In the Hearing Panel
At Wellington

Under	the Resource Management Act 1991
In the matter of	Proposed Natural Resources Plan for the Wellington Region (Hearing Stream 1)

Wellington Regional Council legal submissions in reply for Hearing Stream 1: Overall Policy Framework for the Proposed Plan, Beneficial Use and Development, Areas and Sites with Significant Mana Whenua Values

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MAY IT PLEASE THE PANEL:

1 These legal submissions reply to the main legal matters raised by the Hearing Panel and submitters during Hearing Stream 1. They do not address every legal issue addressed or question asked throughout the 4 weeks of hearing time, but have addressed common themes or recurring issues.

2 These submissions should be read in conjunction with the other submissions previously filed by counsel in respect of this Hearing Stream.[1]

3 In summary, the main legal themes or issues that arose in Hearing Stream 1 are:

3.1 The implications of the *King Salmon* line of cases on the Panel's decision making and ability to consider higher order documents and Part 2 of the RMA.

3.2 The implications of the Resource Legislation Amendment Act 2017 on the proposed Plan and the Panel's decision making.

3.3 The terminology used in the proposed Plan. Specifically the use of the terms 'recognise' and 'provide for' in objectives and the use of the term 'practicable' in policies.

3.4 The appropriateness of the use of qualifiers in policies in the proposed Plan, with specific reference to the case of *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* C74/2000, EnvC, 29 September 2000.

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[1] Legal Submissions on behalf of Wellington Regional Council: Hearing Stream 1, 20 April 2017; Introduction and legal overview on behalf of Wellington Regional Council: Hearing Stream 1, 22 May 2017; Supplementary responses from legal advisors and section 42A authors addressing questions arising during Council's opening session on 22/23 May 2017, 26 May 2017; responses from legal advisors and Emily Greenberg (section 42A author) addressing questions arising in the Panel's Minute No. 4, 8 June 2017.

3.5 The definition of 'Regionally Significant Infrastructure'.

3.6 The appropriateness of Policy P4 and the use of the term 'minimise' throughout the proposed Plan.

3.7 The ability for the proposed Plan to provide for development.

4 While various questions have been asked of submitters as to the above issues, our legal view of these matters remains as set out in our primary legal submissions (filed 20 April), overview (22 May) and supplementary responses (26 May). We summarise that below.

The relevance of *King Salmon* and implications on decision-making

5 There is no doubt that the Supreme Court's decisions in the *New Zealand King Salmon* cases are of significance to resource management practice.[2] However, as set out in the recent High Court decision of *Turners & Growers Horticulture Ltd v Far North District Council* [2017] NZHC 764 (***Turners & Growers***) it is important to remember the factual context of the Supreme Court's decisions.

6 The NZCPS contained a strong, directive policy (Policy 15) that required the avoidance of effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment:

> To protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development:
>
> (a) avoid adverse effects of activities on outstanding natural features and outstanding natural landscapes in the coastal environment.

7 In that case, the plan change proponent was seeking to rely on Part 2 of the RMA to justify adverse effects (significant or otherwise) on an

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[2] Both in terms of adaptive management (*Sustain Our Sounds Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 40) and the interpretation of planning documents (*Environmental Defence Society Inc v New Zealand King Salmon Company Ltd* [2014] NZSC 38 referred to in these submissions as *King Salmon*).

outstanding natural landscape. In other words, it was relying on Part 2 matters to justify doing something that was clearly contrary to a directive policy in the NZCPS. The authority that you cannot look beyond higher order policy documents to Part 2 when making decisions on plan changes arose in that context. However, that authority is not absolute and there are a number of exceptions to it.

8 As the Supreme Court stated, even where there are directive policies, you can look to Part 2 when:[3]

8.1 There is incomplete coverage of a matter in the higher order document;

8.2 There is ambiguity/uncertainty of meaning in the higher order document; or

8.3 The higher order document is invalid.

9 Given the requirement for a regional plan to give effect to (implement) national policy statements this is logical - you cannot use Part 2 to justify not implementing a clear direction from a higher order document. In that respect, *King Salmon* is limited to where higher order documents are directive and provide no 'room' for any other meaning.

