

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 and Further Submissions
by **Wellington Water Limited**

STATEMENT OF EVIDENCE OF CAROLYN WRATT

[PLANNING]

5 May 2017

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INTRODUCTION

1. My full name is Carolyn Wratt.

Qualifications and Experience

2. I am a Principal Policy Planner with the consultancy firm of MWH, now part of Stantec.
3. I hold the degrees of Bachelor of Science (Geography and Resource Management) (1997) and Masters of Science (Hons) in Coastal Geomorphology and Resource Management (1999), both from the University of Auckland. I am a full member of the New Zealand Planning Institute and an accredited Resource Management Commissioner under the Ministry for the Environment programme Making Good Decisions.
4. I have eighteen years experience in planning – both regulatory and policy, including working primarily for local and regional authorities around New Zealand. In my capacity as both a consultant and council planner, I have provided policy advice to a number of clients, including assisting the Hearing Panel for the Proposed Waikato Regional Plan. I have appeared as an expert planning witness numerous times.

Code of Conduct

5. I confirm that I have read the Code of Conduct for expert witnesses in the Environment Court Practice Note 2014 and that I have complied with it when preparing this evidence. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

My involvement with the PNRP

6. I first became involved with the Proposed Natural Resources Plan ("PNRP" or "Plan") whilst undertaking a scoping report for the Paraparaumu Wastewater Treatment Plant renewal of consents. Kapiti Coast District Council's Paraparaumu Wastewater Treatment

Plant currently has five discharge consents to air, land and water that expire on 31st March 2022. Kapiti Coast District Council are proactively embarking on a programme of investigation and consultation that is necessary to ensure that robust and defensible future decisions are made relating to the activities required for the new consents. This project required analysing the PNRP, and summarising the relevant strategic directions (objectives and policies) and provisions as they pertained to wastewater.

7. I was contracted by Wellington Water Limited ("WWL") over twelve months ago to provide planning assistance with the PNRP hearings. I had no involvement in preparing WWL's submission or further submission.
8. I have been involved in two pre-hearing meetings on behalf of WWL. I attended the pre-hearing on 11 October 2016 regarding Schedule N: Stormwater Management Strategy, and the subsequent pre-hearing meeting on 3 November 2016 regarding the stormwater consenting framework and Schedule N. I have not been involved in any expert conferencing.

Scope of Evidence

9. I have been asked by WWL to prepare this evidence, covering those matters identified as being part of Hearing 1:
 - (a) Section 32 and consultation;
 - (b) overall framework of the proposed Plan;
 - (c) beneficial use and development; and
 - (d) significant areas and sites for mana whenua.
10. Within the scope provided by the WWL submission and further submission, I will cover:
 - (a) aspects of the PNRP relevant to these matters that I support; and
 - (b) aspects of the PNRP relevant to these matters that I do not support.

11. In preparing this evidence, I have taken into account the following Section 42A reports:
 - (a) Part A: Introduction and Procedural Matters (Amber Carter);
 - (b) Part A: Section 32 and Consultation (Amber Carter);
 - (c) Part A: Overall Policy Framework of the Proposed Plan (Emily Greenberg);
 - (d) Part B: Overall Policy Framework of the Proposed Plan (Emily Greenberg);
 - (e) Part B: Beneficial Use and Development (Paul Denton);
and
 - (f) Part B: Areas and Sites with Significant Mana Whenua Values (Pam Guest).

12. I have also taken into consideration relevant provisions of the Resource Management Act 1991 ("RMA" or "the Act"), and higher level planning documents including:
 - (a) New Zealand Coastal Policy Statement ("NZCPS");
 - (b) National Policy Statement for Freshwater Management 2014; and
 - (c) Regional Policy Statement for the Wellington region ("RPS")

EXECUTIVE SUMMARY

13. WWL is responsible for the provision and management of three waters infrastructure (being water supply, wastewater and stormwater). The provision of safe drinking water, the transport and treatment of wastewater and protection of people and property from flooding are essential services and enable people and communities to provide for their social, economic and cultural well-being and for their health and safety.

14. Certain provisions and approaches of the PNRP do not promote the sustainable management of three waters infrastructure, partly because the benefits of regionally significant infrastructure are not sufficiently recognised and provided for. The RPS requires the Regional Plan to recognise and protect regionally significant infrastructure, but the PNRP does not give full effect to the RPS in this regard.
15. Central to this concept is the definition of regionally significant infrastructure which includes most of the physical components of the stormwater, wastewater and water supply network but does not specifically include water intake structures.
16. The PNRP objectives and policies in this first tranche of provisions do not recognise the existing investment in regionally significant infrastructure, and that it is not always practical nor reasonable to consider alternative locations or methods.
17. As this first hearing is focused on three sections of the Plan, my evidence only addresses those provisions pertaining to Overall Policy Framework of the Proposed Plan, Beneficial Use and Development and Areas and Sites with Significant Mana Whenua. At a broad scale my evidence addresses the following:
 - (a) The lack of Section 32 analysis that provides a robust cost-benefit analysis of the provisions, in particular the provisions relating to avoidance of Scheduled areas in the context of existing and future regionally significant infrastructure;
 - (b) Increased clarity of how rules are to be applied, including bundling of rules for a single activity and combining activities (Rule 2.1.3);
 - (c) Lack of recognition that contact recreation and mahinga kai are not appropriate or safe at all times of the year in all locations (Objective O5);

- (d) Consistency with higher order planning documents such as the New Zealand Coastal Policy Statement (NZCPS) (Policy P3);
- (e) Lack of recognition that there may be no choice in location for existing regionally significant infrastructure in terms of minimising adverse effects (Policy P4);
- (f) The lack of guidance in terms of reconciling conflicting outcomes with respect to both existing and new regionally significant infrastructure;
- (g) The need for recognition of sunk community investment in infrastructure;
- (h) More adequate recognition of the benefits of three waters infrastructure;
- (i) Meaningful protection of regionally significant infrastructure;
- (j) In addition to the coastal marine area, protection for terrestrial regionally significant infrastructure (particularly three waters infrastructure) from incompatible activities;
- (k) Recognition of the urban environment context and infrastructure, particularly when policies require restoration;
- (l) Sites of mana whenua significance in Schedule C be improved or enhanced rather than protected and/or restored;
- (m) Recognition of the social and economic benefits of stormwater systems to protect against flooding;
- (n) Providing for new flood protection and erosion control activities;
- (o) Consistency and alignment in the direction and approach throughout the Plan;

- (p) The need for clearly defined terms that more comprehensively cover the activities associated with regionally significant infrastructure; and
- (q) Re-consideration of the directive to avoid activities in sites with significant mana whenua values identified in Schedule C.

INTRODUCTION AND PROCEDURAL MATTERS

18. As outlined by Mr Crampton, WWL is owned by the Hutt, Porirua, Upper Hutt and Wellington City Councils and Greater Wellington Regional Council. The Councils fund WWL to maintain, operate, renew and upgrade the three waters (being water supply, wastewater and stormwater) from the source to the sea. In this context, WWL is the network manager. Therefore all the points raised in WWL's submission are based on the roles and responsibilities of WWL.
19. In the context of the RMA, all of the Councils' activities enable "...communities to provide for their social, economic and cultural wellbeing and for their health and safety...". The protection of people and property from flooding, provision of safe drinking water and the transport and treatment of wastewater are essential services and enable people and communities to provide for their social, economic and cultural well-being and for their health and safety. Without the three waters networks these outcomes cannot be achieved.
20. Although WWL's physical structures for water supply, wastewater and stormwater are included in the definition of regionally significant infrastructure, the benefit of the network is not so much in the pipes and treatment plants themselves, but in the activity they enable. At its simplest level, the wastewater network enables the wastewater to be taken away from communities and treated, thus ensuring people's health. The stormwater network takes away flood water and thus protects people's health and homes. The water supply network is essential for life by providing clean drinking water.

Without the conveyance of the three waters, WWL's infrastructure is merely pipes in the ground.

