

BEFORE THE WELLINGTON REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER the **Proposed Natural Resources Plan** for the Wellington Region

Hearing One: Overall policy framework for the proposed plan,
Beneficial Use and Development, & Areas and sites with significant
mana whenua values

BETWEEN **Porirua City Council**

Submitter

AND **WELLINGTON REGIONAL COUNCIL**

Plan Proponent

Hearings Statement for Porirua City Council

Hearing One

5 May 2017

Introduction

1. Porirua City Council (PCC) would like to acknowledge the work produced by Greater Wellington staff in drafting the Proposed Plan and now putting together their recommendations in response to submissions.
2. The health and sustainability of Te Awarua-o-Porirua Harbour and of Porirua's natural environment are of vital importance to the Porirua community, including and importantly, Ngati Toa Rangatira.
3. The Proposed Natural Resources Plan (the proposed plan) is a key document in realising Porirua City Council's aspirations for the harbour and for the natural environment generally. The proposed plan as it currently stands does well in helping to deliver those aspirations.
4. However, PCC has a number of concerns and these were itemised in our submission on the proposed plan. This hearings statement does not address most of our submission points (as related to Hearing One), but focuses on a key concern to PCC: the recognition of the contribution that existing urban areas, future urban development and infrastructure make to social, cultural and economic wellbeing of people and communities.

Executive Summary

5. Urban environments cannot operate without the sustainable use and development of natural resources. Likewise, the management of the Region's natural resources is not independent of the urban environment.
6. PCC considers that the overall policy approach of the proposed plan is deficient in its recognition of the urban context. This deficiency directly impacts on the Council and on the people of Porirua where discretionary and non-complying activities associated with urban development require recourse to the proposed plan's objectives and policies.
7. We have particular concern regarding three matters:
 - a. the lack of recognition of the existing urban environment (section 4 of original submission, S163/012, S163/001, FS27/06, FS27/07);
 - b. the lack of recognition of, and provision for, urban growth and expansion (section 4.1 of original submission, S163/014, S163/020, FS27/06, FS27/07); and,
 - c. the lack of recognition of local infrastructure and provision for local authority infrastructure maintenance activities (section 4.2 of original submission, S163/006, S163/015, FS27/06)
8. Furthermore, we do not consider that our concerns have been appropriately addressed by the Regional Council's s42A reports.

9. In summary, PCC seeks the following relief:

- a. The inclusion of an additional policy within section 4.2 Beneficial use and Development “Recognise the contribution existing urban areas, identified urban growth areas and infrastructure make to the social, economic and cultural wellbeing of people and communities and provide for their ongoing use and development.”
- b. The inclusion of “(m) local authority infrastructure maintenance activities” within policy 8 of the proposed plan.

General comments

10. The fifth overall policy goal of the proposed plan is to *“recognise the benefits to the region derived from the use and development of land and water resources, while managing adverse effects”* as stated in the s42A report Overall policy framework of the proposed plan – Part B.¹

11. Furthermore, “Te Upoko Taiao directed the proposed Plan include policies that not focus solely on managing adverse effects but also provide recognition that the use and development of natural resources provides significant benefits to people and communities”.²

12. An examination of objectives and policies of the plan reveals that:

- a. The word ‘urban’ is used once in the objectives and then only in regard to stormwater discharges (O48).
- b. Although policy uses the word ‘urban’ several times, none are in regard to urban development (existing or future)³.
- c. The plan has no objectives or policy recognising (or providing for) housing, other than for reclamation of lakes and river beds⁴.
- d. The objectives of the plan mention ‘development’ 12 times⁵, yet not one is supportive of development (all limit, control or protect the environment from development). With the exception of the very general Objective 2, not a single objective is supportive of urban development, or in the least, provides appropriate relief or lesser weighting towards effects resulting from urban development.
- e. The objectives of the plan do not recognise or have regard to urban growth. The policies include a single mention of approved local authority growth or development frameworks or strategies, yet that single reference is only in regard to reclamation/drainage of beds of lakes and rivers (P102).

