

**Before the Wellington Regional Council Hearing Panel
Hearing Submissions on the Proposed Natural Resources Plan**

In the matter of: **the Resource Management Act 1991**
And: **Submissions Lodged by Carterton District
Council on the Proposed Natural Resources
Plan**

HEARING STREAM 3

**Statement of Evidence of Christine Anne Foster
Called by Carterton District Council**

Dated 22 August 2017

INTRODUCTION

- 1 My name is Christine Anne Foster. I am a Planning Consultant and sole director of CF Consulting Services Limited' based in Wellington. I hold a Bachelor of Regional Planning and have worked as a resource management planner in New Zealand for over 35 years. I confirm that my qualifications and experience are as stated in my statement of evidence to Hearing Stream 1 dated 05 May 2017.
- 2 This statement of evidence is within my area of expertise as a resource management planner, except where I state that I rely on the evidence of others. I have read the Code of Conduct for Expert Witnesses set out in the 2014 Environment Court Practice Note (and, in particular section 7 in relation to an expert's duty to the Court). Whilst this hearing is not a hearing before the Court, I am aware of the obligations imposed on expert witnesses by the Code and agree to comply with the Code of Conduct. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 3 I assisted Carterton District Council (**CDC**) to prepare its original (first-round) submission and further submissions on the proposed Natural Resources Plan ('**PNRP**'). I was asked by CDC to consider the analysis and recommendations of the officers' reports that pertain to the decisions requested in CDC's submission and further submissions. I am authorised by CDC to present this statement of evidence to the Panel.

EXECUTIVE SUMMARY

- 4 This statement of evidence concentrates on the issues of primary interest to CDC, which can be summarised as relating to:
 - (a) CDC's Kaipatangata Water Supply;
 - (b) Definition of MALF;
 - (c) Allowing time for a shift to disposal of treated wastewater to land;
 - (d) Policy P109 (reduced default lapse period for consents);
 - (e) Objective O19;
 - (f) Additional objectives for water allocation;
 - (g) Policy P118;
 - (h) Definition of the 'health needs of people';
 - (i) Sustainable water use;
 - (j) Policy P25;
 - (k) Policy P26.

CDC'S KAIPATANGATA WATER SUPPLY

S.42A Report by Mike Thomson 'Water Allocation': Paragraphs 5.48 – 5.49: CDC Submission S301/006

- 5 CDC operates a community drinking water supply sourced primarily from the upper Kaipatangata Stream (supplemented when necessary during dry periods from groundwater bores). CDC noted in its submission that the PNRP did not specify a minimum flow for the Kaipatangata Stream and queried the intention. The Kaipatangata Stream is a tributary of the Mangatāre Stream. The CDC abstraction point is shown on the following diagram in relation to the wider Kaipatangata and Mangatāre Streams and the Mangatāre Gorge (referred to in the officer's report).

