

WELLINGTON REGIONAL COUNCIL

PROPOSED CHANGE 1 TO THE WELLINGTON REGIONAL POLICY STATEMENT

MINUTE 22

HEARING STREAM 6 - COUNCIL'S REPLY, REQUEST FOR INFORMATION SOUGHT FROM WELLINGTON INTERNATIONAL AIRPORT DURING THE HEARING AND DIRECTIONS FOR CAUCUSING

1. We thank submitters, witnesses, the Council reporting officers, experts, staff and others who participated in Hearing Stream 6 – Indigenous Ecosystems (HS6) for your comprehensive and helpful legal submissions, evidence and presentations.
2. This Minute:
 - a. sets out specific questions we would like the Council to address in their Reply for HS6 and the due date for the Reply,
 - b. notes information requests that were made of Wellington International Airport Limited at the hearing,
 - c. directs caucusing on specific provisions in HS6 relating to regionally significant infrastructure, and
 - d. sets out directions post-caucusing including for legal submissions for parties and Counsel's reply.

Council's reply

3. We ask the Council to please address the following matters in its reply (in addition to any other matters it wishes to raise following the hearing of submitters on this topic).

NPS-IB Objective

- a. Various submitters have requested greater reflection of clause 2.1(1)(b)(iv) of the NPS-IB in the HS6 provision suite. We appreciate the chapters of the RPS need to be read together but could you please give some more consideration to this issue and whether the HS6 provisions are appropriately balanced.

Terrestrial and coastal environments

- b. It is our understanding that the policies in HS6 apply in the terrestrial environment, including in the terrestrial coastal environment above mean high water springs. We also understand that proposed Policy 24C is intended to give effect to Policy 11 of the NZCPS. Is the intention that Policy 24C also applies in the broader coastal environment (ie below the mean high water spring level) or is it intended to apply only in the terrestrial coastal environment? We would appreciate your review of the policies in HS6 to ensure it is clear which policies apply in which parts of the environment.

- c. Are proposed Objectives 16 – 16C intended to apply in the whole region or only in the terrestrial environment (including in the area above mean high water springs)?

Objective 16

- d. Please review whether the wording you support in Objective 16, “other significant habitats of indigenous fauna, and the ecosystem processes that support these ecosystems and habitats” should be included in specific policies (eg Policies 23, 24, 47).

Effects management hierarchy

- e. At the hearing we queried whether the definition of “effects management hierarchy” (as included in the Reporting Officer’s rebuttal evidence) applied only to manage the adverse effects of an activity on “*significant* indigenous biodiversity values”. Please advise. We note the word “significant” is not in the NPS-IB definition of “effects management hierarchy” but please advise if this change in wording is intentional, and if so, why.
- f. The words “effects management hierarchy” are included in proposed Policy 24A (although not in italics). Is it intended here that the defined term does not apply? If the defined term is intended to apply, in our view, Policy 24A does not seem to be confined to effects on *significant* indigenous biodiversity values.

Policy 47

- g. As discussed at the hearing, can you please review draft Policy 47 in terms of its intended transitional effect as a consideration policy. The explanatory text says that Policies 24 and 24A must be considered until those policies are given effect to in regional and district plans. Please review and advise how you see this working in practice. How will an affected party (for instance), know that Policies 24 and 24A have been given effect to in both the regional and district plan, and so Policy 47 will then no longer apply as a consideration policy relevant to the consent application. The explanation text says that “Policy 47 makes it *clear that...*”. Please reconsider this wording.
- h. Please review the numbering in Policy 47, especially for draft Policy 47(h) – (j).
- i. Given the concerns raised by Ngā Hapū o Otaki about draft Policy 47(j) being applied (in practice) only where significant sites have been identified in a plan, please reconsider the words “*particularly* those associated..”. Would you support the words “*including* those associated...” or alternative wording?
- j. Please advise whether draft Policy 47(j) implements a specific direction in the NPS-IB (see the query raised by Ms Whitney in paragraph 8.12 of her evidence filed on behalf of Transpower NZ Limited).

Policy IE2

Similar to our comments above regarding Policy 47, can you please explain how Policy IE2 is intended to apply in practice once Policy IE1 has been given effect to. See paragraph 4.2(d) of the Legal submissions filed on behalf of Porirua City Council. Please also advise how Policy IE2 is intended to apply to consenting, and whether it can practically be achieved through a consent process.

