

## EXPERT WITNESS CONFERENCE

Proposed Natural Resources Plan

Topic: Policy P4

Date: 28/06/2017

Venue: Life Centre, 9 Hania Street, Mt Victoria, Wellington

Present:

Name	For
Christine Foster	Carterton District Council Meridian
Lindsay Daysh	Centreport Ltd / Centreport Properties Kiwi Rail Holdings
Mitch Lewandowski	WCC
Pauline Whitney	SWDC / MDC Transpower Ltd
Hywel Edwards	NZTA
John Kyle	WIAL
Sylvia Allan	GBC Winstone
David Le Marquand	Powerco / <i>Oil Companies</i>
Chris Staite	Minister for Conservation
Phil Percy	Rangitāne
Lucy Cooper	Fish and Game
Yvonne Legarth	GWRC Officer
Carolyn Wratt	Wellington Water
Trevor Robinson	Facilitator
Amber Carter	GWRC Note taker

Facilitator: Trevor Robinson

### Environment Court Practice Note:

It is confirmed that all present:

- Have read the Environment Court Practice Note 2014 Code of Conduct and agree to abide by it.

And in particular

- Have read the Environment Court Practice Note 2014 in respect of Appendix 3 – Protocol For Expert Witness Conferencing and agree to abide by it.

## **Joint Conferencing Statement**

### **1. Assumptions**

1. YL adopts evidence from para 550 to 555 of Ms Greenberg's s42A report Overall policy framework of the proposed Plan – Part B.
2. Tabled statements from Chris Hansen (Ravensdown) and Perri Duffy (First Gas) but as they were not present, they are not part of this conferencing or joint statement.

### **2. Discussion**

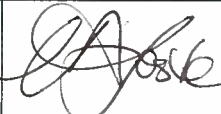




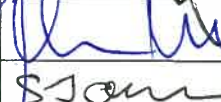
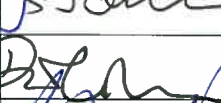
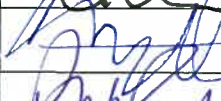

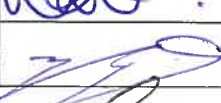




3. Those present considered a series of questions set out in the following paragraphs:
4. Given that minimise is used in different ways in other policies, some with clarification and some without, is any general additional clarification of 'minimise' in the PNRP necessary? Yes – YL, CS; No – the balance.
5. Is additional clarification (either in general or in the policy concerned) necessary for policies that don't currently explain what minimisation entails (estimated 20 policies)? No – SA, ML, CF. CF's view is that individual policies should stand on their own; Case-by-case (i.e. decide what is appropriate for each policy) – JK, YL, HE, PW, LD, CW, LC, CS, PP, DLM.

6. All agreed that individual policies should stand on their own without reliance on other policies for their interpretation of minimise.
7. Notwithstanding [4] and given that minimise is used in different ways in other policies, some with clarification and some without, does a general additional clarification of 'minimise' in the PNRP have value? Yes - YL; Maybe – everyone else.
8. Addressing how that clarification should be provided, options considered were at general high-level or within each policy as required. General high-level – CW, SA; Within each policy as required – DLM, PP, LC, CS; No preference – YL, LD. Consensus that however it is done it needs to be efficient and clear.
9. Consensus that there is value in having a general clarification of 'minimise' in the PNRP, provided it responds to concerns about drafting.
10. There are two general categories of policies that currently use minimise in the PNRP – Set A that contain additional clarification of what 'minimise' means (e.g. Policy P67); Set B that do not (e.g. Policy P26). General agreement that clarification of what 'minimise' means in the Set B policies would be of value.
11. Given that the division between Set A and Set B is not entirely clear, is a general high-level clarification of 'minimise' appropriate, or is it more appropriate that it be included within those policies that require it? There were differing views on the most appropriate way to achieve clarification. Some participants felt unable to express a view on the most appropriate way to address the issue because they have not analysed all the individual policies. Concern expressed that this issue impacts on policies not included in Hearing Stream 1.
12. If there is a high-level clarification of minimise, what form should it take? Options are: policy, definition, explanatory note. Policy – PP, YL, LC; Definition – everyone else; Explanatory note – no one; No preference between a policy or a definition - CS. PP's view is that while, as revised below, it could sit as a definition, a policy is a means in conjunction with other policies to achieve the objectives collectively and potentially directs an action. YL supports PP's view on the basis that a policy has more weight than a definition. The view of the balance of those present is that Policy P4 reads as a definition i.e. an interpretive tool rather than a policy aka a course of action.

13. The discussion that follows accepts that the form the clarification of 'minimise' takes – whether a definition or policy – remains at large and seeks to provide comment on the content of that clarification, if the Panel decides that up-front clarification is the most appropriate option.
14. Consensus that the matters in Policy P4 (a), (c), (d) and (e) are more appropriately addressed in individual policies as appropriate rather than in an upfront general clarification. YL qualifies her support on the basis that it will depend on the resolution of submissions on the balance of the plan.
15. General consensus that if there is to be a general clarification, the first three lines of Policy P4 are an acceptable base provided that the word 'reasonably' is inserted before 'practicable'.
16. YL suggested the following wording for a policy replacing Policy P4: 'When policies in the Plan require adverse effects to be minimised, this means the adverse effects of the activity shall be reduced to the smallest amount reasonably practicable.' Those who support a policy approach support this wording.
17. Those present who support a definition rather than a policy support the following suggested wording:

Minimise    When used in policies means reducing the adverse effects of the activity to the smallest amount reasonably practicable.
18. CF recorded her agreement to this wording on the understanding that 'reasonably practicable' imports functional need and operational requirements as defined; CF and all others have the understanding that 'practicable' includes the concepts underlying 'best practicable option' in the RMA.
19. This clarification has implications for subsequent policies that use 'minimise'. Participants will reflect on those policies in the light of that clarification and some participants advised that they could foresee their clients seeking a more/less restrictive policy outcome as a result, including whether or not the term 'minimise' is used at all.

Signed:

Name	For	Date	Signed
Christine Foster	Carterton District Council Meridian	28/06/17	
Lindsay Daysh	Centreport Ltd / Centreport Properties Kiwi Rail Holdings	28.6.17	
Mitch Lewandowski	WCC	28.6.17	
Pauline Whitney	SWDC / MDC Transpower Ltd	28.6.17	
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