

**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 of behalf of Wellington Regional Council
regarding management of the appeals**

Date: DRAFT FOR COMMENT



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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 3 parties yet to seek a waiver for filing out of time - Hiwi Trust, Beveridge/Cates and the Diederichs.

3 The Court directed the 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 to be the subject of direct engagement are specified in the relevant column in Appendix A. The Council is proposing this 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 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 and April 2020 (with mediation to run 3 or 4 days per week with the exception of the week beginning 27

April) and it suggests those weeks are assigned to these appeals, with the detailed Schedule of dates and topics to be fixed early in 2020. To that end, the Council suggests it files a status report by 20 December 2019 and a further one by 21 February 2020. Specific dates and topics can be identified in those status reports for mediation within the timeframes above that are assigned for mediation.

Appeals which might be referred directly to mediation

- 10 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 December and February status reports once direct engagement on related topics has occurred.

Appeals which should be directed to hearing

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

Consultation on proposed programme

- 12 A draft of this memorandum and Appendix A, B and C was provided to the parties for comment on 1 November and updates were made to these to reflect the feedback provided by the parties who responded.

- 13 **[to complete post receipt of comments on this draft].**

Other matters of process

Correct version of the Resource Management Act 1991 to apply

- 14 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.

- 15 Accordingly, the amendments contained within the RLAA will not need to be considered by the Court. 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.

- 16 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

- 17 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.

- 18 As a result, the Council has received the following clarification:

18.1 That Wairarapa Water Users 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.

18.2 [to complete

- 19 As a result, the Council is seeking directions from the Court requiring two appellants to specifically identify/clarify which provisions they are challenging - Rangitāne Tū Mai Rā Trust and Rangitāne o Wairarapa Inc Soc (**Rangitāne**) and Wellington Fish and Game.

Rangitāne

- 20 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.

21 It is not clear to Council what the scope of these points of appeal are 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.

22 While the notice of appeal refers to their original submissions (points 27, 28, 29 and 30 in the notice of appeal), it is submitted that those submissions do not provide the necessary specificity either. The numbers referenced 001, 002, 005 and 006 refer to the coding used by the Council in its Summary of Decisions requested. It records the decisions requested against those numbers as:

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

002 - Amend Plan to include resource limits and where are not there is a regime to achieve them.

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

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

23 This reflects the relief sought in Appendix A of the notice of appeal, with only point 002 being slightly different:

Amend Plan to include freshwater resource limits and where these are not there is a regime to achieve them. This should include timeframes for achieving limits where they are not currently met.

24 In terms of point 1 in the notice of appeal there is no reference to the original submission. It simply seeks:

Amend the objectives, policies, rules and other provisions to include timeframes for resolving over-allocation or remedying existing adverse effects.

25 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.

26 It is submitted that the intent of this addition in 2009 is as reflected in the First Reading commentary¹:

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.

27 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.

28 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).

Wellington Fish and Game

29 In Appendix A the notice of appeal specifies the details of the appeal (provisions, reasons and relief sought). However, in a number of places there is a lack of clarity as to the provisions that are appealed:

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

- 29.1 'Policy P65 and associated rules' are listed as the plan provisions under appeal and the relief sought is to 'make the consequential changes to associated rules' (page 12).
- 29.2 'Policy P111 and associated rules' are listed as the plan provisions under appeal and the relief sought is to 'amend P111 and associated rules to... ' (page 18/19).
- 29.3 'Policy P117 and equivalent policies/rules within the Whaitua chapters for supplementary allocation including WH.R1, K.R1, R.R1' are listed as the plan provisions under appeal and the relief sought is to 'include the above requirements in the equivalent supplementary allocation policies (and rules) in the Whaitua Chapters of the Plan' (page 18/19).
- 29.4 'New Policy in section 4.9 and in Whaitua Chapters' are listed as the plan provisions under appeal and the relief sought is to 'include as a new policy in Section 4.9 of the Plan, and in Whaitua equivalent policies' (page 20/21).

30

The Council is seeking directions that the appellant clarify what the intended scope of the appeal is. That is, what specific provisions are included in the various descriptions above of 'associated rules' and 'equivalent policies/rules'? It is submitted that this is required by Form 7 of the Resource Management (Forms and Fees) Regulations and it also necessary for the Council to understand in determining what rules can be deemed operative in the Proposed Plan.

Specific directions on section 274 notices with insufficient detail

- 31 There are a number of section 274 notices that have been filed and it is unclear either which appeal they relate to or whether they are in support of the appeal or in opposition. It is submitted that it would be useful for those parties to clarify these details.
- 32 [To complete]

Clause 16 updated version of the Proposed Plan

33 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.

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