BEFORE THE INDEPENDENT HEARING PANEL

UNDER	the Resource Management Act 1991.
IN THE MATTER	of hearing submissions and further submissions on Greater Wellington Regional Councils Proposed Change 1 to the Wellington Region Natural Resources Plan.
Submitter	**WINSTONE AGGREGATES (Submitter No. 206, Further Submitter No. 008).**

LEGAL SUBMISSIONS ON BEHALF OF WINSTONE AGGREGATES (SUBMITTER No. 206/ FURTHER SUBMISSION No. 008)

HEARING STREAM 1 – OVERARCHING ISSUES

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MAY IT PLEASE THE PANEL:

Introduction

1. I appear on behalf of Winstone Aggregates, a Division of Fletcher Concrete and Infrastructure Ltd ("**Winstone**"). Winstone has made a submission (Submitter No. 206, Further Submission No. 008) on GWRC NRP Proposed Plan Change 1 (**PPC1**). Winstone is the largest quarry operator in the Region.

2. More detail about Winstone's operations in the Wellington Region is set out in the evidence of Mr. Heffernan, Winstone's Project Manager and Principal Planner.

Purpose of these introductory submissions

3. Winstone intends to present in support of its submission points on various chapters throughout the hearing process. The purpose of these introductory submissions is to familiarize the Panel with Winstone's role in the Region, its interest in the NRP - PPC1 and to provide preliminary comments in response to the Officer's Report for the HS1 Introductory Chapter. Many of these points are best decided in conjunction with specific submission points, once the Panel has had the benefit of evidence.

4. Counsel also seeks to alert the Panel to "live" issues or themes in Winstone's submission across the whole of the PPC1 and matters that in Winstone's view ought to be considered as preliminary issues.

5. Winstone's detailed submission focuses on aggregate extraction and seeks changes to better provide for aggregate extraction and related activities as part of their submission on PPC1 in line with the acknowledged pathways provided for aggregate extraction and quarrying in the NPS-FM to allow them to continue quarrying at Belmont Quarry which sits within the Te Whanganui- a – tara Whaitua.

Winstone's interest in NRP - PPC1

6. The relief sought by Winstone is essential to ensure a continued supply of aggregate to the Region (particularly in Wellington City where demand is highest). Aggregate extraction already has a restrictive consenting pathway in the Natural Resources Plan – PPC1 introduces further restrictions that will make it virtually impossible to quarry, for example the need to undergo a private plan change to obtain permission to obtain a stormwater consent, due

to proposed use of the prohibited activity status.

Lack of quarriable resource in Wellington Region

7. Wellington Region is facing some very hard and difficult choices in the future as to where aggregate will be sourced (and the resulting cost of doing so):

   a. Locally sourced quarries have been in rapid decline. Fifty years ago, there were 30+ quarries across the Wellington region, (today there are only a handful);

   b. There is no alternative to aggregate, it is a finite mineral which is consumed in huge quantities to build, maintain and support our communities;

   c. It is a heavy, bulky product best utilised as close to where it is sourced as possible to reduce both transport and emissions costs (on average the economic cost per tonne for transport doubles for every addition 30km it is transported); and

   d. Quarries can only be established where accessible and quality aggregate resource lie and where the resource is near the surface. The vast majority of land across the region is already "sterilised" via incompatible land uses.

8. Winstone seeks to maximise the life of its existing quarry operations at already established quarries, for example Belmont Quarry (which has operated since the 1900s) rather than seeking to establish new greenfield quarries further afield. This is the most sustainable way to continue to support access to aggregate in an economically efficient way, and in turn seek to contain aggregate extraction activities (and their effects) to specific sites.

9. Land that has been set aside for aggregate extraction, within the Quarry Management Zone is undeveloped and often contains streams, gullies, tributaries, wetlands and indigenous vegetation high in natural value. Quarrying[1] captures excavation that results in discharge and earthworks and clearance of land.

10. Winstone is concerned that PPC-1 introduces a combination of unworkable

[1] NPS-PS "**Quarry"** means a location or area used for the permanent removal and extraction of aggregates (clay, silt, rock or sand). It includes the area of aggregate resource and surrounding **land** associated with the operation of a quarry and which is used for **quarrying activities**.

Policy direction and a hostile rule framework that has not been developed with quarrying in mind. As drafted PPC-1 will quickly prevent access to remaining deposits of aggregate within Belmont, in terms of both aggregate extraction and quarrying activities[2] required to access the aggregate.