21. In terms of the context of higher level planning documents, the three waters network is included in the definition of "regionally significant infrastructure" in terms of both the RPS as well as the PNRP. The RPS Objective and Policies relevant to Regional Plans and regionally significant infrastructure are:
 - (a) Objective 10: The social, economic, cultural and environmental, benefits of regionally significant infrastructure are recognised and protected
 - (b) Policy 7: Requires regional plans to include policies and/or methods that recognise the benefits of regionally significant infrastructure;
 - (c) Policy 8: Requires regional plans to include policies and rules that protect regionally significant infrastructure from incompatible new use and development;
 - (d) Policy 39: When reviewing regional plans, particular regard shall be given to the social, economic, cultural and environmental benefits and protecting regionally significant infrastructure from incompatible use and development.
22. The Resource Legislation Amendment Act 2017 has included in Section 6 a new matter of national importance: g) the management of significant risks from natural hazards. The RMA definition of Natural Hazards includes flooding, "the action of which adversely affects or may adversely affect human life, property, or other aspects of the environment." This is particularly relevant to WWL's stormwater network which protects the health and wellbeing of communities from floodwaters.
23. The benefits of the infrastructure associated with the three waters are obvious and have been recognized in the RPS as regionally significant infrastructure in Objective 10 and Policies 7, 8, 39 as

outlined above. The PNRP addresses those RPS directives in a generic manner in Objective O12, and O13, and Policies P12, P13 and P14 of the PNRP. However, the PNRP does not move beyond generic recognition and repeating the RPS. There is limited attempt to reflect the RPS and give meaningful recognition of the benefits in practical policies or rules. Most importantly, there is no attempt to reconcile how the benefits of regionally significant infrastructure should be recognized where these conflict with other significant values, such as Objective O33 which seeks to protect and restore sites with significant mana whenua values. The PNRP gives no guidance in situations where there is tension between different objectives / outcomes. In terms of the policy framework (and rules which will be covered in subsequent hearings), the other values appear to be paramount, without clear consideration of the potential costs to regionally significant infrastructure and the community. The PNRP appears to be focused on the potential adverse effects of infrastructure establishment, operation, maintenance and upgrading without sufficient recognition of the benefits of services provided by regionally significant infrastructure, and in particular three waters infrastructure.

24. The PNRP is stopping short of giving full effect to the RPS in terms of meaningfully recognising the benefits of regionally significant infrastructure as required by Policies 7 and 39 of the RPS. I note RPS Policy 7(a)(ii) specifically recognises the three waters and their importance: "*public health and safety is maintained through the provision of essential services: supply of potable water, the collection and transfer of sewage and stormwater, and the provision of emergency services*". However the PNRP does not afford this kind of recognition.
25. It seems that three waters infrastructure is largely bundled within the definition of regionally significant infrastructure which does not include all critical elements of the three water network such as water intake structures.
26. Provisions in the PNRP that provide for protection of regionally significant infrastructure are limited to protecting from incompatible activities only in the coastal marine area. The coastal marine area is

not the only geographical location that the PNRP controls nor the only location for regionally significant infrastructure however. The PNRP manages activities in the beds of streams, lakes and rivers but also other activities that have the potential to adversely affect the operation of regionally significant infrastructure such as earthworks and management of stormwater. While helpful to regionally significant infrastructure located in the coastal marine area, most regionally significant infrastructure is not in the coastal marine area and Objective O13 will not be relevant to most of WWL's infrastructure.

27. Section 7(b) RMA requires the efficient use and development of physical resources and this is relevant to WWL's activities. WWL is required to manage the three waters network in a cost effective way and be prudent in new capital investment and operating expenses, keeping within agreed Council annual plan budgets. The PNRP objectives and policies in this first tranche of provisions do not recognise the existing investment in regionally significant infrastructure, and that it is not always practical nor reasonable to consider alternative locations or methods.
28. There are strong policy directives to avoid certain geographical areas or restore those areas, but this too is not always realistic or balanced against the need to recognise and protect the benefits of regionally significant infrastructure.
29. I elaborate on each of these matters in my evidence. For clarity and ease of reading, I have structured my evidence around the three topics of the Section 42A reports being:
 - (a) Overall Policy Framework of the Proposed Plan;
 - (b) Beneficial Use and Development; and
 - (c) Areas and Sites with Significant Mana Whenua Values.

OVERALL POLICY FRAMEWORK OF THE PROPOSED PLAN

30. Ten points of WWL's submission were coded to the topic Overall Policy Framework of the Proposed Plan. The main outcomes sought were:

- (a) A Section 32 analysis that provides a robust cost-benefit analysis of the provisions (all of Plan);
- (b) Re-balance to reduce the amount of regulation and increase the use of other methods such as collaboration between councils, the community and iwi; and
- (c) That permitted activities are clear and do not require subjective evaluations; and
- (d) Increased clarity of how rules are to be applied, including bundling of rules for a single activity (Rule 2.1.3);
- (e) Inclusion of qualifiers to clarify where and when Objective O5 applies;
- (f) Acknowledgement of the affordability to communities in policies (Policy P1);
- (g) Consistency with higher order planning documents such as the New Zealand Coastal Policy Statement (NZCPS) (Policy P3);
- (h) Recognition that there may be no choice in location for existing regionally significant infrastructure in terms of minimising adverse effects (Policy P4);
- (i) Accurate reflection of the RMA requirements for reviewing resource consents (Policy P5); and
- (j) Clarification of the extent of the Whaitua catchment and clarification of language (Policy P6).

31. Some points of the WWL submission are more general and apply to the entire Plan while others are more specific and pertain to individual provisions. I will cover the general points first, bearing in mind that these comments will apply to all tranches of the PNRP hearing and will be elaborated on as appropriate in later Hearings.

Section 32 Evaluation

32. Given WWL's role as outlined by Mr Crampton in terms of its responsibilities under various Acts, the consideration of costs and benefits through the Section 32 evaluations is of high importance. Although the Hearings Panel are unlikely to be making any specific recommendations on this matter, I consider that particular costs and benefits were not taken into consideration when evaluating the provisions. For example, the investment in existing infrastructure is a significant cost to the community and changes to that infrastructure, e.g. partial relocation, would come at significant further cost. It is not appropriate to expect that significant sunk investment in existing infrastructure would be surrendered in order to meet a policy directive of the PNRP. An example of this situation is Policy P4 which requires consideration of alternative locations and methods for undertaking the activity, and locating the activity away from areas identified in various Schedules. This is not always appropriate and does not recognise the investment from the community or the operational requirement to locate where the resource is located (such as a water body for a water take).
33. While I accept that Section 32 of the Act requires 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,¹ I do not believe that the Section 32 has considered the full costs and benefits of PNRP provisions as they pertain to three waters. My view is that as a general rule, Greater Wellington Regional Council do not need to monetize all costs and benefits, however where there are potentially very large costs, at the very least the magnitude of those costs should have been assessed and quantified. This would have allowed the questions to be answered as to whether the benefits justify the costs and whether these benefits could be realized through lower cost alternatives in terms of the planning framework.

¹ Section 32(1)(c), RMA

Re-balancing to reduce regulation, and Permitted Activity clarity

34. WWL's submission sought re-balancing of the Plan to reduce the amount of regulation and increase the use of other methods such as collaboration between councils, the community and iwi. The submission also sought that permitted activities are clear and do not require subjective evaluations. These matters are more of an issue with regards to rules and I will discuss them at future Hearings as appropriate. This is an approach recommended by the Section 42A report also.²

Section 2.1.3 Rules

35. *As notified: The rules implement the policies, as required under section 67(1)(c) of the RMA. Under section 86B(3) of the RMA all rules in the Plan have immediate legal effect from 31 July 2015. The associated definitions, schedules and maps applicable to those rules also have immediate legal effect.*

The rules have the force and effect of regulations in statute, which means that they are legally binding. They determine whether a person needs to apply for a resource consent or whether the proposed activity is permitted and does not require consent (known as permitted activities). The rules may also make some activities prohibited, which means there can be no resource consent application made for that activity. An activity needs to comply with all relevant rules in the Plan, unless the rule itself states otherwise.

Generally, the Plan does not repeat provisions from national environmental standards or regulations – these must be read in conjunction with the Plan provisions.

- *Permitted activities do not require resource consent provided they comply with the specified conditions.*
- *Controlled activities require resource consent so that specific assessment of identified matters can be undertaken and resource consent conditions imposed to manage the effects of*

² Para 123, Section 42A Report Overall Policy Framework of the Proposed Plan – Part B, Emily Greenberg

the activity. An application for a controlled activity must be granted.

- Restricted discretionary and discretionary activities may be declined or granted (with or without conditions) depending on the effects of the activity.*
- Non-complying activities may be declined or granted (with or without conditions) depending on the effects of the activity. This activity status is often reserved for those activities where the potential adverse effects are great but do not necessarily warrant prohibition.*
- Prohibited activities are not appropriate in any circumstance, and no resource consent application may be made for a prohibited activity.*

To make it easier to apply for resource consents and to reduce the number of separate resource consents required to undertake any particular activity, the Plan has, where practicable, combined associated activities into one rule. The several permissions which may be required under section 9 and sections 12 to 15B of the RMA are included in one rule for which one application for resource consent can be made.

36. The WWL submission sought a number of additions to Section 2.1.3 to improve clarity and accuracy as follows:

- (a) include the legally binding nature of objectives and policies;
- (b) include references to Sections 14 and 15 of the RMA;
- (c) that National Environmental Standards ("NES") provisions be included in the Plan
- (d) in describing non-complying status, refer to the necessary legal tests and to clarify what "generally appropriate" means; and

- (e) clarify the legal status of bundling of rules, particularly in relation to the ability to change one component of a complex multi-faceted activity, without having to seek a whole new suite of consents.

37. With respect to including RMA sections in the Plan, I note that the Section 42A report concludes that whilst there is no doubt that additional text could aid interpretation of how the rules work, there is no need to repeat provisions directly from the RMA. As a result Ms Greenberg recommends no changes to Section 2.1.3 as requested by WWL [S135/001].³ I accept the Section 42A report's recommendations in regards to this part of WWL's submission in most part.

