

Before the Proposed Natural Resources Plan Hearing Panel

under: the Resource Management Act 1991

in the matter of: a submission by the New Zealand Transport Agency
(submitter number 146) on the Proposed Natural
Resources Plan for the Wellington Region

and in the matter of: Hearing Stream Three (Water Allocation and Natural
Form and Function)

by: **New Zealand Transport Agency**
Submitter

Primary statement of evidence (planning) of **Hywel David Edwards** on
behalf of the New Zealand Transport Agency

Dated: 22 August 2017

Hearing Date: 4 September 2017 (Not appearing)

STATEMENT OF EVIDENCE OF HYWEL DAVID EDWARDS ON BEHALF OF THE NEW ZEALAND TRANSPORT AGENCY

EXECUTIVE SUMMARY

- 1 In both Hearing Stream One and Two, I have confirmed my view that the Greater Wellington Proposed Natural Resources Plan (*Proposed Plan*) is 'tilted' in its balance towards protective environmental and cultural policies which are at times, difficult to reconcile with the Regionally Significant Infrastructure (*RSI*) provisions.
- 2 Generally speaking, my evidence to date has confirmed my opinions as follows:
 - 2.1 Hearing Stream One: there is a need for RSI provisions to be strengthened to balance the significant positive effects they generate with adverse effects they create;¹ and
 - 2.2 Hearing Stream Two: in the context of provisions 'saying what they mean', there is a need to 'soften' some objectives and policies and better balance the Proposed Plan's objective and policy framework, especially in the context of RSI. In broad terms, I consider there is a need to provide a consenting pathway to enable the consideration of RSI on a case by case basis.
- 3 The key points raised in my evidence for Hearing Stream Three will:
 - 3.1 Provide a 'softening' of some of the objectives and policies to provide an appropriate pathway to better balance the Proposed Plan's objective and policy framework, especially in the context of RSI; and
 - 3.2 Provide a framework for managing effects to align with the statements and recommendations in my Hearing Stream One and Two evidence, which seek to balance the nationally and regionally significant benefits of RSI and adverse effects they create.

QUALIFICATIONS AND EXPERIENCE

- 4 My full name is Hywel David Edwards.
- 5 My qualifications and the experience relevant to this hearing have been set out in my Hearing Stream One evidence.

¹ In respect of strengthening the provisions, my evidence for Hearing Stream One recommended changes to Objective 12 (para 49) and Policy 13 (para 55); and recommended new Policy Z (para 58).

CODE OF CONDUCT

- 6 I have read the Environment Court's Code of Conduct for Expert Witnesses, and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in my brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

SCOPE OF EVIDENCE

- 7 Much of the foundation of the Transport Agency's approach will be found in the statements of evidence and legal submissions for Hearing Stream One. This includes a discussion of the importance of objectives and policies in the Proposed Plan being clear, consistent and complete, and the need to enable the operation, maintenance, upgrade and development of the strategic transport network as it relates to the Transport Agency's assets and operations.
- 8 For the avoidance of doubt, I confirm that my position in respect of the overall framework of the Proposed Plan, and the management of RSI in particular, remains as set out in my Hearing Stream One evidence. My comments on the Hearing Stream Three provisions should be read in that context.
- 9 My Hearing Stream Three evidence will:
- 9.1 Confirm those matters where I agree with the Council's s42A Reports (Topic: Natural Form and Function Report prepared by Yvonne Legarth dated 07/08/2017 and Topic: Water Allocation Report prepared by Paula Hammond dated 04/08/2017) (*Officers' Reports*) recommendations;
- 9.2 Provide my opinions in respect of the following key themes in Hearing Stream Three, including where I disagree with the *Officers' Reports* recommendations:
- (a) Objective 17: Natural character, Policy 24: Outstanding natural character and Policy 25: Natural character;
 - (b) Objective 19: Natural processes and Policy 26: Natural processes;
 - (c) Objective 32: Outstanding natural features and landscapes, Policy 48: Protection of outstanding natural features and landscapes and Policy 49: Use and development adjacent to outstanding natural features and landscapes special amenity landscapes;

- (d) Objective 36: Significant Geological Features;
- (e) Objective 38: Special amenity landscapes; and
- (f) Policy 126: De-watering.

