

**BEFORE THE HEARING PANEL AND FRESHWATER PLANNING PROCESS  
HEARING PANEL**

**UNDER THE**

Resource Management Act 1991 (**Act**)

**IN THE MATTER OF**

Proposed Change 1 to the Wellington Regional  
Council's Regional Policy Statement (**PC1**)

**BETWEEN**

**WELLINGTON REGIONAL COUNCIL**

Local Authority

**AND**

**WAIRARAPA FEDERATED FARMERS**

Submitter 163 to PC1

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**HEARING NOTES OF COUNSEL FOR WAIRARAPA FEDERATED FARMERS  
FOR HEARING STREAM 1**

**29 JUNE 2023**

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1. Good morning Matua Thompson, Chair Nightingale and Members of the Panels. Thank you for the opportunity to speak today. My name is Mike Campbell and I appear as counsel for Wairarapa Federated Farmers (**WFF**).
2. Joining me today is Elizabeth McGruddy, Senior Policy Advisor for WFF, and Peter Matich, planner for WFF (who is appearing remotely).
3. Regarding format, I'll shortly hand over to Ms McGruddy to speak to WFF's submission generally, and then I intend to speak to the vexed question of allocation of provisions to the Freshwater Planning Process (**FPP**). Mr Matich is present to answer any questions arising from his evidence.
4. To confirm the Panels should now have received now 6 documents filed for WFF:
  - (a) My legal submissions;
  - (b) Hearing Statement of Ms McGruddy;
  - (c) Planning evidence of Mr Matich;
  - (d) Extracts of the RMA; and
  - (e) ORC HC decision.
5. Sixth document in hard copy – a matrix of outcomes if recommendations made on allocation issues (which I'll speak to as part of my submissions).

[Ms McGruddy to speak to WFF generally]

6. Turning to the issue of the allocation of provisions between the FPP and the P1S1 process. Having had the benefit of listening to submissions earlier in the week, it occurs to me that there are three key questions at play:
  - (a) What is the correct legal test to determine if a provision can constitute part of an FPI?
  - (b) Did GW apply the correct legal test?
  - (c) If GW failed to utilise the correct legal test, what can be done about it?

7. Important that the Freshwater Panel (**FWP**) is satisfied that it has jurisdiction to make recommendation on the Freshwater Planning Instrument (**FPI**):
  - (a) See cl 49(1) and (2) of Schedule 1 – recommendations, regardless of whether they are within the scope of submissions, must be either “on the freshwater planning instrument” or “relating to the freshwater planning instrument”; and
  - (b) If the FWP cannot be satisfied that the provisions before it constitute part of the FPI, with respect, the FWP cannot be satisfied that it has jurisdiction to make recommendations on the FPI.
8. Federated Farmers submits that the correct legal test is as is set out at [14] of my legal submissions:

for a provision to “relate to freshwater” and qualify as part of the FPI, it must directly and discretely relate to the maintenance, protection, improvement or enhancement of freshwater. The provision at issue needs to focus on how it will achieve those goals. It is insufficient for a provision to qualify as part of an FPI simply by dint of being applicable to freshwater.
9. WFF submits that is the ratio to be extracted from the ORC case.
10. This can be contrasted with the method utilised by GW, which is set out at Appendix E of the Section 32 report. In particular, as set out in [20] of my legal submissions, GW has included in the freshwater planning instrument provisions that “also relate to other matters”. It is WFF’s submission that, if a provision relates to other matters, it cannot be said to directly and discretely relate to freshwater.
11. Federated Farmers therefore submits GW has erred in its interpretation of s 80A. There is therefore a lack of certainty that taints the allocation of provisions to the FPI and introduces an uncertainty as to the jurisdiction of the FWP and uncertainty in respect of the FPP generally.
12. So, what can be done?
13. It has been suggested during the course of this week that the issue could be addressed by both Panel’s hearing all the submissions and then addressing the allocation of provisions as part of their recommendations. Federated Farmers submits that this is not a viable option.
14. There are a number of reasons for this, which I’d like to briefly touch on.

15. First, section 80A clearly states it is for the regional council to be satisfied whether a provision is part of a FPI or not. Federated Farmers submits that any panel recommendation would be an irrelevant consideration in GW determining the allocation of provisions.
16. Secondly, conceptually it is difficult to understand how the FWP could make a recommendation that a provision should not be part of a FPI where the FWP can only make recommendations on a FPI. Essentially, by making such a recommendation the FWP is undermining its own jurisdiction
17. Third, there are also a number of additional benefits to the FPP, such as conferencing, cross-examination and ADR, that are not part of the P1S1 process. WFF submits it would be wrong to allow a provision that is ultimately determined to be a P1S1 provision to take advantage of those benefits.
18. Fourth – and arguably most importantly – it creates a lacuna as to which panel is making the substantive recommendation on a provision in the event GW rejects the FWP recommendation to either include or exclude that provision as part of the FPI.

[Direct to table – Matrix of outcomes for treating allocation issues as recommendations]

19. For these reasons, it is WFF's submission that certainty around the provisions that are part of the FPI is essential and needs to be established prior to the commencement of the hearing streams on substantive matters.
20. Federated Farmers therefore seeks the FWP immediately refer the entire FPI back to GW for reconsideration of the allocation of provisions in light of what the FWP considers is the correct legal test – which Federated Farmers submits is the legal test at [14] of my legal submissions.
21. To note this relief differs slightly to the relief sought in legal submissions. With the benefit of the discussion earlier in the week and having considered the matter further, it is WFF's submission that the whole of the FPI needs to be referred back to GW.
22. Setting to one side the legal issues, pragmatically GW is best placed to decide what is part of the FPI and what is not. The FWP making recommendations that could either be accepted or rejected GW appears to be double handling – both a recommendation by the FWP and then an assessment of that recommendation by GW. Rather, it is WFF's submission it would be more efficient to refer the entire instrument back to GW with the correct legal test.

23. The concludes FF oral submissions for HS1 and we welcome any questions the Panel's may have.