Aggregate underpins the NPS-UD and infrastructure

11. A reliable source of locally sourced aggregate is necessary to achieve the development and infrastructure outcomes of the NPS-UD and provide for increased housing supply. The Government recognised in the NPS- FW (February 2023 Update), NPS-HPL and NPS-IB the national and regional benefits of quarrying and clean filling activities, and sets out pathways for these activities, that navigate a pathway to consent activities as an exception to the avoid policy in instances where they conflict with other protected values. As an absolute minimum PPC-1 should seek to retain those pathways and not seek to be more restrictive than them, by layering over the top another framework that erodes or prevents those pathways from working.

12. The NPS-FW gives national direction to Councils as to how to manage what can be a problematic interaction. The Ministry for the Environment described the rationale for Clause 3.22 in the following manner:

> "The rationale for providing a consent pathway for quarrying is to recognize:
>
> - aggregate resources are required for the construction of specified infrastructure, which already has a consent pathway in the regulations.
> - the need to provide for increased housing supply.
> - Aggregate is locationally constrained – it can only be sourced from sites where the resource is naturally present.
>
> The proposed amendment gives a discretionary activity status to activities necessary for expanding an existing, or developing a new, quarry for the extraction of aggregate. The discretionary activity status will enable councils to assess a range of matters on application for consent. Controls on the scale of activity will apply through the tests for 'national and/or regional benefit' and 'functional need".

13. The Ministry also elaborated on the rationale for amending the NPS-FW to provide for clean filling of overburden:[3]

> "With a growing population and rising demand for aggregate materials to facilitate

[2] NPS-PS "**Quarrying Activities"** means the extraction, processing (including crushing, screening, washing, and blending), transport, storage, sale and recycling of aggregates (clay, silt, rock, sand), the deposition of overburden material, rehabilitation, landscaping and clean filling of the **quarry**, and the use of **land** and **accessory buildings** for offices, workshops and car parking areas associated with the operation of the **quarry**.

> urban development and infrastructure, we can expect that the need for clean and managed fill sites will continue and may grow. We agree that where possible, fill sites should be outside natural inland wetland areas. However, because of the prevalence of natural wetlands in areas where fills tend to be located (i.e., depressions in the landscape), this may not always be feasible."

14. Winstone's submission seeks to ensure that the National Policy direction for aggregate extraction and the associated clean filling of overburden is recognised as an important (and relevant component) of PPC-1 implementation of the NPS-FW provisions and pathways in that and other NPS-IB, NPS-HPL and NES-F maintained.

Competing views and aspirations

15. Winstone submits that it is vital that the GWRC and Freshwater Planning Panel (FPP) do not shy away from addressing "difficult questions" as to how to consider sometimes conflicting and competing values of protection, improvement and use.[3] Winstone comes to this process fully acknowledging that within all communities there are those difficulties, and respects that others hold differing views and have different aspirations. It is important not to dismiss or ignore the need for use as use also benefits the whole community.

16. One concern that Winstone holds is that in developing the plan GWRC have made it difficult to have those discussions because there has been a lack of consultation, little evidence and a reluctance to understand or quantify the impact that a change in direction in terms of management of freshwater will have on other parts of the community and resource users. The emphasis has been on the benefits or gains, and the costs to users have not been properly explored.

Impact on Belmont Quarry

17. PPC1 as notified has serious impact on Winstone's ability to continue to operate Belmont Quarry, which is a regionally significant aggregate resource that has long been recognised in HCC district plan as being within a Quarry Management Zone, being the largest quarry in the Wellington Region. Some ways in which it does that are:

    a. Quarrying activities are not properly anticipated by either of the rule

[3] This is one of the many "jobs" of regional plans – see for example s65(3)(a) RMA that deals with significant conflict between use, development or protection and mitigation of such conflict.

frameworks to manage “rural activities” or “urban activities” introduced by PPC-1. Application of rules aimed at preventing greenfield development result in overly restrictive results.

b. The new rules mean that earthworks (i.e. quarrying) within a Quarry Zone would automatically be non-complying. Taking a bundling approach, given most quarrying activities include a component of earthworks, it appears all resource consents at a regional level for any quarrying activities will be assigned non-complying status (at best).

c. Winter works restrictions are unsuited for permanent earthworks required for quarrying. Observing the desired winter works shutdown for the largest supplier of aggregate in the region (that has a long track record of good site management) would be catastrophic. It would substantially increase the cost and length of construction in the Region and impede access to aggregate and concrete and create security of supply issues in the local market, yet the s32 Report has failed to assess these impacts.