10 The recent High Court decision in *Turners & Growers* clarifies that where there is a choice between options, the decision-maker can look beyond the higher order policy direction and consider the relevant matters in Part 2.[4] This is logical and consistent with the Supreme Court's decision (in *King Salmon* there was no choice, as all effects on the ONL in that case had to be avoided, not just significant effects, and the relevant policy was not couched in the 'avoid, remedy or mitigate' terms, as was the case in *Turners & Growers*). The High Court said:

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[3] *King Salmon*, at [90].

[4] *Turners & Growers*.

> These objectives and policies leave considerable room for choice as to the methods or rules most appropriate to achieve them. It is an extraordinary proposition to suggest that Council, and the Environment Court on appeal, should disregard the purpose and principles of the Act when considering that choice. I reject this proposition.

11 Another way of looking at it is that the *Turners & Growers* 'options approach' is akin to the ambiguity/uncertainty of meaning exception in *King Salmon*. It is submitted that the fact that the *King Salmon* case considered the NZCPS and the coastal environment, whereas the *Turners & Growers* decision considered a district plan does not make the general principles of law and interpretation in the decisions any more or less relevant to the coastal environment.

12 The focus of much discussion before the Panel has been on the RPS, and whether the Panel can look beyond the RPS to the NZCPS/NPSs or Part 2 of the RMA when considering the appropriateness of objectives and other provisions. The short answer is that it will depend on how directive the policy is:

12.1 If it is so directive that there is no option as to the most appropriate mechanism to give effect to it, then the question is whether any of the exceptions in paragraph 8 above apply. If they do, you can resort to higher order documents and/or Part 2 to resolve this question. If they don't, you can't.

12.2 If it is not directive and there are options as to the most appropriate mechanism to give effect to it, then you can resort to higher order documents and/or Part 2 to resolve this question.

13 **Appendix 1** to these submissions includes a flow diagram we have prepared that attempts to reflect this.

14 Finally, we note the Panel is also only able to consider the issues raised in the RPS/NPSs etc where a relevant issue has been raised in

submissions.[5] All provisions in the proposed Plan need to be 'filtered through the lens of relief sought in submissions'. The Panel's role is to make decisions on submissions (Schedule 1, clause 10) - it is not the Panel's role to prepare the plan from scratch. If no submissions raise opposition to the proposed provisions, there is no scope to address it.

The implications of the Resource Legislation Amendment Act 2017

15 The Resource Legislation Amendment Act 2017 will amend the RMA in three stages. First, the day after the Amendment Act received royal assent (19 April 2017), amendments in part 1, subpart 1 were made. This included amendments to the Council's functions in section 30 (previously addressed in our Supplementary Response filed on 26 May 2017), and section 14(3)(b)(ii) raised by the Panel.

16 The change in section 14(3)(b)(ii) relates to the activities authorised by section 14 of the RMA without the need for a resource consent (ie, it effectively makes them a permitted activity). It has changed the provision by replacing the words 'an individual's' with 'a person's':

> (b) in the case of fresh water, the water, heat, or energy is required to be taken or used for—
>
> (i) an individual's reasonable domestic needs; or
>
> (ii) the reasonable needs of ~~an individual's~~ a person's animals for drinking water,—
>
> and the taking does not, or is not likely to, have an adverse effect on the environment;

17 This changes the focus of the 'permitted activity' from an individual's animals, to a person's animals. While this potentially broadens the permitted activity significantly (as 'person' is defined in section 2 of the RMA as including the Crown, a corporation sole, and also a body of persons, whether corporate or unincorporate) it is important to remember that the activity is still qualified by the statement that *the*

[5] Refer paragraphs 41 to 44 of the Supplementary Responses filed on 26 May 2017.

taking does not, or is not likely to, have an adverse effect on the environment.

18 On 18 October 2017, the RMA will be amended again, through the provisions in Part 1, Subpart 2 of the Amendment Act. Finally, on 18 April 2022 the amendments in Part 1, Subpart 3 of the Amendment Act will occur.

19 While the Amendment Act changes the resource management practice area, the Panel is directed by clause 13 of Schedule 12 of the RMA to make its decision on the proposed Plan as if the Amendment Act had not been enacted.

20 At a conceptual level this is a straightforward direction. The Panel can ignore the Amendment Act and only consider the provisions of the RMA as they were as at 18 April 2017. In reality, it is more complex.

