

**BEFORE THE INDEPENDENT HEARING PANEL APPOINTED TO MAKE
RECOMMENDATIONS ON PORIRUA CITY PROPOSED DISTRICT PLAN**

IN THE MATTER of the Resource Management Act 1991 (the
Act)

AND

IN THE MATTER of a hearing by the Porirua City Council on
Proposed District Plan

AND

IN THE MATTER

**STATEMENT OF EVIDENCE OF ALASTAIR GRAHAM
SMALL ON BEHALF OF WELLINGTON REGIONAL
COUNCIL**

10 September 2021

EXECUTIVE SUMMARY

1. The Porirua City Proposed District Plan (**PDP**) does not give effect to the National Policy Statement for Freshwater Management (**NPS-FM**) 2020. The Officers' Report agrees with this conclusion. The NPS-FM 2020 requires that changes are made to district plans "as soon as reasonable practicable" in order to do so.
2. It is unclear whether the urban development anticipated by the PDP will have a negative impact on waterbodies, and how it will "promote positive effects" on freshwater, because this has not been assessed through the section 32 process for the PDP.
3. Where and how urban development occurs has an impact on the environmental quality of the Porirua Harbour and catchments. This is the biggest lever that the PDP has in achieving the strategic objectives, and giving effect to the NPS-FM 2020. However, the requirements for subdivision form and design, and structure planning fall short of this aim.
4. Greater Wellington Regional Council (**GWRC**) supports the inclusion of future urban zones (**FUZ**). The PDP is structured in a way that requires a plan change for development to progress in a FUZ. Effectively the analysis of whether the zone is viable (in terms of meeting water outcomes) is put off to a future plan change. The mere presence of a future urban zone sends a strong message to developers and the community that development will occur in this place. This may or may not be the case. In my view, the PDP should be very clear of this risk, and what might be required to get a plan change over the line.
5. Urban development should only occur in a FUZ if it can do so within any contaminant limits set in the Natural Resources Plan as required by the NPS-FM, and if future discharges from the development can comply with conditions on relevant discharge consents held by Wellington Water Limited (or future three waters entity). Any FUZ will also need to meet the requirements of the National Environmental Standards for Freshwater, particularly wetland protection and reclamation provisions. Structure Plans should consider these matters, as well as being based on the principles of Water Sensitive Urban Design. The Regional Council suggests additions to FUZ-P2 and APP-11.

INTRODUCTION

6. My name is Alastair Graham Smail. I am the Programme Lead for Urban Water Management at the Greater Wellington Regional Council (**GWRC**). I have 35 years' experience in environmental science, policy analysis and planning. Prior to 2010 I was the Group Manager Environmental Policy and Planning at the Auckland Regional Council. After 2010, I was employed in central government working on freshwater reforms including in the secretariat of the Land and Water Forum and preparing the National Policy Statement for Freshwater Management 2014. I was the programme manager for GWRC's Whaitua process for five years, and have been the Programme Lead for Urban Water Management for the last three years. I hold a Master of Science degree in geology from the University of Auckland.

CODE OF CONDUCT

7. I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and that I agree to comply with the code. My evidence in this statement is within my area of expertise. I have not omitted to consider material facts known to me that might alter to detract from the opinions, which I express.

SCOPE

8. My evidence covers the following matters:
- (a) Requirements of the NPS-FM 2020,
 - (b) Response to Proposed Porirua District Plan: Part A – Overarching Report (**the Officers' Report**)

REQUIREMENTS OF NPS-FM 2020

Give effect to NPS-FM 2020

9. The District Plan must give effect to the NPS-FM 2020. As pointed out in the Officers' Report, the NPS-FM is aimed primarily at the functions of Regional Councils. Regional Councils must give full effect to the NPS-FM, by making changes to their Regional Policy Statement (**RPS**) and regional plans, by 2024 at the latest. The District Plan must also give effect to the RPS, and not be inconsistent with regional plans, including provisions relating to the NPS-FM.