d. PPC-1 appears to include quarrying in the definition of “high risk industrial or trade premises” despite quarrying having a very different effects/risk profile and not resulting in a discharge of a hazardous substance, resulting in an overly restrictive rule framework.

e. The restrictions on removal of vegetation on erosion prone land are problematic, particularly within the quarry zone, where land needs to be cleared and stripped to gain access to the aggregate resource below, and where the slope profile of quarried land inevitably changes.

f. It also appears that use of land for quarrying would be impacted/captured by the proposed prohibited activity status for stormwater discharges from unplanned greenfield development (despite this land having long been set aside as a Quarry Zone). This means that a private plan change to the NRP-PC1 would be required as a pre-requisite to obtaining a stormwater discharge permit for quarrying associated earthworks.

18. Taken individually (or collectively), these outcomes impact affect the ability to continue to undertake quarrying in Wellington. This example highlights how the notified NRP-PPC1 does not strike the correct balance, it has simply not

turned its mind to how to accommodate use of land for aggregate extraction within this framework. Winstone accepts the community desire for protection but there also needs to be a plausible, sensible, cost-effective pathway provided for use.

GWRC Decision to progress with the NRP – PPC1 at this time

19. Winstone shares the concerns of many submitters that question GWRC's decision to advance PPC1 at the current time. While this was not a decision made by the Panel, the consequences of it are something that the Panel, Officers (and submitters) will jointly carry the burden of navigating throughout the hearing process. Counsel considers it important to signal the basis for Winstone's concerns so that these are properly understood.

Unprecedented policy and legislative change

20. Due to the change of Government, we are in a period of unprecedented policy and legislative change. This has created legal uncertainty in both the Policy, law and frameworks and these will have a bearing on PPC1.

21. The Minister of RMA Reform has signaled intention to make wholesale changes to the NPS-FM (and other National Directions). This was described by the Hon. Chris Bishop on 14 October 2024 as:

> "A package of National Direction – including amendments to 14 current National Policy Statements (NPS) and National Environmental Standards (NES) as well as seven new national direction instruments. We will consult on these in early 2025 and along with the Bill they are expected to be passed into law in mid-2025."[4]

22. It is clear from the Minister's direction and decision-making timeframe that NRP-PPC1 will be impacted by this policy shift during the development of the plan.

23. Government had sought to assist Councils navigate these changes via extension of the timeframes for implementation under s 80A(4)(b) of the Resource Management (Natural Built Environment and Spatial Planning Repeal and Interim Fast Track Consenting) Act 2023 by extending the period to complete this process from 31 December 2024 to 31 December 2027, the

[4] Letter from Hon. Chris Bishop (Minister for RMA Reform) to the profession dated 14 October 2024 (CB-COR0836)

reason for this was described as:

> 'We have decided to review and replace the National Policy Statement for Freshwater Management 2020 (NPS-FM) in this term of Government, following normal RMA processes for National Direction.
>
> We will also use the repeal legislation mentioned above to extend the RMA statutory deadline for notifying freshwater planning instruments to implement the NPS-FM by three years to 31 December 2027. This will allow time to replace and then implement a revised NPS-FM.'[5]

24. Also anticipated over the lifetime of the PPC1 is the introduction of amendments included in the Resource Management (Freshwater and other matters) Amendment Bill – that includes changes to freshwater management (expected to pass before end of the year), and Resource Management Amendment Bill No.2 to be introduced to the House by the end of the year and enacted by mid-2025.[6]

25. While it is accepted that, as a decision-maker, the Panel is required to apply the law as it exists at the time, the Panel must also at the same time give effect to those changes to the NPS[7] (if they are within scope) once they are made and apply the law if this is amended and/or becomes operative in advance of the Panel's decision.[8] Counsel agrees with the Council that the Panel cannot entirely ignore the upcoming Policy direction amendments. The complexities and realities of the difficulties of attempting "to give effect to" the new NPS-IB halfway through a planning process was evident in the RPS-PC1 hearing.

26. The Panel should give careful consideration to whether it should seek to defer the hearing NRP-PC1 and direct that the Council use this extra time wisely to address known evidential defects (exercise its own powers to commission reports on those matters) and develop a plan better equipped to address these Policy Changes (when known).