21 Although the Panel needs to make its decision in accordance with the provisions of the RMA as they were as at 18 April 2017, the legal framework has changed, and will further change, before the Panel makes its decision on the proposed Plan.

22 The Panel needs to understand that framework as it is the legal context within which the proposed Plan will operate (just as it would need to consider any new significant case law as to the legal framework that was released before its decision on the proposed Plan) but it is required to disregard the Amendments for the purpose of its decision.

23 Practically, we consider that the direction is for the Panel to make its decisions under the decision-making provisions as they were as at 18 April 2017. Sections 32, 32AA, 30, 65, 66, 67, 69 are relevant to the Panel's decision-making and have all been amended by the Amendment Act. The versions of those provisions as at 18 April 2017 are what need to form the basis of the Panel's decision. Clause 10, Schedule 1, has not changed but Schedule 1 more generally has (and will further). The amendments to Schedule 1 also need to be ignored by the Panel.

24 The other amendments, regarding the substantive scope of the RMA and its coverage and operation can, in our submission, be considered where there is scope to do so (ie, the issue has been raised in submissions). Where appropriate, Council officers will be recommending such changes through their section 42A reports. However, where there is no scope the Panel cannot rely on the Amendment Act to make changes (given the clear direction in clause 13 of schedule 12). If changes are required, the Council may need to address that through a further plan change/variation or withdrawal of parts of the proposed Plan, depending on the issue.

25 Specifically in response to the Panel's questions around the regulation of hazardous substances, the Amendment Act amended section 30, and the Council's functions, by removing section 30(1)(c)(v) and amending section 30(1)(d)(v) as follows:

> (c) the control of the use of land for the purpose of—
>
> ~~(v) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances~~
>
> (d) in respect of any coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of—
>
> (v) any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of natural hazards ~~and the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances~~

26 In response to the amendments to section 30, the Council has reviewed the provisions of the proposed Plan that address hazardous substances. There were no rules controlling land use regarding hazardous substances (in the CMA or outside it). In respect of the proposed Plan, hazardous substances are only addressed in rules controlling the discharge of hazardous substances. Section 30(1)(f) of the RMA provides as a Council function *the control of discharges of contaminants into or onto land, air, or water…* Hazardous substances clearly fall within the

definition of 'contaminant' and therefore it is appropriate for the Council to continue to have rules controlling such discharges.[6]

27 Therefore, no changes to the proposed Plan are required as a result of the removal of the references to hazardous substances from section 30(1)(c) and (d)(v) of the RMA.

28 It is noted that changes to the relevant rules for discharges of hazardous substances in the proposed Plan will be required due to the Resource Management (Exemption) Regulations 2017. Those regulations relate to vertebrate toxic agents (**VTAs**) and exempt three specific VTAs (but not all VTAs) from regulation by section 15 of the RMA. This will be addressed in Hearing Stream 5.

Objectives use of 'recognise' and 'provide', policies use of 'practicable'

29 As previously stated, we consider that objectives within the proposed Plan can use the language of 'recognise' and 'provide'. This has been supported by the Environment Court and higher order policy documents. However, the Panel does need to consider whether the objectives are the most appropriate way to achieve the purpose of the RMA, and it may consider that the terms and phrases used do not do that. That is a policy decision to be made, but from a legal perspective, the use of the words in objectives is, in our submission, legally acceptable.

30 In addition, we consider that the use of the word 'practicable' in policies is acceptable from a legal perspective. Our primary legal submissions, filed on 21 April set out the case law regarding 'reasonably practicable' at paragraphs 89 and 90. We acknowledge that practicable and reasonably practicable are two different, although closely related, concepts.

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[6] Refer definition of 'contaminant in section 2 of the RMA.

31 While the Panel has been referred to the case of *New Zealand Airline Pilots Association Industrial Union of Workers Incorporated v Director of Civil Aviation and Wellington International Airport Limited* [2017] NZCA 27 and its interpretation of 'practicable' that decision needs to be carefully approached. As warned in that case:[7]

> The meaning of "practicable" must be coloured by its legislative text and context. The express statutory purposes provide powerful guidance.

