

**Before the Hearing Panel
at Wellington**

UNDER the Resource Management Act 1991 (**RMA**)

IN THE MATTER OF Proposed Natural Resources Plan for the Wellington Region (Hearing
Streams 1 and 2)

**RESPONSE OF LUCY ELIZABETH COOPER ON BEHALF OF WELLINGTON FISH AND
GAME COUNCIL to
“REVIEW OF THE OBJECTIVES OF THE PROPOSED NATURAL RESOURCES PLAN: A
REPORT FOR GREATER WELLINGTON”**

Dated: 28 July 2017

EXECUTIVE SUMMARY

1. Minute #10 issued by the Hearing Panel advised submitters that Mr Gerard Willis had been formally engaged to undertake an independent integration review of the objectives of the Proposed Natural Resources Plan (pNRP). Hearing Panel Minute 13 set out the timeframes for submitters' response to the independent review.
2. I have been asked by Fish and Game to provide comment on the independent integration review (the review) as it relates to Hearing Streams 1 and 2. Comment on the report in respect of Hearing Stream 3 will be tabled and presented to the Panel during Fish and Game's scheduled appearance at that Stream. With regard to Hearing Streams 4-6, comment on the review will be provided in hearing evidence prepared on behalf of Fish and Game.
3. The purpose of the review was to clearly identify where implicit and explicit linkages exist between objectives, and how the linkages are intended to function in the pNRP. In so doing, Mr Willis was also to consider whether there is any duplication or conflict "in terms of the collective outcomes expressed for matters common to more than one objective", and whether any duplication could be removed without changing the collective outcomes.¹
4. From Mr Willis' report I discern the following conclusions:
 - As notified, the objectives represent a complex framework that does "not assist in conveying a coherent approach"²;
 - There is nothing inherently problematic with the suite of objectives proposed, however eight objectives have been identified as not being able to perform all the functions of an objective;

¹ Terms of Reference for the Independent Integration Review of Objectives of the pNRP, p.1, paragraph 3.

² Review of the Objectives report, p. 4-5.

- The objectives can be re-organised into two key groups and associated sub-groups, the principle groups being ‘how resources will be managed’, and ‘outcomes sought from the management of resources’; and
 - Some of the individual pNRP objectives within the two groups identified can be rationalised either through rewording, combining or deletion.
5. Mr Willis’ review does not dissuade me from my concerns regarding the objectives generally in my evidence for Hearing Stream 1. In this respect, I welcome Mr Willis’ acknowledgement “that is not to say a case cannot be made for more radical change”.³

Overview of Relevant Fish and Game Evidence – Hearings 1 and 2

6. In my planning evidence presented at Hearing Stream 1, I made the following general observations in respect of the objectives in the pNRP:
- The objectives in the pNRP are stated in a general way and there is no way of ranking them. This does not assist plan users or decision makers to determine which is the appropriate selection of objectives and policies against which to assess any given activity. There is no direction to plan users or decision makers as to which consideration within a suite of relevant objectives or policies should take precedence.
 - The objective and policy framework that needs to be worked through in order to assess and determine an application for resource consent provides little in the way of logical guidance, and places a large onus on consent applicants with little real gain.
 - As currently stated there is no real guidance as to the relationship between

³ Ibid, p.ii.

different objectives. In my opinion, the balancing act being asked of plan users is unreasonable, and will result in conflicts between uses being determined on a case-by-case basis, at potentially significant expense to applicants and affected parties.

7. In Hearing Stream 1 I also made several comments on specific objectives:

- Objective 25 and the policy framework intended to achieve it are, as currently written, incomplete and insufficient to ensure that water quality can be managed to safeguard aquatic ecosystem health on a region-wide basis. Objective 25 and its associated policy framework provide insufficient guidance to manage the adverse effects

8. In legal submissions for Fish and Game in Hearing 1, Ms Ongley made the following observations:

- The objectives are drafted as a series of disconnected matters, and there is no guidance as to the relationship between them.
- The objectives do not provide direction to potential consent applicants.

9. Ms Ongley made comments on objectives O42, O44 and O45, in legal submissions presented at Hearing Stream 2, and supported other submitters' suggestions of amalgamation of them.⁴

Case Law

10. Mr Willis' report highlights the limited utility in the case law he cites in determining what an objective is and the role they play in regional plan making. Regardless of whether it is lawful to provide for a list of objectives with no real

⁴ Ms Ongley, Legal Submissions on behalf of Fish and Game, Hearing Stream 2, paragraphs 14-18.

guidance as to the relationship between them,⁵ section 32 does require an evaluation of whether this is the most appropriate way to achieve the purpose of the Act. Mr Willis has referred to the need, at a *collective* level, for the objectives of a plan to “*provide guidance (along with policies) for determining resource consent applications*”.⁶ Without hierarchy, ranking, or clarification as to relationship between policies, I do not consider that guidance will be achieved. Similarly, in the *Infinity*⁷ case, the Environment Court expressed a view that such an approach may not give effect to higher level policy documents (in that case the Canterbury RPS). as to relationship between policies, I do not consider that guidance will be achieved.