9.3 Reference the Officers' Reports as required.

- 10 Unlike previous evidence, I have not attached a table with what I consider to be appropriate relief for all Hearing Stream Three provisions. Where I have not commented on a particular provision in the main body of my Hearing Stream Three evidence, I generally agree with the relief sought in the Transport Agency's submission for the reasons given in that submission.

KEY THEMES AND RECOMMENDATIONS

- 11 I have refrained from providing evidential commentary on each of the Transport Agency's submission points for Hearing Stream Three, but rather focus on what I consider are the key issues.
- 12 In a number of the recommendations below, I refer to the term 'appropriate'. My understanding is that 'appropriate' on its own relates to something that is either required, well or best suited, or provides acceptable levels of adverse effects overall.
- 13 I have also taken on board the discussions during the expert witness conferencing in respect of Policy 4, and specifically the term 'minimise'. My application of that term in my evidence has been that it means reducing the adverse effects of the activity to the smallest amount reasonably practicable.
- 14 As confirmed in my Hearing Two evidence,² my understanding is that 'practicable' on its own relates to something that is feasible or able to be accomplished according to known means or resources. 'Reasonably practicable' affords greater latitude to consider cost-benefit analysis. Cost-benefit analysis is appropriate for RSI in my opinion.

NATURAL FORM AND FUNCTION

Objective 17: Natural Character Form and Function

- 15 The Transport Agency (S146/046) generally supported Objective 17 which relates to Section 6(a) of the RMA. Objective 17 seeks to preserve and protect the listed environments from inappropriate use and development. The corollary to that is it enables 'appropriate' development.

² Paragraph 31.

- 16 I note that the objective wording specifically includes 'natural wetlands', and would exclude man-made wetlands (e.g. for mitigating water quality, cultural or other effects from activities). I consider this is appropriate.
- 17 The terminology in Objective 17 provides a consenting pathway in terms of what it is seeking to achieve and does not precluding use and development in the listed locations. It enables a case by case consideration of an activity in terms of its appropriateness for the environment in which it is located. In the context of natural character, my view is that RSI may be appropriate in most, but possibly not all, circumstances. The consenting process is the best mechanism to confirm this.
- 18 The Officers' Report³ recommends that Objective 17 be amended as follows:
- Objective O17: the natural character of the coastal marine area, natural wetlands, and rivers, lakes and their margins ~~and natural wetlands~~ is preserved and protected from inappropriate use and development.
- 19 On the basis that I consider the recommended wording is consistent with Section 6(a) of the RMA, I support Objective 17 as recommended in the Officers' Report.
- Policy 24: Outstanding natural character**
- 20 The Transport Agency (S146/089) supported Policy 24 subject to amendments which replaced the word 'avoid' with 'protect', and provided a pathway for 'appropriate' development.
- 21 The Officers' Reports recommend no amendments in response to the Transport Agency's submission point.
- 22 Proposed Policy 24 explicitly manages areas of outstanding natural character in the coastal marine area which I note is narrower than the remit under Policy 13 of the New Zealand Coastal Policy Statement 2010 (*NZCPS*) (which refers to coastal environment). I understand and agree with the 'remit' reasons for this as explained in the Officers' Report⁴.
- 23 Policy 13(1)(a) of the NZCPS provides firm and clear policy direction in respect of the coastal environment, within which the coastal marine area is located:

³ Topic: Natural Form and Function, prepared by Yvonne Legarth, paragraph 174.

⁴ Topic: Natural Form and Function, prepared by Yvonne Legarth, paragraph 184.

"avoid adverse effects of activities on natural character in areas of the coastal environment with outstanding natural character".

24 My understanding is that there are a range of values and attributes which contribute to natural character, and that while there may be an effect on a particular value or attribute, it may not collectively contribute to the overall natural character.