32 Further, the case is also under appeal to the Supreme Court on the broad question of 'whether the Court of Appeal was correct to allow the first respondent's appeal to that Court'. However, the following base principles are considered to be relevant to any inquiry as to what is practicable or not: [8]

> The word "practicable" has a well-known meaning, as confirmed by this Court, as something that is feasible or able to be accomplished according to known means and resources; it links the feasibility or practicality of something to the availability of resources. When dealing with the construction of an aerodrome runway, "practicable" must refer to what is actually able to be constructed, importing considerations of practical issues such as the nature of the site and surrounding physical environment, available engineering technology and potential construction options.
>
> …the word "practicable" imports a stricter or higher standard than "reasonably practicable," which is seen as affording greater latitude to adopt a cost-benefit analysis.
>
> The adverbs "reasonably" and "physically" add a qualifying gloss to the ordinary meaning of "practicable" — the former supports a closer focus on economic analysis and the latter on the practical feasibility of construction.

33 The word 'practicable' is used in multiple places throughout the RMA. It is used in respect of timing (ie, as soon as practicable in section 32), in respect of action (ie, in terms of taking all practicable steps (new section 18A)), in respect of options identification (if practicable in section 32) or in the sense of the best practicable option (in sections 16, 70 and 108

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[7] At [51]
[8] At [52], [53] and [63].

with its own clearly defined meaning in section 2). The term 'reasonably practicable' is also used throughout the RMA.

34 'Practicable' is also used in policies in NPSs, including frequently in the NZCPS (including policies 2, 6 and 10), the NPS-FM (policies CA2 and E1) and in the most recent NPS, the NPS-UDC (in policy C4).

35 We submit that the use of the term 'practicable' in policies is legally acceptable. Whether it is the most appropriate wording for a particular provision is a policy decision to be made by the Panel.

The use of qualifiers in provisions

36 The Panel raised some questions regarding the use of qualifiers in the proposed Plan provisions and noted the case of *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* C74/2000, EnvC, 29 September 2000. In that case, the Court when considering the Council's proposal to incorporate the word 'inappropriate' into a policy dealing with subdivision and development the Court stated, at [10]:

> So policy 3(a) needs to be changed. Is it then adequate to add "inappropriate"? We consider it is not: that addition merely repeats the language of the Act and gives little or no guidance to anyone. We re-emphasize that merely parroting that statutory formula is of little use.

37 It should be noted that the Court then went on to place qualifiers on the policy in question by inserting into the policy that sought to avoid subdivision and development the phrase 'unless the subdivision and development will not result in any adverse effects on [a list of matters]'. Counsel have not found authority that cites *Wakatipu Environmental Society* for its statement regarding qualifiers. However, there have been multiple references in recent case law where the Environment Court and the High Court appear to passively accept that qualifiers are appropriate:

37.1 In *Waimakariri District Council v North Canterbury Clay Target Association* [2014] NZEnvC 114 the Court when considering a particular rule and the use of 'incumbent' or

'established' as qualifiers on residential activities stated at [79]:

> It would have been relatively easy to have included such qualifiers in the rule, were they intended.

37.2 The High Court, in *Queenstown Central Ltd v Queenstown Lakes District Council* [2013] NZHC 817, in the context of the section 104D gateway tests stated at [39]:

> In my view, it was not the intention of Parliament that this gateway section should be used for finessing out qualifiers of one objective by looking at another objective, to reach some overall conclusion that viewed "as a whole" the objectives allowed retail activity of this size in the E1 and E2 zones. The Environment Court was obviously sensitive to the qualifier "related to", because in Foodstuffs it returns to it again.
>
> [Emphasis added]

37.3 The Environment Court in *Day v Manawatu-Wanganui Regional Council* [2012] NZEnvC182 when considering the One Plan appeals considered many qualifiers including, at [3-22]:

> However Ms Barton, the planning witness for the Council, considered the qualifier unreasonably (which was in the original policy) should be retained. We concur with that view.

38 In our submission, the use of qualifiers in the proposed Plan is legally acceptable, provided the provisions and their meanings are clear.

39 The Panel has also queried the case law position regarding 'parroting' provisions of the RMA following the *Wakatipu Environmental Society* case. The Environment Court in the passage cited above at paragraph 36 from *Wakatipu Environmental Society* was re-emphasising the following from its earlier decision on the same matter in *Wakatipu Environmental Society Inc v Queenstown Lakes District Council* [2000] NZRMA 59 at [150]:

> We have some sympathy for that submission. There is an observable trend from the notified plan to the revised

> plan, increased in suggested solutions to us, which is to adopt a standard policy formula, parroting section 5(2)(c) of the RMA: to "avoid, remedy or mitigate the adverse effects of ...". We consider that policies with more detail may be of more assistance in both determining the relative methods of implementation, and in applying the policies when the district plan is operating.

