tables 9.1, 9.2 and associated objectives are amended to reflect the Minimum Required Improvements (**MRI**) for all areas, as set out in clause 3.11 and associated appendices to the National Policy Statement for Freshwater Management 2020 (**NPS-FM**);
- (b) the timeframes for achieving the TAS are amended from 2040 to 2060, with appropriate interim TAS also included; and
- (c) as recommended by the section 42A report, an amended approach is taken to Policy P.P2, either by deletion or amendments to remove the direction to use the prohibited activity status.

**2.3** PCC also notes the section 42A Report recommends acceptance of PCC's submission on P.O1,<sup>1</sup> and the accompanying recommended amendment to the second bullet point of P.O1.<sup>2</sup>

**2.4** These legal submissions do not address every submission made by PCC on the provisions allocated to HS2. This should not be read as an abandonment by PCC of those submission points and both documents should be read together.

### **3. The NPS-FM and NPS-UD**

**3.1** Part of Change 1 was notified as a freshwater planning instrument in that the provisions relate to objectives that give effect to the NPS-FM.<sup>3</sup>

**3.2** PCC supports the requirement for regional councils to set TAS under clause 3.11 of the NPS-FM. The use of appropriate TAS will provide useful guidelines and targets to support territorial authorities to make planning and investment decisions that seek to support meaningful improvements to freshwater quality.

**3.3** PCC is also bound by the objectives, policies and methods included in the NPS-UD, as is Greater Wellington Regional Council (**GW**). The NPS-UD has a significant focus on housing growth. In Porirua, housing growth is largely provided for by the Northern Growth Area, which will be key to enabling PCC to meet future urban growth needs.

**3.4** Change 1 must give effect to both NPSs.

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1 Section 42A Hearing Report – Objectives at [167].

2 HS2 S42A Objectives – Appendix 4 at 13.

3 Resource Management Act, s 80A.

#### 4. Target Attribute States

##### *The provisions*

4.1 The objectives in chapter 9 of Change 1 are largely targeted at the improvement of freshwater, groundwater and coastal water quality in Te Awarua-o-Porirua. These objectives are linked to tables which prescribe TAS for various water quality measures.

4.2 P.O3 states:

The health and wellbeing of coastal water quality, ecosystems and habitats in Pāuatahanui Inlet, Onepoto Arm and the open coastal areas of Te Awarua-o-Porirua is maintained or improved to achieve the coastal water objectives set out in Table 9.1, and by 2040:

- (a) sediment and metal loads entering the harbour arm catchments either via freshwater bodies or directly are significantly reduced, and
- (b) high contaminant concentrations, including around discharge points, are reduced, and
- (c) the diversity, abundance and condition of mahinga kai has increased so that mana whenua access to healthy mahinga kai has increased, and
- (d) huanga of mahinga kai and Māori customary use for locations identified in Schedule B (Ngā Taonga Nui a Kiwa) are maintained or improved, and
- (e) the extent and condition of estuarine seagrass, saltmarsh and brackish water submerged macrophytes are increased and improved to support abundant and diverse biota, and
- (f) coastal areas support healthy functioning ecosystems, and their water conditions and habitats support the presence, abundance, survival, and recovery of taonga species and At-risk and Threatened species, and
- (g) mana whenua are able to safely connect with and access the coastal marine area and practice their customary and cultural tikanga, and
- (h) mana whenua and communities can safely connect with the coastal marine area and enjoy a wider range of activities, including food gathering, swimming and paddling.

**4.3** Table 9.1 outlines various TAS to be achieved by 2040 including for enterococci.

**4.4** P.O6 states:

Water quality, habitats, water quantity and ecological processes of rivers are maintained or improved by ensuring that:

- (a) **where a target attribute state in Table 9.2 is not met, the state of that attribute is improved in all rivers and river reaches in the part Freshwater Management Unit so that the target attribute state is met within the timeframe indicated within Table 9.2, and**
- (b) where a target attribute state in Table 9.2 is met, the state of that attribute is at least maintained in all rivers within the part Freshwater Management Unit, and
- (c) where any attribute in any river or river reach is in a better state than the target attribute state, that attribute is at least maintained at the better state in every river or river reach, and
- (d) where a huanga of mahinga kai and Māori customary use for locations identified in Schedule B (Ngā Taonga Nui a Kiwa) is not achieved, the state of the river or river reach is improved.

