BEFORE THE INDEPENDENT HEARINGS PANEL FOR HUTT CITY COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of the Hutt City Council Proposed District Plan

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RIGHT OF REPLY EVIDENCE OF Cristal Bennett

ON BEHALF OF HUTT CITY COUNCIL

Hearing 6 – Infrastructure: Renewable Electricity Generation and Three Waters

30 October 2026

1.0 INTRODUCTION

1.1 My name is Cristal Bennett, and I am the Pou Whakamahere Kaupapa Here - Senior Tikanga Policy Planner at Hutt City Council.

1.2 This Right of Reply evidence responds to questions raised by the Hearings Panel at *Hearing 6: Infrastructure* in relation to the *Renewable Electricity Generation* (REG) and *Three Waters* (THW) chapters, as recorded in the Panel's Minute 18, dated 30 September 2026.

1.3 In addition to considering the information provided through the hearing, in preparing this right of reply I have reviewed the supplementary evidence of Tim Blackman and further memorandum filed by Tiaki Wai (both dated 9 October 2026) concerning the inclusion of a dedicated objective for the protection of the Waiwhetū Aquifer.

1.4 Except as expressly identified in this statement, all findings and recommendations contained in my original Section 42A Report and rebuttal evidence remain unchanged.

2.0 QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

2.1 My qualifications and experience are set out in my Section 42A Reports for the REG and THW chapters. I repeat the confirmation given in those reports that I have read and agree to comply with the Code of Conduct for Expert Witnesses.

3.0 RESPONSES TO PANEL QUESTIONS

3.1 This section responds to the questions raised by the Hearings Panel.

Use of the term ‘ownership’ in matter of discretion 6 of rule THW-R2.2

3.2 The Panel requested that I:

- Reflect upon the use of the term ‘ownership’ within matter of discretion 6 of rule THW-R2.2, and
- Advise on whether I consider this to be sufficiently clear when applied in a ‘land use consent only’ resource consent scenario[1].

3.3 In a strictly 'land-use consent only' scenario, the term 'ownership' can create administrative ambiguity. It blends underlying land tenure or asset ownership with ongoing operational, legal, and maintenance responsibility for stormwater management devices and hydraulic neutrality infrastructure.

3.4 I recommend amending the matter of discretion 6 for rule THW-R2.2 to substitute or expand references to 'ownership' with terms focused on *operational responsibility, legal management arrangements, and ongoing maintenance accountability*. This ensures the rule is workable and legally robust for land-use-only applications.

3.5 Where vesting is proposed, a consent may record preconditions and refer to a separate infrastructure agreement and formal acceptance process, but the condition should not assume that vesting will occur. For subdivisions, section 220 conditions and, where authorised, a section 221 consent notice may provide a more durable mechanism for obligations intended to bind successors in title.

Changes sought by Forest & Bird to matter of discretion 6 of rule REG-R2.2

3.6 The Panel requested that I reflect upon my assessment of the requested changes sought by Forest & Bird to matter of discretion 6

[1] Paragraph 19a of Minute 18.

of rule REG-R2.2, as set out within paragraphs 185 to 186 of the Section 42A Report, and in particular, consideration as to whether:

- The notified wording ‘minimising’ has a technically equivalent meaning to the RMA term ‘mitigating’, and
- Whether ‘remediation’, as requested by Forest & Bird, would provide a higher rather than a lower threshold for the consideration of effects under the matter of discretion – noting that the notified provisions are limited to ‘avoiding, or minimising’[2].

3.7 'Minimising' is a subset of effects management that focuses specifically on reducing the scale, intensity, or magnitude of an adverse effect. Conversely, 'mitigating' is a broader statutory term under the RMA that covers a wider spectrum of remedial or compensatory measures. They are not strictly synonymous; minimising is more prescriptive, whereas mitigating is broader.

3.8 The introduction of 'remediation' proposed by Forest & Bird establishes a higher threshold, particularly if the intention is to remediate all effects. While 'avoiding or minimising' are preventative or active reduction measures applied during design and operation, 'remediation' introduces a restorative threshold (fixing, cleaning up, or restoring affected environments post-impact).

