

WELLINGTON REGIONAL COUNCIL

PROPOSED CHANGE 1 TO THE WELLINGTON REGIONAL POLICY STATEMENT

MINUTE 23

HEARING STREAM 6 – UPDATE ON CAUCUSING

HEARING STREAM 7 – QUESTIONS RELATED TO INTEGRATION OF PC 1 PROVISIONS AND AMENDED TIMETABLE

LEGAL ADVICE PROVIDED TO THE PANEL ON NATIONAL POLICY STATEMENTS

Caucusing – HS6

1. In Minute 22 we directed expert caucusing on the regionally significant infrastructure provisions in HS6. The Hearings Advisor informed us that a date could not be found that suited all planners attending and the facilitator Mr Jason Jones, while also factoring in hearings for HS7 which start on 15 April 2024. The confirmed date of the caucusing is 6 May 2024. Ms Heppelthwaite is not able to attend this date, but Waka Kotahi NZ Transport Agency and any other submitter is able to comment on the Joint Witness Statement that is produced from caucusing.
2. The amended timetable for caucusing is:
 - Caucusing session: 6 May 2024
 - Joint witness statement uploaded to the Hearings webpage: by 5pm Thursday 9 May 2024
 - Any party who submitted on the HS6 provisions (including Royal Forest and Bird Protection Society Inc and Waka Kotahi NZ Transport Agency) and who has scope to do so, may file written comments in response by 5pm on Tuesday 21 May 2024
 - Council reply: by Thursday 30 May 2024
3. This timetable amends the directions in paragraphs 16 and 17 of Minute 22.

Hearing Stream 7 (HS7) – Integration issues

4. The s 42A Reports for HS7 – Small topics, Wrap-up and Variation 1 were uploaded to the Hearings webpage on 11 March 2024. Council evidence and legal submissions are due on 18 March, and Submitter evidence and any legal submissions are due by 25 March 2024. In paragraph 7 below, we direct some changes to this timetable to allow more time for submitters to present evidence and legal submissions.

5. As we signalled in Minute 12, submitters are welcome to present to us in this hearing stream on issues of alignment and horizontal and vertical integration of the PC1 provisions. Submitters will be limited by scope (as relevant to Freshwater and non-Freshwater provisions), and the wrap up hearing should not be taken as an opportunity for submitters to canvas their entire submission and evidence again or to present new evidence. However, we are interested in submitters' comments on the alignment of provisions across different topics and chapters in the RPS. Some integration-related matters may require amendments that only have minor effect, or that are needed to correct minor errors that arise when the provisions across different chapters are read together. There is jurisdiction to make such changes under Clause 16 of Schedule 1.
6. We invite submitters to present in HS7 on issues relating to the integration of the PC 1 provisions across the RPS. Council Officers will provide their comments on these issues in their Rebuttal and/or Reply. Submitters are not required to address all or any of these specific questions, but we simply identify below some of the key integration issues we have been considering. We welcome any comments on these issues to assist our deliberations.

Anticipated Environment Results (AER)

- a. From our review of the Change 1 provisions, it is possible that AERs may not have been included for every Objective in Change 1, or the AERs in the change document may no longer be appropriate or fully align with the relevant Objectives given some of the substantial amendments proposed by Officers in their Reply evidence on the Objectives (eg Objective 22 (HS4)). **Are the other AERs in Change 1 appropriate and aligned with the outcomes sought to be achieved in the Objectives?**

References to Te Rito o Te Harakeke in PC1

- b. In paragraphs 9-10 of his Reply evidence dated 21 September 2023 for HS3, Mr Wyeth for the Council said that the reference in Issue 5 – Climate Change to *Te Rito o Te Harakeke* is best addressed in either HS6 or HS7. Mr Wyeth sets out the reasons for this in his evidence (paragraph 10). Given the provisions in HS6 and the evidence/submissions heard during that hearing stream, **should *Te Rito o te Harakeke* be replaced in places or throughout Change 1 with the words “*decision-making principles for indigenous biodiversity*” or any alternative wording?** See for example Policy 52(e) - (HS3). Is 'taonga species' an appropriate replacement in Objective 20 (which was a term agreed during caucusing – see paragraph 21 of the Reply evidence of Dr Dawe and Mr Beban, HS3 dated 13 November 2023).

