

In the Environment Court
At Wellington

ENV-2024-WLG-

I te Kōti Taiao o Aotearoa
KiTe Whanganui-a-Tara

Under the Resource Management Act 1991 (the Act)

In the matter of an appeal under clause 14(1) of the First Schedule of the Act

Between **KĀPITI COAST DISTRICT COUNCIL**
Appellant

And **WELLINGTON REGIONAL COUNCIL**
Respondent

NOTICE OF APPEAL

18 November 2024



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To: The Registrar
Environment Court
Wellington

1. Kāpiti Coast District Council (**Council**) appeals against a decision of the Wellington Regional Council (**Greater Wellington**) on proposed change 1 to the Wellington Regional Policy Statement (**RPS**) (**PC1**).
2. The Council made a submission on PC1, referenced as submission number S16.
3. The decision was made by Greater Wellington to accept most of the recommendations of the Independent Hearings Panels appointed to hear submissions and make recommendations on PC1.
4. The Council received notice of the decision on 4 October 2024.
5. The Council is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**RMA**).

Decision / part of Decision being appealed

6. The parts of the decision the Council is appealing predominantly relate to the provisions in the following chapters of PC1:
 - 6.1 Climate Change;
 - 6.2 Indigenous Ecosystems;
 - 6.3 Natural Hazards;
 - 6.4 Urban Development;
 - 6.5 Integrated Management; and

6.6 Definitions.

Reasons for appeal

7. The Council is the territorial authority for the Kāpiti Coast district. It has various functions under the RMA, including the responsibility for establishing, implementing and reviewing its District Plan.
8. The Council's submission on PC1 indicated general support for the proposals by Greater Wellington, but also raised specific concerns with various matters and issues. This included concerns about significant increased costs to the Council as a result of the proposed PC1 provisions, jurisdictional issues, and particular implications for territorial authorities.
9. Several of these concerns continue to form the basis for the Council's appeal.
10. The general reasons for the Council's appeal are that the relevant decisions made by Greater Wellington on PC1:
 - 10.1 Will not promote the sustainable management of resources and will not achieve the purpose of the RMA;
 - 10.2 Are contrary to Part 2 and other provisions of the RMA;
 - 10.3 Will not meet the foreseeable needs of future generations;
 - 10.4 Will not promote the efficient use and development of natural and physical resources;
 - 10.5 Will not give effect to the National Policy Statement on Urban Development (**NPS-UD**) and the National Policy Statement for Indigenous Biodiversity (**NPS-IB**);

- 10.6** Direct the Council to take action that goes beyond its functions and responsibilities under the RMA;
 - 10.7** Do not represent the most appropriate way of exercising Greater Wellington’s functions, having regard to the efficiency and effectiveness of other reasonably practicable options, and are therefore not appropriate in terms of section 32 and other provisions of the Act; and
 - 10.8** Amendments to the PC1 provisions are required to address the above matters and ensure that the RPS achieves the purpose of the RMA.
- 11.** Without limiting the generality of the above reasons, further reasons for the appeal are set out below, and in Appendix 1 to this appeal:
- 11.1** Certain provisions impose requirements on territorial authorities which go beyond territorial authorities’ functions and jurisdiction as prescribed by the RMA;
 - 11.2** In relation to a number of provisions that are the subject of this appeal, there is a lack of evidence that a regulatory approach would be effective in achieving their intended outcome;
 - 11.3** Some provisions will impose an unreasonable cost burden on the Council and provide unrealistic timeframes for preparing a district plan change;
 - 11.4** Some provisions are unnecessarily duplicative of the NPS-UD and NPS-IB or are inconsistent with these national policy statements in terms of timeframes and wording used, and/or may be inconsistent with the timeframes as set out in the Resource Management (Freshwater and Other Matters) Amendment Act 2024; and
 - 11.5** Some provisions use ambiguous language which is not consistent with wording in the RMA and national direction, and in some cases the

provisions provide a level of detail that is unnecessarily and inappropriately prescriptive.

Relief sought

- 12.** The Council seeks the relief set out the table at **Appendix 1** to this appeal, and any alternative, consequential or additional relief required to give effect to the matters raised in this appeal and/or its submission. For completeness, the Council opposes any alternative provisions contrary to achieving the above outcomes.
- 13.** The Council also seeks costs of and incidental to the appeal.
- 14.** The Council agrees to participate in mediation or other alternative dispute resolution of these proceedings.