3.9 I do not recommend any changes to matter of discretion 6 of Rule REG-R2.2 in response to this submission.

Recommended change to notification clause of rule THW-R2.2

3.10 The Panel requested I consider whether the recommended change to the notification clause within rule THW-R2.2 could result in unanticipated adverse effects on adjacent sites, such as an increased flood effect that would be greater than ‘less than minor’

[2] Paragraph 19b of Minute 18.

and therefore require limited notification of affected persons (noting related legal advice sought from Mr Quinn)3.

3.11 In my opinion, a proposal that does not achieve hydraulic neutrality could, depending on the site characteristics and the proposed stormwater-management response, result in increased or displaced stormwater effects on an adjacent site, including flooding effects that could be greater than ‘less than minor’. These effects could include changes in the rate or volume of runoff, or increases in flood depth, extent, velocity or duration.

3.12 Those potential effects could arise from the design and operation of the proposed development. I consider that removing the preclusion on limited notification would allow the consent authority to apply the statutory limited-notification process under section 95B, including determining under section 95E whether any person is an affected person because the adverse effects on that person are minor or more than minor, but not less than minor.

3.13 The legal consequence of removing the preclusion is specifically that the rule would no longer prevent limited notification where the statutory tests are otherwise met. Because THW-R2.2 is restricted discretionary, the relevant stormwater effects should also be clearly captured by its matters of discretion.

3.13.1 Accordingly, from a planning perspective, I consider removal of the limited-notification preclusion to be appropriate. Removing the rule preclusion does not mean sections 95B and 95E alone determine notification. The consent authority must apply the full section 95B process, including any applicable mandatory or discretionary steps. Meaning, it does not make non-compliance with hydraulic neutrality automatically notifiable. Rather, it allows the statutory limited-notification process to operate.

[3] Paragraph 19c of Minute 18.

Greater Wellington Regional Council – Submission on the THW chapter

3.14 At the hearing, the Panel asked whether Greater Wellington Regional Council supported the provisions of the THW chapter. I can confirm that the Regional Council (PDP/452 & F38) supported all provisions in the THW chapter.

Relevance of the National Policy Statement for Infrastructure for the Three Waters chapter

3.15 At the hearing, the Panel noted that my Section 42A Report did not identify the National Policy Statement for Infrastructure (NPS-I) as a relevant higher order document for the THW chapter, and sought clarification on this.

3.16 I can confirm that the NPS-I is relevant to the Three Waters chapter, particularly Policies 1-4, 7-9 and 10-11. The NPS-I applies to infrastructure activities and infrastructure-supporting activities, with specific interface provisions; it is not automatically engaged by every land-use rule affecting network capacity.

3.17 I consider the Three Waters chapter generally aligns with the NPS-I. It recognises the essential and interconnected role of water supply, wastewater and stormwater infrastructure; responds to network capacity and resilience constraints; and integrates infrastructure servicing with land-use and subdivision outcomes.

3.18 THW requirements for hydraulic neutrality, water-sensitive urban design and on-site stormwater management also assist in managing adverse effects on infrastructure and receiving environments.

3.19 Although the THW chapter was prepared before the NPS-I came into force, that timing does not remove the need to assess the chapter against the operative national direction. I have considered the THW provisions against the NPS-I objectives and policies, including the direction concerning infrastructure benefits, operational and functional need, efficient delivery, resilience, effects

management, and the interface between infrastructure and other activities.

3.20 In my view, within the confined scope of the THW provisions before the Panel, I consider the chapter to be generally consistent with, and to contribute to giving effect to, the relevant NPS-I direction. I have not identified a provision that requires amendment solely to give effect to the NPS-I. This conclusion is confined to the THW provisions before the Panel and does not preclude consequential drafting changes identified elsewhere in this reply.

Further information on the Waiwhetū Aquifer objective provided by Tiaki Wai

3.21 At the hearing, and in Minute 18, the Panel requested that Mr Blackman (planning expert for Tiaki Wai) undertake a technical assessment setting out which policies and methods within the PDP would connect to the requested new objective to protect the Waiwhetū aquifer[4].