40 A more recent Environment Court decision of *Wairoa River Canal Partnership v Auckland Regional Council* held that:[9]

> The words of subsidiary planning documents were required to "give effect to" the purposes of the RMA, their wording must be consistent with it. However, they were not required to parrot the exact words of the RMA, or of superior planning documents. … To be of most benefit subsidiary planning documents needed to interpret the requirements of higher order documents in the local context, providing definition and clarification as needed…

41 Accordingly, provisions in the proposed Plan with more detail or specificity, instead of simply parroting the RMA or higher order documents, will be of more assistance to users of the proposed Plan. However, there is no legal barrier to such repetition in the proposed Plan, although we do note that it is likely to be of little effect (other than for clarity) as the superior document would likely suffice on its own.[10]

Regionally significant infrastructure

42 The definition in the proposed Plan mirrors the definition in the RPS (with some minor amendments for updating/clarity purposes). It is acknowledged that regionally significant infrastructure either under the RPS or the proposed Plan is not limited to the listed items as the definition provides an inclusive and not exclusive list (ie it states that regionally significant infrastructure **includes** Wellington International Airport, the national electricity grid and the Wellington Railway Station terminus etc). Infrastructure not explicitly listed could still be considered to be regionally significant infrastructure if the decision

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[9] *Wairoa River Canal Partnership v Auckland Regional Council* [2010] NZEnvC 309, at [9]-[12].

[10] *Ibid*, at [10].

maker was satisfied that it was in fact regionally significant. However, given the scope of the list relative to the definition of 'infrastructure' in the RMA (set out below) we consider that there is limited scope for entirely new matters to qualify.

43 To be 'regionally significant infrastructure' the thing must be both *infrastructure* and *regionally significant*.

44 Helpfully, infrastructure is defined in section 2 of the RMA:[11]

> Infrastructure, in section 30, means—
>
> (a) pipelines that distribute or transmit natural or manufactured gas, petroleum, biofuel, or geothermal energy:
>
> (b) a network for the purpose of telecommunication as defined in section 5 of the Telecommunications Act 2001:
>
> (c) a network for the purpose of radiocommunication as defined in section 2(1) of the Radiocommunications Act 1989:
>
> (d) facilities for the generation of electricity, lines used or intended to be used to convey electricity, and support structures for lines used or intended to be used to convey electricity, excluding facilities, lines, and support structures if a person—
>
> (i) uses them in connection with the generation of electricity for the person's use; and
>
> (ii) does not use them to generate any electricity for supply to any other person:
>
> (e) a water supply distribution system, including a system for irrigation:
>
> (f) a drainage or sewerage system:
>
> (g) structures for transport on land by cycleways, rail, roads, walkways, or any other means:
>
> (h) facilities for the loading or unloading of cargo or passengers transported on land by any means:
>
> (i) an airport as defined in section 2 of the Airport Authorities Act 1966:

[11] The definition was amended by the Amendment Act to remove the reference to section 30.

(j) a navigation installation as defined in section 2 of the Civil Aviation Act 1990:

(k) facilities for the loading or unloading of cargo or passengers carried by sea, including a port related commercial undertaking as defined in section 2(1) of the Port Companies Act 1988:

(l) anything described as a network utility operation in regulations made for the purposes of the definition of network utility operator in section 166.

45 In our view, things outside the definition under the RMA should not be considered to be infrastructure. Therefore, they cannot be regionally significant infrastructure.

46 To be regionally significant requires a value assessment. There is no direct legislative guidance, or case law, as to what assessment is required when considering the term 'regionally significant' infrastructure.

47 The definition of regionally significant infrastructure was considered during caucusing. The outcome of that caucusing is contained in the signed conferencing statement dated 27 June 2017. It is clear from that statement that the experts involved agreed that the definition of regionally significant infrastructure was not limited to the list in the RPS, and that minor amendments were required for clarification purposes. No real agreement was reached on substantive new inclusions - being the value judgment we consider is required as set out above. Any inclusions to the definition is a value assessment for the Panel to make based on the evidence before it.

