

**Before the Proposed Natural Resources Plan Hearing Panel**

**In the matter of**      the Resource Management Act 1991

**And**

**In the matter of**      **Wellington City Council's** submission on Greater  
Wellington Regional Council's Proposed Natural Resources  
Plan

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**Summary Statement**

**Maciej Wiktor Lewandowski on behalf of Wellington City Council**

**Hearing 1**

**Plan framework, associated objectives and policies**

**Date:**      8 June 2017

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## Introduction

1 My name is Maciej Lewandowski. I am a Principal Advisor within the District Plan team at the Wellington City Council (**the Council or WCC**).

2 My qualifications and experience are set out in my statement of evidence. I confirm again that I have read the Environment Court Code of Conduct for Expert Witnesses and agree to comply with that code.

3 I also confirm that I am authorised to present this evidence on the Council's behalf.

## Correction

4 At paragraph 71 of my main brief of evidence I said:

*"...Policy 45 then outlines a cascade for addressing adverse effects beginning with avoidance, through remedying and ending with mitigation. This then has a relationship with Policy P4 addressed at paragraphs 41-45 above."*

5 I note that Policy P4 relates to minimisation and that there is no subsequent relationship between Policy P45 and Policy P4.

## Summary

6 This summary statement is prepared to complement my main brief of evidence dated 5 May 2017. It seeks to highlight the key aspects of that evidence.

7 The central theme of the Council's submission relevant to this hearing is the appropriate recognition of the urban environment within the Proposed Natural Resources Plan (**PNRP**), and providing for a suitable regulatory framework that enables activities that are an expected part of the urban environment to continue to occur. Concerns with the PNRP in this regard relate to:

- 7.1 The PNRP not giving due regard to the urban environment;
- 7.2 The use of non-complying activity status, often coupled with the use of 'avoid' in policies and the implications this will have for WCC in establishing and maintaining infrastructure;
- 7.3 An overall 'protectionist' policy framework that applies uniformly to modified and unmodified environments; and
- 7.4 Insufficient balancing in the policy framework against which consents for expected and necessary activities can be assessed.

8 I have appended to this summary a number of examples where, in my view, the framework of the Plan creates an overly onerous situation.

***Section 42A report - Overall policy framework***

9 In terms of the matters relevant to this s42A report, the principal area of concern raised by the Council's submission is the use of the word 'avoid' in policies. The concern stems from, and relates particularly to, the Supreme Court's decision in King Salmon and the interpretation of 'avoid' in that case.

10 More broadly, the decision has resulted in a heightened awareness of plan drafting. Where plans are written in less ambiguous terms, an overall broad judgement approach cannot be relied on. In the absence of policies that counter-balance this approach, what is left is a strong presumption in favour of the overall protectionist slant of the PNRP.

11 The response of the reporting officer is that this issue should be addressed by each individual topic author. This ignores the fact that this is an issue throughout the Plan and is clearly an overall policy framework issue. In my view this sets the tone for the individual hearing streams.

*Policy P4*

- 12 Ms Greenberg has recommended an amendment to Policy P4. The amendment proposes to delete matter (b) as requested in the Council's submission. Accordingly, I support this proposed amendment.
- 13 Notwithstanding this change, I remain supportive of the additional relief sought by the Council in seeking the insertion of qualifiers into the policy.

*Section 42A report - Beneficial use and development*

*Non-complying activity status*

- 14 Related to the aforementioned use of 'avoid' in policies, is the use of a non-complying activity status in a number of instances throughout the PNRP. Some of these, as highlighted in the appendix to this statement, have the potential to have very real consequences for the Council in terms of its ordinary operations.
- 15 As mentioned in my main evidence brief, the principal area of concern here is overcoming section 104D of the Act. The policy framework of the PNRP is sufficiently onerous that in a number of instances it would be challenging to pass the objectives and policies gateway test of section 104D.
- 16 Coupled with the changes sought by the Council to the policy framework of the PNRP, I am of the view that a discretionary (unrestricted) activity status would be sufficient to assess the effects of the relevant activities. There is little to be gained from the use of a non-complying activity status.