**4.5** Table 9.2 outlines various TAS to be achieved by 2040 including for Escherichia coli (**E.coli**).

#### *The legal framework*

**4.6** Section 63 of the Resource Management Act 1991 (**RMA**) states that the purpose of a regional plan is to “*assist a regional council to carry out any of its function in order to achieve the purpose of this Act*”.

**4.7** The sustainable management purpose of the RMA is well understood. Importantly for this hearing, the concept of sustainable management involves:

managing the use, development, and protection of natural and physical resources in a way, or at a rate, which **enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety.**

**4.8** Section 66 of the RMA requires GW to prepare any plan change having particular regard to an evaluation report prepared in accordance with section 32.

**4.9** Section 32(1) requires that an evaluation report that is prepared under the RMA, including in preparing plan changes, must:

- (a) Examine the extent to which the objectives of the proposal being evaluated are the **most appropriate way to achieve the purpose of this Act**; and
- (b) examine whether the provisions in the proposal are the **most appropriate way to achieve the objectives** by—
  - (i) **identifying other reasonably practicable options for achieving the objectives**; and
  - (ii) assessing the efficiency and effectiveness of the provision in achieving the objectives; and
  - (iii) summarising the reasons for deciding on the provisions; and
- (c) contain a level of detail that corresponds to the scale and significance of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the proposal.

**4.10** Section 32(2) requires this evaluation to consider the benefits and costs of policies, rules and other methods.<sup>4</sup> Section 32 requires local authorities to consider a range of options when implementing a plan change to ensure the option chosen is the most appropriate. The extent and detail of this analysis should correspond to the scale and significance of the effects anticipated from implementation of the proposal.

*Evidence as to the affordability and achievability of the TAS*

**4.11** The TAS set in tables 9.1 and 9.2, especially those relating to E.coli, do not provide for sustainable management, as they are neither achievable nor affordable in the current proposed timeframe.

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<sup>4</sup> See discussion in *Sustain our Sounds Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 40 at [16] regarding the equivalent provision in force prior to the Resource Management Amendment 2013.

- 4.12** In Mr David Adrian Walker’s Statement of Evidence on behalf of the GW dated 28 February 2025, he assesses the likely capital costs for the four relevant territorial authorities to meet the TAS for E.coli, dissolved zinc and copper, or alternatively the minimum required improvements for E.coli (**MRI**) in the National Policy Statement for Freshwater Management 2020 (**NPS-FM**), by 2040.<sup>5</sup>
- 4.13** Mr Walker concludes that for PCC to achieve the TAS by 2040, PCC would require a step-change in rates of up to 25% (ie a 25% increase in addition to any increase in rates that might otherwise occur, maintained for 16 years).<sup>6</sup> Mr Walker further concludes that for PCC to achieve the less stringent MRI in the same period would require a step-change in rates of at least 14%.<sup>7</sup>
- 4.14** In Attachment 1 to Mr Walker’s evidence he explains that achieving the TAS by 2060 would require a smaller step-change in rates for PCC of up to 11% maintained for 36 years.<sup>8</sup> Mr Walker’s evidence does not clearly state the estimated step-change in rates required to achieve the MRI by 2060 for PCC in isolation.<sup>9</sup> However, Mr Walker’s evidence indicates that the average step-change increase in rates across the four territorial authorities in this scenario would be at least 6.9%.<sup>10</sup>
- 4.15** Mr Walker also concludes that to achieve the TAS by 2040, the Wellington Region would require a step-change increase in employment of workers constructing required infrastructure of 162% (ie over 2.5 times as many employees as currently work in the sector) almost immediately.<sup>11</sup> To achieve the MRI by 2040, a smaller but still significant step-change increase in the workforce of 20% to 69% would be required.<sup>12</sup> In Mr Walker’s opinion it is not until timeframes of around 31 years or longer (ie if the TAS were required to

