

BEFORE THE INDEPENDENT HEARING PANEL

IN THE MATTER

of the Resource Management Act 1991
(RMA)

AND

IN THE MATTER

of hearing submissions and further
submissions on the Greater Wellington
Regional Councils Proposed Change 1 to
the Wellington Region Natural Resources
Plan (NRP-PPC1)

AND

IN THE MATTER

of Hearing Stream 3 (HS3) Overview and
General Submissions

SUBMITTER

Winstone Aggregates (Submitter No. **206**,
Further submission No. **008**).

**STATEMENT OF PLANNING EVIDENCE OF CHARLES HORRELL ON BEHALF
OF WINSTONE AGGREGATES.**

DATED: 5 MAY 2025

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1. INTRODUCTION

- 1.1. My name is Charles Price Horrell. I am an Associate Principal Planner at Boffa Miskell Limited, an environmental consultancy that specialises in planning, landscape planning architecture and ecology.
- 1.2. I hold the qualifications of a Master of Resource and Environmental Planning (First Class Honours) from Massey University and a Bachelor of Applied Science from the University of Otago. I am a Full Member of the New Zealand Planning Institute.
- 1.3. I have 10 years' experience in planning and resource management, working for both a local authority and a consultancy. I previously worked as a senior consents planner at Otago Regional Council, processing a wide range of regional resource consent applications, including large scale quarrying and mining activities. Since January 2020, I have been employed by Boffa Miskell as a planner in Wellington office. I have worked on various projects involving resource consents, notices of requirement, and plan change processes for various clients, including both government and private entities. My focus has continued to be on regional planning, both in the policy field as well as consenting.
- 1.4. Most recently, I have assisted Winstone Aggregates (**Winstone**) in the preparation of the submissions and further submissions on the Greater Wellington Regional Council (**GWRC**), Proposed Plan Change 1 to the Natural Resources Plan (**PPC1**).

2. CODE OF CONDUCT

- 2.1. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 and have complied with it when preparing this report. Other than where 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.

3. CONTEXT

- 3.1. I refer to the Hearing Statement provided by Mr. Philip Heffernan on behalf of Winstone Aggregates (**Winstone**) during Hearing Stream 1¹ for relevant background to Winstone's operation in Wellington and its general interest in PPC1.

¹ <https://www.gw.govt.nz/assets/Plans-policies-bylaws/PNRP/Hearing-Documents/HS1/Submitter/S206-Winstone-Aggregates-Statement.pdf>

3.2. As a high-level summary, Winstone operate the Belmont Quarry which is a key supplier of aggregates to the Wellington region. The quarry is located within the Te Whanganui a Tara Whaitua. Winstone generally supports PPC1 and its intent of identifying the long-term visions and Target Attribute States (**TAS**) for the Te Awarua-Porirua Whaitua and Whaitua Te Whanganui-a-Tara. However, Winstone has concern that PPC1 may not provide for a balanced approach in giving effect to the National Policy Statement for Freshwater Management and may unintentionally hinder current and future quarrying activities within the Whaitua. Winstone's key concerns raised through its original and further submission include:

- The broad application of Freshwater Planning Instruments (**FPIs**), limiting appeal rights on provisions not directly related to freshwater management.
- Whether the target attribute states will be reasonably achievable within the timeframes set.
- Overly restrictive policy and rule framework relating to earthworks and stormwater discharges with no recognition of quarrying activities and their associated regional benefits.
- Lack of Section 32 evaluation, including proportionate cost / benefit analysis, particularly regarding the economic cost/ impact on the quarrying / aggregate industry of the proposed rule framework.

4. SCOPE OF EVIDENCE

4.1. My statement of evidence is principally focused on the relevant submission points made by Winstone Aggregates (**Winstone**) that have been addressed in the following Section 42A Hearing Reports for Hearing Stream 3 (**HS3**) of PPC1:

- Rural Land Use Report, (prepared by Mr Gerard Willis), dated 15 April 2025;
- Forestry and Vegetation Clearance Report, (prepared by Ms Shannon Watson), dated 15 April 2025; and
- Earthworks Report, (prepared by Ms Alisha Vivian), dated 15 April 2025.

4.2. I have outlined my response to matters raised in those Section 42A reports relevant to Winstone's submission. Where I have not made specific comment on a matter addressed in the Section 42A report on a Winstone submission point, it can be taken that I have no further comment at this time.

4.3. Throughout my evidence, I have provided discussion and, (where appropriate), provided suggestions on how the provisions addressed in my evidence might be amended in line with the relief sought by Winstone.

5. ALLOCATION OF PROVISIONS TO FPP

5.1. In its original submission, Winstone raised concern generally over the use of the Freshwater Planning Process (**FPP**) for provisions throughout PPC1 where freshwater may only be a peripheral issue. I note that Winstone's legal counsel has provided further commentary on this submission point, including a summary of the precedent set in applying the FPP through *High Court in Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Inc*² in legal submissions filed for Hearing Stream 1.³ I set that out here in the following paragraph, and adopt that approach to inform my planning assessment of the correct allocation of provisions to the FPI or Part 1 Schedule 1 instrument.

5.2. The scope of what can lawfully be included in a FPI was addressed by the High Court in *Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Inc*.⁴ The Court made the following observations as to what amounts to an FPI and is able to proceed through the FPP:

- Parts of a regional policy statement will qualify to be part of a FPI if they directly relate to the maintenance or enhancement of the quality or quantity of freshwater.⁵
- Part of a regional policy statement may relate to freshwater through giving effect to the NPS-FM, or by otherwise relating to freshwater.
- The scope of a FPI is narrower than what is included in the NPS-FM. Not all parts of the NPS-FM relate directly to freshwater quality or quantity, and therefore assessment is needed of whether provisions in a regional policy statement relate to freshwater through the way they give effect to the NPS-FM.⁶
- Other provisions that do not give effect to the NPS-FM may relate to freshwater in the required manner to qualify for inclusion in the FPI, by relating directly to matters

² *Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Inc* [2022] NZHC 1777, [2022] NZRMA 565.

