

**Before the Environment Court
At Wellington**

ENV-2019-346-82

Under Clause 14, Schedule 1 of the Resource Management Act
1991

In the matter of appeals on the Proposed Natural Resources Plan

Between **Various**

Appellants

ENV-2019-000103, 105-133

And **Wellington Regional Council**

Respondent

**Memorandum of counsel on behalf of Wellington Regional Council
regarding management of the appeals**

Date: 8 November 2019



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MAY IT PLEASE THE COURT:

1 On 26 September 2019 the Court issued a Minute in relation to these appeals.

2 Since that Minute, 46 different parties have filed 315 section 274 notices. There are 2 parties yet to seek a waiver for filing out of time — Beveridge/Cates and the Diederichs.

3 The Court directed the Wellington Regional Council (**Council**) to consult with the parties with a view to being able to submit an agreed programme to advance these appeals. It also directed the Council to file this memorandum, addressing a list of specified matters.

4 Those matters are addressed below.

Appeals involving topics which should be dealt with together

5 The Council has identified topics and sub-topics that the appeals relate to, based on the decisions on the Proposed Natural Resources Plan (**Proposed Plan**). The broad topic headings are:

5.1 Introduction, Interpretation and Ki uta ki tai policies.

5.2 Beneficial use and development.

5.3 Areas and sites with significant mana whenua values.

5.4 Air quality management.

5.5 Land use in riparian margins and stock access.

5.6 Soil conservation.

5.7 Water allocation.

5.8 Natural form and function.

- 5.9 Contaminated land and hazardous substances.
 - 5.10 Discharges to land.
 - 5.11 Water quality/discharges to water.
 - 5.12 Beds of lakes and rivers.
 - 5.13 Wetlands and biodiversity.
 - 5.14 Coastal management.
 - 5.15 Natural hazards and seawalls.
 - 5.16 Significant historic heritage values.
- 6 In Appendix A the Council has set out a suggested grouping of topics, subtopics, appellants and section 274 parties.

Appeals which might be resolved by direct discussion

- 7 It is the Council's position that for the majority of the appeals there is benefit in direct engagement to either resolve issues or narrow issues in contention. The appeals generally considered suitable for direct engagement are specified in the relevant column in Appendix A (noting that this is not necessarily exhaustive and other matters could also be subject to this approach by agreement). The Council is proposing this direct engagement occurs between November 2019 and the end of February 2020. It will contact the relevant parties and arrange that directly.
- 8 That said, it is likely that most topics will still require some Court assisted mediation. Without knowing the outcome of the direct discussions, the scope of mediation can only be an estimate at this stage. The Council has provided an estimate for the number of days for each subtopic in the specified column in Appendix A, which is provisional only. This totals approximately 43 days.

- 9 The Council has liaised with the Registry and understands there are mediation dates available during March, April and May 2020 (with mediation to run 3 or 4 days per week (ie Monday excluded) with the exception of the week beginning 27 April, where only 30 April and 1 May are contemplated).
- 10 The Council suggests those months are assigned to these appeals, with the detailed Schedule of dates and topics to be fixed early in 2020. As an indicative Schedule (to provide parties with some indication of proposed dates and timing) the Council has included proposed mediation dates in Appendix A. The Registry has not had the chance to review those proposed dates as yet (outside of confirmation of general availability for those months), so they are a suggestion only, to aid in planning. The Council suggests it files a status report with the Court identifying a more definitive Schedule by 21 February 2020 for consideration by the Court.

Appeals which might be referred directly to mediation

- 11 The Council considers that all appeals noted as not being subject to direct engagement should be referred to mediation. Specific dates and topics can be identified in the February status report, once direct engagement has (largely) occurred.

Appeals which should be directed to hearing

- 12 The Council considers there are no appeals in this category at this stage.

Consultation on proposed programme

- 13 A draft of this memorandum and Appendix A was provided to the parties for comment on 1 November and updates were made to the Schedule to reflect some of the feedback provided by the parties who responded. Appendix A did not have the specific suggested mediation dates in it when it was provided for comment, but the parties were advised mediation was proposed for March and April 2020.

- 14 We note that not all feedback on the Appendix was accepted in the final Appendix attached. For example, generally where different timeframes were requested for mediation (e.g. more or less time than specified) the Council did not amend its original times after considering the feedback. At this point in proceedings, Council considers it has provided its 'best estimate' based on the details of the appeals and section 274 notices. However, there will no doubt be changes between now and when a mediation Schedule is finalised and therefore, the times set out in Appendix A are provisional only at this stage.
- 15 The same applies to the suggestions received regarding changes to topic descriptions and/or which provisions sit within which topic. The Council reviewed the requests and it considers its original proposed set of topics and identification of provisions is the most appropriate at this stage.
- 16 Where Council did not accept a change proposed by a party, it has advised the party of that directly.

Other matters of process

Correct version of the Resource Management Act 1991 to apply

- 17 For the benefit of all parties, the Council notes that the Proposed Plan was publicly notified on 31 July 2015. The Resource Legislation Amendment Act 2017 (**RLAA**) received Royal Assent on 18 April 2017.
- 18 Accordingly, the amendments contained within the RLAA will not be relevant to the consideration of these appeals. Under Schedule 12, clause 13 of the RMA the transitional provisions provide that where a proposed plan was publicly notified but has not proceeded to the stage at which no further appeal is possible prior to the RLAA commencing, it must be determined as if the RLAA had not been enacted.