Attachments

- 15.** The Council attaches the following documents to this notice:
 - 15.1** a table setting out the suggested specific amendments to PC1 / the RPS that it seeks to give effect to the relief sought and the reasons for those changes (**Appendix 1**);
 - 15.2** a copy of its submission (**Appendix 2**);
 - 15.3** a copy of the relevant decision (**Appendix 3**); and

- 15.4** a list of names and addresses of persons to be served with a copy of this notice (**Appendix 4**).

Dated: 18 November 2024



Matt Conway / Katherine Viskovic
Counsel for the Appellant

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,-

- (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in Form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Act for a waiver of the above timing or service requirements (see Form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's further submission and the relevant decision. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch

Appendix 1: specific amendments sought by the Council to the provisions

CHANGE 1 RPS REFERENCE	RELIEF SOUGHT BY THE COUNCIL	REASONS FOR THE CHANGE SOUGHT
<p>1. Policy CC.1: Reducing gas emissions associated with transport demand and infrastructure – district and regional plans</p>	<p>Amend Policy CC.1 as necessary to ensure consistency with the functions and responsibilities of territorial authorities.</p>	<p>The Policy lacks clear direction on the specific responsibilities of territorial authorities in terms of implementing this policy through their district plans. Specifically:</p> <ul style="list-style-type: none"> • Territorial authorities do not have responsibility to manage air discharges under the RMA. This is a regional council function; and • Regional councils are responsible for public transport services under the Land Transport Management Act 2003. <p>In light of this, territorial authorities have limited legislative grounds to implement this policy effectively as they do not have the necessary functions or responsibilities. The Council considers that this policy needs to be amended given it is a mandatory policy which territorial authorities must give effect to.</p> <p>The Policy should be amended to ensure consistency with the functions and responsibility of territorial authorities.</p>

CHANGE 1 RPS REFERENCE	RELIEF SOUGHT BY THE COUNCIL	REASONS FOR THE CHANGE SOUGHT
2. Policy CC.2: Policy CC.2 Travel choice assessment– district plans	Delete Policy CC.2 or amend it to allow for non-regulatory methods to promote changes in travel mode choices and remove the timeframes to implement this.	<p>Territorial authorities are not responsible for managing air discharges under the RMA, and therefore, it is impractical for the Council to enforce emissions-related regulations.</p> <p>Additionally, the Council considers that the proposed requirement for a plan change to implement this policy by 30 June 2025 is unrealistic and unachievable. Furthermore, it is for the Council to determine when it will give effect to higher order direction through its planning processes.</p>
3. Policy CC.2A: Travel choice assessment local thresholds – district plans	Delete Policy CC.2A.	<p>In the Council’s view, requiring territorial authorities to establish threshold targets in their district plans is inappropriate because traffic volumes and individuals’ choices regarding private vehicles, electric vehicles, or public transport are not managed through regulatory district plan methods.</p>
4. Policy CC.3: Enabling a shift to low and zero-carbon emission transport – district plans	Delete Policy CC.3.	<p>There is no evidence that territorial authorities’ district plan provisions present a barrier to the uptake of zero and low-carbon multi-modal transport. Accordingly, there is no evidence to suggest that the cost to territorial authorities of a plan change is justified.</p> <p>Additionally, the Policy does not provide clear direction as to how district plans could facilitate a shift to low and zero-carbon emission transport. In the Council’s view, the proposed requirement for a plan change to implement this policy by 30 June 2025 is unrealistic and unachievable for territorial authorities, and it should be for the Council to determine when it gives effect to the RPS provisions.</p>