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5 Statement of Evidence of David Adrian Walker on Behalf of Greater Wellington Regional Council: Technical Evidence (Economics) Hearing Stream 2 – Objectives dated 28 February 2025.  
6 At [38.3].  
7 At [38.3].  
8 Attachment 1 Explanation: Cost Methodology to Statement of Evidence of Mr David Walker (Economics) 28 February 2025 at 8.  
9 Although we note it appears to be somewhere between 5% and 10% based on the graph on page 18 of Mr Walker’s Statement of Evidence (reproduced on page 8 of the attachment to that evidence).  
10 At [36.4].  
11 At [57].  
12 At [59].



be achieved by 2056) that the workforce needed would be “similar to the size of the workforce today”.<sup>13</sup>

**4.16** Mr Stephen Hutchison observes in his statement of evidence on behalf of Wellington Water Limited that large infrastructure projects generally have a lifecycle of five to seven years that may be even longer if complicated land acquisition is required.<sup>14</sup> Accordingly, Mr Hutchison concludes that the 2040 timeframe is *“very challenging from [a] deliverability perspective, funding notwithstanding”*.<sup>15</sup>

**4.17** Mr Liam Foster also notes in his statement of evidence on behalf of Wellington Water, with regard to some of the contaminants subject to TAS in a stormwater context, that statistically significant improvements following work *“may not be apparent by 2040, even if all the work was able to be completed by then”*.<sup>16</sup>

**4.18** Mr Hutchison further notes that it is not clear *“whether [the TAS] are achievable in an urban setting”* noting that the *“scale of work required by Wellington Water to meet the TAS ... is not well understood at this stage”*.<sup>17</sup> However, he concludes that Mr Walker appears to provide *“a reasonable estimate of the scale of work, noting the significant uncertainties he has outlined”*.<sup>18</sup>

**4.19** Following his observations related to affordability and achievability, Mr Walker concludes that:<sup>19</sup>

In my professional view, the costs to TAs of contributing to achieving the PC1 metals and E. coli TAS by 2040 is **both unaffordable from a rates impact perspective and unachievable from a capacity perspective**. ... Excluding any servicing and maintenance costs, achieving the TAS could cost up to \$5.37 billion.

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13 At [60].

14 Statement of Evidence of Stephen John Hutchison for Wellington Water Limited dated 14 March 2025 at [10.23].

15 At [10.23].

16 Statement of Evidence of Liam Alexander Foster for Wellington Water Limited dated 14 March 2025 at [9.1].

17 Statement of Evidence of Mr Hutchison, above n 12, at [11.10] and [13.1].

18 At [5.3].

19 Statement of Evidence of Mr Walker, above n 3, at [71.1].

**4.20** In relation to a timeframe of 2060 for achieving the TAS proposed in Change 1, Mr Walker adds:<sup>20</sup>

The longer timeframe allows the costs of improvements to be spread over a longer time period, but does not negate any of the \$5.37 billion in spending, nor the maintenance and servicing costs associated with that spending.

