

**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

RESPONSE TO QUESTIONS IN MINUTES 23 AND MINUTE 27

30 MAY 2024

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INTRODUCTION

- 1 Through Minutes 23 and 27, the Independent Hearing Panels for Proposed Change 1 to the Regional Policy Statement ('Change 1') sought information from Greater Wellington Regional Council ('the Council') in relation to matters of consistency and integration across Change 1.
- 2 A response to some of these questions was provided on 8 April 2024¹, prior to the commencement of Hearing Stream 7, as requested by the Panels. This reply addresses the remaining questions the Panels have asked the Council in relation to matters that cross some or all of the topics in Change 1.
- 3 This reply is a combined response on behalf of the Change 1 reporting officers.

ANTICIPATED ENVIRONMENTAL RESULTS

- 4 At paragraph 6(a) of Minute 23, the Panels asked:

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?²

- 5 The reporting officers for all hearing topics have undertaken a review of the Anticipated Environmental Results (AERs) relevant to their topic, where a change to the substantive objective has been recommended through the hearings process. This exercise has been limited to AERs that relate to objectives where substantive amendments to the relevant objective have been recommended as we did not consider there was scope to amend the AERs where no change has been recommended to the relevant objective. As a result of this assessment, amendments to a number of AERs are recommended to ensure they remain fit for purpose and clearly link back to the proposed objective, in light of amendments recommended by Council officers throughout the hearing. THE CHAPEAU TO CHAPTER 4.1 AND 4.2 POLICIES

¹ [GWRC-Statement-in-response-to-Minute-23-Para-6d-and-f-080424.pdf](#)

² Minute 23, Paragraph 6(a), page 2

6 At paragraph 6(c) of Minute 23, the Panels stated:

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)).³

7 Reporting officers have reviewed the references in the chapeau for all Chapter 4.1 policies and agree that there is an inconsistent approach applied. Our recommendation is to apply the approach outlined by Mr Wyeth and amend the chapeau text of these policies to consistently refer to ‘objectives, policies, rules and/or other methods’ where it is appropriate to do so. This framing also removes the need to refer to ‘non-regulatory methods’. However, reporting Officers do not consider this change can be made across all the policies in Chapter 4.1 that are the subject of Change 1. As noted by the Panels, a number of policies are framed in a different way. For example, some policies do not require plans to include objectives. Where the chapeau text does not already include the direction to include ‘objectives’, and there have been no submissions to include this reference, then we consider there is insufficient scope to include it at this stage. Other policies, such as Policy CC.2A, have a different construct and focus and do not require objectives, policies and rules in regional or district plans.

8 On this basis, the reporting officers consider it is only appropriate to amend the chapeau text to ‘...objectives, policies, rules and/or other methods...’ for the following policies in Chapter 4.1: Policy CC.2, Policy CC.3 , Policy CC.4, Policy CC.4A, Policy CC.6, Policy 12, Policy

³ Minute 23, Paragraph 6(f), page 4

14, Policy FW.3, Policy FW.4⁴, Policy IE.1, Policy 30 , Policy 31, Policy 32, Policy UD.1, and Policy UD.4.

- 9 The reporting officers have also considered whether a consistent approach can be applied to the chapeau of the consideration policies. Through Hearing Stream 2 Mr Wyeth recommended amending the introduction to Chapter 4.2 to include the statutory direction for the different processes, noting that⁵:

‘...the direction to “have particular regard” to a set of matters in the policy implies a different weighting to the statutory requirement for regional and district plans to “give effect to” (i.e. implement) RPS policies and “have regard to” the relevant provisions in a RPS when considering a resource consent application under section 104(1)(b)(v) or a notice of requirement under section 171(1)(a)(iii). Referring to the policies as ‘consideration policies’ can add further confusion to this issue as evident in a number of submissions.’

- 10 Mr Wyeth recommended addressing this issue by amending the introduction of Chapter 4.2, as follows⁶:

This section contains the policies that need to be given effect to, where relevant, when reviewing, changing, or varying district or regional plans and that particular regard must be had to, where relevant, when assessing and deciding on resource consents and notices of requirement, ~~or when changing, or varying district or regional plans.~~ This applies regardless of whether this is stated at the start of each policy in this section. Within this section, policies are presented in numeric order, although the summary table below lists the policy titles by topic headings.

- 11 In considering Mr Wyeth’s recommendation, reporting officers have considered if there is a way to apply a consistent approach across the consideration policies (whether that be the approach taken in the reply versions of Policy 57 and Policy 58 or a different framing).

- 12 The outcome of this assessment is that applying a consistent approach across all consideration policies will require significant re-drafting and potentially changing the strength of direction applied in the policies. Submitters have not had the opportunity to

⁴ Note this policy has been recommended for deletion by the reporting officer in Hearing Stream 5 but is included here for completeness should the Panel disagree with the Officer’s recommendation.

