

Hearing Stream One: Overall Plan Framework

Right of Reply - 4 September 2017

1.0 Introduction

1. My name is Yvonne Legarth. I have read the s42A Officer's Report: Overall policy framework for the proposed plan (Part A and Part B), prepared by Ms Emily Greenberg dated April 2017, and released in advance of Hearing Stream 1. My qualifications and experience are appended to the response to Minute 3; and are set out in my RMA s42A Natural Form and Function report.
2. This Right of Reply responds to matters raised by submitters and the Panel since the s42A Officer's Report: Overall policy framework reports were released. I have not revisited the advice and recommendations made in response to the submissions that were assessed by Ms Emily Greenberg.
3. This summary outlines:
 - The plan structure
 - Responses to the Panel's Minutes
 - Questions raised during the hearing

2.0 Background

4. The proposed plan is to assist the council to carry out its functions in order to achieve the purpose of the RMA; and be prepared in accordance with:
 - (a) its functions under section 30; and
 - (b) the provisions of Part 2; and
 - (c) a direction given under section 25A(1); and

(d) its obligation (if any) to prepare an evaluation report in accordance with section 32; and

(e) its obligation to have particular regard to an evaluation report prepared in accordance with section 32; and

(f) any regulations¹.

Plan structure

5. A theme running through the questions, some evidence, and the minutes and responses is whether any objectives or any one part of the plan overrides any other part.
6. The layout of the plan is fairly straightforward. The objectives are grouped together, then the policies are grouped; then the rules; then other methods, followed by five Waitua chapters (which have policies and rules that deal with water allocation within each catchment), and then Schedules followed by basic maps. Sitting behind the plan are detailed GIS maps.
7. The RMA section 42A report writers are undertaking the assessment of submissions and relief sought; and in some instances have recommended amending or combining objectives, among other changes in response to submissions. It may be that recommendations are made about headings and the grouping of objectives and policies as hearings on those provisions are progressed. Where it is proposed to relocate, re-word or combine particular objectives, this will be dealt with in the relevant RMA section 42A reports.

Overarching or overall ?

8. The RMA section 42A reports on the overall planning framework were presented to the Panel in Hearing Stream 1.
9. The term ‘**overarching**’ has been used on occasion responding to questions raised during Hearing Stream 1; in some evidence of submitters, and is also used in some of the RMA section 32 reports. Having discussed this with the regional plan staff, I

¹ RMA section 66

am advised that the term ‘overarching objectives’ was used when describing those provisions that always apply and which apply to the whole region, rather than using a term like ‘general objectives’. The term ‘overarching’ is used in the sense of ‘all-embracing’ and the oxford dictionary definition of ‘overarching’...does not imply a hierarchy...

10. Where ‘overarching’ is used, the term refers to those objectives that apply throughout the region. The whole plan is to be read together, and no one objective overrides or implements any other objective. As with many other plans, there are provisions that apply throughout the region that would always apply when assessing a resource consent application; and there are also resource specific and site specific provisions.
11. The development of the proposed plan was overseen by the Te Upoko Taiao - Natural Resources Management Committee which was comprised of six elected Greater Wellington Regional Councillors and six appointed members from the region's mana whenua. The plan has taken an integrated approach to the management of natural and physical resources. As I understand it from the section 42A report of Ms Emily Greenberg and the evidence of Mr Mike Grace, this approach to preparing the plan has resulted in the matters of interest to iwi being woven throughout the plan, and not being in a stand- alone section.

12. 3.0 Update on activity since the s42A report was prepared

13. Since the RMA section 42A reports: ‘Part A and Part B overall planning framework’ were prepared the Panel has issued the following minutes that are relevant to this right of reply:
 - 13.1 **Minute 3** directed an assessment of the Objectives in Hearing Stream 1 as outcome statements. The response to Minute 3 considered that amendments might be made to Objectives O4, O5, O11 and O14 to make the outcomes clearer.
 - 13.2 **Minute 4** sought legal and technical advice on any requirement for interim provisions in the plan to give effects to the NPS-FM. A response to Minute 4 was provided to the Hearing Panel on 8 June 2017. The NPS-FM directs policies into the plan; and those provisions have been included.

- 13.3 **Minute 5 and 7** (directing caucusing); and I attended the facilitated caucusing on Policy P4 that was held on 28 June 2017. The joint caucusing statement signed by participants included: an alternative definition of ‘minimise’; and an alternative Policy P4.

Definition of Minimise: When used in policies means reducing the adverse effects of the activity to the smallest amount reasonably practicable.

Alternative Policy P4: When policies in the plan require adverse effects to be minimised, this means that adverse effects of the activity shall be reduced to the smallest amount reasonably practicable.

