

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I MUA I TE KŌTI TAIAO O AOTEAROA
TE WHANGANUI A TARA ROHE**

ENV-2024-WGN-

IN THE MATTER OF

the Resource Management Act 1991

AND

IN THE MATTER OF

an appeal under clause 14(1) of Schedule 1 of
the Resource Management Act 1991

BETWEEN

UPPER HUTT CITY COUNCIL

Appellant

AND

WELLINGTON REGIONAL COUNCIL

Respondent

**NOTICE OF APPEAL AGAINST DECISIONS OF THE WELLINGTON
REGIONAL COUNCIL ON PROPOSED CHANGE 1 AND VARIATION 1 TO
THE WELLINGTON REGIONAL POLICY STATEMENT**

18 NOVEMBER 2024

BUDDLEFINDLAY
Barristers and Solicitors
Wellington

Solicitors Acting: **David Randal / Manahi Moana**
Email: david.randal@buddlefindlay.com / manahi.moana@buddlefindlay.com
Tel +64 4 462 0450 Fax 64-4-499 4141 PO Box 2694 DX SP20201 Wellington 6140

To: The Registrar
The Environment Court
Wellington

Upper Hutt City Council (UHCC) appeals parts of the decisions of the Wellington Regional Council (**GWRC**) on Proposed Change 1 (**PC1**) and Variation 1 (**V1**) to the Wellington Regional Policy Statement (**RPS**) (**Decisions**).

Background

1. UHCC made a submission on PC1 on 14 October 2022 (**Submission**).
2. UHCC is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**RMA**).
3. UHCC received notice of the Decisions by GWRC on 4 October 2024.
4. UHCC is appealing parts of the Decisions for the reasons given below.

Parts of Decisions subject to appeal

5. UHCC is appealing the following parts of the Decisions:
 - (a) Definitions:
 - (i) Ecosystem processes
 - (ii) Environmentally responsive
 - (iii) Urban zones
 - (b) Climate change:
 - (i) Policy CC.1
 - (ii) Policy CC.2
 - (iii) Policy CC.2A
 - (iv) Policy CC.3
 - (v) Policy CC.8
 - (vi) Policy CC.9
 - (vii) Policy CC.11

- (c) Urban development:
 - (i) Objective 22
 - (ii) Policy 32
 - (iii) Policy 55
 - (iv) Policy 56
 - (v) Policy UD.4
- (d) Indigenous biodiversity:
 - (i) Objective 16
 - (ii) Policy 23
 - (iii) Policy 24
 - (iv) Policy 24B
 - (v) Policy 24D
 - (vi) Policy 47
 - (vii) Method 21

Reasons for appeal and relief sought

6. UHCC's general reasons for appeal relate to:
 - (a) the role of the RPS within the hierarchy of planning documents, and the scope and purpose of the resource management system; and
 - (b) the workability of certain proposed changes, and uncertainties arising from unclear, unnecessary and/or unachievable provisions.
7. More broadly, UHCC considers that parts of the Decisions Version do not serve a resource management purpose, promote the sustainable management of natural and physical resources in accordance with section 5, further the principles of Part 2, or otherwise accord with the RMA.
8. Without limiting the above, UHCC's more specific reasons for appeal are set out below.
9. UHCC seeks the relief set out in **Appendix A**, or any such alternative relief that resolves the reasons for the appeal set out above and below.

Definitions

10. **Ecosystem processes:** This definition is unclear, but seems to significantly broaden the scope of land that requires protection for ecological values. This creates uncertainty for users of the plan and creates inconsistency with the National Policy Statement for Indigenous Biodiversity 2023 (**NPS-IB**), which does not use the phrase “*ecosystem processes*”.
11. **Environmentally responsive:** This definition is ambiguous, is untested in an RMA context, and creates unnecessary complexity.
12. **Urban zones:** This definition excludes special activity zones, future urban zones, or settlement zones. Because the term “*Urban zones*” has been used in various places throughout the Decisions¹ these exclusions from the definition have a significant and unnecessarily restrictive effect on the policy direction relating to development and/or intensification in those zones and creates an incompatibility with the National Policy Statement on Urban Development 2020 (**NPS-UD**).

Climate change

13. **Policy CC.1 Reducing greenhouse gas emissions associated with transport demand and infrastructure,** is unduly onerous and inflexible, particularly because:
 - (a) it lacks a significance threshold and captures 'all new and altered land transport infrastructure' (which would capture minor upgrade work);
 - (b) does not recognise that it will not be practical in every situation to prioritise walking, cycling and public transport above vehicle movements; and
 - (c) the agreed outcomes from caucusing on this provision do not appear to have been taken into account in the decision.
14. **Policies CC.2 (travel choice assessment – district plans) and CC.2A (travel choice assessment local thresholds – district plan):**
 - (a) are unnecessary, in duplicating the substance of a number of provisions already provided for in the Upper Hutt District Plan;

¹ For example Objective 22(d), Policies 31 and 55 and new Policies UD 3 and UD 4.