¹ Exec Summary and at 28

² Overall policy framework of the proposed Plan – Part B s42A report at 137

³ Air quality (5 times), water sensitive urban design (once), the development of Lambton Harbour Area (twice)

⁴ With the exception of policy P102 for the reclamation of river/lake beds for HASHA developments

⁵ O13, O17, O19, O21, O29, O32, O34, O37, O53, O54, O56, O57

- f. The social, economic, cultural and environmental benefits of infrastructure that falls outside the definition of 'regionally significant infrastructure' are not recognised within objectives and policies of the plan.
13. In our opinion, the above list does not support the fifth overall policy goal, or the direction of Te Upoko Taiao.
14. Additionally, the s42A report Part A on the Overall Policy Framework (at 88) states that the proposed plan identifies activities that are beneficial, yet Policy 7 and 8 gives a highly selective list of beneficial activities. Likewise, it states that "*Decisions on activities requiring resource consent are guided by ... the recognition of benefits to the community of the use and development of land and water resources*" yet urban development, growth areas, infrastructure (non-regionally significant) are barely recognised in the objectives and policies. As noted in (d.) above the word 'development' is not once used in a positive sense in the objectives of the plan.
15. In regard to these matters our original submission contained the following statements:
- a. *The Plan does not sufficiently recognise or provide for the benefits of the use and development of the urban environment. It does not recognise that the existing urban environment is a resource, just like natural and physical resources, which cannot continue to operate without the continued use and development of some natural resources. The Plan needs to take a more reasonable and realistic approach to the necessary activities that support urban life.*⁶
 - b. *The Plan does not respond adequately to strategic growth and development issues.... Policy P102 is the only provision in the Plan that mentions growth/development strategies and is inadequate on its own. An alternative policy framework for strategic growth and development needs to be provided. Amendments are also required to provide appropriate consenting pathways for certain activities associated with land development within identified future urban growth areas.*⁷
 - c. *The only recognition or protection offered to infrastructure in the Plan is offered to "regionally significant infrastructure", which does not include local roads or associated infrastructure such as seawalls.... The lack of recognition of the value of this type of urban infrastructure means that their positive effects will not be a matter for consideration, thereby making the consenting process more onerous.*⁸
16. However, none of these concerns and associated submission points have found relief in the s42A reports. We address this point further in this statement.

⁶ Section 4 of original submission

⁷ Section 4.1 of original submission

⁸ Section 4.2 of original submission

National Policy Statement on Urban Development Capacity

17. The NRP is required to give effect to the NPS-UDC. While this submission does not presume to suggest what that should look like, at the very least, in our opinion, it involves the recognition, within the NRP, of urban development and the infrastructure necessary to support urban development as being beneficial use and development.
18. Objective A1 of the NPS-UDC requires *“Effective and efficient urban environments that enable people and communities and future generations to provide for their social, economic, cultural and environmental wellbeing”*. Objective C1 requires *“Planning decisions, practices and methods that enable urban development which provides for the social, economic, cultural and environmental wellbeing of people and communities and future generations in the short, medium and long-term.”* Furthermore, objectives D1 and D2 require coordinated planning evidence and decision-making.
19. The ‘Legal submissions on behalf of Wellington Regional Council’ (20 April 2017) states that giving effect to NPS-UDC can occur through amendments that are within the scope of submissions (at 72).
20. Therefore, PCC submits that the entire section 4 of PCC’s original submission (and partially captured by summary of submissions S163/006, 012, 014, 015 and 020) gives ample scope to give effect to aspects of objectives A1, C1, D1 and D2 of the NPS-UDC and provide the relief sought by PCC for the recognition that existing urban areas, identified urban growth areas and infrastructure necessary to people and communities wellbeing.

National Policy Statement for Freshwater Management

21. Objective C1 of NPS-FM requires the improvement of the integrated management of fresh water and land use and development. PCC does not understand how this can be properly achieved when existing urban areas, identified future growth areas and ‘development’ are not recognised by the plan.
22. PCC appreciates the NRP’s obligations to the NPS-FM, treaty settlement acts, the NZCPS and the RPS. However, PCC is seeking that the NRP recognise the three matters identified above (at 7) its objectives and policies in order that 1) discretionary and non-complying activities can be fairly and appropriately evaluated, and 2) rules can be appropriately tailored to reflect recognition of urban development and local authority activities.

