

**BEFORE THE INDEPENDENT HEARINGS PANELS APPOINTED TO HEAR AND MAKE
RECOMMENDATIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS ON PROPOSED CHANGE 1
TO THE REGIONAL POLICY STATEMENT FOR THE WELLINGTON REGION**

UNDER Schedule 1 of the Resource Management
Act 1991 (the Act)

IN THE MATTER OF Hearing Submissions and Further
Submissions on Proposed Change 1 to the
Regional Policy Statement for the
Wellington Region

STATEMENT OF REBUTTAL EVIDENCE OF Sarah Lea Jenkin

ON BEHALF OF WELLINGTON REGIONAL COUNCIL

HEARING STREAM 1 – Topic: General Submissions

21 June 2023

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INTRODUCTION

- 1 My full name is Sarah Lea Jenkin. I am a Technical Director at GHD Limited.
- 2 I have read all the legal submissions and evidence filed for Hearing Stream 1, from the following parties:
 - 2.1 Wairarapa Federated Farmers
 - 2.2 Winstone Aggregates
 - 2.3 Porirua City Council
 - 2.4 Wellington International Airport
 - 2.5 Royal Forest & Bird Protection Society of NZ
 - 2.6 Fulton Hogan Ltd.

QUALIFICATIONS AND EXPERIENCE AND CODE OF CONDUCT

- 3 My qualifications and experience are as set out in paragraphs 16 – 20 of my s42A report for Hearing Stream 1, dated 26 May 2023. I repeat the confirmation given in that report that I have read and agree to comply with the Code of Conduct for Expert Witnesses.

RESPONSES TO ISSUES RAISED

Wairarapa Federated Farmers [S163] – evidence of Mr P Matich

- 4 I have considered Mr Matich’s suggestion at paragraph 4.1 of his evidence, where he states that I am asserting (in paragraphs 31 and 39 of my section 42A report) that the Exposure Draft of the NPS-IB should be included in the relevant matters.
- 5 That is not what I was suggesting. The purpose of paragraph 39 was simply to describe the current status of the NPS-IB, as it was referred to by submitters and in the Section 32 report.
- 6 I have considered Mr Matich’s suggestion, at paragraph 4.6 of his evidence, that the definition of Rural Areas could be amended to replace ‘include’ with ‘consist of’. As this definition is relevant for objectives and policies which address development in rural areas, and if the Hearing Panels are minded to agree, I recommend deferring consideration of Mr Matich’s suggestion to Hearing Stream 4, so this proposed amendment can be considered alongside the relevant objectives and policies that use this defined term.

- 7 With regard to the definition of Domestic Fires, I agree with Mr Matich’s suggestion¹ that a decision on this is deferred until Policy 2 is considered in Hearing Stream 3, if the Hearing Panels are minded to agree. I do not comment on Mr Matich’s assertion that there is an inconsistency in the RPS framework for regulating coal burning – in my opinion this is a matter for the relevant Hearing Stream 3 s42A report author to consider.
- 8 With regard to the allocation of provisions between the Freshwater Planning Process and the Part 1, Schedule 1 process², I refer to the statement of rebuttal evidence by Ms Mika Zollner, which addresses:
- 8.1 The process undertaken by Council officers to identify and allocate Change 1 provisions between the FPP and P1S1 processes, including in response to the High Court decision *Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Inc* [2022] NZHC 1777, [2022] NZRMA 565.
- 9 In addition, the legal issues associated with the allocation of provisions between the processes are addressed in the legal submissions of DLA Piper.
- 10 I consider the s32 report and the evidence of Ms Zollner clearly set out the process followed in allocating provisions. The legal submissions address the legal issues raised by the parties, including Wairarapa Federated Farmers. How the Panels wish to address the allocation issue moving forward is a matter for them to determine. My only comment is that it is difficult for the Panels to determine, at this point in the Change 1 hearing process, whether a provision meets the criteria to be a freshwater provision as this requires detailed analysis. In my view this needs to be determined after hearing the submissions from all parties on the relevant provisions.
- 11 With regard to the matters raised in paragraphs 4.23 – 4.39 of Mr Matich’s evidence, the concern appears to be that the proposed Change 1 climate change provisions have not been subject to a “careful and extensive analysis”. I consider responding to this should be deferred to the s42A report authors for Hearing Stream 3 – Climate Change as this is a specific issue with those provisions and is better addressed by those report authors.