48 In terms of context, we consider that it is important to be aware that in the proposed Plan as notified includes the term in two objectives (O12 and O13), 11 policies (P12, P13, P102, P138-139, P143-145, P147-P149) and two rules (R197, R214).

Use of 'minimise'

49 In our primary legal submissions we stated:[12]

> [91] Minimise: to minimise is to reduce (something, especially something undesirable) to the smallest possible amount or degree.
>
> [92] There is no relevant case law on the definition of 'minimise'. However, the term is frequently used in the RMA context with no adverse comment by the Environment Court.
>
> [93] It is worth noting that the difference between minimise and mitigate is that minimise is to make (something) as small or as insignificant as possible while mitigate is to reduce, lessen, or decrease.

50 As stated at paragraph [54] of our supplementary response filed on 26 May the word 'minimise' is not defined in the RMA but is used in a variety of sections.[13]

51 As with the use of the terms 'recognise' and provide' in objectives, from a legal perspective, there is no issue with using the term 'minimise' in the proposed Plan. Whether Policy P4 is the most appropriate under section 32 is a policy decision for the Panel to make and this includes consideration of whether it is more appropriate to include the intention of P4 as a definition and not a policy.

52 The joint caucusing statement dated 28 June 2017 is another piece of evidence the Panel can consider when making its decision on Policy P4 and the use of minimise throughout the proposed Plan.

53 In that caucusing statement, there were diverging views on most issues. There was, however, consensus that there is value in having general clarification of 'minimise' in the proposed Plan provided it responds to concerns about drafting. There was, however no consensus on the most appropriate way to achieve that clarification. The two views expressed

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[12] Dated 20 April 2017.

[13] The definition of 'best practicable option', sections 58N, 58O, 70, 108, 149K, 311, 316, 341A and 341B of the RMA.

were for the clarification to be provided through a policy or through a definition.

Providing for development

54 A question has been asked by the Panel in response to legal submissions by Ms Dewar for Wellington International Airport Limited to as to whether it is appropriate for the proposed Plan to provide for development in the region. We understand that this question is not about limitations on the Council's functions in the sense that land and urban development are a territorial authority function, but in the context of encouraging activities through favourable planning provisions (ie by providing for particular activities in terms of land use in the CMA, discharges, water takes and use etc, even though they may have adverse effects).

55 Our submission is that it is appropriate for the proposed Plan to provide for activities in this way (provided the statutory requirements for provisions are met). This is because:

55.1 The sustainable management purpose in section 5(2) of the RMA includes enabling people and communities to *provide for* their social, economic and cultural well-being.

55.2 Sections 6, 7 and 8 of the RMA all start with 'all persons exercising functions and powers under [the RMA] in relation to managing the use, development, and protection of natural and physical resources, shall…' As part of managing development there must be consideration of what activities are appropriate and where.

55.3 Facilitation or provision for particular activities is specifically directed by NPSs (for example, the objective of the National Policy Statement on Electricity Transmission (facilitating the operation, maintenance and upgrade of the existing transmission network and the establishment of new

transmission resources) and policies 6, 7, 8 and 9 in the NZCPS).

55.4 The Council's functions in section 30 of the RMA include provisions to *achieve integrated management* and for *controlling the use of land.* These both require consideration of what activities are appropriate and where.

55.5 Section 65(3) of the RMA requires the consideration of the desirability of preparing a plan where conflicts between use, development or protection of resources arises. Again, showing the need to consider what activities are appropriate and where.

56 In addition in *Wakatipu Environmental Society Inc* the Court confirmed that the role of Councils under the RMA is to *enable* people and communities to provide for their well-being, not direct how that is to be achieved.[14]

57 Accordingly, we do not consider that it is inappropriate to enable development activities through the proposed Plan, by providing for such activities (to the extent that the activity is within the Council's jurisdiction). However, activities should be provided for in a general way as opposed to the proposed Plan providing for specific identified developments.

Date: 11 August 2017

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[14] [2000] NZRMA 59 at [181].

Appendix 1 - Is the Proposed Objective the Most Appropriate?

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IS THE PROPOSED OBJECTIVE THE MOST APPROPRIATE?