**4.21** Mr Walker further concludes that “*achieving the PC1 metals and E. coli TAS is unaffordable*”,<sup>21</sup> and that “*even if affordability concerns could be dealt with, the scale of the step up in investment to achieve the TAS by 2040 seems ambitious from an achievability perspective*”.<sup>22</sup>

**4.22** The unaffordability of the TAS by 2040 is further highlighted by Mr Walker’s acknowledgement that his estimated costs are likely to *underestimate* the actual costs due to various factors including the exclusion of costs for pump stations and rising main upgrades. This observation is supported by Mr Mendonça in his Statement of Evidence on behalf of PCC.<sup>23</sup> By way of example, Mr Mendonça explains that while Mr Walker used an estimated cost of \$4M per hectare of wetland, a recently completed wetland in Porirua slightly smaller than one hectare cost over \$14M.<sup>24</sup>

**4.23** Similarly, Mr Foster gives a conservative high-level estimate that in relation to stormwater the total costs of improvements required is \$3.3 billion.<sup>25</sup> Notably, this is significantly higher than the range given by Mr Walker in relation to stormwater of between \$636 million and \$1.66 billion.<sup>26</sup>

**4.24** Mr Walker’s estimates do not include operational costs or debt servicing costs.<sup>27</sup> This is especially significant from an affordability standpoint, as

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20 At [72.2].

21 At [73].

22 At [75].

23 Statement of Evidence of Michael Anthony Mendonça on behalf of Porirua City Council dated 14 March 2025 at [6.6(a)].

24 At [6.6(c)].

25 Statement of Evidence of Mr Foster, above n 14, at [9.10].

26 Statement of Evidence of Mr Walker, above n 3, at [21].

27 At [24.2] and [24.4].

explained by Mr Mendonça, as operational costs are usually funded directly by rates as opposed to debt.<sup>28</sup>

**4.25** The impact of operational costs on rates could be significant. Mr Gerry O’Neill, on behalf of Wellington City Council (**WCC**), considers that for WCC it could be estimated that for every dollar of capital costs, WCC incurs 50 cents of operational costs.<sup>29</sup> Where operational costs are incurred Mr Mendonça considers that they generally have a 10-fold greater impact on rates than capital costs.<sup>30</sup> Therefore, the total impact of operational costs on rates could in total be larger than the impact of capital costs.

**4.26** Therefore, based on Mr Walker’s, Mr O’Neill’s, Mr Hutchinson’s, Mr Foster’s and Mr Mendonça’s evidence, the current TAS and 2040 timeframe included in Change 1 do not amount to an affordable framework that can be realistically achieved. In section 32 terms, it is simply not possible to reach the view – on the evidence – that the provisions are the most appropriate way to achieve the purpose of the Act.

*Lack of alternatives considered*

**4.27** In setting the TAS in Change 1, PCC is concerned that GW has failed to meaningfully assess viable alternatives.

**4.28** GW appears to have simply adopted the TAS from the Whaitua Implementation Plans (**WIPs**), without proper identification and scrutiny of the full range of options for implementing the NPS-FM. The WIPs are not RMA planning documents and not subject to the same testing under section 32.<sup>31</sup> The only TAS alternative GW appeared to consider was the use of a 2060 timeframe instead of a 2040 timeframe, although this was rejected by councillors due to it differing from the WIPs.<sup>32</sup>

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28 Statement of Evidence of Mr Mendonça, above n 21, at [6.6(f)].

29 Statement of Evidence of Gerry O’Neill on behalf of Wellington City Council dated 14 March 2025 at [21].

30 Statement of Evidence of Mr Mendonça, above n 21, at [6.6(f)].

31 Statement of Evidence of Vanessa Rodgers on behalf of Porirua City Council dated 14 March 2025 at [6.10].

32 Greater Wellington Regional Council *Section 32 Report: Background and Context for the Proposed Plan Change 1 to the Natural Resources Plan for the Wellington Region: Part D* at 56 and 82.

**4.29** Consequently, the section 32 report does not satisfy the requirements of section 32, or more broadly the expectations on GW to identify alternatives. To support the adoption of specific TAS and timeframes for achieving those TAS, the section 32 report should have identified a range of different options and considered the costs and benefits of each. Given the MRI imposed by the NPS-FM and the significant costs associated with achieving the TAS, the section 32 report should have at least considered and assessed the option of requiring only that the MRI be achieved on similar timeframes to the TAS (ie by 2040 or by 2060).