19 Accordingly, for the purposes of all the appeals, it submitted that it is the RMA as it was prior to the 2017 Amendments that applies to all of these proceedings.

Specific directions on appeals with insufficient detail

20 The Council is in the process of determining which parts (if any) of the Proposed Plan can be deemed operative. As part of that, it has contacted a number of appellants in relation to the specifics of their appeals, seeking clarification of the scope of the provisions under challenge.

21 As a result, the Council has received the following clarifications:

21.1 Wairarapa Water Users confirmed that their appeal (ENV-2019-WLG-000105) is limited to Objective 52 and Policy 11, not any of the other provisions more generally referenced in the notice of appeal.

21.2 Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa Inc Soc (**Rangitāne**) advised that when they seek 'timeframes for achieving freshwater limits and objectives' the provisions that they seek those timeframes are added to are Objectives, O24, O25, O31, O35, O52A and Policies P31 and P63. There may also be consequential amendments required.

21.3 Fish and Game have confirmed the scope of their reference to 'associated provisions' as including Method M14, Rule 42, R68, R82, R83, R84, R85, R93, R136, R137, R138, R139, R142, R141, R142, R.R2 and the definitions of 'minimum flow' and 'water level'.

22 However, despite the clarifications, the Council is seeking directions from the Court requiring Rangitāne to provide further particulars to identify/clarify which provisions they are challenging.

Rangitāne

- 23 The Rangitāne appeal claims that it is appealing the entire Proposed Plan. The notice of appeal lists 64 provisions that it is specifically appealing and then lists 5 points of 'entire plan', with some explanation in Appendix A to the appeal. These are points 1, 27, 28, 29 and 30 of Appendix A to the appeal.
- 24 The clarification provided (set out in paragraph 21.2 above) potentially clarifies the provisions challenged in relation to the appeal points listed as '1' and '30' in their notice of appeal, referring to 'Entire Plan'.
- 25 However, it is not clear to Council what the scope of these other 'Entire Plan' points of appeal are (points 27, 28 and 29 in Appendix A of the notice of appeal) and the Council submits that the notice of appeal does not meet the requirement in Form 7 to 'state the specific provision or matter that the decision includes in, or excludes from...the plan...or that the decision proposes to include or exclude' and it does not 'give precise details' of the relief sought in relation to these 'Entire Plan' points. The appellants have sought:

27. Amend provisions to ensure they are consistent with S5(2)(c) RMA.

28. Amend Plan to ensure relevant objectives and policies in the RPS are given effect to.

29. Amend, add, delete provisions to meet 6(e) RMA in order to provide for Maori relationships.

- 26 While the notice of appeal refers to the original submission, it is submitted that those submissions do not provide the necessary specificity either and they are identical to the wording in the notice of appeal.

- 27 It is submitted that this does not provide enough detail to understand what is being sought by these appellants or what provisions are under challenge. There is also an issue of whether this is in conflict with clause 14(2) of the First Schedule to the RMA, which provides:

...a person may appeal...only if...the appeal does not seek the withdrawal of the proposed...plan as a whole.

28 It is submitted that the intent of this addition in 2009 is as reflected in the First Reading commentary:¹

As introduced, clause 148(17) would allow an appeal only if it did not seek the withdrawal of the proposed plan or policy statement as a whole, and if the person appealing had already submitted on the particular matter. We understand that the policy intent is to avoid long delays in plans and policy statements becoming operative while appeals seeking the withdrawal of the whole document are being resolved.

We considered but rejected arguments against removing the ability to challenge and seek withdrawal of an entire plan or policy statement by appeal (under new clause 14(2)(b) of Schedule 1 of the principal Act). We concluded that the benefits (time and cost savings for councils, the court, and third parties) would outweigh any inconvenience arising from placing more responsibility on appellants to specify their concerns and propose possible solutions.

We recommend amending clause 148(17) to clarify that a variation or change to a plan would not be captured by the prohibition against seeking to withdraw an entire policy statement or plan.

29 In other words, it is submitted that the purpose of this addition was to ensure appellants were specific about their concerns and to ensure long delays in plans becoming operative did not occur due to appeals being filed challenging a proposed plan in its entirety.

30 The practical consequence of this lack of detail in the Rangitāne notice of appeal is that this appeal prevents any part of the Proposed Plan being deemed operative (when only 65 provisions are specifically identified as being subject to appeal by Rangitāne, out of 1045 in total).

31 Accordingly, the Council seeks directions from the Court that these appellants provide particulars of these appeal points and specifically, what provisions they are seeking changes to as a consequence of their appeal points 27, 28, and 29 of Appendix A to their appeal, confirmation that the changes sought under point 1 and 30 are correctly identified above, and confirmation of whether they are withdrawing the 'Entire Plan' appeal points.

¹ First Reading, February 2009. Retrieved from https://www.parliament.nz/en/pb/hansard-debates/rhr/document/49HansD_20090219_00000744/resource-management-simplifying-and-streamlining-amendment

Clause 16 updated version of the Proposed Plan

32 The Council has identified a variety of minor amendments to the Proposed Plan that will be made under clause 16 of the First Schedule to the RMA. It intends to make those changes shortly and provide an updated version of the Proposed Plan to the Court and on its website.

33 The clause 16 amendments will be clearly identified on that version of the Proposed Plan.

34 In addition, the Council intends to reflect which provisions are under appeal. This will be after any clarification issues are addressed and of particular importance to this, is whether the Rangitāne appeal is actually on the 'Entire Plan'.

Date: 8 November 2019



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Council