³ <https://www.gw.govt.nz/assets/Plans-policies-by-laws/PNRP/Hearing-Documents/HS1/Submitter/S206-Winstone-Aggregates-Legal-Submission.pdf>

⁴ *Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Inc* [2022] NZHC 1777, [2022] NZRMA 565.

⁵ At [192].

⁶ At [201].

that impact on the quality and quantity of freshwater, including groundwater, lakes, rivers and wetlands.⁷

- Parts of a regional policy statement cannot be included within a FPI simply because of a connection to freshwater through the concepts of Te Mana o te Wai, ki uta ki tai or the integrated management of natural and physical resources.⁸
- A provision that is concerned with sea water cannot be considered as related to freshwater or included in a FPI.⁹
- The starting point is that all provisions in a proposed RPS should be subject to the normal P1S1 process.¹⁰

5.3. The reporting officers (Mr Willis, Ms Watson and Ms Vivian) have each considered Winstone's submission point and the categorisation of provisions to the FPP in Section 3.2 of their respective Section 42A Hearing Reports. All reporting officers agree with the categorization proposed through PPC1 and have recommended no changes. I note that Ms Vivian has suggested that if the changes to Rules WH.R23 and P.R22 she has recommended be accepted, that those rules should be consequentially re-allocated to be subject to a Part 1 Schedule 1 (**P1S1**) process.

5.4. I generally agree with the allocation of provisions outlined by the reporting officers. I also agree with Ms Vivian that changes recommended to WH.R23 and P.R22 would mean those rules do not meet the tests for allocation as FPP. Specifically, the changes she proposes that would result in the provisions applying to seawater.

5.5. However, I disagree with the allocation of the following provisions relating to highest erosion risk land to FPP :

- Definition of '*Highest erosion risk land (woody vegetation)*;
- Rules WH.R17 and P.R16 – the permitted activity rule for *vegetation clearance on highest erosion risk land (woody vegetation)*;
- Rules WH.R18 and P.R17 – the controlled activity rule for *vegetation clearance on highest erosion risk land (woody vegetation)*; and

⁷ At [202].

⁸ At [206].

⁹ At [202].

¹⁰ At [203].

- Rules WH.R19 and P.R18: Discretionary activity rule for *vegetation clearance on highest erosion risk land (woody vegetation)*.

5.6. Ms Watson has assessed these provisions as being subject to the FPP and provides the following reasons in Appendix 3 of the Section 42a Report¹¹:

“These policies, rules, method and supporting definitions, schedules and maps focus on the management of rural land use activities, forestry, and vegetation clearance. These provisions seek to manage the use of land to achieve freshwater outcomes. They relate to objectives that give effect to the NPS-FM. [derived from section 32 assessment]”

I agree with the section 32 assessment that these provisions relate to freshwater and should be part of the FPP. In my opinion the primary focus of these provisions is to manage land use activities to protect freshwater to give effect to the NPSFM. Therefore, I consider they should form part of the FPI, consistent with Section 80A(2)(d)”.

5.7. I acknowledge that the definitions and rules generally associate with the direction provided through Policy WH.P28 and P.P26 which seek to reduce sediment discharges from forestry. Taking a very broad view, the full package of provisions could be captured by FPP as a means of achieving this. However, in my opinion that there has not been sufficient consideration given to each provision as it actually relates to the FPP. For completeness, I do not question the allocation of WH.P28 and P.P26 as being subject to the FPP.

5.8. In my opinion, the provisions I have mentioned above do not meet the tests for being subject to FPP for the following reasons:

- The rules relating to woody vegetation clearance apply broadly to *all* land use activities, not solely to plantation forestry. Accordingly, there is no direct or exclusive connection between these rules and the specific directions set out in WH.P28 and P.P26.
- The provisions are not directly associated with maintaining or enhancing water quality or quantity. While the rules have an interface with water quality through potential sediment discharges, the rules relate to the use of land (e.g. Section 9 of the RMA) and are principally focused on soil conservation. As Ms Watson has noted in Paragraph 79 of her Section 42A report, the vegetation clearance rules are related to “soil erosion, stability and the soil-water interface (impacts on water

¹¹ <https://www.gw.govt.nz/assets/Plans-policies-by-laws/PNRP/Hearing-Documents/HS3/FVC/HS3-S42A-Forestry-and-vegetation-clearance-Appendix-3-Assessment-of-Freshwater-Planning-Instrument-provisions.pdf>

quality)”).

- There is not clear evidence to suggest that the rules are required to give effect to the NPS-FM. While there is an indirect correlation with meeting TAS, as noted, the primary intent and function of the provisions would appear to be in managing soil conservation, rather than directly implementing freshwater objectives. I note that both Dr Greer and Ms Watson have indicated there is no scientific evidence that links the PC1 rules (including WH.R18 and P.R17) as notified to the achievability of the visual clarity TAS or environmental outcomes set out in the objectives of PC1¹².

5.9. For the reasons set out above, I disagree and consider that these provisions should be reallocated to the regular Schedule 1, Plan Change process.

5.10. Notwithstanding the above, I note that Ms Watson has recommended¹³ that the rules¹⁴ and associated definition of highest erosion prone land (woody vegetation) be reverted back to the operative definition of ‘erosion prone land’ using the same language/approach to the rules as the operative NRP Rules R104 - R107. With those changes recommended, I note that as a consequence of her recommendation, the rules would automatically become coastal provisions, because they relate to any associated discharge to water (including seawater). Further to this, I note that the existing R104 – R107 are currently identified as coastal provisions in the NRP. As the rules would relate to seawater, they cannot be considered subject to FPP.