*The section 42A report's alternative recommendations*

**4.30** The Section 42A Hearing Report for HS2 (**42A Report**) recommended several changes to the TAS in both tables 9.1 and 9.2 (**Revised TAS**). These changes largely reduce the required levels/values of the TAS whilst retaining the required timeframe for achieving these the TAS of 2040.<sup>33</sup>

**4.31** Ms Vanessa Rodgers, on behalf of PCC, identifies that for three of the five part freshwater management units (**pFMUs**) in Te Awarua-o-Porirua the 42A Report recommends standards that are more stringent than the MRI.<sup>34</sup> Notably, this approach is taken only in relation to these three pFMUs in Te Awarua-o-Porirua, and no other areas (which have adopted the MRI only). Neither the 42A Report nor any evidence submitted by GW demonstrates any clear assessment of the affordability or achievability of these more stringent targets, versus the standard MRI.

**4.32** As noted above, Mr Walker's evidence concluded that achieving the MRI by 2040 would still require at least a 14% step-change in rates for the next 16 years.<sup>35</sup> This suggests that the impact of the Revised TAS is likely to be greater. As noted in PCC's original submission, on Change 1 this would be in addition to business-as-usual rates increases of between 10% and 30% each year.

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33 Section 42A Hearing Report – Objectives at [213] and [299].

34 Statement of Evidence of Ms Rodgers, above n 30, at [5.8].

35 Statement of Evidence of Mr Walker, above n 3, at [38.3].

**4.33** Without further evidence and analysis it cannot be concluded that the Revised TAS are in any way affordable or achievable. It is therefore submitted that the revised TAS, and in particular those applying to the three pFMUs for PCC, are not the most appropriate provisions for the purposes of section 32, and that modifications are more appropriate.

*Evidence supporting the TAS for other attributes*

**4.34** Tables 9.1 and 9.2 contains various other TAS for attributes other than E.coli as required by the NPS-FM. However, none of the section 32 report, Mr Walker's evidence or the 42A Report meaningfully assess the cost to territorial authorities, and impact on rates, of achieving the TAS for attributes by 2040 other than for E.coli, dissolved zinc and copper. Notably, some of these TAS are also set above the MRI.<sup>36</sup>

**4.35** Therefore, the impact and achievability of the TAS in the timeframes required in relation to other variables is considered to have been insufficiently assessed by GW.

*Most appropriate TAS and timeframes*

**4.36** Based on the limited evidence available, PCC's position is that the use of the MRI with a 2060 timeframe is the most appropriate option before the Panel.

**4.37** Achieving the MRI by 2060 would, according to the attachment to Mr Walker's evidence, require an average step-change increase of at least 6.9% for the relevant territorial authorities.<sup>37</sup> This is still an ambitious reduction requiring an imposing increase in rates.

**4.38** However, the adoption of the MRI on an extended timeframe would at least align the TAS with the NPS-FM and, even if there may be difficulties in achieving the TAS, territorial authorities will have a better prospect of being

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36 For example, the TAS and Revised TAS for Macroinvertebrates (1 of 2) for the Taupō, Wai-o-Hata and Takapū pFMUs, as well as Macroinvertebrates (2 of 2) for Taupō as per Table 9.2 and NPS-FM, cl 3.11(4).  
37 Statement of Evidence of Mr Walker, above n 3, at [36.4].

able to do so. PCC's position on the revised TAS is that additional requirements beyond those required by the NPS-FM should not be placed on territorial authorities without evidence that can demonstrate that those requirements are achievable, affordable and overall appropriate.

**4.39** PCC considers that there is a role for interim TAS, which are required by clause 3.11(6) of the NPS-FM. The need for interim targets would be increased with a 2060 timeframe.<sup>38</sup> The use of interim TAS would also help to address concerns raised by Mr Walker and the s42A Report that a longer timeframe may lead to delayed action.<sup>39</sup> Again, these interim TAS should be set at an affordable and achievable level.