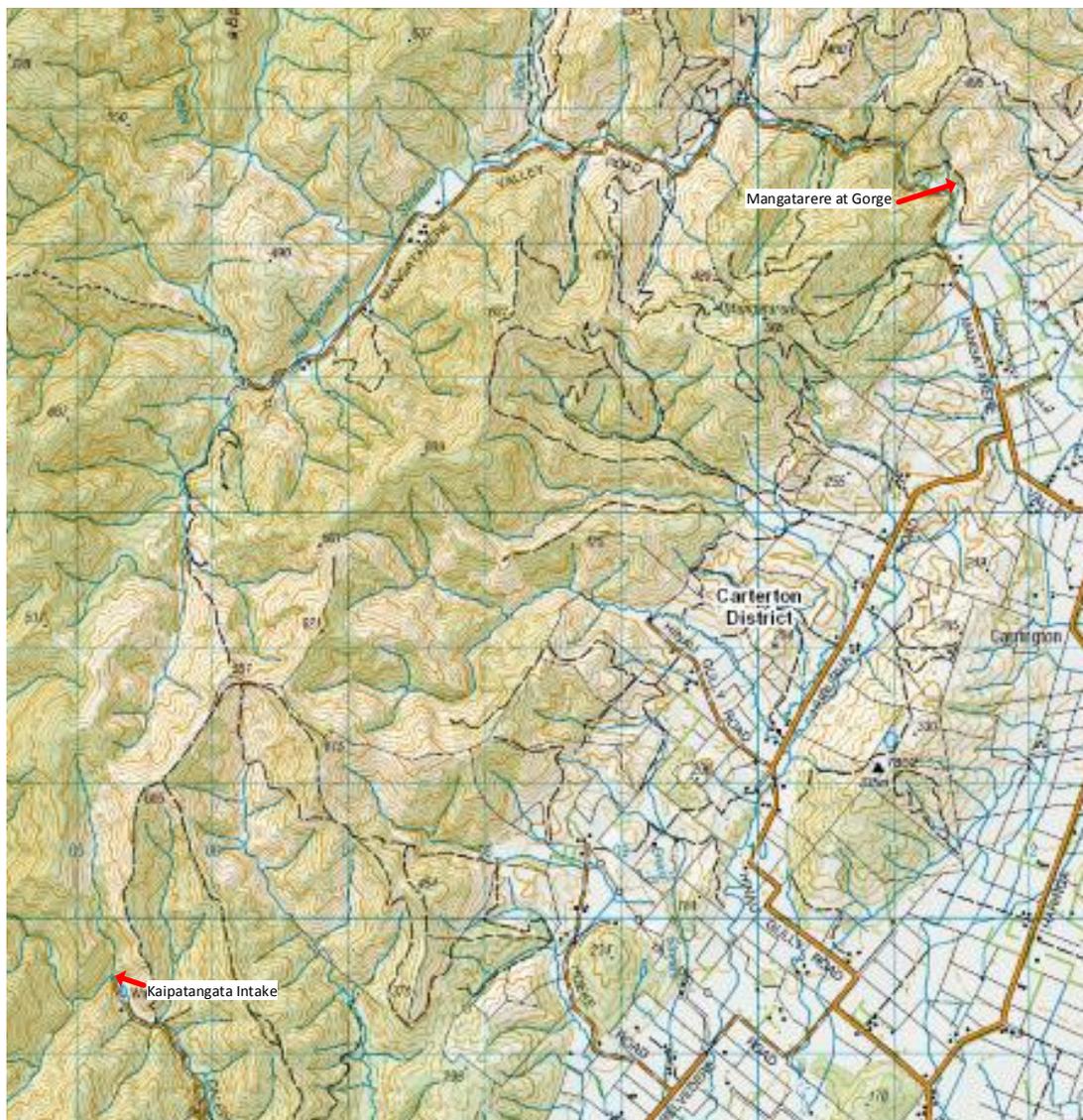


Figure 1 – Kaipatangata Stream and Mangatāre Stream

6 The reporting officer states that:

*5.48 **Submission:** Carterton District Council (S301/006) notes that there is no minimum flow specified for the Kaipatangata Stream and seeks clarification as to whether this is the intention.*

5.49 Yes this was intentional. At the time provisions for the proposed Plan were finalised there was insufficient data with which to specify a minimum flow for the Kaipatangata Stream. Therefore, as a tributary of the lower Mangatarere Stream, the minimum flow that applies by default in the Kaipatangata Stream is 200 L/s (as measured at the Mangatarere Gorge flow site). I note that water remains available below this minimum flow for the Carterton District Council public supply take in the upper Kaipatangata Stream in accordance with Policy P111(a).

7 PNRP Policy P111 (a) states:

Policy P111: Water takes at minimum flows and water levels

*The take and use of water shall not occur when flows or water levels fall below **minimum flows or water levels** in the **whaitua** chapters (chapters 7-11), with the exception that water is available below **minimum flows**:*

- (a) for firefighting, an individual's reasonable domestic needs and the reasonable needs of an individual's animals for drinking water as provided for by section 14(3)(b) and 14(3)(e) of the Resource Management Act 1991, or*
- (b) for the take and use of water permitted by rules in the Plan, or*
- (c) as authorised by resource consents in accordance with Policy P108.*

8 Section 14 (3) (b) of the RMA states:

- (3) A person is not prohibited by subsection (2) from taking, using, damming, or diverting any water, heat, or energy if—*
 - (a) the taking, using, damming, or diverting is expressly allowed by a national environmental standard, a rule in a regional plan as well as a rule in a proposed regional plan for the same region (if there is one), or a resource consent; or*
 - (b) in the case of fresh water, the water, heat, or energy is required to be taken or used for—*
 - i. an individual's reasonable domestic needs; or*
 - ii. the reasonable needs of a person's animals for drinking water, — and the taking or use does not, or is not likely to, have an adverse effect on the environment; or*
 - (c)*
 - (d) ...*
 - (e) the water is required to be taken or used for emergency or training purposes in accordance with section 48 of the Fire and Emergency New Zealand Act 2017.*