27. This does not mean that work should stop altogether, but the progress of the plan should be slowed down to get it right the first time, not end up with a plan

[5] Hon Chris Bishop Minister Responsible for RMA Reform, letter to Councils and profession 13 December 2023, Intention to repeal the Natural Built Environment Act 2023 and the Spatial Planning Act 2023 and replace the National Policy Statement for Freshwater 2020.
[6] Hon Chris Bishop Minister Responsible for RMA Reform, letter to Councils and profession 14th October 2024 (CB-COR0836).
[7] Section 67(3)(a) RMA.
[8] See for example *Balmoral Developments (Outram)Ltd v Dunedin City Council* [2023] NZ EnvC, and High Court Decision in *Southern Cross Healthcare Ltd v Auckland City Council* [2023] NZHC 948.

that is immediately out of step with National direction and in need of ad hoc fix ups. Other Regional Councils have heeded this advice and opted to defer work on these plan changes at this time, recognising the benefits for their communities in doing so in terms of reducing the time and cost of involvement in multiple processes. It is unclear what the community gains from completing a freshwater process only to be directed to do another entirely different one shortly thereafter.

28. An extension of time could be sought by the Panel to the Chief Freshwater Commissioner under schedule 1 cl. 47 of the RMA (or ultimately from the Minister of the Environment if further time is needed) to allow it extra time to complete the FPP process be able to properly navigate the upcoming changes.

Timing in relation to the Regional Policy Statement – Plan Change 1 decision.

29. Timing wise, the RPS-PC1 decision has just been released (24 September 2024). It is notable that at the time the Officers Report was prepared, the Decisions version was not available.[9] That Plan Change contains amendments to the RPS, which are relevant to the NRP- PPC1. The Operative RPS dates to 2013 and is very out of date, therefore the Proposed RPS is highly relevant to PPC-1.

30. Sequentially seeking to advance PPC-1 before the content of the Proposed RPS is settled is another lost opportunity to align the Regional Planning framework and streamline the process. Submitters like Winstone participated in the RPS process with the expectation that their investment in that process would help establish the higher order document and direction for subsequent plans resulting in a more efficient Regional Plan process but that does not appear to have occurred, RPS PPC-1 has been developed and written separately, despite the Regional Plan needing to give effect to the RPS (s65(6) RMA/ s86F RMA). The relationship between an RPS and the Regional Plan was confirmed by the Supreme Court in *King Salmon,* in its description at paragraph [111], illustrates how the current situation sits uncomfortably with the planning hierarchy:

> *'(a) First, there are documents which are the responsibility of central government, specifically national environmental standards, national policy*

[9] Officers Report para 49 and 50.

statements, and New Zealand coastal policy statements. Although there is no obligation to prepare national environmental standards or national policy statements, there must be at least one New Zealand coastal policy statement whatever type must state objectives and policies, which must be given effect to in lower order planning documents In light of the special definition of the term, policy statements do not contain "rules".

(b) Second, there are documents which are the responsibility of regional councils, namely regional policy statements and regional plans. There must be at least one regional policy statement for each region, which is to achieve the RMA's purpose "by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region". Besides identifying significant resource management issues for the region, and stating objectives and policies, a regional policy statement may identify methods to implement policies, although not rules. Although a regional council is not always required to prepare a regional plan, it must prepare at least one regional coastal plan, approved by the Minister of Conservation, for the marine coastal area in its region. Regional plans must state the objectives for the region, the policies to implement the objectives and the rules (if any) to implement the policies. They may also contain methods other than rules.'

31. Implementing the Decisions Version of the RPS-PC1 provisions in the NRP-PPC1 in advance of any appeals/outcomes being known, considered or determined also has the effect of "baking in" GWRC's Decision Version of the RPS- PC1 into the NRP, before they have been tested via appeal processes. This undermines the value in those appeals processes, it is already evident that PPC-1 has been prepared in a silo without consideration of the RPS Decisions Version, and it has inevitably resulted in the same issues being ignored (once again) by Officers. With Quarrying, it appears Winstone will need to (once again) make the case for recognition in the Regional Plan via evidence in this PPC-1 forum (despite having recently established that in the RPS-PC1 hearing) irrespective of the RPS being a higher order document. Preparing PC-1 in a vacuum and proceeding with PC1 before the ink is dry on the RPS -PC1 also increases the risk of compounding any errors across both documents.