3.22 This request was responded to on 9 October 2026 through:

- Supplementary evidence of Tim Blackman, and
- A further memorandum on behalf of Tiaki Wai Ltd that addresses:
    - Council's ability to regulate hazardous materials, sensitivity of the receiving environment and 'residual risk',
    - Tiaki Wai's support for a proposed objective (from the submitter's submission), proposed policy (newly proposed through Mr Blackman's supplementary evidence) and proposed amendment to policy HS-P1(3) (also newly proposed through Mr Blackman's

[4] Paragraph 5 of Minute 18.

supplementary evidence) in relation to the Waiwhetū Aquifer, and

- Scope for the proposed policy and amendment to policy HS-P1(3),
- Legal and practical grounds for including an objective to protect the aquifer, and
- Section 75 of the RMA (*Contents of district plans*).

3.23 The supplementary evidence of Mr Blackman and further memorandum from Tiaki Wai raise the following issues, which I respond to below:

- Whether the proposed policy and amendment to policy HS-P1(3) are within scope of submissions, and
- If it is determined that there is scope, the appropriateness of policy HS-P1(3), the new policy proposed by Mr Blackman, and rules that have been identified by Mr Blackman that would implement the policy.

Scope to consider a new policy and amend policy HS-P1(3)

3.24 It is unusual for new policies and amendments to policies to be recommended by a submitter at this point in a plan change process (being post-hearing), particularly where such policies/amendments have not been recommended or discussed in the relevant submissions, hearing documents (s42A reports, submitter evidence, rebuttal statements and hearing statements) or at the hearing itself.

3.25 A legal opinion has been sought from Stephen Quinn (Council's counsel) to assist the Panel in determining whether there is scope for the Panel to consider the changes recommended by Mr Blackman. This will be provided to the Panel once it is available.

3.26 If it is determined that there is scope to consider the changes recommended by Mr Blackman, the following paragraphs provide my planning response to Mr Blackman's supplementary evidence.

Appropriateness of recommended amendments to policy HS-P1(3), newly recommended policy, and rules that have been identified that would implement the policies

Recommended amendment to Policy HS-P1(3)

3.27 Mr Blackman's response was that Policy HS-P1, which relates to the location of hazardous facilities, gives effect to the proposed objective regarding protection of the Waiwhetū Aquifer, although he recommends a consequential amendment to the policy (para 25 of Mr Blackman's statement).

3.28 Policy HS-P1 reads:

"Ensure facilities and activities involving the manufacture, use, storage, transportation, or disposal of hazardous substances, including significant hazardous facilities, are appropriately located and managed by:

1. *Avoiding unacceptable residual risk to human health, people, and communities through the use of a Quantitative Risk Assessment for the proposed activity, including its site characteristics and any cumulative risk from other nearby hazardous facilities, …*

3. *Locating significant hazardous facilities outside of sensitive environments, and …"*

3.29 Mr Blackman considers subclauses 1 and 3 are relevant because avoiding unacceptable residual risks to human health and communities requires consideration of risks to the Waiwhetū Aquifer, but that it is appropriate that the policy provides a pathway where a significant hazardous facility has a functional or operational need to be located within the sensitive environment provided they can demonstrate that adequate measures are in place to avoid, or mitigate, risks to the Aquifer.

3.30 Separately, the Panel has received recommended amendments to policy HS-P1(3) through a joint witness statement following conferencing of experts involved in Hearing 2 (Business)[5].

3.31 I have discussed this matter with Hamish Wesney, the reporting officer for the Hazardous Substances topic of that hearing, and participant in that conferencing. Mr Wesney's view is that both versions seek to achieve the same broad outcome, namely providing a pathway for a significant hazardous facility to locate within a sensitive environment where there is a functional or operational need to do so. The principal difference is that Mr Blackman's wording refers to "appropriately managing the risk to the sensitive environment", whereas the joint witness statement wording applies a more conventional effects-management framework requiring adverse effects and residual risk to be "avoided, remedied or mitigated". The latter wording was agreed by the planning experts through conferencing and subsequently I recommend that the Panel adopts this wording.