9 The clarification provided by the reporting officer is helpful (that the applicable minimum flow is set in Table 7.1 of Chapter 7). The last sentence of paragraph 5.49

quoted above may have left the Panel with the impression that CDC's submission was seeking to draw water for municipal supply from flows below the specified minimum flow. As I understand it, that is not the case. In any event, CDC's abstraction from the Kaipatangata Stream is not for an individual's reasonable domestic needs. It is for a municipal drinking water supply. I do not agree that CDC could rely on s. 14 (3)(b) or 14 (3)(e) to secure the water it needs from the Kaipatangata Stream for the Carterton municipal drinking water supply below minimum flow. Section 14 (3) (b) provides only for an individual's reasonable domestic needs and for animal drinking water. Section 14 (3) (e) provides only for fire-fighting water supply. Neither of those sub-clauses provides for the commercial, industrial and other community uses that rely on CDC's reticulated municipal water supply. Importantly though, CDC's submission is not seeking to authorise abstraction for municipal supply below the specified minimum flow.

10 In fact, CDC's municipal drinking water supply is supplemented by groundwater precisely to avoid surfacewater abstraction during low flow periods. It is also worth noting that CDC already has in place universal water metering to manage reticulated water demand. CDC has also adopted voluntary measures during summer low flow periods to minimise potential adverse effects on stream ecosystem health:

- Although CDC's current permit authorises abstraction up to 5,000m³/day up to 60 L/s during all flows, CDC has adopted a self-imposed limit of 4,000m³/day;
- Although CDC's permit authorises abstraction when stream flow is below 100L/s, CDC has adopted a self-imposed cease take limit of 83L/s.

11 CDC is also investigating measures to minimise surfacewater abstraction from the Kaipatangata Stream over peak summer months, so as to maintain a sustainable minimum flow long term. These measures include greater reliance on bore water during summer dry periods, installation of water storage facilities, a water demand management strategy and alternative secure water sources. For the foreseeable future, CDC will continue to supplement its Kaipatangata surface water supply with groundwater abstraction to minimise potential adverse effects on the ecosystem health of the Kaipatangata Stream.

DEFINITION OF 'MEAN ANNUAL LOW FLOW (MALF)'

S. 42A report by Paula Hammond: Paragraphs 230-233: CDC Submission S301/020

- 12 CDC queried the definition of 'mean annual low flow' included in the PNRP. The reporting officer has concluded that the definition needs refinement. Her analysis is reproduced below:

230. DairyNZ and Fonterra (S316/016) submit that the definition of MALF needs to be more precise e.g. is it seven days or five days and Carterton District Council (S301/020) suggest using 'arithmetic mean' instead of average.

231. I agree with both submitters' concerns on the interpretation of MALF and recommend changing the definition so it accurately reflects how MALF is used in the proposed Plan. The naturalised average of the mean annual lowest flows measured in each year of a full site record with a duration of seven days.

232. Mean annual low flow is used inconsistently in the following provisions:

- Policy P113 – mean annual low flow*
- R.P1, WH.P1, P.P1, K.P1 and WC.P1- seven day mean annual low flow*
- Footnote for Table 7.3, 8.3 and 10.3 – natural seven day mean annual low flow*

233. I consider by amending the definition as recommended in paragraph 231 the provisions listed above need only to refer to mean annual low flow, as the naturalised and seven day components will be covered within the definition. I recommend amending the definition of mean annual low flow and delete the words 'seven day' from Policies R.P1, WH.P1, P.P1, K.P1 and WC.P1 and delete the words 'natural seven day' from the footnotes for Tables 7.3, 8.3 and 10.3.

