

Proposed Natural Resources Plan:

Submitter:

Hutt City Council

Submitter Number:

S84

25 September 2015

Greater Wellington Regional Council
Wellington 6011
Email: regionalplan@gw.govt.nz

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Submission from the Hutt City Council on the Proposed Natural Resources Plan for the Wellington Region

Please find below the submission from the Hutt City Council (HCC) on the Proposed Natural Resources Plan for the Wellington Region (henceforth referred to as the proposed plan). HCC welcomes the opportunity to provide feedback on the above plan. This submission is made in addition to submissions prepared by Wellington Water (partly owned by HCC) and Tonkin and Taylor on behalf of HCC's and Upper Hutt City Council's Roading and Parks and Gardens departments. HCC wishes to be heard in support of its submission.

HCC is not a trade competitor and would not gain an advantage in trade competition through this submission.

Overall, HCC has serious concerns about the workability of the proposed plan, particularly in relation to the ability of district council's to provide, maintain or upgrade infrastructure in a cost-efficient manner. Additional consideration is needed as to the implications of the proposed policies on the ability of district councils to meet the infrastructure and housing needs of its communities, without imposing undue financial or regulatory costs.

Concern is particularly raised about the highly regulatory approach taken in the proposed plan, with a heavy emphasis on the avoidance (rather than the minimisation, remedying, mitigating or offsetting) of adverse effects and the classification of several activities as Non-Complying Activities. This approach is considered to be deficient in terms of its lack of consideration as to the need for certain types of infrastructure, particularly in urban and modified environments along the coast, and the considerable benefits that infrastructure can provide, such as improved health and sanitation, access to private property and recreational resources and hazard reduction. Additional scope is needed to allow for

infrastructure to be provided or improved in urban and modified environments, which support existing or planned urban development at reasonable cost.

Concern is also raised about the difficulty of interpreting and using the plan, for both lay persons and professionals. The plan uses a number of complicated provisions and it is difficult to determine the activity status for several activities.

Submission

1. Policies requiring avoidance and Non-Complying activities

In a number of instances the PNRP uses a combination of a non-complying activity status with policies that solely seek the avoidance of an effect or activity. This will make it very difficult for these activities to satisfy the "gateway test" specified in Section 104D(1) of the *RMA Act 1991* and consequently to take place with resource consent. This gateway test requires resource consents for non-complying activities to have either: (a) less than minor effects or (b) consistency with the objectives and policies of the relevant plan.

The consequence of this approach is that it leads to the effective prohibition of types of activities, including those which are reasonably expected or could be reasonably necessary in urban environments. This approach does not allow for activities identified as Non-Complying Activities to be assessed on their individual merits, such as consideration of the need for a particular activity (e.g. new seawalls to provide protection to important coastal roads or wet water overflows during heavy storms), the benefits that such activities could deliver and the ability to mitigate or reduce particular effects.

HCC recommends that the activity status for development be based on the actual effects of development, rather than the type of development. That is, rather than the identification of hard engineering coastal protection structures as generally inappropriate, that development with significant effects (such as visual, loss of natural coastal character, damage to identified heritage resources, and decline in water quality) be identified as inappropriate instead. This approach concentrates the assessment of resource consents on the case specific effects (both positive and negative) of a particular development, rather than using a blunt broad-brushed approach that seeks to prevent an entire group of activities regardless of site-specific factors (such as degree of naturalness of the coastal environment and size of local residential population). The appropriateness of certain types of infrastructure should be judged on a wider range of criteria, that goes beyond the type of development proposed.

An example of a development that could be very difficult to obtain resource consent for under the proposed scheme, is for a new or enlarged seawall adjacent to Marine Parade, which provides vehicular access to the Eastern Bays (including Eastbourne and Days Bay). The long-established Eastbourne community has a strong expectation of being able to protect existing roading infrastructure and housing development along the coast, from coastal erosion, storms and high tides (at least in the short and medium term). This expectation was recently expressed in the *2014 Eastbourne Community Survey*, carried out by the Eastbourne Community Board.