- 13.4 I support the caucusing version of Policy P4 as a policy, but not as a definition.
- 13.5 The caucusing of the expert planners discussed the sub-clauses in Policy P4, and that they could be transferred into other policies where they are relevant. *The consequences for the objectives and policies that arise from the alternative Policy P4 include a need to transfer (and potentially amend the sub-clauses from the notified Policy P4) into those policies that use ‘minimise’.* The policy intent that Policy P4 does not apply in a Schedule A, Schedule C, Schedule E and Schedule F sites will need to be made clear in the plan.
- 13.6 As part of her work on submission about stormwater, Ms Amber Carter is drafting along the following lines, which I support: Policy P73 The adverse effects of stormwater discharges (outside areas identified in Schedule A (outstanding water bodies), Schedule C (mana whenua), Schedule E (historic heritage), Schedule F (indigenous biodiversity)) shall be minimised, including by...
- 13.7 **Minute 10** identified additional matters to be considered in the right of reply; and a response to Minute 10 dated 26 May 2017 included legal advice and the supplementary response from Ms Emily Greenberg on whether there is a hierarchy between Objectives (response at page 27). There is no hierarchy between the objectives.

Enfocus review

- 13.8 Minute 10 and 11** directed an independent review of objectives to clearly identify where linkages exist from one objective to another, and how those linkages are intended to function. Ms Pam Guest has addressed the report prepared by Gerard Willis (Enfocus) responding to Minute 10.

4.0 Questions arising from evidence

Whaitua process fully implementing the NPS-FM by 2024

14. The Council has an NPS-FM implementation programme; the first plan change will be prepared and notified in 2018; the final plan change is due in 2023 with notification of the associated plan change in 2024.

Introduction – Table 1.1: Values of water

15. Table 1.1 identifies the values of water that have been identified during the development of the Plan, and does not need to be included in the regulatory part of the plan.

Notification of consents

16. The plan does not have administration provisions that set out the approach to written approvals and notification. The RMA deals with affected parties and notification.

Contact recreation and Māori customary use

17. Maori customary use and contact recreation are not exactly the same thing, however both depend on minimum water quality standards being met.

Objective O5 and potential duplication

18. The potential duplication between Objective O5 and O25 is to be dealt with in the RMA section 42A report: Water quality.

Add ... “where the resource is degraded” to Objective O3 (Mauri is sustained and enhanced)

19. The relevance of ‘where degraded’ would depend on the specific context of the provision in the plan. It is not appropriate in Objective O3

Is Policy P4 consistent with the use of the term in the NZCPS?

20. NZCPS uses ‘minimise’ in the context of the discharge of contaminants and managing coastal hazard risk. The RMA section 42A reports dealing with discharges are being prepared. It would not be consistent with the NZCPS to use ‘minimise’ where effects are to be ‘avoided’ or ‘protected’.

The precautionary principle

21. I understand that legal advice has been provided on the precautionary principle. The NZCPS 2010 Guidance note Policy 3: Precautionary approach also discusses risk identification, and adaptive management and climate change responses.

22. Role of Methods

23. The objectives of a plan can be implemented either by rules in the plan, or by non-regulatory methods. Where non-regulatory methods are used the Council must budget for implementing ‘Other Methods’ with staff resources and funding through its Council’s Long Term and Annual Plans.

Legibility of the Maps

24. The proposed regional plan maps are available in greater detail in a GIS format linked from the proposed plan website; and print outs are available on request from the regional council.

Te Upoko Taiao terms of reference

25. The Hearing Panel requested a copy of the terms of reference for the Te Upoko Taiao. The terms of reference were attached at Appendix B, and revised Terms of Reference are attached as Appendix C.

Approval of regional coastal plans by the Minister of Conservation

26. A proposed regional coastal plan must be developed in consultation with the Minister of Conservation and iwi authorities of the region. The Minister of Conservation only approves the coastal marine area portion of the proposed Natural Resources Plan. The Council can only adopt the regional coastal plan portion of the

proposed plan under clause 18 of Schedule 1 of the RMA, once the plan is beyond challenge by an appeal or a decision of the Court.

Sub-clauses from Policy P4

72. The following sub-clauses from Policy P4 have been amended slightly to read as ‘considerations’, and it may be appropriate to transfer the following sub-clauses into other policies that use ‘minimise’ as relevant:
- (a) consider of alternative locations and methods for undertaking the activity that would have less adverse effects, and
 - (b) locate the activity away from areas identified in Schedule A (outstanding water bodies), Schedule C (mana whenua), Schedule E (historic heritage), Schedule F (indigenous biodiversity), and
 - (c) manage the activity, or the adverse effects of the activity, to avoid times when adverse effects may be more severe, or when receiving environments may be more sensitive to adverse effects, and
 - (d) use good management practices, and
 - (e) design the activity so that the adverse effects of the scale or footprint of the activity is as small as practicable.