Recognition of the urban environment

(Original submission sections 4 and 4.1, S163/012, S163/014, S163/020, FS27/06 and FS27/07)

23. PCC seeks recognition of the social, economic and cultural benefits of urban environments and identified future urban growth areas within the NRP, in accordance with the purpose of the RMA of sustainable management.
24. Section 5 of the RMA promotes the sustainable use, development and protection of ‘natural and physical resources’. ‘Physical resources’ is broad in its definition and includes buildings,

roads, structures and infrastructure in both urban and rural environments. Existing urban development and existing infrastructure both fall within this definition and both provide for the social, economic and cultural well-being of people and communities.

25. While objective O2 in the proposed plan is a general statement that recognises the importance and contribution of land to the social, economic and cultural well-being of the community, we consider that the policy section of the proposed plan is inadequate in developing that general recognition.
26. While policy 7 recognises the cultural, social and economic benefits of using land for 'three waters' infrastructure, beyond that there is little recognition of the urban environment and its benefits in policy.
27. Policy 8(l) includes 'artwork' in its list of beneficial activities and yet housing, existing urban areas, identified future growth areas and infrastructure are not.
28. In PCC's opinion these are beneficial uses of land (P7) and that such recognition properly fulfils the requirements of section 66(1) to promote the sustainable use, development and protection of natural and physical resources that provide for the social, economic and cultural well-being of people and communities.

Response to s42A reports

29. The s42A report 'Overall policy framework of the proposed Plan – Part B' (at 199-205) addresses a number of PCC's submissions. However, we do not consider (200-203) is an adequate explanation as to why PCC's submissions should be rejected.
 - a. PCC does not accept the argument at 200 that because *most* urban activities are matters managed by district plans the PNRP does not need account for urban activities.
 - b. Contrary to 201, GW's legal submission states (at 72) that the NPS-UDC can be addressed where submissions are within scope (and PCC' submissions are very broad in regard to urban development).
 - c. Arguing at 202 that consent applications must *give effect to* the NPS-UDC is erroneous. It is the PNRP that must give effect to the NPS-UDC⁹; consent applications only have regard to it¹⁰.
 - d. We do not agree with the claim at 203 that the proposed plan is already consistent with the NPS-UDC. Given that the objectives and policies of the proposed plan do not speak positively towards providing for development, how can it be consistent with the NPS-UDC?

⁹ S67(3)(a) of the RMA

¹⁰ S104(1)(b) of the RMA

- e. For the above reasons we do not consider PCC's submissions on urban development have been properly addressed.
30. The s42A report 'Beneficial Use and Development' states (at 119) that "*Objective O2 is a response to community engagement undertaken by Council when developing the plan, to recognise all uses of land and water including activities such as forestry, primary production, industry, urban residential development, and mineral extraction that provide a benefit to people and communities.*" However, PCC considers it is not adequate to list these in a s42A report. They need to be spelled out in the policies of the Plan. Otherwise they will be lost in the plan development stage, becoming inaccessible to both applicants and consent planners. To be clear, a s42A has no statutory weight in plan implementation; it is the objectives, policies and rules of the plan that do.
31. Mr Denton proposes amending P7 to include "hard-rock quarries" to recognise the benefit that "hard rock quarries have to roading, building and general construction projects in the region". Given this proposed amendment we struggle to understand how urban development is not a cultural, social and economic beneficial use of land and is still excluded from Policy 7's list.
32. Of particular concern is that the s42A report on Beneficial Use and Development does not address any of PCC's submissions on section 3.2 of the Proposed Plan (submissions S163/015, S163/006 and section 4 of PCC's original submission).

Relief sought

33. In light of the above PCC seeks the inclusion of an additional policy within section 4.2 Beneficial use and Development "Recognise the contribution existing urban areas, identified urban growth areas and infrastructure make to the social, economic and cultural wellbeing of people and communities and provide for their ongoing use and development."