The chapeau to Policies

- c. In response to a question about inconsistent drafting of the chapeau to the regulatory policies, Mr Wyeth, in paragraphs 47-48 of his Reply evidence for HS3 dated 21 September 2023, said that the HS3 Reporting officers were aware of inconsistencies in the chapeau of the Chapter 4.1 policies and recommended they consistently refer to “objectives, policies, rules and/or other methods” except where a different approach is required (eg because a policy relates to the Regional Land Transport Plan). **Should the chapeau text to all regulatory policies use this same**

phrasing ie “District and regional plans shall include objectives, policies, rules and/or other methods...”. See for example the slightly different construction used in Policies 31, 32 (HS4) and Policy FW3 (HS5). See also Policies CC4, CC4A and CC6 which refer to ‘non-regulatory methods’. **Is the wording of the chapeau to Policies 57 and 58 (HS4 - Reply version) appropriate to apply to other policies in Change 1?** We note the Officers’ Reply evidence on this question for HS4 (paras 46 – 49, and also Ms Pascall’s Reply in HS5 (paras 30 -35).

Regulatory policies and non-regulatory policies (including a request for Council)

- d. We understand that regulatory policies in section 4.1 of the RPS direct district and regional plans (and also the Regional Land Transport Strategy); and regulatory policies in section 4.2 set out matters to be considered/had regard to when assessing consent applications, NoRs or changes, variations to plans. Section 4.4 of the RPS contains the non-regulatory policies (ie the activities that support the achievement of objectives but which have no ‘regulatory consequence’).

We request that Council please provide a list of all the Change 1 provisions that are proposed to sit in Sections 4.1, 4.2 and 4.4 of the RPS to help us review alignment across Change 1. Can Council also please provide an explanation of the difference between regulatory and non-regulatory policies. In HS6, some submitters queried whether some policies should in fact be identified as ‘regulatory’ policies given the policy intent. Conversely, in HS3, it seems some submitters interpreted a non-regulatory policy to have regulatory effect. Having a list of the provisions that are regulatory and non-regulatory may help submitters to understand the framework and impact of the Change 1 provisions.

Are the policies within Change 1 correctly identified as regulatory and non-regulatory policies?

Consideration policies

- e. Some regulatory ‘consideration policies’ have interim effect and ‘fall away’ when district and regional plans give full effect to the regulatory policy (eg Policies 40A and 40B). Change 1 takes an inconsistent approach to this e.g noting the transitional effect in the explanatory text only, and other times being more explicit in the policy itself. Sometimes the consideration policy applies only to consenting (eg Policy 42), and other times it also applies to plan changes, variations and reviews (eg Policy 44).

Is a consistent and aligned approach possible across Change 1? We appreciate that there are provisions in the Operative RPS that are not within the scope of Change 1 that will contain different wording, but is consistent phrasing possible within Change 1? We are also uncertain why a consideration policy that applies to consenting also applies to plan changes, reviews and variations given that any change would have to give effect to the corresponding regulatory policy in the district or regional plan, and where this isn’t one, then we understand that the relevant local authority is required to ‘look back up’ at the regulatory policy in the RPS.

Tables 1A and 9 (a question for Council but submitters may wish to comment)

- f. These tables contain the words “Also see – and consider”. We understand this is the format in the Operative RPS (eg in Table 1) but we are uncertain of what text Council proposes to include in Tables 1A and 9 where the words “Also see – and consider” are written. This is important to vertical and horizontal integration. **How are these gaps intended to be filled? While this is primarily a question for Council to respond to, we also welcome any submitter comments.**

Amended timetable for HS7

7. We appreciate issues of integration are complex and we apologise to submitters and council officers and counsel for the delay in issuing this Minute. While Council evidence and legal submissions are due today, Council has a further opportunity to present on these matters in Rebuttal. However, we consider it fair to extend the time for submitters to present evidence and legal submissions on HS7 topics, including issues of integration. The amended timetable is:
 - a. Submitters must notify Council if they wish to be heard – by 5pm on Monday 25 March 2024 (no change)
 - b. Submitter Evidence / Legal submissions (if any) – by 12pm on Thursday 28 March 2024
 - c. Council Rebuttal – by 9.30am on Monday 8 April 2024
 - d. Hearings commence at 9.30am on Monday 15 April 2024 (no change).
8. If any submitters have any concerns with this timing, they can contact the Hearings Advisor to discuss.

Information required from Council

9. Paragraphs 6(d) and (f) of this Minute direct specific information from Council. We ask that this be provided and uploaded to the Hearings webpage by 5pm on Monday 25 March 2024 to allow sufficient time for submitter review.

Legal advice on NPS implementation

10. The Panels commissioned advice from Mr Matthew Allan at Brookfields on the extent to which we are able to recommend amendments to Change 1 provisions to give effect to new national direction that is gazetted after Change 1 is notified. [Mr Allan’s advice is attached and a copy will be uploaded to the Hearings webpage.](#)

Service on Council

11. Any evidence, submissions or other information required by this Minute, and any memorandum or application to the Freshwater Hearings Panel and/or P1S1 Panel should be

lodged by email to regionalplan@gw.govt.nz.

Dated: 18 March 2024



D Nightingale
Chair
Part 1, Schedule 1 Panel
Freshwater Hearings Panel