

WELLINGTON REGIONAL COUNCIL

PROPOSED CHANGE 1 TO THE WELLINGTON REGIONAL POLICY STATEMENT

MINUTE 5

PROPOSED DIRECTIONS REGARDING ALLOCATION OF PROVISIONS BETWEEN P1S1 AND FHP PROCESSES

1. This Minute has been issued jointly by the Part 1 Schedule 1 (P1S1) panel and the Freshwater Panel (FHP) appointed to hear submissions on Proposed Change 1 to the Wellington Regional Policy Statement.
2. In Hearing Stream 1 – General and Overarching Matters – we heard submissions from various parties regarding the classification of provisions between the P1S1 and FHP processes. We acknowledge parties' considered submissions on this matter.
3. We draw parties' attention to an opinion by Mr James Winchester, Barrister, dated 8 March 2023 and provided to the Chair of the Independent Hearings Panel (IHP) conducting hearings on the Wellington City Proposed District Plan (PDP) and the Wellington City Intensification Planning Instrument (IPI). The opinion is available on the WCC hearings panel site <https://wellington.govt.nz/-/media/your-council/plans-policies-and-bylaws/district-plan/proposed-district-plan/files/hearing-minutes/james-winchester-advice---wcc-ihp---topic-allocation-between-pdp-and-ispp---8-march-2023.pdf> and is also attached to this Minute for ease of reference.
4. Submitters on the PDP and IPI similarly sought the reallocation of provisions or topics between the two processes.
5. Having considered Mr Winchester's advice and also the IHP's directions (available at <https://wellington.govt.nz/-/media/your-council/plans-policies-and-bylaws/district-plan/proposed-district-plan/files/hearing-minutes/wellington-pdpminute-12-ispp-allocation414-march-2023.pdf>) we propose the following approach:
 - a. Provisions within the P1S1 and FHP processes were notified together in one change proposal. The Regional Council prepared a single s 32 report and people had the opportunity to submit on all issues in Proposed Change 1. We do not consider that anyone would have been denied the opportunity to present their submission on the basis of any misallocation of provisions between the hearing processes.
 - b. The P1S1 and FHP panels will make recommendations on the classification of provisions once we have heard all submissions on Proposed Change 1.
 - c. We will not make allocation recommendations before or at the end of each Hearing Stream because we do not have the jurisdiction to do so.

- d. In its recommendation report, the FHP may recommend that particular provisions do not relate directly to freshwater or otherwise meet the *Otago Regional Council High Court tests*¹, so they should be removed from the FPI. We consider that the FHP has the jurisdiction to make any such recommendations.
 - e. The P1S1 panel, having heard all submissions and provided there is no issue as to scope, may recommend that particular provisions are reallocated into the P1S1 process. We consider that the P1S1 panel also has jurisdiction to issue recommendations on the merits and content of any reallocated provisions.
 - f. The FHP will hear any application for cross-examination on its merits and in accordance with the directions issued in Minute 1. If in its deliberations, the FHP concludes that a matter in respect of which cross examination has occurred was not properly part of the FPI, then it will disregard any evidence heard during cross examination. The P1S1 panel will disregard all evidence heard through cross examination even if that evidence is relevant to provisions that have moved into the scope of its process.
6. We consider the above approach to be consistent with the approach recommended in Mr Winchester’s opinion and adopted by the IHP. We find the approach to be logical in the present situation.
 7. Counsel for the Regional Council may wish to provide comments in any reply (which is required under Minute 2 to be available by 5pm on Friday 7 July 2023). If any other party has concerns with the approach proposed above in paragraph 5, we invite them to provide comments by **5pm Wednesday 12 July 2023**. If requested and if we consider it necessary, we will hear submissions on this issue during Hearing Stream 2. Parties who wish to speak to this should advise the Hearing Advisors by **5pm Wednesday 12 July 2023**. The afternoon of **Tuesday the 18th of July**, which is currently out of session, has been reserved as potential time to hear approved submissions as detailed here.
 8. For Hearing Stream Two – Integrated Management the Part 1 Schedule 1 (P1S1) panel and the Freshwater Panel (FHP) will sit jointly.

Presentation time extension requests

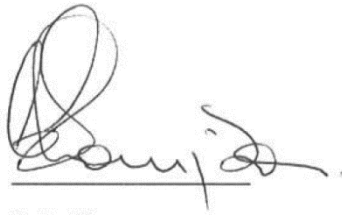
9. The following submitters have asked for additional time to present their submissions during the HS1 hearings next week:
 - a. Meridian Energy Limited
 - b. Rangitāne o Wairarapa Inc
10. The Hearings Advisor has advised that these requests for extended time can be accommodated within the hearing schedule. The Panels see no issues of fairness or natural justice arising therefore the requests are granted.

¹ *Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Inc* [2022] NZHC 1777.

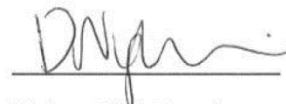
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11. Any information required by this Minute, and any memorandum or application to the Freshwater Hearings Panel and/or P1S1 Panel should be lodged by email to regionalplan@gw.govt.nz.

Dated: 4 July 2023



Craig Thompson
Chair
Freshwater Hearing Panel



Dhilum Nightingale
Chair
Part 1, Schedule 1 Hearing Panel