

Before the 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
Statement of evidence of Caroline Horrox on behalf of Wellington Water
(Planning)

Date: 3rd November 2023

INTRODUCTION

1. My full name is Caroline Anne Horrox. I am employed as a contractor by Wellington Water Ltd (Wellington Water) to provide planning related advice and support on a range of district and regional planning related matters. I was previously involved in drafting Wellington Water's further submission on the Proposed Plan Change 1 to the Regional Policy Statement for the Wellington Region (PC1).
2. I have prepared this statement of evidence on behalf of Wellington Water in respect of planning related matters arising from submissions, further submissions, and the section 42A reports on PC1.
3. This statement of evidence relates to **Hearing Stream 5** – which covers Freshwater and Te Mana o te Wai topics.
4. I am authorised to provide this evidence on behalf of Wellington Water.

QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

5. My qualifications and experience are set out in my evidence for Hearing Stream 4 Urban Development.
6. I have read the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023. I have complied with the Code of Conduct in preparing my evidence and will continue to comply with it while giving oral evidence. My qualifications as an expert are set out my evidence for Hearing Stream 4. Except where I state I rely on the evidence of another person, I confirm that the issues addressed in this statement of evidence are within my area of expertise, and I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions.

SCOPE OF EVIDENCE

7. My statement of evidence covers the following matters:

- Roles and responsibilities for controlling land use for water quality
 - Water source protection provisions
 - The 'undeveloped state' definition
 - The proposed new hydrological controls policy
8. As outlined in Mr Slyfield's legal submission, a number of other matters raised in Wellington Water's original RPS PC1 submission and relevant to this hearing stream are now resolved or are no longer being pursued.

CLARITY OF RESPONSIBILITIES FOR CONTROLLING LAND USE FOR WATER QUALITY

9. Mr Slyfield's legal submission outlines the concerns raised in Wellington Water's original submission about the allocation of responsibilities for controlling land use for water quality purposes.
10. In her S42A report (paragraph 84), Ms Pascall acknowledged that some Freshwater topic provisions did not sufficiently differentiate between regional and territorial authority roles and responsibilities. Ms Pascall proposed changes to Table 4 and a number of provisions (including the addition of new provisions) to address this.
11. I agree with Wellington Water and Ms Pascall that it is critical for the RPS to clearly articulate regional and territorial authority roles and responsibilities for plan making and consenting with regard to water quality. Role clarity is also necessary to enable councils and Wellington Water to implement Te Mana o te Wai and support Target Attribute States as required by the National Policy Statement for Freshwater Management (NPS-FM).
12. Ms Pascall has proposed a number of provision changes that have improved role clarity. In particular Policy 15, which addresses the management of effects of earthworks and vegetation disturbance clearance, provides a useful example

of how the Regional Council/territorial authority split can be done effectively and helpfully.

13. However, I consider that ambiguity remains with respect to Policies 6, FW.3 and Policy 14, and that further changes are required.
14. Policy FW.6 deals specifically with the allocation of responsibilities for land use and development controls for freshwater. As such this policy needs to be explicit about where these responsibilities lie. However, Policy FW.6 states in different subclauses that the control of land use and land development is both the responsibility of both Greater Wellington and territorial authorities (albeit in slightly different terms, emphasis added):

Policy FW.6(a) “ ...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 the maintenance and enhancement of water quality and ecosystems in water bodies, and the maintenance of water quantity.”

Policy FW.6(c) “Territorial authorities are responsible for the control of land use and subdivision. Territorial authorities 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...”

15. It is unclear to me what the differences are between the responsibility for the ‘*use and development of land*’ (clause a) and ‘*the control of land use and subdivision*’ (clause c). The terms used are slightly different without being obvious what these differences are. Consistent use of ‘land use development’ related terms would be helpful.
16. In my opinion, 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.

17. Policies FW.3 and Policy 14 (as proposed by Ms Pascall in her s42A report) contain a number of similar or overlapping obligations for regional and district plans in relation to managing the effects of urban development on freshwater and receiving environments, including but not limited to:

- application of water sensitive design principles and techniques
- contaminant management
- protection and enhancement of rivers, lakes, wetlands, springs, riparian margins and estuaries.

18. From a planning perspective I agree that both regional and district plans have a role in managing these matters. However, as drafted, policies FW.3 and Policy 14 are not sufficiently clear about the division or focus of responsibility which is important to ensure these matters are managed in an efficient and integrated way.

WATER SOURCE PROTECTION

19. Wellington Water's submission on PC1 requested that the consideration of the matters in Policy 42 clauses (p) and (q) should also apply to District Plans given the role of territorial authorities in managing land development.