38. In terms of rule bundling, while the WWL submission referred to "rule bundling" I am not sure this term was used correctly in the submission. It seems to me that the submission is referring to the text in Section 2.1.3 which explains that:

To make it easier to apply for resource consents and to reduce the number of separate resource consents required to undertake any particular activity, the Plan has, where practicable, combined associated activities into one rule. The several permissions which may be required under section 9 and sections 12 to 15B of the RMA are included in one rule for which one application for resource consent can be made.

39. The submission sought clarification of the legal status of bundling of rules, particularly in relation to the ability to change one component of a complex multi-faceted activity, without having to seek a whole new suite of consents. The Section 42A has interpreted the point of submission as meaning the overall activity status of an activity with multiple components and has addressed this particular matter.⁴

40. Three matters therefore arise from this:

³ Para 134, Section 42A Report Overall Policy Framework of the Proposed Plan – Part B, Emily Greenberg

⁴ Para 127, Section 42A Report Overall Policy Framework of the Proposed Plan – Part B, Emily Greenberg

- (a) The approach of the Plan to combine activities under Section 9 and Sections 12 to 15B of the RMA and associated activities into one rule where possible;
- (b) The approach where an activity is subject to an overlay / Schedule rule and the activity status of that activity in the Schedule is different to the activity status in the region-wide rules; and
- (c) The approach for activities which have multiple components with different activity statuses.

41. In terms of a) above to combine activities under Section 9 and Sections 12 to 15B of the RMA and associated activities into one rule where possible, in principle this seems like a sensible approach. The point that WWL's submission was making is what happens when only one component of that activity is being sought? The risk with this approach is that certain components could appear in multiple activities, creating confusion as to which activity applies. As this is an issue most relevant to rules, I will cover this more fully in consequent hearings.
42. I understand what is meant by "bundling" as outlined in the Section 42A report⁵. While the Section 42A report describes the concept well, Section 2.1.3 does not address this concept. I note that the recent decision on the Proposed Unitary Plan recommended the inclusion of text on matters b) and c) above to assist Plan users and consider it would be helpful to include something similar in the PNRP. I can provide this text to the Panel if they would find it helpful.
43. I agree with the Section 42A report to delete the second and third sentence in Section 2.1.3 as it will no longer be relevant once the Decision on the Plan is publicly notified.
44. I agree with the Section 42A report's recommendation to not list all the NES's,⁶ and for the same reason do not support including the verbatim text of NES's in the Plan. I would support the use of ample

⁵ Para 127, Section 42A Report Overall Policy Framework of the Proposed Plan – Part B, Emily Greenberg

⁶ Para 61, Section 42A Report Overall Policy Framework of the Proposed Plan – Part B, Emily Greenberg

signposts to users of the Plan to relevant NES's where appropriate however.

Objective O5: Fresh and Coastal Water

45. As notified: *Fresh water bodies and the coastal marine area, as a minimum, are managed to:*
- (a) *safeguard aquatic ecosystem health and mahinga kai, and*
 - (b) *provide for contact recreation and Māori customary use, and*
 - (c) *in the case of fresh water, provide for the health needs of people.*
46. WWL's submission expressed concern that Objective O5 is a blunt and highly aspirational Objective which does not recognise that not all fresh water bodies and the coastal marine area will be appropriate for activities such as mahinga kai or contact recreation. The submission sought that Objective O5 should include a qualifier which allows for natural perturbations such as floods (consistent with RMA Schedule 3). The submission also sought that the Objective be more refined as follows:
- (a) *clarifying whether contact recreation and Maori customary use is for all times (winter and summer);*
 - (b) *clarifying whether contact recreation and Maori customary use is appropriate in all locations (for example, it might not include swimming in the commercial port area); and*
 - (c) *whether primary or secondary recreation contact is intended.*

In essence, the submission sought that the objective includes qualifiers as to when and where this objective applies.

47. The Section 42A report considered no amendments were needed to Objective O5 because Objective O24 and O25 adequately

addresses the concerns raised in WWL's submission [S135/036].⁷ With respect, I do not agree that Objective O24 and O25 meets WWL's concerns. I acknowledge that Table 3.1 (primary contact) in Objective O24 allows for variation in the following way:

- (a) seasonal variations through targeting September – April;
- (b) excluding flood events through applying only to rivers with flows below 3x median flow; and
- (c) applying to the 95th percentile.

- 48. Table 3.2 in Objective O24 applies to secondary contact and allows for variation through median E. coli data based on a minimum of 12 data points collected over three years. Table 3.3 has a similar approach with 95th percentile derived using the Hazen method from a minimum of 30 data points collected over three years. I note that Table 3.3 contains recognition of "where appropriate" in regards to consumption of shellfish.
- 49. Objective O25 contains tables with values for rivers, lakes, groundwater, natural wetlands, and coastal water. These also allow some variation in terms of identifying maximum percentages based on samples from on a minimum of three years of monthly sampling and rolling medians.
- 50. Notwithstanding that Objectives O24 and O25 enable variations over time, it still appears that the purpose of Objective O5 is to establish a blanket water quality, assessed through subjective measures for both fresh and coastal water bodies, irrespective of how realistic this is or the constraints (including safety) of that environment. I consider Objective O5 sets an unrealistic expectation for the community and does not actually reflect the approach in Objectives O24 and O25. Given the detail contained in Objectives O24 and O25, it is not clear the value that Objective O5 adds to the Plan. Objectives O24 and 25 give a more complete picture, and in the case of O25 recognise that improvements in waterbodies below

⁷ Para 538, Section 42A Report Overall Policy Framework of the Proposed Plan – Part B, Emily Greenberg

standard will occur 'over time'. Arguably Objective O5 creates unnecessary confusion / alignment issues with the more detailed Objectives.

51. If the Hearings Panel were of a mind to retain Objective O5, I consider the Objective needs to be refined to recognise that contact recreation, mahinga kai and Māori customary use is not appropriate or safe within every location, at every time of year, to more accurately reflect the approach in Objectives O24 and O25.

Policy P3 Precautionary Approach

52. *As notified: Use and development shall be managed with a precautionary approach where there is limited information regarding the receiving environment and the adverse effects the activity may have on this environment.*
53. WWL's submission sought amendments to Policy P3 to give effect to the New Zealand Coastal Policy Statement.
54. I am aware of higher level planning documents referencing the precautionary principle and outlining how it should be applied; being the NZCPS and the RPS. I consider that Policy P3 could be amended to better accord with the accepted application of the precautionary approach, and only used where there is both uncertainty and the potential for significant adverse effects (as embodied in Policy 3 of the NZCPS). The RPS is less directive in its use of the precautionary approach and only employs the concept when assessing the potential for adverse effects on indigenous ecosystems and habitats.
55. While I accept that the precautionary approach is applied not only to the coastal environment terms of Policy P3 of the PNRP, I consider that the precautionary approach should be applied to those scenarios anticipated by Policy 3 of the NZCPS i.e. activities whose effects on the coastal environment are uncertain, unknown, or little understood, but potentially significantly adverse. This aligns with the definition developed at the 1992 United Nations Conference on Environment and Development (Rio Declaration, Principle 15):

Where there are threats of serious or irreversible damage, lack of full scientific evidence shall not be used as reason for postponing cost-effective measures to prevent environmental degradation.

56. The triggering factor is the "threat" of serious or irreversible damage. I therefore consider that the word "significant" needs to be added when referring to effects to better reflect the concept of the precautionary approach as contained in the NZCPS. I consider PNRP Policy P3 should refer to the effects that are little known in accordance with Policy 3 of the NZCPS, rather than the knowledge base of the receiving environment as currently contained in PNRP Policy P3.
57. Although I acknowledge that the Section 42A report has recommended amendments to Policy P3⁸, I propose it be further amended to better reflect the concept embedded in Policy 3 of the NZCPS as follows:

Use and development shall be managed with a precautionary approach where ~~there is limited information regarding the effects~~ are uncertain, unknown, or little understood and potentially significantly adverse. ~~receiving environment and the adverse effects the activity may have on this environment.~~

Policy P4: Minimising Adverse Effects

58. As notified: *Where minimisation of adverse effects is required by policies in the Plan, minimisation means reducing adverse effects of the activity to the smallest amount practicable and shall include:*
- (a) *consideration of alternative locations and methods for undertaking the activity that would have less adverse effects, and*
 - (b) *locating the activity away from areas identified in Schedule A (outstanding water bodies), Schedule C (mana whenua), Schedule E (historic heritage), Schedule F (indigenous biodiversity), and*

⁸ Para 344, Section 42A Report Overall Policy Framework of the Proposed Plan – Part B, Emily Greenberg

- (c) *timing the activity, or the adverse effects of the activity, to avoid times of the year when adverse effects may be more severe, or times when receiving environments are more sensitive to adverse effects, and*
- (d) *using good management practices for reducing the adverse effects of the activity, and*
- (e) *designing the activity so that the scale or footprint of the activity is as small as practicable.*

59. The WWL submission expresses concern that existing three waters infrastructure would have difficulty meeting Policy P4 and the Policy is more relevant to new development. Consequently the submission notes there are a number of shortfalls in the Policy as follows:

- (a) Does not recognise the "sunk investment" of existing infrastructure;
- (b) Does not recognise efficiency;
- (c) Does not recognise that alternative locations may not be appropriate for existing facilities; and
- (d) Does not recognise that there are limitations, including practical or financial, to minimising adverse effects.