- 13 The officer's recommendation is to amend the definition as follows: **'Mean annual low flow (MALF) means:** *The naturalised mean annual low flow with a duration of seven days'*. The current PNRP definition is: *The average of the lowest flows measured in each year of a full site record.*
- 14 'Naturalised' flow considers flow in the absence of any abstraction occurring. That is quite a different concept from the statistical mean of actual annual 7-day low flows. That proposed change to the definition would result in a higher (more conservative) minimum flow than one based on statistical mean annual low flow. For example, in Policy R.P1 for small streams that are not specified in Table 7.1, this definition would impose a much higher minimum flow than one calculated on a non-naturalised basis. As I understand it, CDC opposes the proposed definition for that reason.

ALLOWING TIME FOR A SHIFT TO DISPOSAL OF TREATED WASTEWATER TO LAND

S. 42A Report by Paula Hammond Paragraphs 162-165: CDC Submissions S301/024 and 026

- 15 CDC's submission requested amendment to Objectives O5, O16, O17, O23, O25, O26, O27, O33, O35 and O50 and their accompanying explanatory text to acknowledge the need to allow time to implement the objectives. As explained in evidence to Hearing Stream 1, CDC's concerns are linked to its submission on the definitions of 'new' and 'existing' discharge. CDC's current proposal to upgrade its existing discharge of treated wastewater to water is classified by the PNRP as a 'new' discharge even though it is a beneficial upgrade of a pre-existing discharge. The proposal will reduce discharge volumes, eliminate low-flow discharges and improve instream conditions. CDC understands, from discussions held with GWRC officers, that the authors of the PNRP did not intend to capture beneficial upgrades of pre-existing discharges as 'new' discharges, rather to capture wholly new discharges of treated wastewater. It would be helpful if GWRC officers could confirm this sooner rather than later for the benefit of CDC and the Panel.
- 16 CDC's concern is with the discouraging policy framework the PNRP creates for 'new' discharges. CDC's concerns about the policy framework, including the objectives named above, will be resolved if the definitions are amended to clarify that upgrading an existing discharge, as proposed by CDC, is not captured as a 'new' discharge. I understand that submissions on the definitions are scheduled to be heard in a later Hearing Stream.
- 17 For the purposes of Hearing Stream 3, the reporting officer recommends no change to the objectives or their explanatory text in response to CDC's submission. I look forward to the underlying issue (the definition of 'new' discharge) being clarified at the earliest opportunity. If it is the case that the definition of 'new discharge' excludes beneficial upgrades, I expect CDC's concerns about the policy framework will be resolved.

POLICY P109 REDUCED DEFAULT LAPSE PERIOD

S.42A Report by Paula Hammond Paragraphs 632 - 634: CDC Submission S301/055

- 18 CDC's submission point opposed the proposed reduction in default lapse period that is otherwise provided for by section 125 of the RMA. The reporting officer's evidence is that:

632. Carterton District Council (S301/055) question why Policy P109 reduces the normal lapse period provided for by the RMA and imposes additional consent complexity by requiring applicants to make a case for a five-year lapse period. S301 requests the three year lapse limit is removed. A further submission by Rangitāne o Wairarapa Inc. (FS74/284) opposes the submission by Carterton District Council.

633. In my view, section 125 of the RMA does not specify a 'normal' lapse period. Instead it sets a default period should a resource consent not specify a lapse date. An applicant may, if they choose, apply for a lapse date of greater than three or even five years. Council would need to assess the application on its merits and whether it was justified due to the scale or complexity of the activity. For example, if storage lakes similar to the Stuart Macaskill Lakes in Upper Hutt were to be constructed elsewhere in the region, I imagine they would take a considerable number of years to design and construct. However, the consent to take water to fill the lakes would want to be obtained prior to the construction of the lakes beginning. Therefore, the applicant would seek a longer lapse period on the water take consent. In my opinion, Policy P109 provides for this type of scenario.

634. I recommend there is no change to Policy P109.

- 19 Section 125 of the RMA states:

- (1) A resource consent lapses on the date specified in the consent or, if no date is specified,—*
- (a) 5 years after the date of commencement of the consent, if the consent does not authorise aquaculture activities to be undertaken in the coastal marine area; or*
 - (b) 3 years after the date of commencement if the consent does authorise aquaculture activities to be undertaken in the coastal marine area.*

- 20 Policy P109 states:

Resource consents to take and use water shall be given effect to within three years of the commencement date unless a longer lapse date is justified due to the scale or complexity of the activity. For the purpose of this policy, "given effect to" includes the installation of infrastructure, water meter or flow measuring device or the use of the water in accordance with the purpose of the resource consent.