**4.40** We note in passing that the table attached to PCC's submission did not expressly seek a change to the use of MRI in the row that discusses Table 9.2. It is submitted that a change to the MRI is consequential to and consistent with PCC's primary submission on this topic, as discussed in the covering section of the submission and throughout the table. In effect, it is a middle ground option that sits between PCC's primary relief and what is now being supported through evidence.<sup>40</sup> For completeness, PCC's submission records it is strongly opposed to the 2040 E.coli target set by Change 1 (as notified), with relief seeking to ensure that the final limits are achievable and affordable.

#### *Wastewater Environmental Performance Standards*

**4.41** In addition to issues identified above with the TAS and associated timeframes, it is also relevant to note that Taumata Arowai has recently begun consulting

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38 We note that regardless of whether the timeframe is extended clause 3.11(6) of the NPS-FM requires interim TAS be included as noted the Statement of Evidence of Ms Rodgers at [7.42].

39 Section 42A Hearing Report – Objectives at [300]; and Statement of Evidence of David Walker at [71.4].

40 We note also that the 42A report states at para 329 "*As noted in paragraph 299, I consider it preferable to relax the TAS rather than extend the timeframe as sought by these submitters. An amendment of this nature is within the scope of these 'timeframe' submissions, because the impact of my proposed change is similar by reducing the quantum of the improvement burden in the period to 2040, particularly for councils and WWL who assume responsibility for the improvements to community wastewater and stormwater networks.*"

on new proposed Wastewater Environmental Performance Standards (WWEPS).<sup>41</sup>

- 4.42** Although there is no draft available of these standards yet, the discussion document released by Taumata Arowai suggests that these standards will prescribe various performance standards that must be met in relation to wastewater activities including discharges to water and to land.<sup>42</sup> The discussion document anticipates these standards will impose requirements relating to E.coli for discharges of wastewater.<sup>43</sup>
- 4.43** Alongside the proposed WWEPS, the Local Government (Water Services) Bill is currently before Parliament, with the select committee report back due on 17 June 2025.
- 4.44** This Bill includes clauses which would amend the RMA, the effect of which would mean that any Wastewater Environmental Performance Standards, as well as Stormwater Environmental Performance Standards, set by Taumata Arowai, would prevail over regional council rules regardless of whether those rules are more or less stringent.<sup>44</sup> Regional councils would in turn be required to amend planning documents to remove any conflicting or duplicating rules in regional plans.<sup>45</sup>
- 4.45** As a result, GW may yet be required to review the TAS imposed by Change 1 and implement a subsequent plan change to ensure compliance with the WWEPS.

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41 Taumata Arowai *Help shape New Zealand's Future* (press release, 25 February 2025) <https://www.taumataarowai.govt.nz/news/articles/consultation-provides-an-opportunity-to-contribute-to-new-zealands-wastewater-future/>; and Taumata Arowai *Consultation on proposed wastewater environmental performance standards: Discussion Document*.

42 Taumata Arowai Discussion Document, above n 38, at 4.

43 At 19.

44 Local Government (Water Services) Bill, cl 269.

45 Local Government (Water Services) Bill, cl 269.

## 5. **Unplanned greenfield development**

5.1 Policy P.P2(a) directs territorial authorities to prohibit unplanned greenfield development. The 42A Report has recommended removing policy P.P2 in its entirety.<sup>46</sup> PCC supports this removal due to overlap with other policies (which are the subject of subsequent hearing streams). PCC supports this recommendation.

5.2 For completeness, PCC also makes the following submissions related to P.P2 on the basis that aside from any overlap with other policies, P.P2(a) itself is inappropriate. PCC acknowledges that the substance of P.P2(a) may also be considered further in relation to the overlapping policies in later hearing streams and may make further submissions on these points in the relevant hearing streams.