60. I note that the Section 42A report does not recommend any amendments to Policy P4 as notified. In particular, the Section 42A report considers that "consideration is not a requirement to achieve an alternative location."⁹ Whilst this seems like a reasonable approach, I note that only Clause a) involves "consideration", whilst Clauses b), c), and d) are all absolute requirements. I note that Clause e) includes the concept of "practicable" which implies more flexibility.

61. A number of submissions sought refocusing the Policy to achieving the best practicable option, including New Zealand Transport

⁹ Para 589, Section 42A Report Overall Policy Framework of the Proposed Plan – Part B, Emily Greenberg

Agency [s146/076] (whom WWL further submitted on in support). I note that Wellington Water is required to manage three waters in a cost effective manner under the Local Government Act and consider there is nothing to be gained from requiring consideration of alternative locations and methods where these are not practicable, efficient or cost effective. The concept of “best practicable option” is embedded in the RMA, eg Sections 15 and 128 and is a defined term in Section 2. That definition relates to discharge of a contaminant or an emission of noise, but the principles contained in the definition are relevant here:

means the best method for preventing or minimising the adverse effects on the environment having regard, among other things, to—

- (a) the nature of the discharge or emission and the sensitivity of the receiving environment to adverse effects; and
- (b) the financial implications, and the effects on the environment, of that option when compared with other options; and
- (c) the current state of technical knowledge and the likelihood that the option can be successfully applied

- 62. I would support the inclusion of the concept of best practicable option in Policy P4 as a means of addressing some of the concerns raised by WWL.
- 63. I also note that some of the policies provide an alternative definition of what minimise means, specific to the subject matter of the Policy. Policy P73 is an example of this, where it seeks to minimise adverse effects of stormwater discharges and lists four clauses as to how this can be achieved. It may be that the intention of Policy P4 was to be the overarching Policy, with Policies specific to activities sitting underneath. However care needs to be taken that they are aligned and do not conflict.
- 64. WWL's submission also considered that the requirement in Clause b) to locate the activity “away” from areas identified in the Schedules is unclear and I agree. If the intention is for activities to be located outside those areas contained in the Schedules, then the Policy should say this. If this is indeed the intention, I note here (in a similar

vein to that covered above) that this is not practical for existing infrastructure.

65. If the intention of Policy P4 is to direct activities to be located outside those areas contained in the Schedules, I question how the Plan reconciles this with potentially conflicting provisions such as Policy P13 (which considers existing regionally significant infrastructure as beneficial and generally appropriate), and Policy P12 (which recognises the benefits of regionally significant infrastructure).
66. I note that there are consistency issues within the Plan. While Policy P4(b) directs activities to be located away from areas identified in various Schedules, there are other Policies which establish a more pragmatic / flexible approach. An example of this is Policy P138 which enables new structures, replacement of a structure or any addition or alteration to a structure in a site identified in various Schedules where:
- (d) it is necessary to enable the development, operation, maintenance and upgrade of regionally significant infrastructure,
- and in respect of (a) to (d):
- (e) there are no practicable alternative methods of providing for the activity.
67. An alternative approach is to exclude regionally significant infrastructure from Clauses a) – e) of Policy P4 and have different requirements for regionally significant infrastructure.

Policy P5: Review of existing consents

68. *As notified: The conditions of existing resource consents to discharge contaminants to fresh water or coastal water, and to take and use water, may be reviewed pursuant to section 128 of the Resource Management Act 1991 in respect of future changes to the Plan.*

69. WWL's submission on Policy P5 sought amendments to take into account all of the parts of section 128(1) RMA, including the purpose of the review.
70. The Section 42A report considered that there is no need for inclusion of the Policy given that reviews are enabled by Section 128 of the RMA without the need for policy, but the inclusion provides clarity to consent holders and the community of Council's discretion to review existing consents.¹⁰
71. I agree with the Section 42A report that Policy P5 is somewhat redundant given the Section of the Act. However, if the Hearings Panel were of a mind to retain Policy P5, I would support a more refined Policy, indicating which sub-clauses of Section 128 of the Act the Policy specifically refers.

Policy P6: Synchronised expiry and review dates

72. As notified: *Resource consents may be granted with a common expiry or review date within a whaitua or sub-catchment, if:*
- (a) *the affected resource is fully allocated or over-allocated, or*
 - (b) *the exercise of the resource consent may impede the ability to implement an integrated solution to manage water quality, quantity or habitat within that whaitua or sub-catchment.*
73. The WWL submission stated it is not clear whether the whaitua catchments include just the freshwater catchment or include the coastal marine area. I note this matter is addressed in the Section 42A report and that future plan changes from the whaitua committees could include the coastal marine area.¹¹
74. The submission also stated that the policy does not make clear what happens to the expiry date of existing consents that do not match

¹⁰ Para 364, Section 42A Report Overall Policy Framework of the Proposed Plan – Part B, Emily Greenberg

¹¹ Para 379, Section 42A report Overall policy framework of the proposed Plan – Part B, Emily Greenberg

with the other consents in the catchment. However I note that Section 128 of the RMA could be potentially used by Greater Wellington Regional Council in this regard.

BENEFICIAL USE AND DEVELOPMENT

75. Nineteen points of WWL's submission were coded to the topic Beneficial Use and Development. This is a key section for WWL as it sets the parameters for the activities and structures defined as regionally significant infrastructure. This section also sets at an objective and policy level, the recognition of the benefits of regionally significant infrastructure and its protection. The main requests in WWL's submission were for:

- (a) Recognition of water intakes, and stormwater and wastewater discharges as a component of the three waters network in the definition of regionally significant infrastructure;
- (b) More adequate recognition of the benefits of three waters infrastructure;
- (c) Protection of regionally significant infrastructure;
- (d) Provision for and protection of the stormwater network and associated watercourses and wastewater networks throughout the Plan;
- (e) In addition to the coastal marine area, protection for terrestrial regionally significant infrastructure (particularly three waters infrastructure) from reverse sensitivity effects;
- (f) Distinguishing and recognition of the urban environment context and infrastructure;
- (g) Recognition of the need for water for fire-fighting purposes at an objective level;
- (h) Recognition of the social and economic benefits of stormwater systems to protect against flooding;

- (i) Protection of existing flood protection activities and structures; and
- (j) Providing for new flood protection and erosion control activities.

Definitions

76. The definition of **Regionally Significant Infrastructure** is fundamentally important to WWL, as the Objectives, Policies and Rules are based on this defined term. WWL's submission noted that the sixth bullet point of the definition of regionally significant infrastructure only recognises two components of the local authority water infrastructure – being the “the local authority water supply network and water treatments plants”. However intake works are a fundamental component of the water supply network, and indeed the water treatment plants. Without intake structures, there would be no water in the network. Intake structures are physical components of the water supply network and I consider should be included in the definition. I therefore propose the definition of regionally significant infrastructure be amended as follows:

Regionally significant infrastructure includes:

- the local authority water supply network (including intake structures) and water treatments plants;

77. WWL's submission notes that bullet point 7 does not recognise the discharges that are an intrinsic component of both the stormwater and wastewater network. The nested definitions of “Wastewater Network” and “Stormwater Network” clearly only relate to the physical resource for carrying stormwater and wastewater, not the waters themselves:

Wastewater network: A community reticulated wastewater system, including pipes and pump stations, designed to accept and transport wastewater from properties to a treatment plant.

Stormwater network: The network of devices designed to capture, detain, treat, transport and discharge stormwater, including but not limited to kerbs, intake structures, pipes, soak pits, sumps, swales and

constructed ponds and wetlands, and that serves more than one property.

78. The definitions allude to a discharge but focus on the physical structures, rather than what is conveyed within them. Although WWL's submission sought inclusion of the discharges associated with wastewater and stormwater in the definition, I do not support this request. The definition of regionally significant infrastructure includes structures not activities (notwithstanding that the structures only have regional significance if they are used for their intended purpose). The definition of Infrastructure in the RMA is limited to the structure not the activity. So although the use of the stormwater and wastewater network for their intended purpose will result in a discharge, I consider discharges are an activity not a structure.
79. I note that the definition of Infrastructure in the decisions on the Proposed Auckland Unitary Plan included "*storage, treatment and discharge facilities for a drainage or sewerage system*" and I would support the inclusion of something similar for increased clarity.
80. WWL submitted on the defined term "**Upgrade**", outlining the concern that the definition refers to bringing existing structures or facilities up to "current standards".
81. As notified: *Use and development to bring existing structures or facilities up to current standards provided that the effects of the activity are the same or similar in character, intensity and scale as the existing structure and activity.*
82. I share WWL's concerns that "current standards" is vague and does not provide any clarity for Plan users. Is the definition referring to international standards? National standards? Current best practice (which is subject to regular change)? Levels of service? This is particularly problematic for a definition, as definitions should provide clarity for Plan users. In addition (as noted in WWL's submission), upgrades may improve levels of service and may be required to accommodate growth, while not necessarily being to current standards (whatever that may be). The National Policy Statement on Urban Development Capacity 2016 is a further statutory consideration here with its requirement for three years of

serviced land to meet growth needs, which includes upgrades to meet urban intensification. This matter was not addressed in the Section 42A report.