5.11. Overall, I consider that the provisions outlined in Paragraph 5.5 as proposed should be reallocated to be subject to the P1S1 process. At the least, I consider that should the Panel accept the changes proposed by Ms Watson, that they will need to, as a consequence, reallocate those provisions to a P1S1 process.

6. DEFINITIONS

“Earthworks”

6.1. Winstone its original submission¹⁵ sought changes to the definition of ‘*earthworks*’ to allow for the full list of exemptions that are currently provided for in the operative definition, and

¹² Paragraph 114 of the Section 42A Report and Paragraph 39 of Dr Greer’s Statement of Evidence.

¹³ Paragraphs 117 – 118, 128-129, and 149-150.

¹⁴ Rules WH.R17, WH.R18, WH.R19, P.R16, P.R17 and P.R18.

¹⁵ Submission point [S206.023].

to correct the list to ensure activities are disjunctive, rather than conjunctive (e.g. use of an 'or' rather than 'and').

- 6.2. Ms Vivian rejected the submission point¹⁶ however, has recommended an additional permitted activity rule WH.R23A to provide for those exemptions. While I remain of the view that the proposed amendments to the definition would be a more effective and efficient method of providing for those activities, I consider that the additional rule satisfies Winstone's concerns. I do however note that the rule as drafted continues to imply a conjunctive list of activities with the use of 'and'. I recommend that either: the reference is replaced with an 'or' to ensure it is disjunctive; or there is reference to "any one or more of the following" in the chapeau. I have shown suggested changes based on the former option below (changes shown in red):

Earthworks and the associated discharge of sediment and/or flocculant into a surface water body or coastal water or onto or into land where it may enter a surface water body or coastal water, including via a stormwater network, associated with:

- (a) thrusting, boring, trenching or mole ploughing associated with cable or pipe laying and maintenance, ~~and~~ or
- (b) the construction, repair, upgrade or maintenance of:
 - (i) pipelines, ~~and~~ or
 - (ii) electricity lines and their support structures, including the National Grid, ~~and~~ or
 - (iii) telecommunication structures or lines, ~~and~~ or
 - (iv) radio communication structures, ~~and~~ or
 - (v) firebreaks or fence lines, ~~and~~ or
- (c) repair or maintenance of existing roads and tracks, and airfield runways, taxiways, and parking aprons for aircraft;

is a permitted activity provided the following conditions are met:

- (d) the earthworks shall not occur within 5m of a surface water body or the coastal marine area, and
- (e) soil or debris from earthworks is not placed where it can enter a surface water body or the coastal marine area, including via a stormwater network, and
- (f) the area of earthworks must be stabilised within six months after completion of the earthworks, and
- (g) there is no discharge of sediment from earthworks and/or flocculant into a surface water body, the coastal marine area, or onto land that may enter a surface water body or the coastal marine area, including via a stormwater network, and erosion and sediment control measures shall be used to prevent a discharge of sediment where a preferential flow path connects with a surface water body or the coastal marine area, including via a stormwater network.

“Significant Mineral Resources”

¹⁶ Paragraphs 96 – 98.

- 6.3. Winstone had sought¹⁷ the inclusion of a definition for ‘significant mineral resources’ which reflects the same definition included in the Wellington Regional Policy Statement. This definition was sought alongside an additional rule framework for quarrying activities as it relates to stormwater discharges and impervious surfaces.¹⁸
- 6.4. While not specifically mentioned in Ms Vivian’s S42A Hearing Report, Appendix 5 of the Report indicates that the submission point seeking this definition is rejected. It is unclear why the submission point has been rejected, given it is not addressed in the report and no reasons have been provided. I note that this submission point may be best considered as a collective with the other associated submission points. As I understand, those submission points will be considered during Hearing Stream 4 (Stormwater).

7. RURAL LAND USE TOPIC

Policies WH.P25 and P.P24 “Managing rural land use change”

- 7.1. Winstone sought clarification over the use of ‘rural land use’ in Policies WH.P25 and P.P24. Based on the direction, it was anticipated that those policies were intended to capture agricultural land uses, and not other rural land uses which may encompass quarrying activities. Winstone has sought a change to the reference to rural land uses in the chapeau to ‘primary production’.
- 7.2. Mr Willis has clarified that the policies are not intended to capture other rural land uses such as quarrying activities and has recommended changes throughout the policies to replace ‘rural land use’ with ‘primary production land use’. While I acknowledge that this does directly respond to Winstone’s relief, I note that in the context of other references to primary production (other than the chapeau), this term could still inadvertently capture quarrying activities. While ‘primary production’ is not a defined term in the NRP, it is defined in the National Planning Standards and does include reference to quarries (emphasis added):

primary production means:

(a) any aquaculture, agricultural, pastoral, horticultural, mining, quarrying or forestry activities; and

(b) includes initial processing, as an ancillary activity, of commodities that result from the listed activities in a);

(c) includes any land and buildings used for the production of the commodities

¹⁷ [S206.004]

¹⁸ Definition is directly associated with the inclusion of policies and rules sought in [S206.008]; [S206.009]; [S206.010]; [S206.011]; [S206.012]; and [S206.013]

from a) and used for the initial processing of the commodities in b); but

(d) excludes further processing of those commodities into a different product.

- 7.3. To avoid any misinterpretation within the policy, I suggest that the reference is updated to be 'land-based primary production'. This term is used in the National Policy Statement for Highly Productive Land. I have shown its associated definition below.

***land-based primary production** means production, from agricultural, pastoral, horticultural, or forestry activities, that is reliant on the soil resource of the land.*

- 7.4. I have shown the proposed changes sought to Policy WH.P25 and P.P24 below (suggested additions in **red**).