*Regionally significant infrastructure*

- 17 The Council sought the addition of local roads to the definition of Regionally Significant Infrastructure. Mr Denton has recommended against granting this relief.

- 18 This aspect of the Council's submission is a continuation of the main thrust of the submission relating to the appropriate recognition of urban areas and urban infrastructure. It is a further means by which some balance can be provided to the overall theme of the PNRP in order to allow the Council to have some surety around its infrastructure works.
- 19 Given the amount of infrastructure that the Council owns in and around the CMA, it will inevitably encounter the regulatory burden of the PNRP in future maintenance and upgrade works.
- 20 As noted in my main evidence, there are alternative means by which this relief can be achieved. An alternative form of relief would be to ensure that the relevant objectives and policies sufficiently provide for local roads in a manner akin to the provisions for regionally significant infrastructure.

*New Policy – Beneficial Use and Development*

- 21 The addition of a new policy (or policies), that recognise the existence of the urban environment and its functioning is sought by the Council. Such policies will act as a suitable counter-balance to the otherwise singular direction of the PNRP. The PNRP is otherwise silent on such matters.
- 22 The suggested policy, as outlined in the Council submission, would recognise the contribution of existing urban areas, growth areas and infrastructure, and would provide for their ongoing use and development.
- 23 As noted in my main brief I am firmly of the view that the PNRP is in need of touchstones against which matters relating to urban development can be appropriately assessed.

*National Policy Statement – Urban Development Capacity*

- 24 The National Policy Statement on Urban Development Capacity (**NPS-UDC**) must be given effect to by the PNRP.

25 The NPS-UDC is not directive in how it must be given effect to. However the NPS-UDC clearly elevates matters relevant to urban development and it is policies PA1 – PA4 that are of particular relevance to all decision makers under the Act.

26 In my view, for the reasons outlined both above and in my main brief of evidence the PNRP does not sufficiently give effect to the NPS-UDC.

**Conclusion**

27 My conclusions are set out in my principal brief of evidence.

28 The Council would be happy to participate in any caucusing that the Panel may direct.

**Date:** 8 June 2017



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**Maciej Lewandowski**

## Attachment 1 – Policy and Rule Framework Examples

**Note:** The list below has been prepared to demonstrate a number of instances where in my view the PNRP creates an overly burdensome regulatory hurdle. It is not intended to be an exhaustive list.

1. Rule 162 – New structures, additions and alterations to structures inside sites of significance – non-complying activity

*Policy P138 is the relevant policy. Requires new structures to be avoided except for very limited circumstances such as for regionally significant infrastructure.*

2. Rule 166 – Seawalls outside sites of significance – discretionary activity

*Policy P139 is the relevant policy. States new seawalls are inappropriate except where required to protect existing or upgrades to infrastructure but only where there is no reasonable or practicable alternative means.*

3. Rule 167 – Seawalls inside sites of significance – non-complying activity

*As above but with a non-complying activity status.*

4. Rule 172 – Removal, demolition or replacement of structures or parts of structures identified in Schedule E1, Schedule E2 or Schedule E3 – discretionary activity

*Policies P46 and P47 are relevant. Policy P46 requires that more than minor adverse effects on significant historic heritage values be avoided, remedied or mitigated through managing activities against a range of linked criteria.*

*Policy P47 states that demolition of a structure is inappropriate with a number of narrow linked exceptions, and requires additional consideration of the matters in Policy P46.*

5. Rule 195 – Disturbance or damage inside sites of significance – non-complying activity

*The policies relevant to the particular type of significant site are applicable. For mana whenua sites for example, Policies P44 and P45 apply. Policy P45 starts with a presumption of avoidance.*

6. Rule 215 – Reclamation and drainage – non-complying activity

*Policy P102 applies. States that reclamation shall be avoided except where it is for a range of listed purposes and even in that case on the proviso that there are no practicable alternative methods for providing for the activity.*