83. The WWL submission sought that "current standards" be replaced with "community decided levels of service" or to like effect, in particular to allow infrastructure to change to accommodate growth. Whilst this concept may be appropriate in the context of WWL and the three waters network, I note that the term "upgrade" will apply to a multitude of different structures or facilities and the concept of "community decided levels of service" may not be appropriate.
84. The peculiar characteristics of the three water network means that an increase in the capacity of the pipes (i.e. the infrastructure) to accommodate growth would necessitate a change in the consents which control the input (water intakes) and outputs (wastewater and stormwater discharges) of the network. Thus the structure and the activity are regulated separately in terms of the consenting regime. I looked at other definitions for upgrading infrastructure to get a feel for whether it pertained to the physical structure, or capacity of the network. The National Environmental Standard for Electricity Transmission Activities (NESETA) defines upgrade as meaning "increasing the carrying capacity, efficiency, security, or safety of a transmission line". I accept this is in the context of electricity transmission, but it is interesting to note that it anticipates an increase in the carrying capacity as "upgrading".
85. In terms of the three waters infrastructure, what happens at either end of a pipe is governed by other consent requirements, so there does not seem to be an adverse effect to be concerned about, other than the one already captured in the definition (ie the direct effect of the pipe itself). Therefore, in the case of three waters, wording similar to the NESETA could be appropriate and allow for increased carrying capacity. I accept that this may not be appropriate for other activities to which the term "upgrade" applies, but this could be managed by the addition of a sentence within the definition of "upgrade", specific to the networks for water supply, wastewater and stormwater.

86. I note that there is currently a problem with the mechanics of the definition. The way it is drafted at present, it would appear that the need for effects to be similar in character, intensity and scale applies to the act of upgrading, not the effects of the infrastructure per se.
87. The WWL submission sought the addition of three more defined terms:
- (a) dam;
 - (b) weir; and
 - (c) aquiclude.
88. As these are specific to water infrastructure, I will address these as appropriate in subsequent hearings.
89. WWL further submitted in support of the submission from New Zealand Transport Agency [S146/031] with regards to the definition of **Reverse Sensitivity**. I partially agree with the New Zealand Transport Agency that the definition needs to include "maintenance and upgrade" of the existing activity, as well as operation (as contained in the notified version). However I consider the definition should also include "use and operation" to be aligned with Policy P13. This is a consideration for WWL as a network operator, as other landuses have the potential to constrain the maintenance, development and upgrade of the infrastructure as well as the operation. Whilst I accept that the definition of reverse sensitivity originates from the RPS as stated in the Section 42A report,¹² there is no reason why the PNRP cannot modify the definition to align with the activities listed in Policy P13 of the PNRP. Policy P13 recognises that the *"use, operation, maintenance, and upgrade of existing regionally significant infrastructure and renewable energy generation activities are beneficial and generally appropriate."*
90. I am aware that the definition of reverse sensitivity may apply to activities other than regionally significant infrastructure. If the Panel

¹² Para 284, Section 42A Beneficial Use and Development, Paul Denton

does not consider maintenance and upgrade is appropriate in relation to all activities to which the reverse sensitivity definition applies, then a sentence applying only to regionally significant infrastructure could be added to the definition of reverse sensitivity as follows:

In the case of Regionally Significant Infrastructure this can include the vulnerability of maintenance and upgrade activities.

Objective O6

As notified: *Sufficient water of a suitable quality is available for the health needs of people.*

91. The WWL submission supported Objective O6 which seeks sufficient water of a suitable quality is available for the health needs of people. However the submission sought an additional clause to ensure access to water for firefighting. This matter was not addressed by the Section 42A report.
92. My concerns with adding an additional Clause to Objective O6 (or indeed a new Objective as sought in the submission) is that it singles out a requirement for water for fire-fighting purposes.
93. I considered whether as an alternative (and to achieve the same outcome sought by the submission), the definition of *Health Needs of People* be amended to include water for fire-fighting, thus recognising the need for water for fire-fighting purposes in Objective O6. However the risk with this approach is of unintended consequences – while the Health Needs of People is clearly about health, fire fighting is more of a safety issue. :

Health Needs of People - The amount and quality of water needed to adequately provide for people's hygiene, sanitary, and domestic requirements.

94. I note that at a policy level there is recognition of the importance of fire-fighting. Policy P7(i) specifically recognises the use of land and water for fire-fighting as a cultural, social and economic benefit. Additionally, Policy P112 prioritises water for fire-fighting (as well as human health, animal drinking water and rootstock protection) in

times of drought and serious water shortage. Policy P111 enables water to be available below minimum flows for fire-fighting purposes.

95. There is no specific recognition of water supply for fire-fighting at an objective level, which appears to be a gap. Objective O6 addresses water quality and quantity for the health needs of people, and Objective O7 addresses water quality and quantity for the livestock, but there is no specific Objective for fire-fighting. However it is likely that the following Objectives provide the objective support for the fire-fighting policies, albeit not explicitly:

- (a) Objective O2 - The importance and contribution of land and water to the social, economic and cultural well-being of the community are recognised; and
- (b) Objective O8 - The social, economic, cultural and environmental benefits of taking and using water are recognised and provided for within the Plan's allocation framework.

96. Given that the policies ensuring that water for fire-fighting is one of the priorities for water allocation, I consider Objective O8 in particular provides the necessary support at an Objective level. Therefore I consider specific recognition of the water needs for fire-fighting at an Objective level is not necessary.

Objective O8

97. As notified: *The social, economic, cultural and environmental benefits of taking and using water are recognised and provided for within the Plan's allocation framework.*

98. WWL's submission supported Objective O8 which recognised the social, economic, cultural and environmental benefits of taking and using water. Water is essential for the functioning of communities and the provision of water is WWL's core business. Taking water for municipal supply is essential for the Region. I agree with this, and note that my proposed inclusion in the definition of regionally significant infrastructure of water intake structures supports the

recognition of the benefits of taking water and therefore aligns with Objective O8.

Objective O12

99. As notified: *The social, economic, cultural and environmental benefits of regionally significant infrastructure and renewable energy generation activities are recognised.*
100. Although WWL supported Objective O12, the submission sought amendments to recognise and protect regionally significant infrastructure. I note that the RPS Objective 10 and Policies 8 and 39 not only require the social, economic, cultural and environmental benefits of regionally significant infrastructure to be **recognised** but also to be **protected** [emphasis added]. In order to give effect to the RPS, I recommend Objective O12 to be amended as follows:

The social, economic, cultural and environmental benefits of regionally significant infrastructure and renewable energy generation activities are recognised and protected.

101. I will be touching on the practical implications of this Objective in subsequent hearings with regards to policies and rules.

Objective O13

102. As notified: *The use and ongoing operation of regionally significant infrastructure and renewable energy generation activities in the coastal marine area are protected from new incompatible use and development occurring under, over, or adjacent to the infrastructure or activity.*
103. The WWL submission sought to amend the objective to protect significant three waters infrastructure against reverse sensitivity in all environments, not just the coastal marine area (CMA). I agree that this objective appears to only apply in the coastal marine area, yet the management of incompatible activities is equally applicable to terrestrial environments as well as coastal.
104. The Section 42A report considered that in the context of the Proposed Plan 'use and development' is that which occurs in the

CMA and the beds of lakes and rivers in the region.¹³ However Mr Denton went on to state that the CMA is where most if not all regionally significant infrastructure is located that requires protection from use and development alongside. He considered activities in the beds of lakes and rivers are less so and have provisions in the proposed Plan for their management.¹⁴ With respect to Mr Denton I disagree. Whilst the PNRP is tasked with managing landuses in the CMA, this is not the only environment where the PNRP can meaningfully protect regionally significant infrastructure from incompatible use and development.

105. If Objective O13 were to be broadened to include the terrestrial environment, it could assist in preventing this scenario and give effect to RPS Policy 8 which requires regional plans to include policies and rules that protect regionally significant infrastructure from incompatible new use and development occurring under, over, or adjacent to the infrastructure.
106. Further, the majority of regionally significant infrastructure associated with the three waters is not in the CMA. As an example, there is a wastewater pipe that runs a significant length of the Kenepuru stream. There is the potential for activities controlled by the PNRP to inadvertently allow incompatible activities under, over or adjacent to this highly sensitive infrastructure. An example would be Council undertaking stream works to reduce flooding in the park or bank erosion, and in the process undermine the integrity of that wastewater pipe. The adverse effects of such an event would be significant.
107. I note that Policy P14 seeks to protect regionally significant infrastructure and renewable energy generation from new incompatible use and development, however this Policy (which ostensibly assists in achieving Objective O13) is not limited to the CMA.