11.

Best Practice

12. I acknowledge Mr Willis’ comments in respect of current practice in drafting objectives (section 1.2.1), and agree with his list of good practice principles for plan objectives set out in paragraph 1.2.3 of the report. In addition, I consider the following list to offer relatively simple and straightforward test against which to assess the appropriateness and utility of objective. In writing objectives it is good practice to:

- Be specific;
- Write the objective in a form of a sentence that states what is to be achieved, where and when;
- Write the objective in such a way that plan users can understand what the issue is (if the issue is not included in the Plan); and
- Write the objective in such a way that is assessable (i.e. those people implementing and monitoring the plan will know when an objective has been met).⁸

Complexity, Coherency, and the Grouping of Objectives

⁵ As stated in “Supplementary responses from legal advisers and section 42A authors addressing questions arising during Council’s opening session on 22/23 May 2017” at [25].

⁶ Review of Objectives Report at 1.2.3(b).

⁷ *Infinity Investment Group Holdings Ltd v Canterbury Regional Council* [2017] NZEnvC 36.

⁸ Taken from www.qualityplanning.org.nz website, *Writing issues, objectives and policies*.

13. I agree with Mr Willis' statement that the relationship "between individual objectives is complex".⁹ I also concur with his suggestion that the nature of plan making for complex, interrelated environments presents challenges to plan makers when formulating provisions for the management of those environments.
14. I welcome Mr Willis' attempts to provide an alternative structure of the objectives to try to solve some of the complexity and incoherence of the pNRP. Table 1 of the report provides an alternative means of contextualising the current suite of objectives, but it does not solve the issues of navigation, interpretation and usability that arise when the objectives are applied to an assessment or decision-making scenario, such as the worked example of a cultivation activity presented in my evidence for Hearing Stream 1.
15. This exercise demonstrated that the provisions of the Plan do not provide the plan user – be that a decision maker, an applicant, or submitter – with a coherent road map from the assessment of an activity to an environmental outcome that is consistent with the purpose of the Act, other national instruments, or the RPS. The absence of desired end state outcomes in many of the objectives, including appropriate water quality standards that relate to the effects of activities the pNRP must manage to address the resource management issues, significantly contributes to the complexity and lack of coherency in the pNRP.
16. Therefore, I consider that the complexity of the objectives goes beyond the way they are organised in the pNRP. Without addressing the fundamental inconsistencies and flaws present within individual objectives, the ability of any alternative structure to enable the Council to perform its functions under the RMA will have only limited success.

⁹ Review of the Objectives report, p.ii.

The Rationalisation of Individual Objectives

17. I welcome Mr Willis' attempts to rationalise some of the objectives in the pNRP, and his views that a number of activity specific objectives could be deleted without losing any functionality of the Plan. Support for rationalisation of this nature would be on the basis that the remaining objectives that manage for environmental values, such as freshwater quality, are sufficiently robust, comprehensive and transparent to ensure activities can be managed to secure the outcomes sought by the RMA, the NPSFM and the RPS.

18. However, I disagree with Mr Willis that retaining objectives in the pNRP that have limited functionality are not "inappropriate or in any way problematic".¹⁰ I refer again to my worked cultivation example, which demonstrates the illustrates the difficulties that an applicant (and indeed a decision-maker) would have in obtaining guidance as to whether the activity is consistent with, or provided for, by the objectives and policies. The retention of any objective that does not actively assist the Council to perform its functions under the RMA, or that interfere with a decision maker's ability to determine the appropriateness of an activity with any level of confidence is problematic and inappropriate.

19. Furthermore, I do not consider the Mr Willis' review goes far enough to determine those objectives which do not perform all the functions expected of an objective, or those that can be reworded, deleted or combined.

Conclusion

20. For the reasons outlined above, Mr Willis' review does not dissuade me from my concerns regarding the objectives generally, and particular objectives specifically, introduced in my evidence (and in Ms Ongley's legal submissions) for Hearing Streams 1 and 2. In this respect, I welcome Mr Willis' acknowledgement "that is not to say a case cannot be made for more radical change".¹¹

¹⁰ Review of the Objectives report, p.10.

¹¹ Review of the Objectives report, p.ii.

21. The amendments requested in my evidence at Hearing Stream 1 are attached in track-changed form for convenience.