Recognition also needs to be given that for some types of infrastructure it is unrealistic to avoid all adverse effects. A policy framework that allows for a balancing of negative and positive effects, the consideration of the scale of effects and methods proposed to reduce effects is considered more appropriate.

Decision sought

Change the Activity Status of Non-Complying Activities to Discretionary Activities. This activity status would still allow for adverse effects to be considered.

Reconsider the use of the term 'avoid' and ensure that it does not unnecessarily and inappropriately constrain activities that result in effects that are significant and/or provide essential services for the health and safety of the community and protection of the environment.

Provide a policy framework that provides a pathway for new infrastructure reasonably needed to support existing or planned future development to gain resource consent. This would allow for resource consent for these activities to be granted in appropriate circumstances.

2. Recognition of need for and benefits arising from urban environment

There is little recognition in the PNRP of the benefit of the use and development of the urban environment. There are clear social and economic benefits from this use, through the provision of housing, recreation opportunities and employment. These benefits arise from both existing and new development within the urban environment.

Insufficient recognition is given to the need for existing urban environments to continue to use and develop some natural resources. It is not possible to prevent all negative effects on the coastal marine area arising from existing or planned urban development.

Provisions in the proposed plan are particularly onerous for sites which are already highly modified. A policy framework which differentiates between rural and metropolitan areas is more appropriate.

Increased recognition needs to be given to the obligations of district councils to satisfy the housing needs of its communities, which are likely to require urban intensification and new urban growth areas (such as Kelson and Wainuiomata) as specified in HCC's 2014 *Urban Growth Strategy*. Activities such as large-scale earthworks, some waterway/stream diversion and vegetation clearance are generally needed to support future urban development. The proposed plan does not sufficiently provide for development related activities needed to support future urban development.

An alternative framework is needed that balances the full range of economic, social and environmental effects of development; that provides for essential infrastructure, whilst providing an appropriate degree of protection for biodiversity, water quality and other resources. The need to protect and restore natural resources in the Wellington Region needs to be balanced with the need for urban resources to be maintained and enhanced as well. It should be recognised that even identified significant sites in the plan include highly modified environments with existing infrastructure which needs to be managed and maintained.

Policy P7 recognises the cultural, social and economic benefits of a number of uses of land and water. The benefits of the use and development of the urban environment should also be recognised within this list.

Decision Sought

Add 'urban use and development' to the list of uses in Policy P7.

3. Provisions for local and regional infrastructure

Provisions provided for identified regionally significant infrastructure should be extended to other existing types of infrastructure, such as local roads and cycleways. Policy P139 should extend the ability to provide protective structures such as seawalls for regionally significant infrastructure to other types of infrastructure, such as the recently announced Eastern Bays Shared Path or local roads adjacent to the coast.

This problem is compounded by the high threshold for infrastructure to be classed as regionally significant infrastructure. Regionally significant infrastructure only includes roads that have been identified as part of the Strategic Transport Network in the Regional Land Transport Plan 2015 (RLTP2015).

This is problematic in terms of the lack of clear identification and mapping of regionally significant infrastructure, which requires cross-referencing to a separate document, which itself is likely to be superseded during the life of the proposed plan.

In addition to the lack of provision for protective works which could reasonably be needed for local infrastructure, such as local roads which provide the principal or sole means of access to local coastal communities. There is a strong expectation that these roads are both provided for and protected from damage caused by coastal erosion, storm damage and inundation.

The provisions generally focus too much on the adverse effects arising from operation, maintenance and upgrading of infrastructure, in contrast to the need for and benefits arising from this infrastructure. Insufficient consideration is given to the maintenance requirements of existing infrastructure and infrastructure related obligations placed on district councils under alternative legislation, such as the *Local Government Act 2002*.

It is unrealistic to expect local authorities to meet complex standards or go through a consent process for routine activities which provide essential community health and safety or other critical functions. The continued functioning of local roads like Marine Parade may periodically require maintenance or improvements within the coastal marine area. The process for allowing the maintenance and improvements of this type of infrastructure should not be overly complicated or onerous.