Managing **land based primary production land use change**

Managing **land based** primary production land use change Manage the actual and potential adverse effects of changing land use from low to higher intensity rural primary production land use by:

- (a) controlling **land based** primary production land use change that is greater than 45ha and associated diffuse discharge where there is a risk the diffuse discharges of nitrogen, phosphorus, sediment or Escherichia coli may increase, and
- (b) only granting resource consent for such a change in land use when, in accordance with Policy P75, the diffuse discharge of nitrogen, phosphorus, sediment and Escherichia coli of the more intensive activity is demonstrated to be the same or less than the activities being replaced.

- 7.5. It is appreciated that this observation was overlooked at the time the submission was prepared and differs from the specific changes suggested in the relief sought. However, it continues to align with the intent of the submission point e.g. to clarify quarrying activities are not anticipated, and thus I consider it is within the scope of the original submission point.

8. FORESTRY AND VEGETATION CLEARANCE TOPIC

Erosion Risk Land

- 8.1. Winstone raised concern over the approach taken to managing erosion risk land and in particular the provisions relating to 'Highest erosion risk land (wood vegetation)'. The concerns raised by Winstone included:

- The definitions of 'highest erosion risk land (pasture)', 'Highest erosion risk land (woody vegetation)', and 'Highest erosion risk land (plantation forestry)' have not been robustly mapped and identified¹⁹. Winstone sought that the definitions are deleted and replaced with the existing 'erosion prone land' definition from the Operative NRP.

¹⁹ Submission points [S206.024]; [S206.026]; and [S206.027].

- Rules WH.R17 – R19 and P.R16 – R18 as a framework for managing vegetation clearance on erosion prone land²⁰. Concerns raised over inaccuracy with the associated definitions / mapping and the limitations this would place on reasonable development. Winstone also considered that there has been insufficient consideration of the ‘status quo’ through the Section 32 evaluation with the observation that it is more fit for purpose and has not had any apparent implementation issues. Winstone sought that the proposed rules are deleted, and the operative framework is retained.

8.2. Ms Watson has recommended various changes to the provisions relating to erosion risk land – but generally speaking has reverted the rules framework to the approach taken in the operative NRP. This will result in the definitions being deleted and replaced with the Operative definition of ‘erosion prone land’, and the rule framework replaced to reflect the existing rule framework from the Operative NRP (Rules R104 – R107).

8.3. I agree with Ms Watson’s recommendations and consider that the recommended amendments are more efficient and effective in meeting the objectives. I agree with Ms Watson’s Section 32AA evaluation and to build on this, I note the following:

- There has been limited implementation issues associated with the ‘status quo’ approach to erosion prone land.
- There is no clear or compelling evidence to demonstrate that imposing further restrictions on vegetation clearance on erosion-prone land would result in measurable improvements to water quality outcomes in line with the TAS. Retaining the PC1 approach would fail to meet Section 32(1)(c) of the Act.
- On balance, the benefits of retaining the status quo provisions outweigh the potential costs associated with maintaining the current framework in accordance with Section 32(2)(b) of the Act.
- There would be a risk of acting on insufficient and incomplete information to continue with the proposed rule framework in PC1 in accordance with Section 32(2)(c) of the Act. Specifically, the mapping that supported the definition and rules was based on high level assumptions and contained various inaccuracies – as outlined in Mr Nation’s evidence²¹.

²⁰ Submission points [S206.056]; [S206.057]; [S206.058]; [S206.084]; [S206.085]; and [S206.086].

²¹ Paragraphs 24-30

8.4. Overall, the changes are supported and satisfy Winstone's relief.

9. EARTHWORKS TOPIC

Policy WH.P29 and P.P27 "Management of earthworks"

9.1. Winstone sought various changes to proposed policies WH.P29 and P.P27 as shown below²².

The ~~risk~~ adverse effects of sediment discharges from earthworks shall be managed by:

- (a) ~~requiring retention of soil and sediment on the land undertaking earthworks in accordance with~~ using good management practices for erosion and sediment control measures that are appropriate to the scale and nature of the activity, and in general accordance with the GWRC Erosion and Sediment Control Guideline for the Wellington Region(2021), ~~for the duration of the land disturbance~~, and
- (b) limiting where practicable, the amount of land disturbed at any time, and
- (c) designing and implementing earthworks with knowledge of the existing environmental site constraints, specific engineering requirements and implementation of controls to limit the discharge of sediment to receiving environments, and
- (d) requiring erosion and sediment control measures to be installed prior to, and during earthworks and ensuring those controls remain in place and are maintained until the land is stabilised against erosion.

9.2. Ms Vivian has considered Winstone's submission and has accepted in part the relief sought. Specifically, Ms Vivian has recommended changes to replace 'risk' with 'adverse effects' and has clarified clause (a) only relates to retention of 'uncontrolled' soil and sediment. I am satisfied that those changes resolve Winstone's concerns relating to the chapeau and clause (a) of the policy.

9.3. With respect to clause (b), Ms Vivian has not provided specific comment on the additional wording sought. While the proposed amendment would further acknowledge the practical realities associated with minimising land disturbance, I accept that the use of the term "limiting" already provides a degree of flexibility and implicitly recognises these practicalities.

9.4. I note that Ms Vivian has recommended the addition of clause (e) as shown below.

(e) minimising works required during the close down period (from 1st June to 30th September each year)

9.5. It is understood that this change has been made consequentially following the recommended deletion of Policies WH.P31 and P.P29 relating to 'winter shutdown'.

²² Submission points [S206.046]; and [S206.074].