- (b) are unduly onerous, in making strongly directive requirements to plan users in relation to matters that are often largely outside of their control, and apply at inappropriate thresholds;
 - (c) contain timeframes for the inclusion of provisions in district plans (by 30 June 2025) that are unachievable; and
 - (d) would more appropriately be limited to applications for subdivisions.
15. **Policy CC.3** *Enabling a shift to low and zero-carbon emission transport – district plans* contains a timeframe for the inclusion of provisions in district plans (by 30 June 2025) that is unachievable and raises other issues of practicality.
16. **Policy CC.8** *Prioritising greenhouse gas emissions reduction over offsetting:*
- (a) is unclear on what role district plans are intended to have, given that they do not directly regulate emissions;
 - (b) is uncertain, in that it is reliant on a future piece of non-statutory guidance to provide clarity on how the policy is to be implemented; and
 - (c) may conflict with and/or duplicate national regulation of greenhouse gas emissions.
17. **Policy CC.9** *Reducing greenhouse gas emissions associated with subdivision, use or development:*
- (a) is unduly onerous, particularly because it lacks a significance threshold; and
 - (b) is unnecessary for most resource consent applications; and
 - (c) would more appropriately be limited in application to transport infrastructure.
18. **Policy CC.11** *Encouraging whole of life greenhouse gas emissions assessment for transport infrastructure – consideration:*
- (a) is unclear (particularly through the use of the verb 'encourage'), and as a result has administrative costs for Council and financial and resource costs for applicants; and
 - (b) unduly onerous, particularly because it lacks a significance threshold.

Urban development

19. UHCC is a Tier 1 territorial authority for the purposes of the NPS-UD.
20. UHCC is concerned that a number of the urban development provisions in the Decisions pose significant barriers to some forms of greenfield development. The barriers placed on greenfield development through **Objective 22 and Policies 55, 56 and UD.4** are inconsistent with national direction in the NPS-UD by placing undue constraints on development capacity. These provisions also generally lack clarity and are convoluted.
21. **Policy 32** is unclear, particularly in terms of how district plans can include rules and / or methods that '*recognise the importance of industrial based activities and the employment opportunities they provide*'. It is also unclear how a district plan can identify a range of land sizes, short of identifying minimum lot sizes in a number of sub-zones, and does not recognise that in many places the potential to rezone for 'land-extensive' activities does not exist.

Indigenous biodiversity

22. **Objective 16 and Policies 23, 24, 28 and 47** are unclear in their effect, but seemingly significantly broaden the scope of land that requires protection for ecological values. This creates uncertainty for applicants and creates inconsistency with the NPS-IB, which does not use the phrase "*ecosystem processes*". These provisions, along with **Policies 24B and 24D, and Method 21**, also include unrealistic timeframes for the inclusion of provisions in district plans and which conflict with the NPS-IB.

Consequential relief

23. In addition to the relief sought in **Appendix A**, UHCC seeks all further or other consequential relief and amendments as may be necessary to fully give effect to the relief sought.

Attachments

24. UHCC attaches the following documents to this notice:
 - (a) the relief sought by UHCC (**Appendix A**);
 - (b) a copy of its submission (**Appendix B**); and

(c) a list of the names and addresses of persons to be served with a copy of this notice (**Appendix C**).

25. Related documents, including the Decisions Version, evidence, Council officers' reports and submissions, can be downloaded from the Council's website at [Greater Wellington — Regional Policy Statement \(RPS\) Proposed Change 1](#)

Dated 18 November 2024



D G Randal / M T Moana

Counsel for Upper Hutt City Council

This document is filed by **DAVID RANDAL** and **MANAHI MOANA**, solicitors for the Appellant, whose address for service is at the offices of Buddle Findlay, Level 17 Aon Centre, 1 Willis Street, Wellington Central, Wellington 6011.

Documents for service on the abovenamed may be couriered or hand delivered to that address or may be:

1. Posted to the solicitor at PO Box 2694, Wellington 6140 (Attention: David Randal); or
2. Emailed to the solicitor at david.randal@buddlefindlay.com and manahi.moana@buddlefindlay.com.

Advice to recipients of copy of notice

How to become party to proceedings

You may be a party to the appeal if—

- (a) you made a submission on the matter of this appeal; and
- (b) within 15 working days after the period for lodging a notice of appeal ends, you lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- (c) within 20 working days after the period for lodging a notice of appeal ends, you serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.