### *Legal requirements for the use of prohibited activity status*

5.3 In *Coromandel Watchdog of Hauraki Inc v Chief Executive of the Ministry of Economic Development* the Court of Appeal held that as a result of section 32 (and other provisions of the RMA including those setting out a local authority's functions and those in part 2 setting out the purpose and principles of the RMA), prohibited activity status should only be used where it is the *most appropriate* approach "*having regard to the matters evaluated in the course of the process mandated by the Act*".<sup>47</sup>

5.4 Subsequently, in *Thacker v Christchurch City Council* the Environment Court stated that:<sup>48</sup>

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46 Section 42A Hearing Report – Ecosystem Health and Water Quality Policies at [65].

47 *Coromandel Watchdog of Hauraki Inc v Chief Executive of the Ministry of Economic Development* [2007] NZCA 473, [2008] 1 NZLR 562 at [37]. We note that at [34]–[36] of that judgment the Court of Appeal acknowledged various circumstances in which a local authority "*could rationally conclude that prohibited activity status was the most appropriate status*" which included where council intends to allow for a staged approach to development by area. This is not conclusive of whether prohibited activity status is the most appropriate but rather acknowledges that it may be in such circumstances depending on the merits. Furthermore, as discussed below the use of prohibited activity status by Greater Wellington Regional Council here is purportedly related to water quality and not to ensure staged development generally.

48 *Thacker v Christchurch City Council* [2009] ELHNZ 145 at [42].



**The imposition of prohibited activity status on any activity or activities is the most draconian form of control available under RMA.** A prohibited activity is not only one for which a resource consent must not be granted by a consent authority, but a proponent of such an activity may not even make an application for it. Although not specifically stated by any of the parties to these proceedings there was an implicit acceptance that **prohibited activity status was not one which should be imposed lightly and without detailed consideration.**

*Prohibited activity status is not the most appropriate status*

- 5.5** As discussed in Ms Rodgers' evidence, a prohibited activity status for unplanned greenfield development would likely result in negative unintended consequences.<sup>49</sup> In particular, the status may prevent the consideration of proposals, even where those proposal may have positive environmental outcomes, including for freshwater.<sup>50</sup> In this regard, the use of prohibited activity status would effectively provide no consenting pathway to consider positive or negative effects of development in unplanned greenfield areas.<sup>51</sup>
- 5.6** GW also did not consider any alternative activity status in its section 32 report.<sup>52</sup> As a result, GW has not fully considered the most appropriate approach with reference to reasonably practicable alternatives, such as less restrictive activity statuses that would provide a consenting pathway while still enabling relevant effects to be considered as part of that consenting pathway.
- 5.7** A practical consequence of the approach is that any unplanned greenfield development would require two plan changes before a consent application could be made.<sup>53</sup> A change to the NRP would need to take place prior to the change to PCC's district plan because of the requirement that a district plan cannot be inconsistent with a regional plan under section 75(4)(b) of the RMA.

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49 Statement of Evidence of Ms Rodgers, above n 30, at [8.3].

50 At [8.3].

51 At [8.3]

52 Greater Wellington Regional Council Section 32 Report, above n 31, at 3.1.3.

53 This is expressly acknowledged in the note to P.P15 of Change 1.

- 5.8** Duplicating plan change requirements, whether sequential or otherwise, does not provide for the efficient use and development of natural and physical resources, nor is it likely to lead to better resource management decisions. The Environment Court has previously recognised that although some overlap may be inevitable, duplication of processes and associated costs may create inefficiencies which should be avoided.<sup>54</sup>
- 5.9** A duplicate process is likely to discourage or prevent urban development, or lead to applicants relying on the process in the Fast-track Approvals Act 2024.
- 5.10** GW’s section 32 report states that the approach adopted by P.P2 allows “*an approach that considers and incorporates the competing drivers between the NPS-UD (for intensification and development) and the NPS-FM*”.<sup>55</sup>
- 5.11** It is submitted that P.P2 is not the most appropriate approach to balance these objectives. In particular, policy 8 of the NPS-UD requires that “*local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity*” even where that development capacity is not anticipated by RMA planning documents or is “out-of-sequence” with planned land release. In effect, policy 8 directs local authorities to be responsive to potential unplanned greenfield development.
- 5.12** Requiring two separate but similar plan changes to enable ‘out-of-sequence’ development would act to prevent (or at least significantly impact on) both PCC and GW’s ability to be responsive to plan changes that would add significantly to development capacity.<sup>56</sup> Therefore, the process is inconsistent with policy 8 of the NPS-UD.

