

**BEFORE THE INDEPENDENT HEARINGS PANELS APPOINTED TO HEAR AND MAKE
RECOMMENDATIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS ON PROPOSED CHANGE 1
TO THE REGIONAL POLICY STATEMENT FOR THE WELLINGTON REGION**

UNDER Schedule 1 of the Resource Management
Act 1991 (the Act)

IN THE MATTER OF Hearing Submissions and Further
Submissions on Proposed Change 1 to the
Regional Policy Statement for the
Wellington Region

**STATEMENT OF REBUTTAL EVIDENCE OF SAMUEL O'BRIEN
ON BEHALF OF WELLINGTON REGIONAL COUNCIL**

HEARING STREAM 7 – Variation 1

4 April 2023

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INTRODUCTION

- 1 My full name is Samuel Nicholas O'Brien. I am a policy advisor at Wellington Regional Council.
- 2 I have read the respective evidence of:
 - 2.1 Murray John Brass on behalf of the Director-General of Conservation / Tumuaki Ahurei
 - 2.2 Catherine Lynda Heppelthwaite on behalf of Waka Kotahi NZ Transport Agency
- 3 I adopt the contents of the s42A report prepared by Mr Sheild for Variation 1 to Proposed Change 1 to the Regional Policy Statement.

QUALIFICATIONS AND EXPERIENCE

- 4 I hold a Master of Planning and a Bachelor of Applied Science from the University of Otago.
- 5 I have 1 year experience as a Policy Advisor working across a range of resource management issues.

CODE OF CONDUCT

- 6 I have read the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023 (Part 9). I have complied with the Code of Conduct in preparing this evidence. My experience and qualifications are set out above. Except where I state I rely on the evidence of another person, I confirm that the issues addressed in this evidence are within my area of expertise, and I have not omitted to consider material facts known to me that might alter or detract from my expressed opinions.

RESPONSES TO EXPERT EVIDENCE

Summary of Evidence

- 7 Murray Brass (on behalf of the Director-General of Conservation) and Catherine Heppelthwaite (on behalf of Waka Kotahi NZ Transport Agency) both provided evidence on the proposed change in the s42A report to insert new text into Clause 4 in both Objectives TAP and TWT:

“Where appropriate and with the agreement of private landowners, provide for safe and healthy access...”

- 8 Mr Brass considers that the proposed change goes too far in only providing for public access with the agreement of landowners. Further, Murray Brass highlights the potential of this objective to limit public access provided for through the operation of district plan and resource consent features such as esplanade reserves and esplanade strips. Murray Brass proposes that the references in the clause to “where appropriate” and “safe and healthy access” provide enough direction to warrant the removal of “and with the agreement of private landowners”.
- 9 Ms Heppelthwaite supports the proposed amendments except the inclusion of the word “private” within Objectives TAP(4) and TWT(4). Ms Heppelthwaite considers that “all landowners should be engaged in discussions / provision of agreement for safe access to waterbodies (and especially where infrastructure is present).”.

Analysis and Recommendations

- 10 I agree with the assessment of Mr Brass that the explicit requirement for “agreement of private landowners” has the potential to conflict with existing public access rights managed through district plans and resource consents.
- 11 The intent of this clause is to provide a long-term vision for freshwater and coastal water at the objective level relating to “safe and healthy access” within these two whitua. It is not intended that these vision objectives provide direct regulation or requirements on public access. I consider that the direct reference to “agreement of private landowners” provides an unnecessary level of detail for an objective in the RPS. It also narrows the intent of Clause 4 by focusing it on the right to cross private land to access waterbodies or coastal waters when instead the emphasis should be placed on the ability of people to enjoy a recreational experience.
- 12 I agree that landowners should be engaged in discussions around access across private land to waterbodies as raised in the evidence of Ms Heppelthwaite and by submitters. However, I do not agree that explicit requirements for agreement of landowners within a freshwater and coastal water vision objective of the RPS is the appropriate mechanism.
- 13 This clause does not promote the unrestricted access of people and communities to private land. The RPS does not override existing regulation regarding access to private land and public land. In my view promoting improvement of public access to waterbodies and coastal waters at a high level through the RPS is not incompatible with the recognition of property rights.

14 I agree with the proposed approach of Mr Brass to amending clause 4 of Objectives TAP and TWT. The recommended changes make amendments to drafting introduced in the section 42A report. These changes are made in response to evidence provided by Mr Brass and the justification for those changes is based on my professional opinion. The amended clause I recommend is set out below.

Where appropriate and with the agreement of private landowners, provide for safe and healthy access...

Section 32AA Evaluation

15 In accordance with 32AA, I consider the replacement text I am recommending for Objective TAP(4) and TWT(4) is the most appropriate for the following reason:

15.1 I consider that the amended clause provides the appropriate level of direction for an objective in the RPS.

15.2 The amended clause will not conflict with existing access arrangements on public and private land. Retaining “Where appropriate” in this clause emphasises that public access is not unrestricted.

DATE:

4 APRIL 2023

SAMUEL O’BRIEN

POLICY ADVISOR

WELLINGTON REGIONAL COUNCIL