Winstone opposed the requirement for winter shutdown throughout the various provisions in PC1²³ noting that they fail to account for activities requiring year-round earthworks, such as quarrying activities. Ms Vivian acknowledged those concerns which informed her recommendation to delete the associated policy.²⁴ While her recommendation to delete the winter shutdown policy is supported (this is further discussed elsewhere), I note that the inclusion of clause (e) to Policies WH.P29 and P.P27 continues to impose impracticalities for quarrying activities that cannot cease operations during winter months. I acknowledge that the verb ‘minimise’ is less onerous than ‘avoid’; however, would still require quarry operators to demonstrate earthworks are reduced to the smallest degree possible, which simply is not possible at a quarry as these are needed to access the aggregate resource below. On the basis that the winter shutdown directions are not intended to capture operations such as quarrying activities, it is sought that clause (e) is amended as shown below to exempt quarrying activities (additions in red).

(e) minimising works required during the close down period (from 1st June to 30th September each year), **except where the earthworks are required for quarrying activities.**

Policies WH.P30 and P.P28 “Discharge standard for earthworks”

9.6. Winstone opposed policies²⁵ WH.P30 and P.P28 due to the prescriptive nature of the policies, noting that policies as drafted set a specific outcome that must be achieved rather than policy directions. Notwithstanding those concerns, Winstone sought changes to the policy as shown below.

The discharge of sediment from earthworks over an area greater than 3,000m² shall:

(a) not exceed 100g/m³ at the point of discharge where the discharge is to a surface water body, or coastal water, **stormwater network or to an artificial watercourse**, except that when the discharge is to a river with background total suspended solids that exceed 100g/m³, the discharge shall not, after the zone of reasonable mixing, decrease the visual clarity in the receiving water by more than:

(i) 20% in River class 1 and in any river identified as having high macroinvertebrate community health in Schedule F1 (rivers/lakes), or

(ii) 30% in any other river, and

(b) be managed using good management practices in accordance with the GWRC Erosion and Sediment Control Guidelines for the Wellington Region (2021), to achieve the discharge standard in (a), and

(c) **where required**, be monitored by a suitably qualified **or trained person**, and the results reported to the Wellington Regional Council.

9.7. Ms Vivian has considered Winstone’s submission and has agreed that the reference in

²³ Submission points [S206.048]; [S206.060]; [S206.061] [S206.076]; [S206.088]; and [S206.089]

²⁴ Paragraph 159 of the Section 42A Report for Earthworks

²⁵ Submission points [S206.047]; and [S206.075].

clause (a) to discharges into a 'stormwater network' does accord with the RMA and Sections 2²⁶ and 15. Ms Vivian has subsequently recommended changes to clause (a) to clarify that it would be any discharge 'via' a stormwater network. I agree with this change and consider it responds to Winstone's relief.

- 9.8. I note that Ms Vivian has not commented on Winstone's relief sought to clause (c). I consider that those changes remain relevant and note that in the context of the direction of the Policy, 'suitably trained' would be much more important than the qualifications of the individual. I seek that the change to clause (c) is made as per Winstone's original relief sought.
- 9.9. With respect to Winstone's concerns regarding the prescriptive nature of the policy, I note that Ms Vivian has not addressed this matter in her evidence. In my view, these concerns remain valid. The current drafting of the policy does not align with recognised best practice²⁷. Specifically, it reads more like a consent condition, setting out mandatory technical requirements — such as quantitative thresholds (e.g. 170 NTU) — rather than providing strategic direction for managing the effects of sediment discharges at a Regional Plan level.
- 9.10. Policies should guide decision-making by setting clear expectations for how adverse effects are to be avoided, remedied, or mitigated, without prescribing specific metrics or implementation details that are better suited to rules or consent conditions. As a minimum, the policy should be revised to use more appropriate policy language in the chapeau, consistent with the role of a policy under the RMA. To that end, I recommend the following amendment to the policy chapeau to better reflect its intended policy function:

~~The discharge of sediment from earthworks over an area greater than 3,000m² shall Minimise the adverse effects associated with discharges of sediment from bulk earthworks to water by implementing erosion and sediment controls that are designed to achieve the following:.....~~

Policies WH.P31 and P.P29 “Winter shut down of earthworks”

- 9.11. Winstone opposed Policies WH.P31 and P.P29 and sought that they be deleted in their entirety. As indicated previously, Winstone opposed the direction requiring a mandatory shut down period which failed to account for activities requiring year-round earthworks.

²⁶ Definition of water

²⁷ For instance, best practice principles from Quality Planning: [Writing Issues, Objectives and Policies | Quality Planning](#)

- 9.12. Ms Vivian has acknowledged Winstone’s concerns and has recommended the deletion of Policies WH.P31 and P.P29. This outcome addresses Winstone’s submission and is supported.

Rules WH.R23 and P.R22 “Earthworks – permitted activity”

- 9.13. Winstone sought changes to Rules WH.R23 and P.R22 as shown below²⁸. The changes sought ensure that the rule relates to a regional function by referencing any associated potential discharge.

Earthworks and the associated discharge of sediment and/or flocculant into a surface water body or coastal water, or onto or into land where it may enter a surface waterbody or coastal water, including from a stormwater network, is a permitted activity, provided the following conditions are met:

- (a) the earthworks are to implement an action in the erosion risk treatment plan for the farm, or
- (b) the earthworks are to implement an action in the farm environment plan for the farm, ~~and or~~
- (c) the area of earthworks does not exceed 3,000m² per property in any consecutive 12-month period, and
- (d) the earthworks shall not occur within 5m of a surface water body or the coastal marine area, except for earthworks undertaken in association with Rules R122, R124, R130, R131, R134, R135, and R137, and
- (e) soil or debris from earthworks is not placed where it can enter a surface water body or the coastal marine area, including via a stormwater network, and
- (f) the area of earthworks must be stabilised within six months after completion of the earthworks, and
- ~~(g) there is no discharge of sediment from earthworks and/or flocculant into a surface water body, the coastal marine area, or onto land that may enter a surface water body or the coastal marine area, including via a stormwater network, and~~
- (h) erosion and sediment control measures shall be used to prevent a discharge of sediment where a preferential flow path connects with a surface water body or the coastal marine area, including via a stormwater network.