¹³ Para 361, Section 42A Beneficial Use and Development, Paul Denton

¹⁴ Para 364, Section 42A Beneficial Use and Development, Paul Denton

108. I note RPS Policy 8 is similarly not limited to the CMA. In order to give effect to the RPS, I therefore propose Objective O13 to be amended as follows:

The use and ongoing operation of regionally significant infrastructure and renewable energy generation activities ~~in the coastal marine area~~ are protected from new incompatible use and development occurring under, over, or adjacent to the infrastructure or activity.

Policy P7: Uses of Land and Water

109. As notified: *The cultural, social and economic benefits of using land and water for:*

- (a) *aquaculture, and*
- (b) *treatment, dilution and disposal of wastewater and stormwater, and*
- (c) *industrial processes and commercial uses associated with the potable water supply network, and*
- (d) *community and domestic water supply, and*
- (e) *electricity generation, and*
- (f) *food production and harvesting, and*
- (g) *gravel extraction from rivers for flood protection and control purposes, and*
- (h) *irrigation and stock water, and*
- (i) *firefighting, and*
- (j) *contact recreation and Māori customary use, and*
- (k) *transport along, and access to, water bodies*

shall be recognised.

110. The WWL submission considered that the concept of removing water to protect communities from flooding is not included, but should be recognised by including reference to the social and

economic benefits of providing stormwater systems to protect against flooding.

111. Unfortunately there is no discussion of the WWL submission in the Section 42A report. I note that Policy P7 implements Objective O2 by specifically recognising certain activities that have cultural, social and economic benefits from using land and water. I note that Clause g) of Policy P7 refers to flood protection and control purposes, in the context of gravel extraction from rivers. Clause b) currently refers to both wastewater and stormwater, whilst Clause c) refers to water supply. As a way to recognise the importance of the flood protection purpose of stormwater and thus Section 6(h) of the Resource Legislation Amendment Act 2017, I propose stormwater be given its own Clause, effectively disconnecting it from wastewater as a separate entity as follows:

b) conveyance, treatment, dilution and disposal of wastewater ~~and stormwater~~, and

....

l) collection, conveyance, treatment and discharge of stormwater, including mitigation of flooding

112. The importance of adding conveyance is that the transport of stormwater and wastewater away from areas of human habitation and economic activity is the "benefit" of both stormwater and wastewater networks.

Policy P8 Beneficial Activities

113. As notified: *The following activities are recognised as beneficial and generally appropriate:*

(a) *activities for the purpose of restoring natural character, aquatic ecosystem health, mahinga kai, outstanding water bodies, sites with significant mana whenua values, and sites with significant indigenous biodiversity values, and*

- (b) *activities that restore natural features such as beaches, dunes or wetlands that can buffer development from natural hazards, and*
- (c) *day-lighting of piped streams, and*
- (d) *removal of aquatic weeds and pest plants, and*
- (e) *the establishment of river crossings (culverts and bridges) or fences and fence structures that will result in the exclusion of regular livestock access from a water body, and*
- (f) *the retirement, fencing and planting of riparian margins, and*
- (g) *the retirement of erosion prone land from livestock access, and*
- (h) *maintenance and use of existing structures in the coastal marine area, natural wetlands and the beds of rivers and lakes, and*
- (i) *removal of dangerous or derelict structures in the coastal marine area, natural wetlands and beds of lakes and rivers, and*
- (j) *structures necessary to provide for monitoring resource use or the state of the environment in the coastal marine area, natural wetlands and beds of lakes and rivers, and*
- (k) *activities necessary to maintain safe navigation, and*
- (l) *artworks that support and enhance public open space.*

114. The submission from WWL notes that Clause l) seems out of context in a regional plan. The submission was most concerned that the following matters are missing from the list:

- (a) domestic or community water supply;

- (b) protection of the community and property from flooding by stormwater networks; and
- (c) protection of public health by maintaining and operating a wastewater network and disposal system.

115. Unfortunately there is no specific discussion of these points in the Section 42A report. The Section 42A report notes that Policy P8 recognises the benefits of certain activities and that these activities are general in nature and afford a benefit in a general sense from that activity rather than applying a specific benefit.¹⁵

116. Considered in isolation Policy P8 seems to be a rather eclectic list of activities to be considered "beneficial and generally appropriate". After some more research of the Plan, it appears that the many of the activities listed in Policy P8 are largely permitted or controlled. For example:

- (a) Rule R106 Restoration of natural wetlands, significant natural wetlands and outstanding natural wetlands – controlled activity;
- (b) Rule R115 Culverts – permitted activity;
- (c) Rule R104 The maintenance, repair, addition, alteration, or replacement (like for like) of an existing structure, in a natural wetland or significant natural wetland – permitted activity;
- (d) Rule R112 Maintenance, repair, replacement, upgrade or use of existing structures that is fixed in, on, under, or over the bed of a river or lake, (excluding the Barrage Gates) – permitted activity;
- (e) Rule 157 New or replacement structures for scientific, research, monitoring and education purposes and the associated use of the structure in the coastal marine area – controlled activity;

¹⁵ Para 161, Section 42A Beneficial Use and Development, Paul Denton

- (f) Rule R122 The trimming or removal of vegetation (including weeds) from the bed of any river or lake – permitted activity;
- (g) Rule R156 New or replacement navigation aids – permitted activity; and
- (h) Rule R118 The removal or demolition of a structure or a part of a structure that is fixed in, on, under, or over any river or lake bed – permitted activity

117. I note the use of the terms “beneficial and generally appropriate” in other policies such as Policies P13 and P15. If the intention is for these policies to list permitted activities, then I consider for clarity the Plan should say as much and be consistent in its application of the term. It seems that the phrase does not have a singular meaning and is mixed in its application. The term “beneficial and generally appropriate” is vague and does not provide any clarity for users.

118. Notwithstanding the lack of clarity of the use of the phrase “beneficial and generally appropriate”, the provision of a comprehensive water, wastewater and stormwater network is clearly a beneficial activity to both the community and the environment.

119. I note that three waters infrastructure is covered by Policy P13 in the same way as Policy P8, however only in terms of **existing** regionally significant infrastructure. There is no corresponding policy recognition or support for new regionally significant infrastructure. Recognition of the three waters, in particular at a policy level as being beneficial, would give effect to the RPS.

120. In terms of Clause h) of Policy P8, the WWL submission sought inclusion of “operation” in terms of existing structures in the coastal marine area, natural wetlands and the beds of rivers and lakes. In terms of the dictionary definition of these terms, there is a slight difference between “use” and “operation”. Given that Policy P8 appears to pertain largely to permitted activities, there is little risk in including both terms for clarity. I therefore propose Policy P8(h) be amended to read “maintenance, operation and use of existing

structures in the coastal marine area, natural wetlands and the beds of rivers and lakes, and”

121. If the Panel are agreeable to this inclusion, corresponding Rule R112 would need to be amended to reflect the inclusion of “operation”.
122. As an aside, I note there are inconsistencies with the terms that are used:
- (a) Policy P8(h): maintenance and use
 - (b) Policy 13: use, operation, maintenance, and upgrade
 - (c) Policy 15: use, maintenance and ongoing operation
123. I note that the Section 42A report recommends amendment of Policy 8(h) to include “upgrade”¹⁶, and I support this, although acknowledge that the term “upgrade” is somewhat constrained by the definition.

Policy P12: Benefits of Regionally Significant Infrastructure and Renewable Electricity Generation Facilities

124. As notified: *The benefits of regionally significant infrastructure and renewable energy generation activities are recognised by having regard to:*
- (a) *the strategic integration of infrastructure and land use, and*
 - (b) *the location of existing infrastructure and structures, and*
 - (c) *the need for renewable energy generation activities to locate where the renewable energy resources exist, and*
 - (d) *the functional need for port activities to be located within the coastal marine area, and*

¹⁶ Para 164, Section 42A Beneficial Use and Development, Paul Denton

(e) *operational requirements associated with developing, operating, maintaining and upgrading regionally significant infrastructure and renewable energy generation activities.*

125. WWL's submission sought to replace "by having regard to" with "and protected" to the end of the sentence (or to like effect). The submission sought inclusion of the benefits of:

- (a) the provision of the health needs of people with a potable water supply;
- (b) the protection of people and property from flooding; and
- (c) the protection of public health by the provision of a wastewater service.

126. As outlined earlier, there are key RPS directives with regards to **recognising** and **protecting** the benefits of regionally significant infrastructure (being Objective 10, and Policies 7 and 8 of the RPS). RPS Objective 10 conflates recognition and protection of regionally significant infrastructure. Whilst PNRP Policy P12 seeks to recognise the benefits of regionally significant infrastructure, the second leg of "protection" is not addressed or delivered by the Policy. I acknowledge however that Policy P14 seeks to manage incompatible activities and thus provide protection in this regard. While a regional plan is required to give effect to the RPS, there is no reason why a regional plan cannot go beyond the RPS requirements.