25 On that basis, I recommend the following amendments to Policy 24:

Areas of outstanding natural character in the coastal marine area will be preserved by:

- (a) avoiding adverse effects of activities on natural character in areas of the coastal marine area with outstanding natural character, and
- (b) enabling use and development in areas of the coastal marine area with outstanding natural character where the values and attributes of that environment are maintained to the extent natural character is preserved; and
- (c) recognise existing activities that were occurring at the time that an area was assessed as having outstanding natural character.
- ~~(d) requiring use and development to be of a type, scale and intensity that will maintain the natural character values of the area, and~~
- ~~(e) requiring built elements to be subservient to the dominance of the characteristics and qualities that make up the natural character values of the area, and~~
- ~~(f) maintaining the high levels of naturalness of these areas, and~~
- ~~(g) avoiding the adverse effects of activities, including those located outside the area, that individually or cumulatively detract from the natural character values of the outstanding natural character area.~~

26 Of note here is the fact that no outstanding natural features or landscapes have been identified in the Proposed Plan. In my view, the Proposed Plan should contemplate the transportation network being included in an outstanding natural character area, and provide a pathway for the operation, maintenance and upgrade of that infrastructure.

Policy 25: Natural Character

27 The Transport Agency (S146/090) generally supported this provision but sought amendments to include reference to 'avoid, remedy and mitigate' and the addition of a sub-clause to Policy 25 to specifically enable RSI.

28 The Officers' Reports do not accept the relief sought by the Transport Agency. In response to other submissions, the Officers' Reports recommend that Policy 25(d) be amended to be more

consistent with NZCPS Objective 6 and Policy 6. The intent of this is to recognise that there are activities with a functional need to locate on or in the CMA, and that activities that do not have a functional need to be in the CMA should not be there. The recommended amendments also specifically addresses natural processes associated with freshwater.

- 29 In general terms, I favour the relief sought by the Transport Agency. I consider:
- 29.1 The Policy addresses the beds of lakes or rivers as well as the CMA. Policy 13 of the NZCPS is the likely reason for splitting Policy 25 in terms of avoiding 'significant' effects and avoiding, remedying and mitigating other effects. This imparts a higher threshold test for the beds of lakes and rivers;
 - 29.2 In the context of NZCPS Policy 13, Proposed Plan Policy 24 manages 'outstanding' natural character (not Policy 25);
 - 29.3 The Officers' Reports recommended amendments to Policy 24(d) impart a requirement to focus on less adverse effects without applying a broader balancing concept. For example, the expert witness statement on Policy 4 refers to minimise as meaning to "minimise to the smallest amount reasonably practicable", which imparts a cost-benefit component; and
 - 29.4 The Officers' Reports recommended addition Policy 24(c) is appropriate in relation to the CMA. This is consistent with NZCPS Policy 6(2)(c) and (d).

Objective 19: Natural Character Form and Function

- 30 The Transport Agency (S146/048) sought the deletion of this provision. The Transport Agency considered that Objective 19 is not consistent with effects based planning. Interference, such as the construction of a bridge or culvert to accommodate a road for example, may interfere with natural processes, but there could be a functional and operational need for that structure and it could be acceptable from an effects perspective.
- 31 The Officers' Reports (paragraph 279) provide further clarity on the intended meaning of 'interference', being to describe the potential adverse effects. The Officers' Reports recommend that Objective 19 be amended to improve the specificity about what is being managed, and to more clearly describe the outcome sought from the management of natural processes, as follows:

~~The interference from use and development on natural~~ Natural processes, ~~is minimised~~ including natural elements, patterns

and ecological processes continue to occur, and the integrity and functioning of natural processes and forms are retained.

- 32 Subject to the Proposed Plan providing clarity on what the term 'minimise' means, and that this meaning is consistent with the joint witness statement on Policy 4 (i.e. to the smallest amount reasonably practicable), my view is that the following amended Objective 19 is appropriate:

The adverse effects from the use and development on natural processes is minimised.

Policy 26: Natural processes

- 33 The Transport Agency (S146/091) supported the provision subject to amendments to be consistent with effects based management, and acknowledge that while development may interfere with natural processes, it can be acceptable from an effects based perspective.
- 34 The Officers' Reports recommend that Policy 26 is retained as notified.
- 35 Subject to the Proposed Plan providing clarity on what the term 'minimise' means, and that this meaning is consistent with the joint witness statement on Policy 4 (i.e. to the smallest amount reasonably practicable), I consider wording of Policy 26 can be retained.