⁵ Overarching Issues and Objective, Integrated Management Section 42A Report (16 June 2023), p.35, [RPS Change 1 S42A Report Template \(gw.govt.nz\)](#)

⁶ Overarching Issues and Objective, Integrated Management Section 42A Report (16 June 2023), p.35, [RPS Change 1 S42A Report Template \(gw.govt.nz\)](#)

sufficiently comment on these changes and we consider it would be inappropriate to make this change this late in the process.

- 13 Based on this assessment, no further changes to the chapeaux of the consideration policies are recommended over and above the amendments recommended by reporting officers through the hearings process. The reporting officers consider this redrafting/reframing should be undertaken through the next full review of the RPS, where submitters will have the opportunity to review and comment on an alternative drafting approach across the RPS in its entirety.

CONSIDERATION POLICIES

- 14 At paragraph 6(e) of Minute 23, the Panels asked⁷:

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.

- 15 The Panels' question raises two key issues in relation to consideration policies:

- 15.1 Issue 1: the varied approach across Change 1 to the application of 'sunset clauses' or similar that indicates a time after which the policy will no longer have effect.

⁷ Minute 23, paragraph 6(e), p.3, [Minute-23-HS6-Caucusing-HS7-Integration-Questions-and-Legal-Advice-2.pdf \(gw.govt.nz\)](#)

- 15.2 Issue 2: inconsistencies across the provisions in relation to when consideration policies apply (i.e. resource consents only or resources consents and/or to plan changes, reviews and variations).
- 16 In relation to Issue 1, the application of sunset clauses in the consideration policies is dependent on the nature and context of the policy itself. Some policies are interim provisions until such time as district and/or regional plans are updated to give effect to national direction. This is the case with Policy 40A and Policy 40B, which have been recommended for inclusion through Right of Reply for Hearing Stream 5. These policies mirror Clauses 3.22 and 3.24 of the NPS-FM which direct regional councils to insert a specific policy (or words to the same effect) in the regional plan relating to the circumstances under which resource consent may be granted where the loss of extent and values of natural inland wetlands and rivers cannot be avoided. Policy 40A and Policy 40B provide an interim measure to ensure these matters are given consideration until such time as the NRP is updated to give full effect to these aspects of the NPS-FM. As there is only one regional plan and these matters relate to regional council functions only (as opposed to 8 territorial authorities and district plans in the case of policies relating to territorial authority functions), there will be no need for Policy 40A and Policy 40B to apply once the NRP has been updated. As such, in the case of these two policies a sunset clause is appropriate.
- 17 By contrast, there are other instances where it is appropriate for consideration policies to continue to apply because either:
- 17.1 the policy applies in respect of resource consents at a territorial authority level, and it is unlikely that all 8 district plans in the region will be brought up to date to give effect to the RPS at the same time. The inclusion of these consideration policies assists with implementation of policy direction where it is unclear whether the policy has been given full effect through the district plan, or
- 17.2 the nature of the topic means that information will change and evolve over time, and it is therefore appropriate to have policy direction that provides for the consideration of new information. For example, Policy 47 in the Indigenous Ecosystems topic where knowledge of the extent and diversity of the Wellington Region's indigenous biodiversity is incomplete and new surveys and research continue to identify new ecosystems and sites that meet the Policy 23 criteria.

- 18 On this basis, reporting officers consider that the inconsistency in the application of sunset clauses for consideration policies is appropriate given the context of each policy.
- 19 In relation to Issue 2, some consideration policies apply to regional consents only, rather than to plan changes, reviews or variations. These policies only relate to regional consents, rather than territorial authority consents and are typically in relation to specific matters or issues that are logically addressed at the consenting stage, rather than through a plan change or variation, which typically address matters of a more strategic nature or apply on a broader spatial scale. Again, these policies provide for consideration of these matters in situations where the NRP has not yet been fully updated to give effect to the Chapter 4.1 policies.
- 20 In other cases, the consideration policies apply to consenting and plan change processes. This addresses situations where a plan change is progressed that relates to a discrete part of the NRP or a district plan, for example a private plan change request that relates to a small area of the region, but where broader changes to the district or regional plan are not within the scope of the plan change. The consideration policies provide the Council with the scope to consider matters that would otherwise be addressed through broader changes to a district or regional plan to implement the Chapter 4.1 policies, as it relates to that proposal. This may also be the case for small scale Council initiated plan changes that address specific areas or topics within the plan (e.g. a particular zone).
- 21 The consideration policies had legal effect from the notification of Change 1, and so must be considered as part of any consenting or plan change proposal, regardless of whether the regulatory policies in Chapter 4.1 have been given effect. Where a lower-order plan has not yet been amended to include the relevant provisions required by Chapter 4.1 policies, a decision-maker on a plan change or variation cannot 'look back up' to the Chapter 4.1 policies because the direction in Chapter 4.1 policies is that the respective plans be changed to insert the appropriate provisions first. These changes will generally require some work on behalf of the regional and/or territorial authorities to apply the RPS policy appropriately in the local context.
- 22 For example, Policy 29 requires regional and district plans to identify areas affected by natural hazards. This requires a significant amount of spatial analysis to be undertaken to inform the objectives and policies of the relevant lower-order plan. Until such time as this analysis has been undertaken and the provisions of the plan updated, the decision-maker cannot accurately determine whether the proposal appropriately manages the effects of