10. City Councils can only give effect to higher order documents within their functions as outlined in section 31 of the Resource Management Act 1991 (**RMA**). The NPS-FM 2020 gives particular direction to City Councils. In particular, the District Plan is required to give effect to clause 3.5 (1),(3),and (4), relating to integrated management, which states:

(1) Adopting an integrated approach, ki uta ki tai, as required by Te Mana o te Wai, requires that local authorities must:

(a) recognise the interconnectedness of the whole environment, from the mountains and lakes, down the rivers to hāpua (lagoons), wāhapū (estuaries) and to the sea; and

(b) recognise interactions between freshwater, land, water bodies, ecosystems, and receiving environments; and

(c) manage freshwater, and land use and development, in catchments in an integrated and sustainable way to avoid, remedy, or mitigate adverse effects, including cumulative effects, on the health and well-being of water bodies, freshwater ecosystems, and receiving environments; and

(d) encourage the co-ordination and sequencing of regional or urban growth.

(3) In order to give effect to this National Policy Statement, local authorities that share jurisdiction over a catchment must co-operate in the integrated management of the effects of land use and development on freshwater.

(4) Every territorial authority must include objectives, policies, and methods in its district plan to promote positive effects, and avoid, remedy, or mitigate adverse effects (including cumulative effects), of urban development on the health and well-being of water bodies, freshwater ecosystems, and receiving environments.

11. Sub-clause (1) reminds us all of the integrated nature of land and water management. Sub-clause (3) requires all local authorities to co-operate in the integrated management of the effects of land use and development on freshwater. I take this to mean co-operation in all aspects of planning and implementation, including alignment of District and Regional Plans. Sub-clause (4) directs territorial authorities to:

“...include objectives, policies and methods to promote positive effects, and avoid, remedy or mitigate adverse effects (including cumulative effects) of urban development” (my emphasis). The NPS-FM requires this to be implemented “as soon as reasonably practicable” [clause 4.1(1)].

Role of District Plans in Land and Water Management

12. In my opinion, the key reason that the freshwater and the harbour environments of Porirua have degraded over a long period of time is that urban development (land use change) has occurred within a relatively permissive land use planning regime. In other words, urban development has occurred in places, and in a way, that has had little regard to the impacts on water. This is the fault of both regional and district plans. This is not peculiar to Porirua or to the urban environment (rural land use change has occurred in a similar way). This must not continue, and the NPS-FM requires a significant shift in planning, and in the implementation of plans.
13. In my opinion, the role of the District Plan is twofold in regard to land and water management. Firstly, the District Plan identifies the location and form of urban development. Secondly, the plan provisions must provide clarity to plan users (consent applicants and those requesting private plan changes, submitters, as well as consent officers) that the integrated management of land and water is a key consideration. It is important that the integration of district and regional planning, including resource consenting and considering plan changes, is done in a way that there is clarity for resource users, there is not duplication of effort, and that there are no gaps (the environment is adequately protected). The District Plan must do this in a way that gives effect to clause 3.5 of the NPS-FM 2020.

GWRC's SUBMISSIONS

14. GWRC has made a number of submissions relating to the integrated management of land and water [137.1, 137.2, 137.3, 137.76]. In particular, the Council has submitted that the Proposed District Plan (PDP) does not give effect to the NPS-FM 2020.

RESPONSE TO OFFICERS' REPORT

Giving Effect to the NPS-FM 2020

15. The Officers' Report has recommended that GWRC submissions [137.1, 137.3, 137.76] be accepted in full apart from submission 137.2 which it recommends be rejected.
16. In recommending accepting submission 137.1 and 137.76 the Officers' Report agrees that the PDP does not give effect to the NPS-FM 2020. The Officers' Report states that a future plan change will be required to give effect to the NPS-FM 2020. It is not clear when that might be. The section 32 report provides some insights into what might be involved. It is

unclear, however, what analysis might be undertaken on parts of the PDP that could be inconsistent with the NPS-FM 2020.