Lack of evidential foundation to support s32 assessment

32. Evidentially, Officers have admitted that Plan Change 1 has been hurried and consultation has not been as complete and effective as it potentially could have been[10] The Officer agrees in part with submitters that there remain key information/evidential gaps about the cost and benefits of implementing rules resulting in a significant Policy shift and accept that the consequences of that Policy shift are in many cases not properly understood by GWRC.[11]

33. Where information has been provided, the focus has been too narrow – for example despite containing provisions that would result in a cessation of quarrying activities within the area, there does not appear to be any assessment of the impacts on quarrying in the s32 analysis reports. Procedurally, a Council should not be dependent upon submitters to provide evidence to fill the gaps in order to give both Council and the Panel an evidential basis for the provisions being advanced. Submitters should not be used to do the heavy lifting in terms of plugging significant deficit in the information available about the impact that the rules will have on the region's productivity, growth and development as a broad perspective is required.

34. Caselaw is clear that there is a need for a strong evidential basis to inform the s32 analysis so to assist decisionmakers weigh up every provision of the plan. The Environment Court in *Colonial Vineyard Ltd v Marlborough District Council* [2014] NZEnvC 55 at [17], summarised the mandatory requirements that govern plan change processes. One of the requirements which flows from s 32 is as follows:

> *'Each proposed policy or method (including each rule) is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives of the district plan taking into account:*
>
> *(i) the benefits and costs of the proposed policies and methods (including rules); and*
>
> *(ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods; and*
>
> *(iii) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances.'*

[10] Officers Report para. 108.
[11] Officers Report para 112-115.

35. The Officer's suggested response to this concern is to introduce necessary technical assessments based on the "concerns expressed by submitter at the chapter stage"[12] may do this in a piecemeal fashion, but ultimately is unlikely to provide the Panel with the level of detail it needs on each provision.

Less flexibility in the Freshwater Planning Process

36. Winstone does not share the optimism expressed by the Reporting Officer and legal counsel for GWRC that these evidential deficiencies and changes to National Direction can effectively be "ironed out" in the process. Navigating a process which at the outset such a degree of change over its lifetime is expected places a significant additional financial and time burden upon submitters – like all hearing processes. While it is not unusual to encounter one of these or possibly two, the myriads of issues to be faced by PPC1 is unique. The Officer has suggested the following approach be taken:[13]

> "I acknowledge that changes to the NPS-FM (and other national instruments) may arise during the hearing process for PC1. In the event that this arises, any such changes can be considered and reported on during any relevant hearing stream and brought together in the final 'integration hearing right of reply' hearing. I envisage this process will largely follow the approach taken for the Environment Court mediation on the NRP appeals that I was involved in as the Council's appointed mediation lead. That is, where national instruments had been updated since the completion of the Council hearing process, the general approach was to align the plan provisions with the new direction at the time as part of mediation agreements reached where there was scope to do so."

37. Regrettably, the fix up process described by the Officer in the Schedule 1 Plan Change process it is not available for the provisions that have been allocated to the Freshwater Planning Process. Schedule 1, Clause 56(3) RMA provides that appeal rights on those provisions are restricted to matters of law to the High Court. Unlike the Environment Court, the High Court does not generally adopt a multi-party mediation process, there no ability or scope for the High Court to re-align or approve revised wording of provisions as it is primarily concerned about law no factual findings. The High Court's role is restricted to determining whether there is an error of law established by the appellant and is generally unwilling to wade into issues requiring specialist expertise.

[12] Officers Report para 112.
[13] Officers Report paragraph 115.

38. As a result, the restricted FPP appeal process compounds the difficulties caused by a change of National direction or lack of evidence by removing the safety net or the opportunity to fix up those provisions as part of the appeal process, the Panel will need to be alive to this as it navigates the process.

Allocation of provisions between the FPP and P1S1 processes

39. Winstone is concerned about how GWRC have approached allocation of provisions, has included assigning "parent provisions" to the FPP process. It appears that many provisions have been allocated to the FPP process, not where it is the primary issue, but because it is one of several issues to which the provisions relate. There is a risk that the link is too tenuous and assigning FPP provisions has been applied too broadly. Wrongly allocating provisions has flow on effects of the appeal process (described above).

40. Winstone request that the Panel ask GWRC to provide detailed reasons for its grouping in respect of each provision as part of its Chapter response, to allow allocation of the provisions to be considered by submitters and assessed as part of the consideration of those provisions.

Concluding remarks

41. Counsel has sought to respond to issues raised in the s42A Report and signpost issues for the Panel in terms of both its concerns and themes which it intends to elaborate on in further detail in evidence during the relevant hearing on substantive issues.

42. Counsel trusts that raising these concerns with the Panel at an early point is helpful and allows the Panel to give genuine through and attention to them in advance of embarking on the hearing process

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