¹ Statement of evidence of Mr P Matich, 13 June 2023, paragraph 4.9

² Ibid, paragraphs 4.13-4.22

Winstone Aggregates [S162] – Legal submissions

- 12 I respond to the legal submissions only insofar as they make direct reference to paragraphs in my s42A report.
- 13 The legal submissions, at paragraphs 25 and 26, refer to specific policies as examples that should not have been allocated to the FPP and reference paragraph 202 of my s42A report. That paragraph contains my conclusion that submissions and further submissions related to implementation of Change 1 are either accepted in part or that no decision is required. There is no mention of specific policies.
- 14 I disagree with the statement in paragraph 47 of the legal submissions, that I have avoided consideration of other National Policy Statements as part of Change 1. The scope of my report is responding to ‘general submissions’. This excludes any submissions or further submissions on specific objectives, policies or methods and hence the aspects of any NPS that a reference to those specific provisions. At paragraphs 31-40 of my s42A report I identified those NPS I considered relevant for the purpose of considering and making recommendations on the general submissions and further submissions within the scope of my S42A report.

Winstone Aggregates [S162] – evidence of Mr P Heffernan

- 15 Mr Heffernan’s evidence raises general concerns throughout regarding the allocation of provisions. The allocation of provisions between the FPP and the P1S1 process has been described by Ms Zollner in her supplementary statement of evidence, as noted in paragraph 8 of this statement. This includes confirmation that Council undertook a review of the allocation of provisions between the two processes following the High Court decision.
- 16 Submissions on specific provisions will be addressed in the topic-specific s42A reports in subsequent hearing streams. I suggest that consideration of the workability, or otherwise, of the indigenous biodiversity provisions should be deferred to Hearing Stream 6, when the relevant objectives, policies and methods will be addressed.
- 17 I have considered paragraphs 5.4-5.6 and 7.2-7.6 of Mr Heffernan’s evidence. As these related to the topic of indigenous biodiversity I consider they should also be deferred for consideration by the section 42A report author in Hearing Stream 6.

- 18 With regard to the matter of process allocation, in paragraphs 8.4-8.5, these have been addressed in the Statement of Evidence of Ms Zollner.
- 19 With regard to the concern about lack of recognition for aggregate extraction (at paragraph 8.7 of Mr Heffernan’s evidence), the operative RPS already includes an objective and policies, as noted in paragraph 140 of my s42A report.
- 20 At paragraph 8.8, Mr Heffernan has suggested that the Council should wait until the NPS-IB is confirmed or that the draft NPS-IB provisions relating to aggregate extraction, quarrying and clean filling should be recognised. I disagree with this approach. There is no certainty that the NPS-IB will be gazetted, when this would occur or whether the existing draft provisions would survive this process. I agree that future changes may be required to the RPS to give effect to the relevant requirements the NPS-IB if/when it is gazetted.

Porirua City Council [S30] – Evidence of M Rachlin

- 21 Paragraphs 18-43 of Mr Rachlin’s evidence addresses matters of drafting of specific objectives, policies and methods. Consistent with my response to the same issue in earlier paragraphs of this rebuttal statement of evidence, I consider a response to these submissions should be deferred until the relevant topic-specific hearing stream(s).
- 22 I have considered paragraphs 44-49 of Mr Rachlin’s evidence and his disagreement with my recommendation of “no decision required” for four of the PCC submission points addressed in Hearing Stream 1. I note Mr Rachlin’s opinion that a decision will need to be made on these submission points. I disagree. As described in paragraph 14 of my s42A report “the summary of submissions identified a significant number of ‘summary statements’, where a submitter provided a summary of their detailed submission points. To avoid repetition, the detailed submission points will be considered by the relevant topic leads in their s42A reports. For the relevant summary submissions, therefore, I have noted these submission points as ‘no decision required’, to avoid presupposing the outcome of topic-specific assessments.”
- 23 I reviewed all ‘summary submission points’ against the detailed submissions. Where there was a detailed submission point covering the same material I noted ‘no decision required’. I consider that this is an appropriate approach to take, because the submission issue will be addressed in later hearings. The alternative would require me to make recommendations on submissions on specific provision wording despite this being outside the scope of Hearing Stream 1 and in anticipation of consideration of the detailed submissions by the

topic-specific s42A authors. However, if the Hearing Panels are minded to make recommendations on these summary submission points, I consider this should be deferred until the hearing streams where the detailed submissions will be heard.

Wellington International Airport Limited (WIAL) [S148] – legal submissions

24 I note the detailed legal analysis provided in Appendix A to the WIAL legal submissions and referenced in paragraph 4.2 of those submissions. Consistent with my response to the same issue in earlier paragraphs of this rebuttal statement of evidence, I consider a response to those submissions should be deferred until the relevant topic-specific hearing stream(s).

DATE:

21 June 2023

Sarah Lea Jenkin

Technical Director – GHD Limited