- 21 The officer's report does not make a case for reducing the default lapse period. It does not state what the significant resource management issue is that needs a reduced lapse period. Policy P109 introduces the requirement that an applicant

must 'justify' a lapse period longer than 3 years. The result of the policy will simply be that applicants will have to invent ways in which their proposals involve scale or complexity that requires 5 years (or longer) instead of 3. Alternatively, they will need to install equipment, perhaps earlier than otherwise necessary to 'give effect to' consent. These responses probably won't be difficult, but demonstrate that the proposed policy introduces an additional element of red tape for no apparent environmental benefit.

FURTHER SUBMISSIONS OF CDC:

S.42A Report by Yvonne Legarth Paragraphs 275-281 and 303: Objective O19 (Natural Processes)

CDC Further Submission FS85/076, 077, 078, 079 and 080

- 22 CDC supported the submissions of others who opposed the wording of Objective O19 in the absence of clarity about what 'interference' means. The reporting officer accepts that the expression 'interference' is problematic and proposes alternative wording (below):

Objective O19:

~~The interference from use and development on natural~~ Natural processes, is minimised, managed to ensure that including natural elements, patterns and ecological processes continue to occur, and the integrity and functioning of natural processes and forms are retained.

- 23 I support the proposed amended wording. I have conferred with CDC and I understand that CDC has no opposition to the proposed amended wording.

S.42A Report by Paula Hammond Paragraphs 326-327: Water Allocation

CDC Further Submission FS85/178

- 24 The officer's report states that:

326. Forest & Bird (S353/123) submits that the core allocations in Policy P113 are too high and do not give effect to the NPS-FM. S353 considers that the maximum allocation amounts should be set at a level which provides for ecological health (a significantly lower allocation amount than in this policy). Carterton District Council (FS85/178) considers that lowering allocation amounts would have potential implications for community drinking water supply purposes.

327. As discussed above, the allocation amounts in the proposed Plan are largely focussed on the maintenance of ecological values and the avoidance of long term decline in water resources. Based on Mr Thompson's technical evidence, I consider the allocation amounts in the proposed Plan to be appropriate. Further,

the allocation provisions of the proposed Plan will not compromise important elements of the NPS-FM such as avoiding any further overallocation (Objective B2 and Policy B5) while allowing whatua committees to recommend sub-catchment limits that will implement the NPS-FM in full.

- 25 The officer recommends rejecting the Forest & Bird submission. I understand that CDC supports the officer's recommendation.

S.42A Report by Paula Hammond Paragraphs 566-569: Policy P118

CDC Further Submission FS85/179, FS85/180

- 26 CDC supported Masterton District Council and South Wairarapa District Council requests that Policy P118 be amended by deleting the struck-out text as follows:

~~(a) applying the reasonable and efficient use criteria identified in Schedule Q (efficient use) to new users immediately, while existing users replacing existing resource consents have a period of four years from the date of the plan being made operative to meet the criteria, and~~

- 27 The officer's report explains:

566. Masterton District Council (S367/096), AJ Barton (S327/010), South Wairarapa District Council (S366/096) and WWU (S124/017) disagree with the timeframe in Policy P118 for requiring existing consent holders to meet the efficiency criteria in Schedule Q. Some submitters request the timeframe is four years from renewal of the resource consent, while others request 10 years from the date the plan is made operative. The district councils wish to see the words after Schedule Q (efficient use) deleted.

567. Horticulture NZ (S307/055) requests (e) is added to Policy P118 taking into account the cost of replacing existing systems. S307 states that recognition needs to be given to existing systems which would be an unreasonable cost to replace.

568. I acknowledge that there will be a cost to users to upgrade their systems so that they meet the efficiency criteria. However, I consider that in order to meet the increasing demands for water, both in-stream and out-of-stream users of the water must use the resource in an efficient manner to ensure the greatest number of demands for water can be met. For example, if a user has an inefficient system that leaks, or water is applied at a rate that exceeds plant uptake capacity, then additional water could have been available for another use.

569. I also consider that the four year period from the date the plan becomes operative in clause (a) of Policy P118 provides enough time for existing users to ensure that their system is operating efficiently in accordance with Schedule Q. In addition, it is not until a resource consent needs to be replaced/renewed that this part of the policy will apply. I do not consider it necessary to add a further clause to Policy P118, or delete the four year timeframe.