- 9.14. Ms Vivian agrees with Winstone submission points and has recommended amending the rules in line with the relief sought. I confirm that this change achieves Winstone’s relief and is supported.

Rule WH.R24 and P.R23 “Earthworks - restricted discretionary activity”

- 9.15. Winstone opposed Rules WH.R24 and P.R23 insofar as it does not provide for activities requiring year-round earthworks. Winstone sought changes to the rule as shown below to remove the reference to the winter shut down period requirement.

Earthworks and the associated discharge of sediment and/or flocculant into a surface water body or coastal water, or onto or into land where it may enter a surface water body or coastal water, including via a stormwater network, that does not comply with Rule WH.R23 is a restricted discretionary activity, provided the following conditions are met:

- (a) the concentration of total suspended solids in the discharge from the earthworks shall not exceed 100g/m³, except that, if at the time of the discharge the concentration of total suspended solids in the

²⁸ Submission points [S206.059] and [S206.087].

receiving water at or about the point of discharge exceeds 100g/m³, the discharge shall not, after the zone of reasonable mixing, decrease the visual clarity in the receiving water by more than:

(i) 20% in River class 1 and in any river identified as having high macroinvertebrate community health in Schedule F1 (rivers/lakes), or

(ii) 30% in any other river, and

~~(b) earthworks shall not occur between 1st June and 30th September in any year.~~

Matters for discretion:

....

~~8. Preparation required for the close-down period (from 1st June to 30th September each year) and any maintenance activities required during this period~~

...

- 9.16. Ms Vivian has not directly addressed Winstone's relief in relation to this specific rule. However, she has interpreted Winstone's broader concern as seeking provision for quarrying earthworks as a discretionary activity,²⁹ which is addressed through recommended changes to Rules WH.R25 and P.R23. In addition, Ms Vivian has recommended an amendment to clause (b) of the rule, adding a qualifier that the winter shutdown only applies where the relevant Target Attribute State (**TAS**) for suspended fine sediment is not met. The revised clause reads:

(b) earthworks shall not occur between 1st June and 30th September in any year where works are located within a Part Freshwater Management Unit where the target attribute state for suspended fine sediment in Table 8.4 is not met.

- 9.17. While I acknowledge this amendment better aligns with the objectives and policies of PC1, I consider that it does not fully address Winstone's concern. Specifically, the amended rule continues to constrain quarrying, which does require year-round earthworks to operate, this is critical to ensuring a security of supply and for there to be sufficient aggregate available for construction and infrastructure projects within the Region. Furthermore, there has been no assessment as to the impact of these provisions on quarrying activities. I note Mr. Phillip Heffernan, Winstone's project manager provided evidence in Hearing Stream 1 to the NRP-PC1 about the impact of the proposed winter works shut down period on quarrying:

*"For example, the proposed seasonal shutdown (winter works restriction) for earthworks could severely impact operations like quarrying during wetter months. Quarrying is essentially long term earthworks. It would have a horrific impact on the security of aggregate supply, cost of aggregate products and provision of building projects in the Region."*³⁰

"The section 32 Report should include a more thorough assessment of the

²⁹ Paragraphs 159 and 161 of Section 42A Report for Earthworks.

³⁰ Paragraph 8.5 of Phillip Heffernan's Evidence in Hearing Stream 1: <https://www.gw.govt.nz/assets/Plans-policies-bylaws/PNRP/Hearing-Documents/HS1/Submitter/S206-Winstone-Aggregates-Statement.pdf>

*economic impacts and consider practical solutions that allow for sustainable quarrying activities*³¹

- 9.18. While I understand that Ms Vivian's recommended changes to WH.R25 and P.R23 are intended to satisfy Winstone's relief³², I do not consider it responds to Winstone's submission points on the above rule and note that the rule framework continues to infer that any quarrying activities are not otherwise provided for e.g. falls to the most onerous activity status. The discretionary status poses less of a consenting risk, however, does not provide any greater certainty to Winstone that quarrying activities will be differentiated from any other earthworks undertaken during winter months. In addition, I note that as a discretionary status, there is full discretion to consider any relevant matters to the application. In my experience, this often results in a broader range of issues that must be addressed, which can add time, cost, and uncertainty for the applicant.
- 9.19. In my opinion, further changes are required to allow for quarrying activities outside of the winter earthworks shut down period for the following reasons:
- As noted previously, it is understood that the 'intent' of the winter earthworks shutdown period was not to capture activities such as quarrying, which must operate year-round - as opposed to temporary earthworks associated with construction. This intent is not reflected in the current conditions.
 - There has not been sufficient evidence to suggest that the winter earthworks shut down would better achieve the objectives of PC1, or directly correlates to an increase in sediment discharges. This is acknowledged by the Reporting Officer³³ and their relevant experts.
 - There has not been sufficient evidence provided to support the inclusion of the condition as it relates to quarrying activities, including supporting Section 32AA evaluation of the costs. Specifically, I note that there is no evidence to suggest that quarrying activities undertaken in the winter months increase the risk or effect of discharges of sediment.
 - The matters of discretion allow for broad consideration of adverse effects from earthworks, including any additional potential risks associated with the ongoing nature of earthworks required by quarrying activities. The activity status also allows

³¹ Paragraph 8.9 of Phillip Heffernan's Evidence.

³² Indicated at Paragraph 159 of the Section 42A Report.

³³ Paragraph 164 of the Section 42A Report.

the Consent Authority an ability to decline resource consent in accordance with Section 104C of the RMA.

- Allowing for quarrying activities as a restricted discretionary status reflects a 'balanced approach' for quarrying activities that is more aligned with the higher order direction, including Policy 60 of the Wellington Regional Policy Statement³⁴.
- Relevant case law supports providing for the least restrictive rule framework to achieve the objectives³⁵. I consider that the proposed approach is inconsistent by not allowing for quarrying activities as a restricted discretionary activity, despite the activity being undertaken in a manner that meets the objectives and policies of PC1.