Objective 32: Sites with significant values

- 36 The Transport Agency (S146/055) sought the retention of Objective 32 on the basis that it seeks to protect outstanding natural features and landscapes from inappropriate use and development. The corollary to that is the objective enables 'appropriate' use and development.
- 37 I am conscious that such sites are yet to be identified within the region, therefore it is not possible to assess the merits of particular sites and locations in the context of the transportation network. However, my view is that the objective provides an appropriate consenting pathway, and allows for the case by case consideration of a particular activity.
- 38 The Officers' Reports⁵ recommend that Objective 32 is retained as notified.
- 39 Subject to the following minor amendment, I consider the Objective will give effect to Policy 26⁶ of the Wellington Regional Policy Statement:

⁵ Topic: Natural Form and Function, prepared by Yvonne Legarth,, paragraph 361.

Objective 32: "*Identified* outstanding natural features and landscapes are protected from inappropriate use and development".

Policy 48: Protection of outstanding natural features and landscapes

- 40 Noting that the policy was broader than just being applicable to the CMA and that outstanding natural features and landscapes are yet to be confirmed, the Transport Agency (S146/108) sought to amend Policy 48 to include reference to inappropriate activities and delete the reference to 'avoid significant adverse effects'.
- 41 The Officers' Reports do not specifically address the Transport Agency's submission. However, in response to other submissions, the Officers' Reports state that amending Policy 48 to 'identified' natural features and landscapes would nullify the policy. The Officers' Reports therefore recommend no amendment until those areas are identified.
- 42 My view in respect of landscapes is the same in principle as those expressed for outstanding natural character. Without the identification of these landscapes, it is impossible to understand the implications from a practical perspective.
- 43 To that end, my expectation would be that future outstanding natural features and landscapes do not overlay the transportation network. In the absence of having clarity on this, the policy should provide suitable recognition of any existing infrastructure to the extent that it can be operated, maintained and upgraded under the framework.

Policy 49: Use and development adjacent to outstanding natural features and landscapes special amenity landscapes

- 44 Policy 49 manages use and development in the CMA that is adjacent to an outstanding natural feature or landscape or special amenity landscape identified in a district plan. The Transport Agency (S146/109) sought to soften the directness of the policy by including reference to 'where practicable' and also add sub-policy(c) to reference whether it is necessary to enable the development, operation, maintenance or upgrade and development of regionally significant infrastructure.
- 45 The Officers' Reports do not accept the relief sought, primarily because, in the officers' views, the amendments sought would duplicate other provisions in the Plan. I note that the Officers' Reports reference the recognition for RSI provided in Policy 12 as justification for rejecting the relief sought. In my view, as currently

⁶ Specifically refers to natural features and landscapes which have been 'identified' in accordance with Policy 25 of the RPS.

drafted Policy 12 does nothing else but require RSI to be recognised. In other words the Policy is weak and does not enable or provide for RSI.

46 In my view, Policy 49 is overly direct. I consider it is the respective district and regional plan provisions that should provide protection for identified Outstanding Natural Features or Landscapes. Where activities in the CMA are proposed adjacent a district plan Outstanding Natural Feature or Landscape, the Regional Plan focus should be less direct.

47 On that basis, I make the following recommended wording amendments:

Use and development in the coastal marine area on sites adjacent to an outstanding natural feature or landscape or special amenity landscape identified in a district plan shall seek to be managed by:

- (a) protecting visual and biophysical linkages between the site and the outstanding natural feature or landscape, and
- (b) avoiding adverse cumulative effects of inappropriate use and development on the values characteristics and qualities of an outstanding natural feature or landscape.

48 I have outlined my opinions for the need to strengthen RSI provisions (e.g. provisions that recognise, provide and enable RSI as opposed to only 'recognise') in Hearing Stream One evidence. Provided those provisions are strengthened, including to the extent that RSI use and development is at least contemplated in all environments, I do not consider it necessary for a specific sub-policy to be included referring to RSI.

Objective 36: Sites with significant values

49 The Transport Agency (S146/059) sought to amend Objective 36 by including "from inappropriate use and development" to the end of the provision. The Transport Agency considered it critical to recognise that some infrastructure in the coastal environment (and CMA) has functional, locational and operational constraints, and furthermore that significant benefits can be derived from such infrastructure. The Transport Agency considered it appropriate and necessary to embed an enabling focus to the objective.