Policy IE3

- k. Should the words “reconstruction of areas” (see Clause 3.21 of the NPS-IB) be included in this policy, or any other policy regarding restoration of indigenous biodiversity?
- l. This policy has been identified as ‘non-regulatory’ but seems to be regulatory in effect (see the legal submissions of Porirua City Council). Do you have any comments on this and could it lead to unintended interpretation or implementation issues? (ie if it is identified as ‘non-regulatory’).

Policy 23

- m. Ms Hunter for Wellington International Airport Limited says in her evidence that it is not clear what impact Policy 23 areas (ie indigenous ecosystems and habitats with significant indigenous biodiversity values) will have on the identification of SNAs (required by the NPS-IB). We understand that the intention is that the Policy 23 areas are a direction to essentially identify SNAs (as required by the NPS-IB). Is our understanding correct?
- n. We understand that the direction in draft Policy 23(2) for regional plans to identify ecosystems and habitats in the CMA, beds of lakes and rivers and natural wetlands, is derived from s 6(c) and s 30(ga) of the RMA as well as the Objective and Policies in the NPS-IB (where these do not specifically refer to territorial authority functions). Please advise. We also understand that PC1 allows for areas of significant indigenous biodiversity values *additional* to SNAs to be identified/mapped by a regional plan? Please advise.

Policy 24

- o. Having heard Meridian Energy Limited’s planning evidence at the hearing, do you still consider it useful to retain Policy 24 eg as a signposting clause?

Policy 24A

- p. Having heard submitters, do you propose any amendments to the incorporation of the aquatic offsetting and compensation principles?

Policy 24B

- q. As discussed at the hearing, please confirm whether draft Policy 24B(1)(e) should refer to “life cycle” rather than “life”.
- r. Please review the words “*new activities*” in draft Policy 24B(2) given that the policy applies to maintenance, operation and upgrade. Could the word “new” create any interpretation issues?

Policy 61

- s. We understand that this draft Policy applies to all indigenous biodiversity and it implements Objective 16A. Please review and advise whether the words “where appropriate” are needed and also references to “enhancement and restoration” (on the basis of the wording in Objective 16A). Or is it intentional that the Policy applies only to ‘maintenance’?
- t. Can you please review the explanatory text to this Policy, in particular paragraphs 2 and 4 and the references to “freshwater and coastal water” and “receiving water bodies”. Should these references apply to other parts of the environment?

Method 32

- u. We understand that the impact of Objective 16 (the Council officer’s rebuttal evidence version) is that Method 32(2)(c) would also apply to ‘enhancement and restoration to a healthy functioning state where appropriate’. Please advise.

Method 53

- v. Ms Guest, we understand from your comments at the hearing when Wellington Fish & Game Council were presenting, that you supported reverting to the operative RPS wording for this Method so that it did not apply to indigenous ecosystems only. Please advise.

Restoration

- w. A definition is proposed here in relation to indigenous biodiversity. Do you have any comments in light of the relief sought by Wellington Fish and Game Council? Is the intention that any references in the RPS to “restoration” and “restore” could apply more broadly than the defined term “restoration in relation to indigenous biodiversity”?

AER3

- x. Do you have any additional comments on the relief proposed by Waka Kotahi NZ Transport Agency to delete the words “extent or condition” from this provision. We note that the wording the Officer supports in the rebuttal evidence is “extent and condition”.

Request for information from Wellington International Airport Limited

4. As discussed at the hearing, we invite WIAL to provide any further information on the application of draft Policy 24C and Table 17 to its proposed activities, in particular its future work on the airport seawall and the extent to which that work could be restricted by Policy 24C. We also invite any information on whether ‘Mixed kelp assemblages’ and/or ‘bull kelp forests’ or similar ecosystems or species could impact the upgrade and maintenance of the seawall. Any information WIAL wishes to provide is to be sent to the Hearings Advisor by 5pm on Wednesday 20 March 2024.
5. We appreciate that a detailed assessment of all relevant provisions, including those in the Natural Resources Plan, is beyond scope, but we are trying to get a better and real-world understanding of the potential impact of the PC1 provisions on WIAL’s maintenance and upgrade activities.