Decision sought

Include a schedule and/or map of the Strategic Transport Network, to provide clarity as to what infrastructure is identified as regionally significant.

Extend provisions for regionally significantly infrastructure to other types of infrastructure.

4. Provisions for seawalls

HCC agrees that requiring resource consent for seawalls within the coastal marine area is appropriate. However, HCC has concerns with regard to the provisions of the PNRP for these structures.

Seawalls in sites of significance are a non-complying activity under Rule R167 of the PNRP. This is overly onerous, particularly as the sites of significance include highly modified, urban environments. In addition, Policy P138 seeks to avoid new structures in significant sites. The combination of a non-complying activity status and policy framework that specifies avoidance of

an activity (rather than specifying effects that are to be avoided) is highly problematic for reasons outlined in Section 1. Policy P138 does not sufficiently recognise that sites of significance can include existing uses, that it may also be appropriate to protect.

Two areas of the Petone foreshore as well as the mouth of the Hutt River are included in Schedule C as sites of significance to mana whenua. Whilst HCC agrees that the significance of these sites should be recognised and protected, it also seeks recognition that these locations represent modified, urban environments where coastal protection structures would reasonably be expected. It would be more appropriate for provision to be made for seawalls in significant sites as a Discretionary Activity requiring resource consent, with relevant policies specifying the effects or scale of effects that are to be avoided.

The s32 report titled "Activities in the coastal marine area" on page (page 30) incorrectly refers to the benefits of a Non-Complying Activity Status as *providing "the community with an opportunity to provide input into the decision making"* of a resource consent. The level of community input into a resource consent is dependent on the scale of its effects as assessed under S95 of the *RMA Act 1991*, rather than its activity status. The potential for community input would remain if a Discretionary Activity Status was used instead.

Decision sought

The activity status of seawalls should be changed to a Discretionary Activity, regardless of location within a site of significance or not. An exception could be provided to specified sites of significance of high natural character in rural environments.

5. Definition of infrastructure

While the plan defines regionally significant infrastructure, it does not include a definition of other infrastructure. Given the frequency with which the term is used in the plan, this should be clarified.

It is also recommended that other definitions be reviewed to provide additional clarity, such as upgrades to infrastructure and seawalls. The term 'upgrade' should apply to improvements to existing infrastructure, regardless of whether these improvements are below, at or exceed current infrastructure standards. It is not clear whether the term "seawall" is also intended to cover other coastal protection structures such as groynes or revetments.

Decision sought

Either add a definition of infrastructure or specify that the PNRP adopts the RMA definition.

6. Identification of significant sites and need for specialist assessment

Schedule F5 lists several types of habitats that have been determined as having significant biodiversity values. However, unlike the other schedules of the plan, these areas are not mapped.

This is of concern, as the need for resource consent for some activities is dependent on whether they occur within the habitats listed on this schedule or not. This creates considerable uncertainty as to the location of significant sites and potentially leads to considerable cost to GWRC in providing officer advice regarding the interpretation of provisions or costs to applicants to engage specialist consultants to determine if their land includes these habitats.

Subjective judgement or specialist assessment should not be required to determine whether an activity is permitted or not (that is, does not need resource consent). In the Environment Court case of *Carter Holt Harvey v Waikato Regional Council (A123/08)*, it was considered that a permitted activity rule should achieve the following:

- Be clear and certain;
- Not contain subjective terms;
- Be capable of consistent interpretation and implementation by lay people without reference to council officers; and
- Not retain later discretions (decision making) to council officers.

If the decision on whether a site was within Schedule F5 was to be made by GWRC staff, this would represent the retention of decision making, and would be *ultra vires*. In addition, the rule would not be "*capable of consistent interpretation and implementation by lay people without reference to council officers*".

Decision sought

Provide a map of the habitats with significant indigenous biodiversity values.