CHANGE 1 RPS REFERENCE	RELIEF SOUGHT BY THE COUNCIL	REASONS FOR THE CHANGE SOUGHT
<p>5. Policy CC.8: Prioritising the reduction of greenhouse gas emissions – district and regional plans</p>	<p>Delete Policy CC.8 or amend to apply to regional plans only.</p>	<p>The Council seeks deletion of this policy because requiring district plans to prioritise reducing greenhouse gas emissions rather than offsetting, is not supported by territorial authorities’ functions under the RMA.</p> <p>Territorial authorities do not have functions under the RMA to manage greenhouse gas emissions or apply offsetting measures. Therefore, a mandatory policy which requires district plans to support objectives they have no lawful ability to enforce is inappropriate.</p> <p>There are regulatory methods available to Greater Wellington under section 30 of the RMA which can be implemented through the regional plan.</p>
<p>6. Policy CC.9: Reducing greenhouse gas emissions associated with subdivision, use or development – consideration</p>	<p>Delete Policy CC.9 or amend to apply to regional plans only.</p>	<p>There is no legislative basis for district plans and decisions under them to prioritise or assess whether subdivision, use, and development:</p> <ul style="list-style-type: none"> • Is planned to optimise overall transport demand; or • Will maximise a shift from private vehicles to public or active transport modes to reduce greenhouse gas emissions. <p>The Council seeks deletion of the Policy or that the Policy be amended to apply to regional plans only as district plans are not suitable resource management tools for accomplishing the outcomes stated above.</p>

CHANGE 1 RPS REFERENCE	RELIEF SOUGHT BY THE COUNCIL	REASONS FOR THE CHANGE SOUGHT
<p>7. Policy CC.11: Encouraging whole of life greenhouse gas emissions assessment for transport infrastructure – consideration</p>	<p>Delete Policy CC.11 or amend to apply to regional plans only.</p>	<p>The Policy will impose unnecessary costs onto territorial authorities in relation to transport infrastructure applications without delivering tangible greenhouse gas reduction benefits.</p> <p>For example, a notice of requirement or a resource consent application for constructing a new road is unlikely to yield practical options for reducing transport-related greenhouse gas emissions.</p> <p>Greenhouse gas emissions primarily result from vehicles utilising the transport network and not the infrastructure itself. Resource consent and district plan decisions cannot regulate or impact the emissions from vehicles that will later use the infrastructure.</p>
<p>8. Policy 23: Identifying indigenous ecosystems and habitats with significant indigenous biodiversity values and other significant habitats of indigenous fauna – district and regional plans</p>	<p>Amend to remove the timeframe to implement this policy.</p>	<p>Recent changes to the RMA made by the Resource Management (Freshwater and Other Matters) Amendment Act 2024, have suspended the requirement to identify SNAs, in accordance with criteria in the NPS-IB, by three years. This change means the prescribed timeframe in Policy 23 (of 4 August 2028) has become out of date. The timeframe in the policy should be deleted to negate a conflict in timeframes reoccurring.</p>

CHANGE 1 RPS REFERENCE	RELIEF SOUGHT BY THE COUNCIL	REASONS FOR THE CHANGE SOUGHT
<p>9 Policy 24: Protecting indigenous ecosystems and habitats with Significant indigenous biodiversity values and other significant habitats of indigenous fauna – district and regional plans</p>	<p>Amend to remove the timeframe to implement this policy and to remove the reference to ecosystem processes.</p>	<p>As with Policy 23 above, the timeframe included in this policy unnecessarily duplicates and is inconsistent with the NPS-IB timeframe.</p> <p>Additionally, the use of “ecosystem processes” in the policy is uncertain, and the definition does not assist with providing certainty. As a result, it is likely to complicate the plan change process, with no certainty of any environmental benefit.</p>
<p>10 Policy 24A, 24B, 24C, 24CC, 24D</p>	<p>Amend to stay consistent with relief sought for Policy 24.</p>	<p>Refer to the reasons for the relief sought in relation to Policy 24.</p>
<p>11 Policy 29: Managing subdivision, use and development in areas at risk from natural hazards – district and regional plans</p>	<p>Amend policy as per the reasons for change sought.</p>	<p>In the Council’s view, this policy could limit activities in a way or to an extent that is disproportionate to what is necessary to give effect to national direction on natural hazards.</p> <p>Additionally, there are parts of this policy which rely on the explanatory text for implementation. This text holds no legal status under the RMA. The explanatory text also lists guidance documents are likely to be superseded, and therefore this text will become less relevant over time.</p>

CHANGE 1 RPS REFERENCE	RELIEF SOUGHT BY THE COUNCIL	REASONS FOR THE CHANGE SOUGHT
<p>12 Policy 30: Maintaining and enhancing the viability and vibrancy of regionally and locally significant centres – district plans</p>	<p>Amend generally to align with national direction, and to achieve consistency and correct errors.</p>	<p>This policy introduced new terms and classifications which do not align with established terms in National Planning Standards e.g. “locally significant centre”.</p> <p>Additionally, the rationale for the list of locally significant centres is unclear. For example, it is unclear why Paraparaumu Beach is the only town centre in the Kāpiti Coast District Plan that is not listed. There are also two references to Ōtaki centres which both appear to be referring to the same centre, rather than to Ōtaki Main Street and Ōtaki Rail as they are referred to in the District Plan.</p>