9.20. For completeness, I note that Winstone do not question Condition (a) of the restricted discretionary rule which set out a bottom line for suspended sediment. It is acknowledged that earthworks from quarrying activities in some instances may not be able to achieve this standard and which case would fall to the discretionary status. However, as drafted, the rule framework would not provide any opportunity for a less restrictive consenting pathway, despite how efficient and effective sediment controls are in a quarry (including the ability to meet water quality standards).

9.21. To address the relief sought, I recommend that an exemption be added to clause (b) and the corresponding matter of discretion (8), to explicitly provide for quarrying activities that otherwise meet the performance standards. This approach provides more certainty and consistency with the policy framework, including similar changes sought to clause (e) of Policies WH.P29 and P.P27 as previously mentioned. The recommended amendments are shown below (additions in **red**):

Earthworks and the associated discharge of sediment and/or flocculant into a surface water body or coastal water, or onto or into land where it may enter a surface water body or coastal water, including via a stormwater network, that does not comply with Rule WH.R23 is a restricted discretionary activity, provided the following conditions are met:

- (a) the water quality in the discharge from the earthworks shall not exceed 170 Nephelometric Turbidity Units (NTU) except that, where the discharge is to freshwater, if at the time of the discharge water quality in the receiving water at or about the point of discharge exceeds 170 Nephelometric Turbidity Units (NTU), the discharge shall not, after the zone of reasonable mixing, decrease the visual clarity in the receiving water by more than:
 - (i) 20% in River class 1 and in any river identified as having high macroinvertebrate community health in Schedule F1 (rivers/lakes), or

³⁴ Providing particular regard to the social, economic, and environmental benefits from utilising mineral resources.

³⁵ *Tauranga City Council v Bay of Plenty Regional Council* [1999] NZRMA 423; *Christchurch City Council v Simes* [2010] NZHC 2551

(ii) 30% in any other river, and

- (b) earthworks shall not occur between 1st June and 30th September in any year where works are located within a Part Freshwater Management Unit where the target attribute state for suspended fine sediment in Table 8.4 is not met, except where the earthworks are associated with quarrying activities.

Matters for discretion:

....

8. Preparation required for the close-down period (from 1st June to 30th September each year) and any maintenance activities required during this period, except where the earthworks are associated with quarrying activities.

...

Rules WH.R25 and P.R24 “Earthworks – non-complying activity”

- 9.22. Winstone opposed the non-complying status applied to Rules WH.R24 and P.R24³⁶. Winstone raised concern over the onerous activity status that was not sufficiently justified by the Section 32 evaluation.
- 9.23. Ms Vivian has considered Winstone’s submission, along with other similar submissions, and has recommended amending the activity status of Rules WH.R24 and P.R24 to discretionary. This change resolves Winstone’s relief and is supported.

10. CONCLUSION

- 10.1. It is apparent that the Reporting Officer and supporting experts have invested considerable time and energy into meaningfully considering and responding to the submission points. I generally support and endorse the recommendations of the reporting officers and the associated changes to the relevant provisions of Hearing Stream 3. I am particularly supportive of the recommend changes to the highest erosion prone land provisions to return to the Operative NRP approach, and the deletion of the ‘winter shut down period’ in the earthwork’s provisions. Those changes improve the workability of the plan and appropriately respond to submissions. While I am generally supportive, I consider that further changes are necessary to various policies and rules to satisfy Winstone’s relief sought in their submission and make better provision for quarrying activities. I have discussed those changes in the evidence above and have provided recommended changes to the provisions in **Appendix 1**.

³⁶ Submission points [S206.061] and [S206.089].



Charles Horrell authorised to give evidence on behalf of

Winstone Aggregates.

5 May 2025

Appendix 1: Proposed amendments to provisions

NOTE: Mark ups are applied to the s 42A recommended version of PC1. Changes recommended by s 42A reporting officers are shown by:

- Additions underlined; and
- Deletions ~~struck through~~.

Changes sought by Winstone are shown in red by:

- Additions underlined; and
- Deletions ~~struck through~~.

Reallocate the following provisions to P1S1:

- Definition of 'Highest erosion risk land (woody vegetation)';
- Rules WH.R17 and P.R16 – Permitted activity rule for vegetation clearance on highest erosion risk land;
- Rules WH.R18 and P.R17 – Controlled activity rule for vegetation clearance on highest erosion risk land; and
- Rules WH.R19 and P.R18: Discretionary activity rule for vegetation clearance on highest erosion risk land.

Amend WH.R23A:

Earthworks and the associated discharge of sediment and/or flocculant into a surface water body or coastal water or onto or into land where it may enter a surface water body or coastal water, including via a stormwater network, associated with:

- (a) thrusting, boring, trenching or mole ploughing associated with cable or pipe laying and maintenance, ~~and or~~
- (b) the construction, repair, upgrade or maintenance of:
 - (i) pipelines, ~~and or~~
 - (ii) electricity lines and their support structures, including the National Grid, ~~and or~~
 - (iii) telecommunication structures or lines, ~~and or~~
 - (iv) radio communication structures, ~~and or~~
 - (v) firebreaks or fence lines, ~~and or~~
- (c) repair or maintenance of existing roads and tracks, and airfield runways, taxiways, and parking aprons for aircraft;

is a permitted activity provided the following conditions are met:

- (d) the earthworks shall not occur within 5m of a surface water body or the coastal marine area, and

- (e) soil or debris from earthworks is not placed where it can enter a surface water body or the coastal marine area, including via a stormwater network, and
- (f) the area of earthworks must be stabilised within six months after completion of the earthworks, and
- (g) there is no discharge of sediment from earthworks and/or flocculant into a surface water body, the coastal marine area, or onto land that may enter a surface water body or the coastal marine area, including via a stormwater network, and erosion and sediment control measures shall be used to prevent a discharge of sediment where a preferential flow path connects with a surface water body or the coastal marine area, including via a stormwater network.

