

**Before Greater Wellington Regional Council**

**Under** the Resource Management Act  
1991

**In the matter of** the Proposed Natural Resources  
Plan for the Wellington Region

**And**

**In the matter of** Submissions (S135) and Further  
Submissions (FS25) by **Wellington  
Water Limited**

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**LEGAL SUBMISSIONS FOR WELLINGTON WATER LIMITED**

**HEARING STREAM 1**

**6 June 2017**

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**M J Slyfield**

Barrister  
Stout Street Chambers  
Wellington

Telephone: (04) 915 9277  
Facsimile: (04) 472 9029  
PO Box: 117, Wellington 6140  
Email: [morgan.slyfield@stoutstreet.co.nz](mailto:morgan.slyfield@stoutstreet.co.nz)

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## Introduction

1. Wellington Water Limited is a submitter (S135) and further submitter (FS25) on the Proposed Natural Resources Plan (**the PNRP**). This is the first of many occasions on which you will be hearing from Wellington Water, as its submissions cover a range of topics to be heard in hearing streams 3, 4, 5 and 6.
2. Who Wellington Water is, and what its role is, will shortly be described in a statement from Wellington Water's Chief Executive, Mr Crampton; so I will refrain from any detailed description here. Suffice to say, Wellington Water is responsible for maintaining, operating, renewing and upgrading the 3 waters networks, comprising water supply, wastewater and stormwater assets and services.

## Giving Effect to the Regional Policy Statement

3. The PNRP is required to give effect to the Regional Policy Statement for the Wellington Region (**the RPS**).<sup>1</sup> As you will be well familiar, the Supreme Court in the *King Salmon* case has authoritatively said:<sup>2</sup>

"Give effect to" simply means "implement". On the face of it, it is a strong directive, creating a firm obligation on the part of those subject to it."

"The implementation of such a directive will be affected by what it relates to, that is, what must be given effect to. A requirement to give effect to a policy which is framed in a specific and unqualified way may, in a practical sense, be more prescriptive than a requirement to give effect to a policy which is worded at a higher level of abstraction."

4. For present purposes, there is one objective and three policies of the RPS that are relevant: Objective 10 and Policies 7, 8 and 39. They require the PNRP to include policies and/or methods that recognise the benefits of regionally significant infrastructure, and

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<sup>1</sup> Resource Management Act 1991, s 67(3)(c).

<sup>2</sup> *Environmental Defence Society v New Zealand King Salmon Company Ltd* [2014] NZSC 38, [2014] 17 ELRNZ 442, [2014] 1 NZLR 593, [2014] NZRMA 195 at [77] and [80].

policies and rules that protect regionally significant infrastructure from incompatible new use and development.

5. The 3 waters networks are regionally significant infrastructure: they are expressly included in the definitions used in the RPS and in the PNRP.
6. It is therefore indisputable that the PNRP's policies and rules (or methods) must recognise the benefits of the 3 waters networks, and must protect the 3 waters networks from incompatible new use and development.
7. The PNRP is also not limited to the RPS requirements. There is no legal reason why the PNRP cannot go beyond the RPS' requirements where appropriate: just as the RPS expresses with greater precision and emphasis some aspects of Part 2 of the Act, so too the PNRP can express with greater precision and emphasis how those matters will be regulated.

#### **Wellington Water's Position**

8. Many of Wellington Water's submissions in this hearing will correlate to the submissions it will make in subsequent hearing streams. For now, Wellington Water's concerns are raised in respect of the relevant objectives and policies (as constrained by the scope of this hearing); but it is expected that some of the issues will become clearer when the Panel's attention turns to the detail in specific rules.
9. Ms Wratt has independently reviewed the contents of Wellington Water's submission (she was not involved in the submission's preparation), and her evidence sets out a reasoned planning assessment in support of Wellington Waters' position. In a few instances,<sup>3</sup> Ms Wratt does not support the submission — or supports it only in part — and, to that limited extent, Wellington Water's submissions are modified.
10. At a broad level, Wellington Water considers that the PNRP fails to adequately recognise and protect the 3 waters networks.

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<sup>3</sup> At [37], [78], [96], [127].

11. Among other things, the ability to operate, maintain, upgrade, and develop the 3 waters networks, and to consent new 3 waters projects, is critical to the recognition and protection of the cultural, social, and economic benefits of the 3 waters for the well-being of the region's people and communities. The PNRP's current framework makes this challenging at best.
12. Wellington Water seeks amendments to the PNRP to provide an objective and policy framework that is enabling for regionally significant infrastructure, while managing environmental effects. Wellington Water contends a more enabling framework is a consequence of properly giving effect to the RPS's directives to recognise the benefits of the 3 waters networks, and to protect them from incompatible uses.
13. It is noteworthy that the RPS was promulgated and became operative in a pre-*King Salmon* environment.<sup>4</sup> That timing is irrelevant in a legal sense: the Supreme Court's approach is unquestionably applicable to the RPS. However, in a factual sense, the timing means that those who contributed to the formulation of the RPS did not necessarily foresee that Part 2 of the Act would be supplanted by the RPS: i.e. that when undertaking planning assessments there would be limited recourse to Part 2 of the Act to supplement the directives of the RPS with other 'sustainable management' considerations. In particular, the RPS may not have "covered the field"<sup>5</sup> in respect of the enabling aspects of Part 2.
14. In addition to seeking a more enabling framework, Wellington Water submits some direction should be provided within the PNRP as to how the policies aimed at protecting the natural environment are to be balanced against the need to use, develop, and protect regionally significant infrastructure. This must recognise that with respect to linear infrastructure in particular there are often constraints as to its nature and location.

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<sup>4</sup> That is, an environment in which RMA practitioners were accustomed to treating policy directives to "avoid" or "protect" specific things, as something less than a bottom line.

<sup>5</sup> Incomplete coverage being one of the 3 recognised exceptions that allow for recourse to be had to Part 2. See *King Salmon* above n 2 at [88]; and subsequently confirmed in a consenting context in *R J Davidson Family Trust v Marlborough District Council* [2017] NZHC 52 at [76].

15. Since the receipt of the s 42A reports, and the filing of evidence, there has been some (limited) opportunity for discussion with other operators of regionally significant infrastructure. This has confirmed that many other operators share Wellington Water's concerns.
16. Wellington Water would welcome further opportunities to explore common areas of concern, and if possible assist the Panel by promoting — within the scope of submissions — outcomes that are appropriate across all types of regionally significant infrastructure. Wellington Water considers pre-hearing meetings could have been used more extensively to achieve this, and Wellington Water would strongly support greater use of pre-hearing meetings in respect of subsequent Hearing Streams.
17. Wellington Water calls:
  - Colin Crampton, and
  - Carolyn Wratt.

  
**M J Slyfield**  
**6 June 2017**