the activity in relation to natural hazard risks. Policy 51 (the related consideration policy) therefore provides the scope to consider these matters within the context of the proposal. Furthermore, our understanding of the natural environment, hazards, processes, ecology and biodiversity can change as updated information comes to hand and new research is undertaken. In these situations, the consideration policies act as an important backstop when new or updated research differs from that contained in regional and district plans.

CATEGORISATION OF PROVISIONS

23 In paragraph 10(a) of Minute 27, the Panels state:

a. Please advise whether, having heard submitters, you recommend any changes to the categorisation of provisions between FPP and P1S1.

i. In Table 3 of the s 42A Report on Definitions, the Officer recommends that the three definitions that are within the scope of the Report (National Grid, Regionally Significant Infrastructure and Strategic Transport Network), are re-categorised as P1S1 provisions on the basis that while activities associated with these definitions may have some interaction with water quality, the connection to freshwater quality and quantity is indirect because the substance of the definition substance is largely about the activity itself rather than its effects.

ii. It seems that Officers across the different hearing streams may have applied different methodology to the categorisation of provisions and definitions in Proposed Change 1. For example, the explanation and rationale given by the HS4 Report Author, to the categorisation of HS4 definitions to the FPP (see Table 5, s 42A Report, HS4) and the explanation and rationale given by the HS7 Report Author to the categorisation of HS7 definitions (see Table 3: FPP assessment), seems to be different.

iii. We found the approach described in Mr Wyeth's HS2 Right of Reply evidence clear and helpful (see paragraphs 39 – 42).

iv. We would be grateful if the Officers across the different hearing streams could please review their advice on the categorisation of all provisions to the FPP with a view to providing consistent analysis and rationale for their recommendations

24 The Panels have identified an inconsistency regarding how definitions and Methods 1-5 have been assessed for categorisation into the FPP. It is important to note that in the

original categorisation when Change 1 was notified, the rationale for definitions, methods 1-5 and objective tables, as shown in Appendix E of the Section 32 report, is different to other provisions.

25 Instead of testing for a direct relationship to water quality/quantity from the *Otago Regional Council v Royal Forest & Bird Protection Society of NZ Inc [2022]* High Court decision, the following tests were applied:

25.1 If a defined term is used in a provision notified as FPP, it must also be FPP to support interpretation of that provision, given the shorter timeframe for the FPP process.

25.2 If a method directly refers to the implementation of a policy notified as FPP (e.g. Method 1 refers to implementation of Policy FW.3), it must also be FPP to support implementation of the policy.

26 Definitions and Methods 1-5 are therefore a specific case where timing risks were the original justification for categorisation into the FPP (as per Appendix E of the S32 report). This rationale was maintained in most S42A reports, for example Tables 5 and 6 of the Hearing Stream 4 S42A report, Table 4 of the Hearing Stream 3 nature-based solutions S42A report, and Appendix 3 of the Hearing Stream 5 S42A report. The integrated management topic in Hearing Stream 2 did not contain any definitions so this matter was not traversed.

27 The reporting officers have considered the matters raised by the Panels in relation to the categorisation of provisions between the FPP and P1S1 processes. In particular, the reporting officers for Hearing Stream 4 (Urban Development) and the Hearing Stream 7 (Definitions and Consequential Amendments) topics have discussed the Council's initial methodology for categorisation and the approach that was applied at the hearings stage.

28 It is noted that Mr Watson applied the 'direct relationship' test to the definitions of Regionally Significant Infrastructure, National Grid, and Strategic Transport Network rather than the tests set out above in paragraph 25. Mr Watson has provided commentary in his Right of Reply at paragraphs 12-16 in relation to this matter, concluding that he remains comfortable with this approach given the low risk to implementation if these definitions were to be recategorised from the FPP process to the P1S1 process.

29 Overall, the reporting officers are generally comfortable with the assessments they have already undertaken based on their expert opinion. On this basis, no further changes are

considered necessary to the categorisation of provisions beyond what has been recommended by individual reporting officers.

DATE:

30 MAY 2024

KATE PASCALL

**PROGRAMME LEAD – PROPOSED CHANGE
1 (ON BEHALF OF GREATER WELLINGTON
REGIONAL COUNCIL)**