Infrastructure

(Original submission section 4.2, S163/006, S163/015 and FS27/06)

34. PCC seeks recognition of infrastructure (beyond just 'regionally significant') within section 4.2 of the plan. 'Local' infrastructure is critical to the functioning and wellbeing of communities and provides an essential service.
35. Policy should ensure that there are no unnecessary barriers to providing for essential infrastructure which allow our communities to function and should recognise local infrastructure as beneficial development in accordance with section 5(2) of the RMA.
36. The RMA definition of infrastructure includes (g) "structures for transport on land by cycleways, rail, roads, walkways, or any other means".
37. Given that the NPS-UDC recognises both 'development infrastructure' and 'other infrastructure' and this needs to be given effect to by the NRP, we think it is reasonable that

local roads, cycleways and footpaths should be recognised as beneficial use and development.

Local authority infrastructure maintenance activities

38. PCC seeks recognition of “local authority infrastructure maintenance activities” at the policy level of the proposed plan and seeks that such recognition will flow through to less onerous activity statuses for these essential local authority activities.
39. A core function of PCC and other territorial authorities is the provision of good-quality infrastructure and local public services. A Council must provide these services in a cost-effective manner for rate payers. These are requirements under the LGA 2002. Furthermore, a core function of Wellington Regional Council is the performance of regulatory functions in a way that is most cost-effective for households and businesses, including providing for public transport which relies on good quality infrastructure.
40. As the Plan is currently written, PCC considers that overly onerous activity statuses for (non-complying) consent to conduct what are essential activities to ensure people’s health and wellbeing cost ratepayers at multiple levels, in both PCC’s preparation and GW’s processing of consents. While the activity status of particular rules is to be addressed at later hearings, appropriate recognition of “local authority infrastructure maintenance activities” will ensure appropriate activity statuses, aid consent processes and minimise the costs for essential, legislated activities.
41. Currently the proposed plan acknowledges “local authority activities” in its provision for motor vehicles on the foreshore (P147, P148, P149 and R197) and for deposition in sites of significance (P143). Additionally, “local authority infrastructure maintenance activities” should be recognised as beneficial within Policy 8 of the plan.

Relief sought

42. PCC seeks the inclusion of an additional policy within section 4.2 Beneficial use and Development “Recognise the contribution existing urban areas, identified urban growth areas and infrastructure make to the social, economic and cultural wellbeing of people and communities and provide for their ongoing use and development.”
43. PCC seeks the inclusion of “(m) local authority infrastructure maintenance activities” within policy 8 of the plan.

Case law / Hierarchy of documents

44. The recent *Davidson Family* Environment Court and High Court rulings underscore the need for subordinate documents to give substance to the purpose and principles in Part 2 and to ‘particularise’ the direction of higher order RMA documents.
45. If the social, economic and cultural benefits of urban environments are not recognised in the NRP then, in the light of *Davidson Family* Court rulings, consent applications will HAVE to go

up the statutory “food chain” because the Plan does not appropriately reflect all relevant Part 2 and higher order document matters. This combined with the numerous non-complying activity statuses and the narrow recognition of infrastructure mean PCC will be hindered in fulfilling aspects of its LGA obligations to deliver good-quality local infrastructure and local public services in a way that is cost-effective to ratepayers.

Conclusion

46. In brief, PCC considers it is reasonable that the contribution of existing urban areas, urban development and associated infrastructure to the social, economic and cultural wellbeing be recognised in the Natural Resources Plan.

47. We think this reasonable for the following reasons:

- d. The fifth overall policy goal of the proposed Plan is to “recognise the benefits to the region derived from the use and development of land and water resources”
- e. Recognition of “the benefits to the region derived from the use and development of land and water resources” needs to be spelt out in policy to give clear direction to consent planners in their assessment of applications; that discretionary and non-complying activities can be fairly and appropriately evaluated.
- f. Section 5(2) of the RMA promotes enabling people and communities to provide for their social, economic and cultural well-being. Urban development is essential to the realisation of this purpose.
- g. The NRP is required to give effect to the NPS-UDC and at the very least this should involve the recognition of urban development and associated infrastructure.

