

## Before the Independent Hearings Panels

**In the matter** of the Resource Management Act 1991 (**RMA**)

**And**

**In the matter of** Proposed Change 1 to the Wellington Regional Policy Statement (**RPS**) (being both a freshwater planning instrument, and a non-freshwater planning instrument)

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### Memorandum of Counsel for Wellington Regional Council – amended section 80A of the RMA

**Date:** 25 August 2023

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**MAY IT PLEASE THE PANELS:**

- 1 The purpose of this memorandum of counsel is to update the Panels and submitters as to the recent amendments to section 80A of the Resource Management Act 1991 (**RMA**).
- 2 While the amendments set out below do not impact on the current Proposed Change 1 process, as section 80A has been the subject of significant submissions and discussions, the Council considered it appropriate to file this memorandum to update the Panels.
- 3 The Natural and Built Environments Act 2023 (**NBEA**) received Royal Assent on 23 August 2023.
- 4 The amendments to section 80A of the RMA are contained in Schedule 15 of the NBEA. In accordance with section 2(1)(i) of the NBEA, that Schedule is in effect from the day after Royal Assent (being 24 August 2023), meaning the new section 80A of the RMA is now in effect.
- 5 There are no specific transitional provisions in either the NBEA or the RMA that apply to the amendments to section 80A of the RMA.
- 6 Therefore, the general position that legislation does not have retrospective effect and that the amendment of legislation does not affect the completion of a proceeding in progress under the legislation that was amended applies.<sup>1</sup>
- 7 This means that for the purposes of Change 1, it is submitted that it proceeds as if the unamended version of section 80A of the RMA continues to have effect.

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<sup>1</sup> Sections 12 and 33 of the Legislation Act 2019.

- 8 For completeness, the amended version of section 80A of the RMA, in effect from 24 August 2023, is set out in Appendix 1 to this memorandum with the amendments shown in strike through and underline.

**Date:** 25 August 2023

A handwritten signature in blue ink, consisting of a large, stylized initial 'R' followed by several horizontal strokes.

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K M Anderson / E L Manohar / K H Rogers  
Counsel for Wellington Regional Council

**Section 80A of the RMA as amended by the Natural and Built Environment Act 2023**

**80A Freshwater planning process**

(1) The purpose of this subpart is to require all freshwater planning instruments prepared by a regional council to undergo the freshwater planning process.

(2) A *freshwater planning instrument* means—

~~(a) a proposed regional plan or regional policy statement for the purpose of giving effect to any national policy statement for freshwater management:~~

~~(b) a proposed regional plan or regional policy statement that relates to freshwater (other than for the purpose described in paragraph (a)):~~

~~(c) a change or variation to a proposed regional plan or regional policy statement if the change or variation—~~

~~(i) is for the purpose described in paragraph (a); or~~

~~(ii) otherwise relates to freshwater.~~

(a) any part of a proposed regional plan or regional policy statement that relates to objectives that give effect to the national policy statement for freshwater management:

(b) any provisions of a proposed regional plan or regional policy statement in relation to which the regional council has decided to use the freshwater planning process under subsection (6B)(b):

(c) any regional policy statement (including any change or variation to the statement) in relation to which the council has decided to use the freshwater planning process under subsection (6B)(c):

(d) any change or variation to a proposed regional plan or regional policy statement if the change or variation—

(i) relates to objectives that give effect to the national policy statement for freshwater management; or

(ii) relates to a provision described in paragraph (b).

~~(3) A regional council must prepare a freshwater planning instrument in accordance with this subpart and Part 4 of Schedule 1. However, if the council is satisfied that only part of the instrument relates to freshwater, the council must—~~

~~(a) prepare that part in accordance with this subpart and Part 4 of Schedule 1; and~~

~~(b) prepare the parts that do not relate to freshwater in accordance with Part 1 of Schedule 1 or, if applicable, subpart 5 of this Part.~~

(3) A regional council must prepare a freshwater planning instrument in accordance with this subpart and Part 4 of Schedule 1.

(4) A regional council must—

(a) publicly notify the freshwater planning instrument; and

(b) if the purpose of the freshwater planning instrument is to give effect to the National Policy Statement for Freshwater Management 2020, publicly notify the freshwater planning instrument by 31 December 2024; and

(c) no later than 6 months after it has publicly notified the freshwater planning instrument, submit the documents required by clause 37(1) of Schedule 1 (the required documents) to the Chief Freshwater Commissioner; and

(d) at least 20 working days before submitting the required documents, provide to the Chief Freshwater Commissioner in writing—

(i) its notice of intention to submit those documents; and

(ii) the regional council and local tangata whenua nominations for appointment to the freshwater hearings panel required by clause 59(1)(b) and (c) of Schedule 1.

(5) The following is an outline of the rest of the freshwater planning process set out in Part 4 of Schedule 1:

(a) the Chief Freshwater Commissioner must convene a freshwater hearings panel to conduct the public hearing of submissions on the freshwater planning instrument:

(b) the freshwater hearings panel must conduct the public hearing of submissions in accordance with its powers and the procedures set out in Part 4 of Schedule 1:

(c) after the public hearing of submissions is concluded, the freshwater hearings panel must make recommendations to the regional council on the freshwater planning instrument:

(d) the regional council may accept or reject any recommendation. However,—

(i) the regional council must provide reasons for rejecting a recommendation; and

(ii) a person who made a submission on the freshwater planning instrument may make an appeal in accordance with subpart 2 of Part 4 of Schedule 1.

(6) For the purpose of this subpart the following provisions of Schedule 1 apply:

(a) clauses 1(3), 1A, 1B, 2(1), 3 to 3C, 4A, 5, 6, 7(1) and (2), 8, 8A, and 8D; and

(b) clauses 16, 16A, 16B, 17, 20, and 20A; and

(c) if a request is made by a person under clause 21(1) in relation to a

freshwater planning instrument, Part 2 of Schedule 1 applies to the request.

(6A) A proposed regional plan or regional policy statement (or any part of it) relates to freshwater if—

(a) it relates (in whole or in part) to an objective of the regional plan or regional policy statement; and

(b) the objective relates to the performance of a function in section 30(1)(c), (e), (f), (fa), (g), or (ga).

(6B) A regional council—

(a) must use the freshwater planning process when preparing any part of a regional plan or regional policy statement that relates to objectives that give effect to the national policy statement for freshwater management; and

(b) may use the freshwater planning process when preparing other provisions of a regional plan or regional policy statement that relate to freshwater; and

(c) may use the freshwater planning process when preparing a regional policy statement or change or variation to the statement if the council is satisfied that doing so is necessary to achieve integrated management of the natural and physical resources of the whole region.

(7) This section does not affect the Minister's ability to call in a matter that the Minister considers is or is part of a proposal of national significance under section 142.

(8) In subsection (2), a proposed regional plan does not include a proposed regional coastal plan or a change or variation to that plan.

(9) Section 37(1)(a) does not apply to any time period specified in this subpart or Part 4 of Schedule 1.

- (10) In subsection (4), publicly notify, in relation to a freshwater planning instrument, means to publicly notify the instrument in accordance with clause 5 of Schedule 1.
  
- (11) Subsection (5) is by way of explanation only and does not limit or affect the other provisions of this Act.