Directions for caucusing

6. In accordance with our powers under the RMA, including clause 8AA of Schedule 1 (regarding the resolution of disputes), we direct caucusing on the provisions within HS6 relating to electricity transmission, renewable electricity generation, and WIAL’s and Waka Kotahi NZ Transport Agency’s assets and activities (“the regionally significant infrastructure provisions”).
7. At the hearing, we heard presentations from Transpower NZ Limited and Meridian Energy Limited. Both parties took a different approach to the infrastructure provisions, with Transpower seeking an exemption for its assets and activities under clause 1.3(3) of the NPS-IB, and Meridian Energy seeking amendments to recognise and provide for renewable electricity generation assets and activities in terrestrial and coastal environments with indigenous biodiversity values.
8. We direct the following planning experts who lodged evidence to attend facilitated caucusing as set out below:
 - a. Waka Kotahi NZ Transport Agency: Catherine Heppelthwaite
 - b. Meridian Energy Limited: Christine Foster
 - c. Wellington International Airport Limited: Claire Hunter
 - d. Transpower NZ Limited: Pauline Whitney
 - e. Director-General of Conservation: Murray Brass
 - f. Wellington Regional Council: Pamela Guest and Jerome Wyeth.
9. The aim of the caucusing is for experts to discuss and, where possible, reach an agreed position on the amendments needed to the following provisions in HS6:
 - Policy 24

- Policy 24B
- Policy 24C
- Policy 24D
- Policy 47
- Policy IE2A

or narrow and identify any points of difference between them in order to:

- a. collectively implement the NPS-IB, NPS-ET, NPS-REG and NZCPS, and
 - b. give effect to the NPS-IB, NZCPS and any other relevant higher order direction while also providing appropriately for the maintenance, upgrading and development of WIAL's and Waka Kotahi's assets and activities, and in particular, how these activities are undertaken in the coastal environment.
10. The caucusing will take, as its starting point, the provisions recommended by the Council Officers in their Rebuttal evidence dated 13 February 2024.
 11. We note that the other nationally significant infrastructure provider involved in Proposed Change 1 is Kiwirail Holdings Limited however it did not seek any specific relief on the HS6 provisions and therefore is restricted by scope.
 12. Other parties who filed expert planning evidence for HS6 and have scope through their submissions, may also attend the caucusing but are not directed to do so. If parties wish to attend, they are to contact the Hearings Advisor.
 13. Expert caucusing is to be undertaken in accordance with the Environment Court Practice Note 2023 and in particular, section 9 – Code of Conduct for Expert witnesses. We expect all experts who participate in caucusing to have read and be familiar with the Practice Note.
 14. Jason Jones, Principal Consultant at Resource Management Group Limited, is appointed as the independent facilitator for the expert conferencing and associated meetings. Mr Jones is authorised to:
 - a. act as independent facilitator
 - b. liaise with the Hearing Advisor and invite witnesses who filed and/or presented expert planning evidence, and the respective s 42A report authors, to attend the caucusing sessions as directed above
 - c. in conjunction with the Hearing Advisor organise the sessions (including format, topics, agendas, attendance and Joint Witness Statements (JWS), times and venues (in person or on-line as appropriate)
 - d. liaise with the submitters, counsel, experts and s 42A report authors
 - e. liaise with the Hearing Advisors on the JWS for each caucusing session which must, as a minimum, include a statement of the outcomes to be achieved and the matters and/or provisions agreed and not agreed by the experts attending; and
 - f. report to the Chair of the Hearing Panels on progress with the caucusing sessions.
 16. The Hearing Advisor has consulted with Mr Jones and advises that caucusing is to occur on 26 March (as the preferred date), with 27 – 28 March as alternatives.

17. Following caucusing, the JWS will be uploaded to the Hearings webpage by 5pm on Wednesday 3 April 2024. Counsel for any party who has submitted on the HS6 provisions (including Royal Forest and Bird Protection Society Inc) and who has scope to do so, may file written legal submissions in response by 5pm on Friday 12 April. The Council is to please file its reply by 5pm on Monday 22 April 2024.

Service on Council

18. Any evidence or information required by this Minute, and any memorandum or application to the Freshwater Hearings Panel and/or P1S1 Panel should be lodged by email to regionalplan@gw.govt.nz.

Dated: 6 March 2024



D Nightingale
Chair
Part 1, Schedule 1 Panel
Freshwater Hearings Panel