17. Paragraph 120 of the section 42A report refers to the section 32 report's conclusion that it gives effect to 3.5(4) of the NPS-FM 2020 through inclusion of strategic objectives NE-O3 and NE-O4. The GWRC submission supports the inclusion of these objectives, but I consider that they will not be able to be achieved without adding or amending objectives, policies and rules in other chapters that control the major factors that will influence the health of the harbour and catchments. The Officers' Report appears to have accepted this submission point [137.76], but I cannot evaluate whether this has been addressed until I see the s42A reports for the Natural Environment, Three Waters and Future Urban Zones chapters.
18. However, I remain of the view that, while strategic objectives NE-O3 and NE-O4 partially give effect to clause 3.5(4) of the NPS-FM 2020, without sufficient controls on the factors that influence the health of the harbour and catchments, the PDP will be unable to influence whether these strategic objectives will be achieved.

Submission 137.2

19. GWRC has suggested additions to a number of urban development related provisions (THWT-O2, THWT-P2, THWT-P3, SUB-O1, SUB-P1, SUB-P5, FUZ-P2 and APP-11). The Officers' Report recommends rejecting this submission on the basis that it is unclear how these additions would give effect to the NPS-FM 2020. It is my view that these additions are relatively minor from the point of view of giving effect to the NPS-FM. It is not GWRC's submission that these changes are all that is required. These changes will assist the integrated implementation of the district and regional plans in relation to urban development. In particular, a joined up resource consenting process will be encouraged. I deal with changes to FUZ-P2 and APP-11 paragraph 20 below.

Water Quality Limits

20. Water quality limits, as required by the NPS-FM will be included in the Natural Resources Plan (**NRP**) by plan change notified by December 2024 at the latest. However, I anticipate these changes will be made before Wellington Water Limited (or future three waters entity) upgrades its citywide global stormwater consents by 2023. I anticipate that there will be a flow-on effect to the District Plan. There is a direct correlation between the conditions on the global stormwater consents and urban development. While the limits are not yet in place in the NRP, the direction of travel is well known and is signalled in the Te Awarua-

o-Porirua Whaitua Implementation Programme and Ngati Toa Rangatira Statement. Almost all urban freshwater catchments, and arms of the harbour, are degraded. In almost all cases, significant reductions in contaminant loads are required. I have seen no evidence or information that the greenfield and brownfield urban development anticipated in the PDP will result in a nett contaminant load reduction, let alone a significant reduction. It could result in a nett increase in contaminant load and a continued degradation of water bodies.

Future Urban Zones

21. GWRC supports the inclusion of future urban zones (**FUZ**). This is one of the important roles of district plans, and is one way they give effect to the NPS-UD. The PDP is structured in a way that requires a plan change for development to progress in a FUZ. Effectively the analysis of whether the zone is viable is put off to a future plan change. The mere presence of a future urban zone sends a strong message to developers and the community that development will occur in this place. This may or may not be the case. In my view, the PDP should be very clear of this risk, and what might be required to get a plan change over the line.
22. Urban development should only occur in a FUZ if it can do so within any contaminant limits set in the NRP as required by the NPS-FM, and if future discharges from the development can comply with conditions on relevant discharge consents held by Wellington Water (or future three waters entity). Any FUZ will also need to meet the requirements of the National Environmental Standards for Freshwater, particularly wetland protection and reclamation provisions. Structure Plans should consider these matters, as well as being based on the principles of Water Sensitive Urban Design.
23. The Regional Council suggested additions to FUZ-P2 and APP-11 (part of submission 137.2 recommended be rejected by the Officers' Report) to assist supporting this. These additions could be made now, and do not need to wait for a future plan change. The specific changes referred to here were made through submission points 137.66 and 137.88, which presumably will not be considered until a future hearing stream.

CONCLUSION

24. The PDP does not give effect to the NPS-FM 2020. The Officers' Report agrees with this conclusion. The NPS-FM 2020 requires that changes are made to district plans "as soon as reasonable practicable" in order to do so.
25. It is unclear whether the urban development anticipated by the PDP will have a negative impact on waterbodies, and how it will "promote positive effects" on freshwater, because this has not been assessed through the section 32 process for the PDP.
26. Where and how urban development occurs has an impact on the environmental quality of the Porirua Harbour and catchments. This is the biggest lever that the PDP has in achieving the strategic objectives. However, the requirements for subdivision form and design, and structure planning fall short of achieving this aim.