

**GREATER WELLINGTON REGIONAL COUNCIL
PROPOSED NATURAL RESOURCES PLAN FOR THE WELLINGTON
REGION**

HEARING PANEL MINUTE 10

Hearing Stream 1

26 June 2017

ADDITIONAL MATTERS TO BE CONSIDERED IN REPLY

Introduction

1. The Council has helpfully provided us with a table which shows the functional relationship between objectives, policies and methods of the PNRP relevant to Hearing Stream 1. We have since asked the Council to make any corrections or additions to that table and provide a complementary table showing the linkages between the Plan provisions and the higher order directions from relevant statutory documents¹. We are expecting this information to be provided by the appropriate s42A author(s) as part of the written closing statement for Hearing Stream 1. In future, for Hearing Stream 2 the table will be presented at the beginning of the hearing and for all other streams (i.e. streams 3-6) this information will be produced as part of the pre-circulated s42A Reports for each hearing stream.

2. In further considering the concept of linkages, we have some additional matters we wish to have addressed before the Council finalises and submits its reply statement. Broadly, these pertain to the inter-relationship of the Proposed Plan's objectives as a whole. The purpose of this Minute is twofold:
 - (a) to record, for the benefit of all parties, the nature of the additional assessment we require and how we envisage it is to be undertaken; and

 - (b) to specifically invite the Council to arrange for the work to be completed and delivered to us.

¹ Minute 3, paras 10-13

3. In terms of (b) above, we will produce a specific “Terms of Reference” document but in the meantime, there should be sufficient information in this Minute for the parties to understand the nature of what we require.

Clarifying the inter-relationship

4. A main tranche of questions to Officers during Hearing Stream 1 related to whether or not there is a hierarchy between the various objectives in the Proposed Plan. We were advised on multiple occasions that the Council does not consider there to be such a hierarchy, nor is there any need for one to be established.
5. The Officers have, instead, explained that there is an inter-relationship between the objectives, but no primacy is given to one over another.
6. Be that as it may, we have observed some inconsistencies with the explanations from Officers as to precisely how the inter-relationship is intended to function, and we are compelled to get some clarification on that point at this stage.
7. For example, the relationship has been described in the s42A reports in the following ways:
 - (a) that the objectives “inter-relate” with one another;²
 - (b) that proposed Objective O3 is at the ‘top’ of a framework of objectives, policies, rules and methods that sustain and enhance mauri;³
 - (c) that multiple objectives are “specific to” similar outcomes or topics;⁴
 - (d) that Objective O3 is also “implemented by” four objectives;⁵ and
 - (e) that objectives are ordered from the more general to the more activity or resource use specific⁶.
8. While these descriptions might not explicitly fall within a hierarchy per se, it does at least suggest to us that there is some division between the objectives. In fact, Ms Greenberg

² S42A report Overall policy framework of the proposed Plan Part B, Paras 161-162,

³S42A report Overall policy framework of the proposed Plan, Part B, Para 398

⁴ S42A report Overall policy framework of the proposed Plan, Part B, Para 411

⁵ Ms Greenberg supplementary response 26 May, p.27, Para 13

⁶ Ms Greenberg supplementary response 26 May, p.27, Para 14

confirmed this, suggesting that the objectives fall into two sub-categories: *overarching* and *activity or topic-specific*.

9. Relatedly, it was the description of objectives implementing objectives that gave us particular cause to more carefully consider this issue. This concept seemed in conflict with the submissions from Ms Anderson that it is the Proposed Plan's *policies* – not objectives – which are to implement the objectives.⁷
10. In looking at this notion further, we observed examples not only of objectives seemingly implementing other objectives, but also of duplication, partial duplication, and/or variation of direction about common themes. By way of example, we compare Objectives O5(a) and O25 below (our **emphasis**):

Objective O5

Fresh water bodies and the coastal marine area, as a minimum, **are managed to**:

- (a) **safeguard aquatic ecosystem health and mahinga kai**, and
- (b) provide for contact recreation and Māori customary use, and
- (c) in the case of fresh water, provide for the health needs of people.

Objective O25

To safeguard aquatic ecosystem health and mahinga kai in fresh water bodies and coastal marine area:

- (a) water quality, flows, water levels and aquatic and coastal habitats are managed to maintain aquatic ecosystem health and mahinga kai, and
- (b) restoration of aquatic ecosystem health and mahinga kai is encouraged, and
- (c) where an objective in Tables 3.4, 3.5, 3.6, 3.7 or 3.8 is not met, a fresh water body or coastal marine area is improved over time to meet that objective.