127. I note that most of Policy P12 refers generally to regionally significant infrastructure, but does contain specific references to renewable energy generation and port activities. WWL seeks similar recognition of three waters infrastructure. The WWL submission sought that the Policy be amended to identify benefits of three water infrastructure, including providing a potable water supply for the health needs of people, protecting people and property from flooding and protecting public health by providing a wastewater service. I consider such an amendment would change the intent and focus

of the Policy, as the Policy is a method for achieving Objective O12, rather than a list of all the benefits of regionally significant infrastructure or the forms of regionally significant infrastructure (which is covered by the definition). However I do consider that the health benefits of the three waters network is such that Policy P12 could be amended to recognise this. Without this, there is a risk that the PNRP discharges the obligation to recognise those benefits simply by saying existing regionally significant infrastructure is beneficial (in Policy P13), and stating how regionally significant infrastructure benefits will be recognised by having regard to certain matters (Policy P12), without anywhere stating what the benefits of regionally significant infrastructure actually are. I therefore propose incorporating words to reflect RPS Policy 7, which states:

public health and safety is maintained through the provision of essential services, being a supply of potable water and the collection and transfer of wastewater and stormwater.

128. I note that Policy 12(e) acknowledges that regionally significant infrastructure may have operational requirements and I support this Clause, particularly as some WWL infrastructure such as water takes depend on the location of the resource. Operational requirements is defined as:

When an activity needs to be carried out in a particular location or way in order to be able to function effectively and efficiently.

129. I consider that the recognition of the functional need to locate in a certain location is adequately recognised through the use and definition of the term "operational requirements".

130. I note that Policy P12 (b) which has regard to the location of existing infrastructure and structures and Policy P12(e) recognising operational requirements conflicts with Policy P4(b), which requires activities to be located away from areas identified in Schedule A (outstanding water bodies), Schedule C (mana whenua), Schedule E (historic heritage) and Schedule F (indigenous biodiversity). This is a good example of an internal conflict within the PNRP, and the RPS objectives and policies regarding regionally significant infrastructure

are not given full effect. The PNRP is not clear in terms of the primacy of these outcomes.

131. I note the submission from New Zealand Transport Agency (s146/082) sought recognition of the existing investment, and would support inclusion of this concept as a way of addressing WWL's concerns around lack of recognition of sunk investment in existing infrastructure.

132. I therefore propose Policy P12 to be amended as follows:

The benefits of regionally significant infrastructure and renewable energy generation activities are recognised by having regard to:

- (a) the strategic integration of infrastructure and land use, and
- (b) the investment in and the location of existing infrastructure and associated structures, and
- (c) the need for renewable energy generation activities to locate where the renewable energy resources exist, and
- (d) the functional need for port activities to be located within the coastal marine area, and
- (e) operational requirements associated with developing, operating, maintaining and upgrading regionally significant infrastructure and renewable energy generation activities, and
- (f) the maintenance of public health and safety through the provision of essential services, being a supply of potable water and the collection and transfer of wastewater and stormwater.

133. I questioned the use of the term "structures" in Clause b) as this could potentially apply to all manner of structures not necessarily associated with regionally significant infrastructure. I consider this term could be more clearly linked to infrastructure with the inclusion of the word "associated".

Policy P13: Existing Regionally Significant Infrastructure and Renewable Electricity Generation Facilities

134. As notified: *The use, operation, maintenance, and upgrade of existing regionally significant infrastructure and renewable energy generation activities are beneficial and generally appropriate.*
135. WWL's submission expressed particular concern with the term "are generally appropriate" and sought that this be replaced with "are protected" to give effect to the RPS. I note that the Section 42A report recommends retaining the term "generally appropriate" on the basis that the word "generally" construes that not all activities are beneficial and each situation would be treated on a case-by-case basis.¹⁷ I can appreciate the viewpoint of Mr Denton, however the use of the term does not give the Plan users any certainty. As a result, I consider Policy P13 to be rather vague in its policy direction. I have considered this issue in Paragraph 117 of my evidence. Based on what I think I understand the significance of the words "beneficial and generally appropriate" I am not sure that "protect" is the right replacement term.
136. I note that Policy P13 pertains to the "use" of existing regionally significant infrastructure. I question how this relates to the activities associated with the physical structures. For example, in order to "use" the stormwater network, a discharge is required and that requires a resource consent. The same applies for the wastewater network and a water take is required in order to "use" the water supply network. It would seem in the context of three waters infrastructure that if the term "beneficial and generally appropriate" is a surrogate for "permitted activity" then this may not be appropriate.

Policy P14: Incompatible activities adjacent to regionally significant infrastructure and renewable electricity generation activities

137. As notified: *Regionally significant infrastructure and renewable energy generation activities shall be protected from new incompatible use and development occurring under, over or adjacent to it, by locating and designing any new use and development to avoid, remedy or mitigate any reverse sensitivity effects.*

¹⁷ Para 345, Section 42A Beneficial Use and Development, Paul Denton

138. WWL submitted in support of Policy P14, and further submitted on the submissions from Powerco NZ Ltd [S29/017] and New Zealand Transport Agency [S146/084]. The only comment I wish to make on this Policy other than to support it, is that only regionally significant infrastructure is addressed by the Policy, not the activities associated with it. As highlighted by the submission from New Zealand Transport Agency [S146/084], the activities include the use, maintenance, upgrading, replacement or development of that infrastructure and these may be compromised by incompatible development.

139. I note that although RPS Policy 8 seeks to “*protect regionally significant infrastructure from incompatible new subdivision, use and development occurring under, over, or adjacent to the infrastructure*”, the explanation to that Policy clearly anticipates the potential for incompatible activities and uses from constraining the operation, maintenance and upgrade:

Incompatible subdivisions, land uses or activities are those which adversely affect the efficient operation of infrastructure, its ability to give full effect to any consent or other authorisation, restrict its ability to be maintained, or restrict the ability to upgrade where the effects of the upgrade are the same or similar in character, intensity, and scale. It may also include new land uses that are sensitive to activities associated with infrastructure.

140. I consider that there is a risk that Policy P14 be interpreted as applying only to the physical asset, not the activities associated with it (a point that was made by Transpower New Zealand Ltd in their submission s165/011). I note that Policy P15 has taken an alternative approach by beginning the Policy with “The use, maintenance and ongoing operation of....” and I would support a similar approach to Policy P14. I therefore propose Policy P14 be amended to read:

Regionally significant infrastructure and renewable energy generation activities, including the use, maintenance ongoing operation, and upgrade of regionally significant infrastructure, shall be protected from new incompatible use, activities and development occurring under, over or adjacent to it, by locating and designing any new use and development to avoid, remedy or mitigate any reverse sensitivity effects or other incompatible activities.

141. I note that Policy P14 refers to both incompatible uses and reverse sensitivity effects. I consider that the policy should address both as the operation, use, maintenance and upgrade of regionally significant infrastructure can be affected by sensitive uses establishing nearby (as embodied in the Plan's definition of "reverse sensitivity"). Regionally significant infrastructure can also be constrained by incompatible activities that may interfere with the operation, use, maintenance and upgrade, including physical constraints.

Policy P15: Flood protection activities

142. As notified: *The use, maintenance and ongoing operation of existing catchment based flood and erosion risk management activities which manage the risk of flooding to people, property, infrastructure and communities are beneficial and generally appropriate.*
143. The WWL submission expressed concern that the policy is not clear whether river flood protection infrastructure as well as stormwater activities are included. Unfortunately the Section 42A report does not provide any further clarity. I note that the Policy as notified indicates "catchment based flood and erosion risk management activities" as a defined term as being:

Structures built, controlled or maintained by a local authority and associated activities for the purpose of protecting the community from flood or erosion risk in accordance with a river management scheme or flood plain management plan.

144. I note the new Section 6(h) in the Resource Legislation Amendment Act 2017 recognises management of significant risks from natural hazards as a matter of national importance. Natural hazards includes flooding in terms of the RMA definition of the term. I therefore propose Policy P15 be amended as follows:

The use, maintenance and ongoing operation of existing catchment based flood and erosion risk management activities which manage the risk of flooding to people, property, infrastructure and communities, including river flood protection infrastructure as well as stormwater management, are beneficial and generally appropriate.

145. I have similar concerns to those I have expressed above with regards to Policy P14, that the use of the term "generally appropriate" should be clarified. It provides no guidance as to when and where these activities might not achieve the objective, and provides the Plan user with no certainty or policy direction. I note that the Section 42A report considers existing flood and erosion risk management activities as an appropriate activity because they reduce the risk to communities, people, property and infrastructure.¹⁸ I consider that river flood protection infrastructure as well as stormwater management fulfils this same role.
146. I note that flood protection is one of the mandatory core services of local authorities under the Local Government Act and this should be recognised and protected. If the terms "beneficial and generally appropriate" are to apply to permitted activities, then the rule framework would need to be amended to include existing river flood protection infrastructure and stormwater management activities.