- 28 I understand that Carterton District Council supports the requests made by Masterton and South Wairarapa District Councils and adopts their evidence in this regard.

S.42A Report by Paula Hammond Paragraphs 478-481: Definition of 'Health Needs of People'

CDC Further Submission FS85/037

- 29 Submitters requested amendment to the definition of the 'health needs of people. In response, the reporting officer recommends no change to the definition. I understand that CDC supports that recommendation.

S.42A Report by Paula Hammond Paragraphs 138-154: Sustainable Water Use

CDC Further Submission FS85/084

- 30 Submission point S308/021 requested additional objectives addressing the management of water quantity. The reporting officer recommends no additional objectives and no change to existing objectives managing water quantity to respond to the submitter's request. I understand that CDC supports that recommendation.

S.42A Report by Yvonne Legarth Paragraphs 152-161 and 245-260: Policy P25

CDC Further Submissions FS85/075, FS85/140, FS85/141, FS85/142, FS85/143

- 31 The officer recommends the following amendments to Policy P25:

Use and development shall avoid significant adverse effects on natural character in the coastal marine area (including high natural character in the coastal marine area) and in the beds of natural wetlands⁷², lakes and rivers and avoid, remedy or mitigate other adverse effects of activities, taking into account:

- (a) the extent of human-made changes*
- (b) the ...*
- (c) the ...; and*

Delete proposed (d)(i) and (ii)

~~(d) whether it is practicable to protect natural character from inappropriate use and development through:~~

- ~~(i) using an alternative location, or form of development that would be more appropriate to that location, and (ii) considering the extent to which functional need or existing use limits location and development options.~~*

Add new Policy P25 (d) (e) and (f)

(d) alternative locations, design or form of development that have less adverse effects; and

(e) the extent to which the activity has a functional need to be located in the coastal marine area that limits location and development options, and

(f) the ecosystems, natural flow characteristics and hydrodynamic processes,

and the natural pattern and range of water level fluctuations in natural wetlands, and rivers and lakes and their margins.

- 32 I support the suggested wording and I understand that CDC is not opposed to the proposed amendments to Policy P25.

S.42A Report by Yvonne Legarth Paragraphs 304-343: Policy P26

CDC Further Submissions FS85/144, FS85/145, FS85/146, FS85/147, FS85/148

- 33 Policy P26 states that '*Use and development will be managed to minimise effects on the integrity and functioning of natural processes.*'
- 34 The reporting officer recommends no change to Policy P26 but notes that the Panel has yet to determine the outcome of submissions on Policy P4 (which provides guidance on what 'minimise' means). The reporting officer provides the following recommended wording in the event that the Panel amends Policy P4 as suggested during expert caucusing:

Policy P26: Use and development will be managed to minimise effects on the integrity and functioning of natural processes, by
(a) *considering alternative locations and methods for undertaking the activity that would have less adverse effects, and*
(b) *locating away from areas identified in Schedule A (outstanding water bodies), Schedule C (mana whenua), Schedule E (historic heritage), Schedule F (indigenous biodiversity), and*
(c) *timing the activity, or the adverse effects of the activity, to avoid times when adverse effects may be more severe, or times when receiving environments are more sensitive to adverse effects, and*
(d) *using good management practices, and*
(e) *designing the activity so that the effects of the scale or footprint of the activity is as small as practicable.*

- 35 I participated in the planning witness conferencing and agreed with the other planners, including Ms Legarth, that all policies should ideally stand on their own without reliance on other policies for interpretation. I, and others, also agreed that it would be useful to include a definition of 'minimise' to assist interpretation of policies such as P26. The suggested wording settled on (by those who supported a definition) was that minimise could be defined as meaning: '*when used in policies means reducing the adverse effects of the activity to the smallest amount reasonably practicable.*'

36 In my opinion, the words 'reasonably practicable' import considerations of functional need and operational requirements and include the concepts underlying the expression 'best practicable option' as used in the RMA. This means that considerations of functional need and operational requirements will be relevant when considering minimisation, for example, in Policy P26. That definition, alongside Ms Legarth's suggested amendment to Policy P26, would address the concerns I raised in evidence to Hearing Stream 1 about the particular requirements of regionally significant infrastructure (including infrastructure operated by CDC).



Christine Foster

22 August 2017