11. It is clear from the above that the underlined text in each objective is almost verbatim. On that interpretation, one could logically conclude that the intent of matters (a)-(c) under Objective O25 is to implement Objective O5(a). Similar conclusions could be drawn about the relationship between Objective O24 and Objective O5(b).
12. As we detail further below, it is important for our overall consideration of the objectives, to better understand the manner in which they are intended to function as an integrated whole.

⁷ Legal submissions on behalf of Wellington Regional Council, 20 April 2017, p.4, para 16

Implications for Section 32AA

13. To be clear, we are not concerned with whether there is, implicitly or explicitly, a hierarchy between the objectives. However, inherent in our evaluation of the objectives under s32AA of the Act is the need to be absolutely clear on their construction as an integrated whole.
14. As clarified in Ms Anderson's opening submissions⁸, part of our role is to evaluate the objectives in terms of:
- (a) their appropriateness in achieving the sustainable management purposes of the RMA; and
 - (b) to the extent relevant, their role in giving effect to any national policy statement, the Regional Policy Statement, the New Zealand Coastal Policy Statement and other relevant statutory direction⁹.
15. Once satisfying ourselves that the objectives do this, we then must consider the lower order policies, rules and other methods in the Proposed Plan to the extent they are the most appropriate means of implementing the objectives. We have found some difficulty in undertaking this task at this preliminary stage.
16. Whilst the tables we have requested of Council (referred to at the outset of this Minute) will assist in providing us with a road map for these evaluations, the missing piece this Minute further identifies is the need for an assessment that clearly identifies where linkages exist from one objective to another, and how those linkages are intended to function.
17. Once we have this information, possible flow-on effects that may arise include:
- (a) a hierarchy of overarching objectives (e.g. Objective 5) may need to be explicitly identified and some the *activity* or *topic-specific* objectives (e.g. Objective 25) may need to be deleted and or recast as policies; or
 - (b) it may become apparent that some or all of the implicit overarching objectives are redundant (or partially redundant) and may be edited so that the duplication and

⁸ Legal submissions on behalf of Wellington Regional Council, 20 April 2017, p.10, paras 41-43

⁹ To the extent that we have scope via submissions to consider those provisions

confusion is avoided with the *activity* or *topic-specific objectives* and to enable surety about which lower order provisions implement their corresponding objective(s); or

(c) no changes may be necessary, other than minor drafting changes.

18. We wish to emphasise that we have certainly not arrived at any substantive decision on this matter and merely provide the above scenarios as examples of the possible outcomes for this further piece of work requested.

Integration Review

19. We are abundantly aware that Officers have plenty to attend to in their reporting capacities, and in responding to other directions and requests we have tasked them with. Accordingly, we are hesitant to add further demands on their workloads to address the matters that we have summarised above.

20. Moreover, we recognise there may be some added benefit in a 'fresh set of eyes' being involved at this stage.

21. Accordingly, we request that the Council commissions an independent review of the proposed objectives. We intend to define the terms of reference for the review prior to commencement, but in summary, the matters to address will include consideration of:

- (a) the explicit and implicit linkages between objectives, including between the 'over-arching' and 'activity or topic specific' objectives;
- (b) any 'mixed messages', duplication or conflict in terms of the collective outcomes expressed for matters common to more than one objective;
- (c) whether any duplication could be removed without changing the collective outcomes sought in the objectives; and
- (d) whether, if any objectives might be more appropriately recast as policies if they are deemed to be 'implementing' other objectives.

22. Again, this is just a preliminary summary of the matters for consideration, and we will issue a more formal inventory of terms once the Council has commissioned the review report.

Next Steps/Timeframes

23. The Panel will issue formal terms of reference for the reviewer, including timeframes for delivery of her/his findings later this week (the week of 26 June 2017).
24. The Panel requests that the Council endeavour to appoint a suitably qualified independent professional to undertake the integration review exercise we have summarised above by 5pm on Friday 30 June 2017. We anticipate that the reviewer will need up to 10 working days to undertake this task; thus, a delivery date for review of 14 July is our target.
25. We signal now that this means that the date for the receipt of Council's reply statement for Hearing Stream 1 is formally delayed. Confirmation of the date for the reply statement for Hearing Stream1 will be specified once it is known that a suitably qualified person is available to undertake the integration review and date for the delivery of the review is agreed to. Council Officers will then be given 10 working days to consider the findings of the integration review and incorporate any discussion and/or associated amendments in its reply statement for Hearing Stream 1.



Mark St. Clair

Chair

For and on behalf of

Proposed Natural Resources Plan Hearing Panel

26 June 2017

Note 1: The Hearings Officer is the Council's 'point of contact' for submitters and the media.

The contact email address is: regionalplan@gw.govt.nz

Note 2: The Councils website address is: <http://www.gw.govt.nz/proposed-natural-resources-plan/>.