New policy recommended by Mr Blackman

3.32 Mr Blackman recommended a new policy to sit underneath the objective requested through the submission of Wellington Water, to provide further direction regarding aquifer protection.

3.33 The new policy would state:

"Ensure land use, subdivision and development are designed having regard to the values, operational requirements of and any risks to the Waiwhetū Aquifer (activities above the Groundwater Supply Protection Area - Map 41 of Greater Wellington Regional Councils Natural Resources Plan) and associated groundwater infrastructure."

3.34 In addition, Mr Blackman has identified discretionary and non-complying activity rules associated with subdivision and

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5 https://www.huttcity.govt.nz/__data/assets/pdf_file/0024/78441/Hearing-2-JWS-planning-including-appendices.pdf

development, that would be able to implement this policy and the objective (Appendix A of Mr Blackman's supplementary evidence).

3.35 Mr Blackman's supplementary evidence includes a s32AA assessment. However, this assessment is more an assessment of four possible approaches, rather than a s32AA assessment of whether the policies and identified rules would be the most appropriate way to achieve the objective, and doesn't assess the efficiency and effectiveness of the provisions through identification and assessment of the benefits and costs of the environmental, economic, social and cultural effects anticipated from the implementation of the provisions (s32(1)(b) of the RMA).

3.36 While there hasn't been an assessment of the scale of the effects, the recommended policy would apply to a specific area (the Groundwater Supply Protection Area identified in Map 41 of Greater Wellington Regional Council's Natural Resources Plan – shown in Figure 1 below), which appears to apply everywhere on the Hutt Valley floor. This does reduce the scale of the costs of the provisions when compared to provisions that would apply district-wide. As an indication of scale, the Hutt Valley floor includes approximately 19,000 properties, most of which are in the residential, commercial and mixed use zones (the zones for the zone-specific rules that Mr Blackman has identified as potential rules that would be relevant to the new policy).

3.37 This is a very crude way of identifying the scale of the costs and benefits of a policy, but in lieu of a more detailed assessment, it does illustrate that the policy could be relevant for many proposals.