20. As noted in Mr Slyfield's legal submission, Wellington Water is no longer pursuing further changes to Policy 42(p).

21. Policy 42(q) relates to protecting drinking water sources from inappropriate use and development. Wellington Water's original submission noted that developers were often not aware of the regional requirements around managing water source protection until too late in the development process.

This had potentially adverse outcomes for the aquifer (for example deep foundations located within a *Drinking Water Source Protection Area*). Wellington Water considered that reference to water source protection requirements in the district plan would help reduce the risks to these areas from development. Wellington Water proposed a new policy 42A to address this issue.

22. In her s42A report, Ms Pascall disagreed with the relief sought by Wellington Water on the basis that:

- Developers interacting with district plans more frequently than regional plans was not sufficient reason to address these matters via district plan regulatory policies and methods; and
- Policy 42 was not the right place to address these issues as it focused on matters to be considered in assessing regional resource consents, rather than district plan provisions.

23. Ms Pascall considered the matter sufficiently dealt with via the NRP/ regional consents (s42A report paragraph 414).

24. While I agree with Ms Pascall that water source protection is a matter to be addressed primarily via the NRP and regional consents, I consider that there would be benefit in requiring district plans to contain a water source protection policy and some form of cross reference to the regional plan water source protection requirements. Based on Wellington Water's observed experience, this would help reduce the risks from land development to this critical resource. In my view, this approach would align with the principle of 'integrated management' promoted in the NPS-FM (for example NPS-FM 3.5(4)) and the RPS PC1. This approach also aligns with Policy FW.6(c) which requires territorial authorities to control land use to avoid, remedy or mitigate adverse effects on the health and wellbeing of water bodies, freshwater ecosystems and receiving environments.

25. I do not consider that the RPS needs to be directive on the specifics of how district plans should address water source protection. At the RPS level, the issue could be addressed through some minor changes to Policy FW.3 (k) as follows (emphasis added):

“Require that urban development is located and designed to protect and enhance rivers, lakes, wetlands, springs, riparian margins, ~~and~~ estuaries, aquifers and drinking water source areas”;

UNDEVELOPED STATE

26. Ms Lockyer’s evidence (paragraph 31) suggests some refinements to the definition of “undeveloped state” proposed in the s42A report. I support Ms Lockyer’s refinements on the basis that they reduce the likelihood of the definition being interpreted differently and support improved water quality outcomes.

HYDROLOGICAL CONTROLS

27. Ms Lockyer’s evidence outlines concerns regarding the clarity, direction, and practicality of the proposed new ‘Policy FW.X Hydrological Control for urban development – regional plans’ from a water specialists’ perspective.

28. From a planning perspective, the matters raised by Ms Lockyer raise concerns regarding the ability to effectively implement this proposed new policy as outlined below.

29. Ms Lockyer’s evidence notes that it is not clear whether the new policy requires continuous flow modelling to estimate the annual runoff volume and frequency of exceedance of the 2-year ARI, to be done as part of the regional plan, or by developers when seeking a resource consent (paragraph 33.1). I concur with Ms Lockyer that the intent is not evident and consider this has potential to create confusion for planning processes down the line.

30. Ms Lockyer suggests changes to the proposed new policy FW.X to include ‘via a stormwater network that discharges to a stream’ as a point to which a “fully developed area” discharges into (paragraph 33.10). From a planning perspective I support this proposed addition on the basis that discharges from developments to streams are often via the stormwater network. Thus, it is important to include the stormwater network as a discharge point to comprehensively manage water quality effects.
31. Ms Lockyer’s evidence (paragraph 33.7) notes that the use in Policy FW.X of the terms “channel forming” and “bankfull flow”, in addition to the reference to “2-year Average Recurrence Interval (ARI)”, overly complicate this policy. The terms are not defined and it is unclear whether they all have the same meaning or all require something slightly different. From a planning perspective this does not promote clear and certain outcomes.
32. It is also unclear what is meant by the term “fully developed area” referred to in FW.X(a)(i) and (ii) and FW.X(b)(i) and (ii) as this is undefined. From a planning perspective this is an important matter to clarify to ensure it is implemented as intended.
33. In my opinion, Policy FW.X ‘*Hydrological Control for urban development – regional plans*’ is quite detailed for an RPS policy. While I am not opposed to this in principle, I am concerned that in this case, its technical nature will make the policy difficult to interpret and implement. Along with the ambiguities discussed above, this may create unintended issues in the Regional Plan or in consent processes. Accordingly, I support the recommendation in Ms Lockyer’s evidence that a simpler, more pragmatic approach would be to revise Policy FW.X to require retention of rainfall to manage the effects of stormwater runoff (volume and quality) on freshwater ecosystem health (paragraph 34).

Caroline Horrox
3rd November 2023