13 **Objective 22**

Amend Objective 22 as follows:

A compact, well-designed, climate-resilient, and accessible, regional form with well-functioning urban areas and rural areas where:

~~*(a) there is sufficient development capacity to meet the needs of current and future generations, improve housing affordability and quality, and provide access to a diversity of housing typologies within neighbourhoods which enable choice; and*~~

~~*(b) Māori are able to express their culture and traditions, and the*~~

~~*relationship of mana whenua / tangata whenua with their culture, ancestral land, water, sites, wāhi tapu and other taonga is provided for; and*~~

~~*(c) Te Mana o te Wai is given effect to; and*~~

~~*(d) intensification occurs within existing urban zones in appropriate places where it is environmentally responsive; and*~~

~~*(e) subdivision, use and development is located, designed, and constructed in a way that is climate resilient and contributes to reducing greenhouse gas emissions; and*~~

~~*(f) built environments, including integrated transport infrastructure, meet the health and wellbeing needs of all people, with multi-modal access including active transport, between housing, jobs, community services, centres, green space, and open space; and*~~

~~*(g) the biophysical characteristics, location, recognised values, capability and limitations of land inform its use and development; and*~~

~~*(h) the productive capacity of rural land is retained; and*~~

~~*(i) existing urban zoned land, and infrastructure capacity is used effectively and efficiently; and*~~

The objective seeks to introduce an inappropriate policy-level detail on the characteristics of well-functioning urban environments.

The Council seeks the removal of this level of detail from the objective, as this will ensure it is focused on articulating a high-level goal. Further, the sub-paragraphs added to this objective may unnecessarily constrain or prescribe how this goal is to be achieved.

CHANGE 1 RPS REFERENCE	RELIEF SOUGHT BY THE COUNCIL	REASONS FOR THE CHANGE SOUGHT
	<p>(j) new or upgraded infrastructure is integrated and sequenced with development; and (k) development densities are sufficient to support the provision and ongoing maintenance of infrastructure; and (l) a variety of residential, commercial, mixed use and industrial development in appropriate locations is provided which contributes to viable and vibrant centres at a range of scales, and industrial based employment locations; and (m) the safe and efficient operation of regionally significant infrastructure is protected from potential reverse sensitivity effects.</p>	
<p>14 Policy 31: Enabling intensification to contribute to well-functioning urban areas</p>	<p>Delete Policy 31</p>	<p>The Policy duplicates the requirements under the NPS-UD and is in conflict with the Council’s Intensification Planning Instrument (IPI) (which is already operative) or may be in conflict with the wider discretion expected to be available to territorial authorities who choose not to ratify their IPI following upcoming RMA amendments.</p> <p>The Policy also introduces unclear terms such as “city centre zones” and “metropolitan zones” and imposes requirements of its own on heights and densities for medium and high-density development. This unnecessarily adds to territorial authorities’ responsibilities as they have already undertaken this work as part of the IPI process.</p>

CHANGE 1 RPS REFERENCE	RELIEF SOUGHT BY THE COUNCIL	REASONS FOR THE CHANGE SOUGHT
<p>15 Policy 57: Integrating land use and transportation – consideration</p>	<p>Amend Policy 57 based on the reasons for change sought.</p>	<p>In the Council’s view, it is unclear how the policy will achieve improved alignment between resource management decisions and the regional land transport plan.</p> <p>Additionally, there appears to be a conflict between the policy and its supporting explanation, as the explanation states that the policy applies to proposals affecting land transport outcomes, while the policy itself imposes broader requirements.</p> <p>There is also uncertainty in terms of the implementation of this policy as there is no threshold specified to indicate when the policy should be applied or incorporated into district plans.</p>
<p>16 Medium Density Development</p>	<p>Delete definition</p>	<p>This definition unnecessarily duplicates and is inconsistent with the NPS-UD.</p> <p>This definition also conflicts with the IPI already prepared and made operative by the Council. Considering and implementing this new definition will impose unnecessary administrative costs on the Council (and any other territorial authorities in the same position).</p>