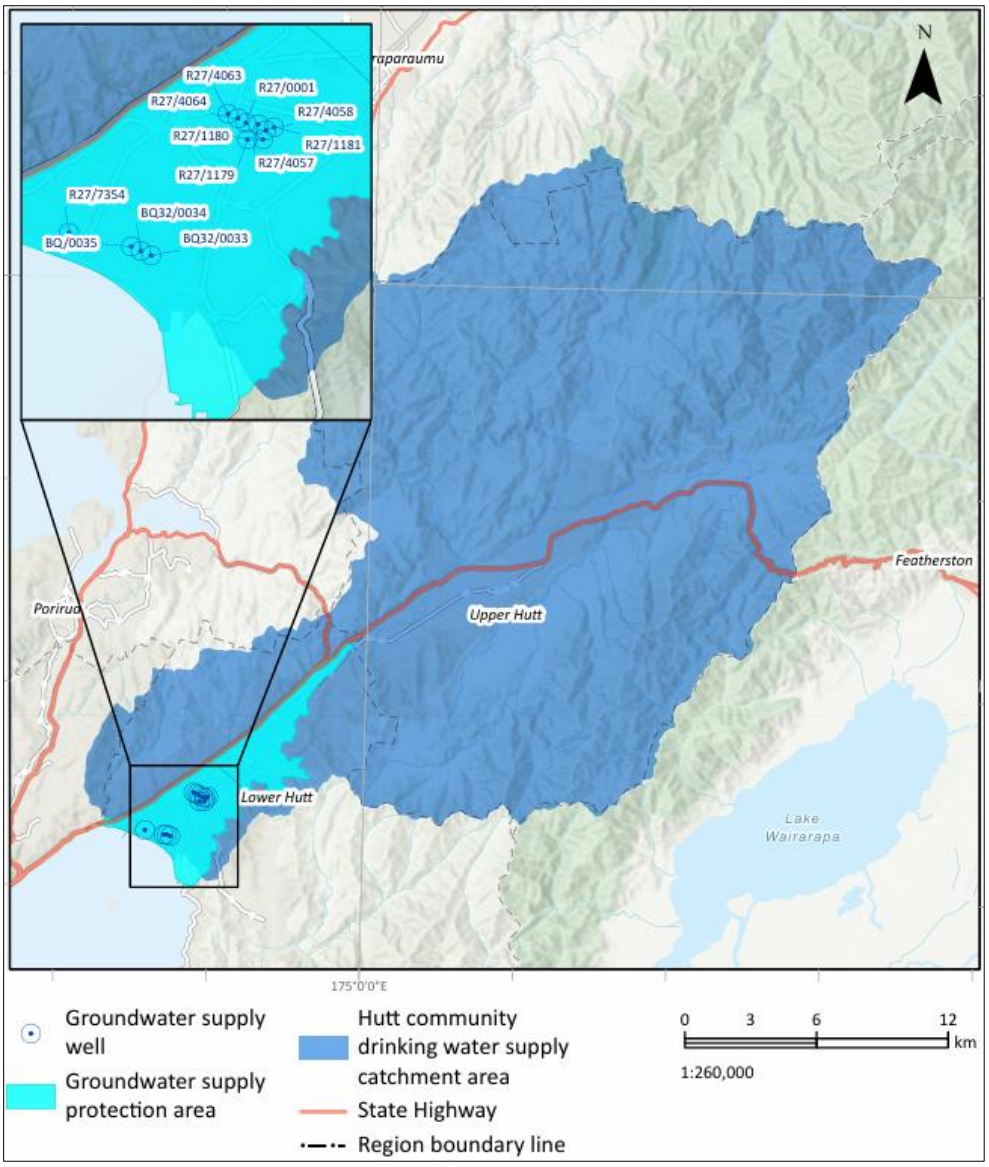


Figure 1: Map 41 of Greater Wellington Regional Council's Natural Resources Plan.

3.38 In addition, I have the following concerns with policy and rules that have been identified that would implement the policy:

- It is inappropriate for a policy in a district plan to refer to a map in a separate planning document, particularly a planning document of another agency that may change over time. It would be more appropriate to include the area for the policy on the District Plan maps through an overlay.

- It is unclear how the area for the policy has been identified. My assumption is that this is the urban area of Lower Hutt that

sits above the aquifer. However, it is unclear whether the area identified is the appropriate area for applying additional controls to land use and development in order to address the risks to the aquifer and groundwater infrastructure, noting that groundwater infrastructure appears to be entirely located towards the southern end of the valley.

- The proposed policy does not provide clear direction on what action is required in addressing the risks to the aquifer and associated groundwater infrastructure as part of land use, subdivision and development, just that regard is to be had to values and operational requirements.

- The rules that have been identified that would implement the policy appear to be the existing discretionary and non-complying activity rules of residential, commercial and mixed use zones and of the Subdivision chapter. It is unclear why these rules have been identified, and I disagree that these would all be relevant rules for giving effect to the policy, particularly with regard to subdivision.

  As an example, while technically the policy would be able to be considered for a subdivision consent application under SUB-R25 (for subdivision in the Gas Transmission Pipeline Corridor), that corridor is entirely in the Western Hills and it is clear that the intent of that rule is on the impacts of subdivision and future land use to the transmission pipeline. This is also the case for SUB-R23 and SUB-R24 (relating to subdivision in the Highly Constrained Roads Overlay and National Grid Subdivision Corridor Overlay, respectively) as the Highly Constrained Roads Overlay is not located in the valley floor and the National Grid Subdivision Overlay only intersects with the valley floor for only a small area in Boulcott and north of Stokes Valley.

3.39 In summary, I recommend that the policy proposed through Mr Blackman's supplementary evidence and objective requested

through the submission of Wellington Water regarding the Waiwhetū Aquifer are not included in the District Plan.

Cristal Bennett

Pou Whakamahere Kaupapa Here

30 October 2026