Amend Policies WH.P25 and P.P24:

Managing ~~rural~~ land based primary production land use change

Managing ~~rural~~ land based primary production land use change Manage the actual and potential adverse effects of changing land use from low to higher intensity rural primary production land use by:

- (a) controlling ~~rural~~ land based primary production land use change that is greater than 45ha and associated diffuse discharge where there is a risk the diffuse discharges of nitrogen, phosphorus, sediment or Escherichia coli may increase, and
- (b) only granting resource consent for such a change in land use when, in accordance with Policy P75, the diffuse discharge of nitrogen, phosphorus, sediment and Escherichia coli of the more intensive activity is demonstrated to be the same or less than the activities being replaced.

Amend Policies WH.P29 and P.P27:

The ~~risk~~ adverse effects of sediment discharges from earthworks shall be managed by:

- (a) requiring retention of uncontrolled soil and sediment on the land using good management practices for erosion and sediment control measures that are appropriate to the scale and nature of the activity, and in accordance with the GWRC Erosion and Sediment Control Guideline for the Wellington Region (2021), for the duration of the land disturbance, and
- (b) limiting the amount of land disturbed at any time, and
- (c) designing and implementing earthworks with knowledge of the existing environmental site constraints, specific engineering requirements and implementation of controls to limit the discharge of sediment to receiving environments, and
- (d) requiring erosion and sediment control measures to be installed prior to, and during earthworks and ensuring those controls remain in place and are maintained until the land is stabilised against erosion, and
- (e) minimising works required during the close down period (from 1st June to 30th September each year), **except where the earthworks are required for quarrying activities.**

Amend Policies WH.P30 and P.P28:

The discharge of sediment from earthworks over an area greater than 3,000m² shall Minimise the adverse effects associated with discharges of sediment from bulk earthworks to water by implementing erosion and sediment controls that are designed to achieve the following:

- (a) not exceed ~~100g/m³~~ 170 Nephelometric Turbidity Units (NTU) at the point of discharge where the discharge is to a surface water body, coastal water, ~~(including via a stormwater network)~~ or to an artificial watercourse, except that when the discharge is to a river with background total suspended solids that exceed 100g/m³, the discharge shall not, after the zone of reasonable mixing, decrease the visual clarity in the receiving water by more than:
 - (i) 20% in River class 1 and in any river identified as having high macroinvertebrate community health in Schedule F1 (rivers/lakes), or
 - (ii) 30% in any other river, and
- (b) be managed using good management practices in accordance with the GWRC Erosion and Sediment Control Guidelines for the Wellington Region (2021), to achieve the discharge standard in (a), and
- (c) be monitored by a suitably qualified **or trained** person, and the results reported to the Wellington Regional Council.

Amend Rules WH.R24 and P.R23:

Earthworks and the associated discharge of sediment and/or flocculant into a surface water body or coastal water, or onto or into land where it may enter a surface water body or coastal water, including via a stormwater network, that does not comply with Rule WH.R23 is a restricted discretionary activity, provided the following conditions are met:

- (a) the ~~water quality concentration of total suspended solids~~ in the discharge from the earthworks shall not exceed 170 Nephelometric Turbidity Units (NTU) ~~100g/m³~~ except that, where the discharge is to freshwater, if at the time of the discharge ~~the concentration of total suspended solid~~ the water quality in the receiving water at or about the point of discharge exceeds ~~100g/m³~~ 170 Nephelometric Turbidity Units (NTU), the discharge shall not, after the zone of reasonable mixing, decrease the visual clarity in the receiving water by more than:
 - (i) 20% in River class 1 and in any river identified as having high macroinvertebrate community health in Schedule F1 (rivers/lakes), or
 - (ii) 30% in any other river, and
- (b) earthworks shall not occur between 1st June and 30th September in any year where works are located within a Part Freshwater Management Unit where the target attribute state for suspended fine sediment in Table 8.4 is not met, **except where the earthworks are associated with quarrying activities.**

Matters for discretion:

1. The location, area, scale, volume, duration and staging and timing of works
2. The design and suitability of erosion of sediment control measures including consideration of hazard mitigation and the risk of accelerated soil erosion associated the staging of works and progressive stabilisation
3. The placement and treatment of stockpiled materials on the site, including requirements to remove material if it is not to be reused on the site
4. ~~The proportion of un stabilised land in the catchment~~
5. The adequacy and efficiency of stabilisation devices for sediment control
6. Any adverse effects on:
 - (i) groundwater, surface water bodies and their margins, particularly surface water bodies within sites identified in Schedule A (outstanding water bodies), Schedule B (Ngā Taonga Nui a Kiwa), Schedule C (mana whenua), Schedule F (ecosystems and habitats with indigenous biodiversity), schedule H

(contact recreation and Māori customary use) or Schedule I (important trout fishery rivers and spawning waters)

- (ii) group drinking water supplies and community drinking water supplies
 - (iii) mauri, water quality (including water quality in the coastal marine area), aquatic and marine ecosystem health, aquatic and riparian habitat quality, indigenous biodiversity values, mahinga kai and critical life cycle periods for indigenous aquatic species
 - (iv) the natural character of lakes, rivers, natural wetlands and their margins and the coastal environment
 - (v) natural hazards, land stability, soil erosion, sedimentation and flood hazard management including the use of natural buffers
7. Duration of the consent
 8. Preparation required for the close-down period (from 1st June to 30th September each year) and any maintenance activities required during this period, **except where the earthworks are associated with quarrying activities**
 9. Monitoring and reporting requirements