Policy P16: New Flood Protection and Erosion Control

147. *As notified: The social, cultural, economic and environmental benefits of new catchment based flood and erosion risk management activities are recognised.*
148. The WWL submission sought that Policy P16 not only "recognise" new catchment based flood and erosion risk management activities, but also provide for them. I note that the Section 42A report considers it is not appropriate to "provide" for these structures and activities as it sets a level higher than is required or anticipated for the proposed Plan.¹⁹ Given the new Section 6(h) in the Resource Legislation Amendment Act 2017, this position may need to be reconsidered.
149. I note that flood protection infrastructure and services are a mandatory service to be provided by local authorities under the Local Government Act. As such, they should be "provided for", as

¹⁸ Para 200, Section 42A Beneficial Use and Development, Paul Denton

¹⁹ Para 200, Section 42A Beneficial Use and Development, Paul Denton

recognition on its own has little practical effect and provides little guidance when considering resource consent applications. Such an amendment would provide a stronger policy direction, and should logically be reflected in the rule framework.

150. I note that Objective 19 of the RPS seeks to reduce the risks and consequences to people, communities, their businesses, property and infrastructure from natural hazards and climate change effects. This can be achieved by two methods, managing development and enabling flood protection and erosion control. As the definition for “catchment based flood and erosion risk management activities” is tightly tied to only structures built, controlled or maintained by a local authority, there is little risk of a proliferation of inappropriate flood protection and erosion control structures and activities as a result of amending Policy P16. This would also be an efficient means of giving effect to RPS Objective 19. If the position of “providing for” was to be adopted, the Plan would need to recognise the benefits by making specific provisions for the activities in the rule framework.

151. I therefore propose Policy P16 be amended as follows:

The social, cultural, economic and environmental benefits of new catchment based flood and erosion risk management activities are recognised and provided for.

SIGNIFICANT AREAS AND SITES FOR MANA WHENUA

152. Two points of WWL's submission were coded to the topic Significant Areas and Sites for Mana Whenua, although WWL actually made three submission points on these provisions. The submission points sought:

- (a) Deletion of references to claims and settlements under the Treaty of Waitangi as a matter that may be included in a Cultural Impact Assessment;
- (b) Sites of mana whenua significance in Schedule C be improved or enhanced rather than protected and/or restored; and

- (c) Re-consideration of the directive to avoid activities in sites with significant mana whenua values identified in Schedule C.

153. I will not address the changes the WWL submission sought to the Cultural Impact Assessment as I am satisfied with the analysis and conclusion in the Section 42A report.²⁰

Policy P44: Protection and Restoration of Sites with Significant Mana Whenua Values

154. As notified: *Sites with significant mana whenua values identified in Schedule C (mana whenua) shall be protected and/or restored.*
155. The WWL submission expressed concern that sites with significant mana whenua values as identified in Schedule C can be large. The submission considered the concept of "restoring" is not feasible, and sought replacing the term "restored" with "enhanced" or "improved".
156. The Section 42A report notes that a number of submitters sought alternative terms or qualifiers such as "where practicable".²¹ In the discussion Ms Guest draws heavily on the terms "protect" and 'restore' derived from RPS Objective 16 and Policies 23 and 24.²² She states that these policies require the identification and protection of ecosystems and habitats with significant values, including those of special significance to tangata whenua. I note however that the focus of the RPS Objective and Policies is on indigenous ecosystems and habitats with significant indigenous biodiversity values, not sites of mana whenua significance per se. I note that tangata whenua values is one of the *criteria* for identifying indigenous ecosystems and habitats with significant indigenous biodiversity values in RPS Policy 23.
157. A search of the RPS only identifies RPS Policy 49 as being relevant. This requires that when preparing a change, variation or review of a

²⁰ Para 162, Section 42A Report Significant Areas and Sites for Mana Whenua, Pam Guest

²¹ Para 124, Section 42A Report Significant Areas and Sites for Mana Whenua, Pam Guest

²² Para 126, Section 42A Report Significant Areas and Sites for Mana Whenua, Pam Guest

district or regional plan, certain matters shall be **recognised and provided for** [my emphasis]. One of these matters is “(d) places, sites and areas with significant spiritual or cultural historic heritage value to tangata whenua”. On this basis I consider that there is no RPS directive for PNRP Policy P44 to hold a policy position to protect and/or restore sites listed in Schedule C.

158. I consider the policy directive to “protect and/or restore” would be unrealistic and challenging to achieve, particularly in an urban environment, as urban development has substantially altered the character of the environment. The challenge with Policy P44 is that it would be considered when processing a resource consent application. It is wholly inappropriate for a resource consent application to seek to “restore” an environment or “to bring back to a previous, original, or normal condition” as outlined in the Section 42A report, particularly in an urban environment.²³ This is particularly true when the original condition cannot be re-created. I note this was a matter raised by Wellington City Council (S286/034; S286/033), who requested an amendment or new policy to recognise that the degree of restoration or protection of a site needs to be in the context of the degree of existing development, particularly if it is an urban environment.
159. In addition, the Policy provides no clarity on what is to be protected and/or enhanced. Is it the values? Is it the water quality? Is it the ecology?
160. I consider a more moderate policy position to “enhance” or “improve” would be more realistic, whilst still going some way towards achieving PNRP Objective O33. This would need to be reflected in the title to Policy P44 also. I also question how Policy P44 might reconcile Objectives O33 and O12 where they coincide – one which seeks to protect mana whenua values while the other seeks to recognise the benefits of social, economic, cultural and environmental benefits of regionally significant infrastructure.

²³ Para 131, Section 42A Report Significant Areas and Sites for Mana Whenua, Pam Guest

Policy P45: Managing adverse effects on sites with significant mana whenua values

161. As notified: *In the first instance, activities in sites with significant mana whenua values identified in Schedule C (mana whenua) shall be avoided.*

If the site cannot be avoided, more than minor adverse effects on the significant mana whenua values must be evaluated through a cultural impact assessment undertaken by the relevant iwi authority or iwi authorities. The adverse effects of activities shall be managed in accordance with tikanga and kaupapa Māori as recommended in the cultural impact assessment by:

- (a) avoiding more than minor adverse effects, and*
- (b) where more than minor adverse effects cannot be avoided, remedying them, and*
- (c) where more than minor adverse effects cannot be remedied, mitigating them, and*
- (d) receiving written consent of the iwi authority.*

Where more than minor adverse effects on significant mana whenua values identified in Schedule C (mana whenua) cannot be avoided, remedied or mitigated, the activity is inappropriate. Offsetting of effects in sites with significant mana whenua values is inappropriate.

162. Although not coded in terms of the summary of submissions, the WWL submission expressed concern that the Policy may conflict between sites with significant mana whenua values, and the recognition and protection of regionally significant three waters infrastructure. The submission noted that "avoidance" is a very strong directive, and may preclude any activity in areas with significant mana whenua values. Given the recent Supreme Court decision on King Salmon²⁴, I would agree that "avoid" as a policy directive needs to be very carefully used, and only in those cases

²⁴ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] NZLR 593.

where it is appropriate, having given considerable thought to the consequences of the use of the word. I note too that in the instance of Policy P45, the policy direction is to avoid the **activity**, not just the **adverse effects** of that activity.

163. The WWL submission sought the effect of this policy be re-examined in terms of existing activities, especially those of three waters infrastructure, where ongoing maintenance, operation and upgrade is provided for and anticipated for the community's wellbeing and health and safety.
164. After scrutinising Policy P45, I do consider that the Policy has an internal conflict, particularly the first paragraph. The first paragraph requires activities in sites listed in Schedule C to be **avoided** [emphasis added]. But then goes on to develop a tiered approach of avoid, remedy and mitigate adverse effects. I acknowledge that a site can always be avoided, but this comes at a cost. As an alternative, I would support reflection of best practicable option in this policy. I realise this may only be an option for regionally significant infrastructure however.
165. I consider the Policy could be improved for clarity by deleting the first paragraph, as the Policy goes on to state (third paragraph) that where more than minor adverse effects on significant mana whenua values cannot be avoided, remedied or mitigated, the activity is inappropriate. This position conflicts with other Policies such as Policy P12(b) which requires regard be given to the location of existing infrastructure and structures for regionally significant infrastructure, and Policy P13 which considers the use, operation, maintenance, and upgrade of existing regionally significant infrastructure as beneficial and generally appropriate.
166. I note too that the WWL submission expressed concern with Clause d) and the role of iwi in implementation of this Policy. Whilst it is important that the Council and iwi work together as Treaty partners, iwi are not a regulatory authority and yet it seems that written consent of the iwi authority is required in order not to be classed as "inappropriate" in terms of the last paragraph.

167. The mechanics of the Policy are confusing as drafted. It is not clear whether written consent of the iwi authority is a requirement for each of the Clauses a) – c), or a requirement that stands as an alternative to Clauses a) – c).



CAROLYN WRATT

5 MAY 2017