50 The Officers' Reports recommend that Objective 36 be retained as notified on the basis that the amendment adjusts the management of the geological features from an assessment of its vulnerability and protection of its values, to an assessment about doing so in the

context of an overall judgement about what may be 'inappropriate' activities.

51 My view is that the objective should relate to identified sites. Further, I am of the opinion that the objective should not preclude use and development, but rather provide a pathway for assessing the merits of any activity on a case by case basis.

52 Therefore, I recommend the following wording:

Objective 36: *Identified s*Significant geological features in the coastal marine area are protected from inappropriate use and development.

Objective 38: Special amenity landscapes

53 The Transport Agency (S146/060) sought the deletion of Objective 38 on the basis that district plans should provide the framework for special amenity landscapes.

54 The Officers' Reports recommend Objective 38 be retained as notified. The Officers' Reports state the reason for its inclusion is to give effect to RPS Objective 18 and Policy 27. The criterion that may be applied to identify a special amenity area is contained in RPS Policy 27.

55 On reading this explanation, I agree that such an objective is appropriate. However, while noting special amenity landscapes have not yet been identified for the Proposed Plan, I consider the objective should be focused on the landscapes on which the regional council has jurisdiction - the coastal marine area and the beds of lakes and rivers. This is confirmed in the explanation to Policy 27 of the Wellington RPS.

56 Therefore, I recommend the following wording:

Objective 38: Identified special amenity landscape values within the coastal marine area and the beds of lakes and rivers are maintained or enhanced.

WATER ALLOCATION

57 The Transport Agency's submissions sought the retention of a large number of water allocation related provisions and furthermore, sought that:

57.1 a new definition for groundwater monitoring bores (S146/020);

- 57.2 geotechnical investigation bores be permitted within community drinking water supply protection areas to specified depths (S146/189); and
- 57.3 the definition of dewatering be amended to include diversion (S146/013).
- 58 The Officers' Reports recommend these submission points be accepted (with geotechnical bores permitted up to a depth of 5m) and I agree with these recommendations for the reasons given in the Transport Agency's submission.

Policy 126: Site dewatering

- 59 The Transport Agency sought the policy be amended by replacing the word 'minimise' with 'be avoided to the extent practicable'. The focus of the amendment was to avoid adverse effects, including in relation to localised land subsidence.
- 60 The Officers' Reports⁷ comment that dewatering has the potential to cause significant adverse effects, particularly where it is long term or associated with deep excavation. I agree with this. Further, the Officers' Reports comment that for some dewatering activities, even if the effects are reduced to the smallest amount practicable these effects could still potentially cause significant damage. Again, I agree with this.
- 61 On that basis, the following amendments are recommended in the Officers' Reports:

Localised land subsidence that affects structures shall be avoided and any more than minor adverse effects of **dewatering** on existing ~~groundwater users or the flows, levels or quality of surface water shall be minimised~~ the following shall be avoided, remedied or mitigated:

- (a) the ecosystem functioning of connected water bodies, and
 - (b) the reliability of supply for existing surface and ground water users, and
 - (c) the quality of surface or groundwater, and
 - (d) the contamination of land and water.
- 62 I recommend a minor amendment to the above wording. This further recommended amendment reflects that it is the integrity of the structure that is the critical factor, the effects on which should be avoided.

⁷ Topic: Water Allocation, prepared by Paula Hammond, paragraph 716.

Localised land subsidence that affects *the integrity of* structures shall be avoided and any more than minor adverse effects of dewatering on the following shall be avoided, remedied or mitigated:

- (a) the ecosystem functioning of connected water bodies, and
- (b) the reliability of supply for existing surface and ground water users, and
- (c) the quality of surface or groundwater, and
- (d) the contamination of land and water.

CONCLUSIONS

- 68 The key points raised in my evidence for Hearing Stream Three highlight my view on the need to:
- 68.1 Provide a 'softening' of some of the objectives and policies to provide an appropriate pathway to better balance the objective and policy framework, especially in the context of RSI; and
 - 68.2 Provide a framework for managing effects to align with the statements and recommendations in my Hearing One and Two evidence which seek to balance the nationally and regionally significant benefits of RSI and adverse effects they create.
- 69 My evidence also supports a number of the recommendations in relation to the water allocation provisions.

Hywel David Edwards

22 August 2017