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54 *Winston Aggregates v Matamata-Piako District Council* (2004) 11 ELRNZ 48 (EnvC) at [68]; and *Re Otago Regional Council* [2022] NZEnvC101 at [205]–[216].

55 Greater Wellington Regional Council Section 32 Report, above n 31, at 52.

56 Statement of Evidence of Vanessa Rodgers, above n 30, at [8.9].

*Regional and district councils' respective roles for managing land use*

- 5.13** Sections 30 and 31 of the RMA define the respective functions of regional councils and territorial authorities. These functions in turn define and limit the scope of regional and district plans.<sup>57</sup>
- 5.14** Section 31(1)(a) provides a broad function for territorial authorities of *“the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources”*.
- 5.15** Section 30(1)(a) provides a function for regional councils of the *“establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region”*.
- 5.16** Both of these functions are broad in nature, however, the specific focus on use, development and protection of land in relation to territorial authorities, illustrates that it is generally the role of a territorial authority to control land use through zoning and associated rules.
- 5.17** Regional councils are not without functions relating to controlling the use of land. However, the specific functions given to regional councils to control land use generally involve some connection to other functions.<sup>58</sup> Many of these functions are found in section 30(1)(c) and this specifically provides regional councils with a function in controlling the use of land for specific purposes, being:
- (i) soil conservation:
  - (ii) the maintenance and enhancement of the quality of water in water bodies and coastal water:

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<sup>57</sup> Resource Management Act, ss 63(1) and 72.

<sup>58</sup> *Canterbury Regional Council v Banks Peninsula District Council* [1995] 3 NZLR 189 at 11 and 12–13; and *Federated Farmers of NZ v Manawatu-Wanganui Regional Council* [2011] NZEnvC 403.

- (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:
- (v) the avoidance or mitigation of natural hazards:

**5.18** GW's section 32 report identifies P.P2(a) as allowing for "*appropriate consideration and assessment of the accumulative [sic] effects of stormwater contaminants*".<sup>59</sup>

**5.19** However, P.P2(a) applies much more broadly than to stormwater and water quality, and instead controls the use and development of land more generally including via the use of maps which create different zones for development.<sup>60</sup> Controlling development in this broad and general way is more consistent with the functions of territorial authorities, and as discussed above, the proposed approach would result in a duplication of functions.

## **6. Relief sought by PCC**

**6.1** In reliance on the evidence presented for PCC, it is submitted that the following outcomes are most appropriate on the totality of the evidence:

- (a) The TAS in tables 9.1 and 9.2, and the timeframes in the associated objectives be amended so that they are affordable and achievable meaning:
  - (i) the TAS be set at the MRI;
  - (ii) the timeframe for achieving the TAS be 2060; and
  - (iii) achievable interim TAS be set in accordance with clause 3.11(6) of the NPS-FM; and

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<sup>59</sup> Greater Wellington Regional Council, above n 31, at 53.

<sup>60</sup> In this regard the present circumstances can be distinguished from those in *Re Otago Regional Council* [2022] NZEnvC 101 at [164]–[175] where the Court found that rules requiring regional consents for earthworks (in addition to consents from the district council) were within the role of the regional council noting that the regional consents and conditions were focussed on water quality.

- (b) Policy P.P2(a) be deleted in its entirety.
- (c) The amendment recommended by the 42A Report to the second bullet point of objective P.O1 be accepted.

**DATED** this 21<sup>th</sup> day of March 2025



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M Wakefield / H Harwood  
Counsel for Porirua City Council