7. Identification of areas of significance to birds

HCC supports the protection of significant bird habitats from inappropriate development. However, the level of significance that needs to be met to be included in Schedule F2c (Habitats for indigenous birds in the coastal marine area) is considered too low. As a consequence this schedule includes very large areas including all of Wellington Harbour.

Identification as an area significant to birds appears to be solely based on bird sightings at a site rather than the actual value of the site to birds. The number of bird sightings is considered likely

to be affected by not just the number of birds visiting a site but also the accessibility and proximity of urban areas to these sites. That is, more remote areas may have lower bird sightings due to less people present to witness bird visitation. Little weight appears to be given to the actual use of a site for birds, such as nesting site or part of a migration route.

The consequence of an area being included in Schedule F2c is that the disturbance of the foreshore from motor vehicles in the area would be a non-complying activity (Rule R196). The combination of disturbance of motor vehicles being non-complying and a policy framework that specifies the avoidance of the activity (Policy P148) is anticipated to create difficulties in maintaining vehicular access on existing roads along the foreshore, including those needed to access recreational land, public utilities or provide emergency access. This provision is unduly restrictive and does not give sufficient consideration to the individual merits of each case.

Decision sought

Use a scientifically robust method for identification of areas of significance to birds, that recognises the actual value of the sites.

Amend the activity status for disturbance in the coastal marine area to Discretionary Activity, regardless of whether it is located in an identified site of significance for birds. An exception could be provided to identified sites of significance to birds of outstanding value or for areas of high natural or rural character.

Change the policy framework for disturbance in significant sites in the coastal marine area to require the management of specific effects, rather than simply demanding the avoidance of particular activities.

8. Good Management Practices

HCC supports the identification and encouragement of good management practices. Nevertheless, concern is raised as to requirements for good management practice introduce an unacceptable degree of uncertainty into planning provisions, given that such practices are subject to change outside of a plan process and are open to multiple interpretations. These provisions could allow GWRC to change the requirements for some activities without going through the plan change process and consequentially engaging in consultation with affected persons and relevant stakeholders.

Provisions relating to good management practices are considered contrary to the tests for permitted activities set out in the Environment Court Decision *Carter Holt Harvey v Waikato Regional Council* (A123/08) detailed in Section 6.

Good management practices could be referred to through either methods or notes to the relevant rules. Alternatively, the plan could refer to specific existing good management practice documents.

Decision sought

Remove requirements to comply with good management practices. Refer only to specific, existing good management practice documents.

9. Definition of zone of reasonable mixing for the coastal marine area

Under the PNRP definition for zone of reasonable mixing, the zone of reasonable mixing for discharges to coastal water is to be determined on a case by case basis. This is for both consented and permitted discharges.

The mixing zone for a permitted discharge cannot be determined on a case by case basis as it is unclear who would make the determination of what is appropriate and there is a lack of certainty on whether a discharge would be permitted. Subjective judgement or a specialist assessment should not be required to determine whether an activity is permitted as previously outlined.

Decision sought

Identify a specific zone of reasonable mixing for discharges to coastal water for permitted activities.

10. Provisions relating to discharges of dust

Objective 41 states that *"the adverse effects of odour, smoke and dust on amenity values and people's well-being are reduced."* Despite this objective, there are few rules that relate to the discharge of dust. As there is no permitted activity rule for the discharge of dust from earthworks, construction or roading, the discharge of dust from these activities would default to a discretionary activity under Rule R41. This rule not only applies to discharges at the property boundary, but all discharges to air. Such an approach is considered unduly restrictive and likely to generate unnecessary resource consent requirements.

The City of Lower Hutt District Plan currently has provisions that manage dust nuisance from construction at or beyond the property boundary.

Decision sought

Add provisions that allow the discharge of odour, smoke and dust unless discharging beyond the property boundary.

11. Earthworks and Vegetation Clearance

The proposed plan includes rules relating to earthworks. Earthworks and vegetation clearance may also require resource consent under The City of Lower Hutt District Plan.

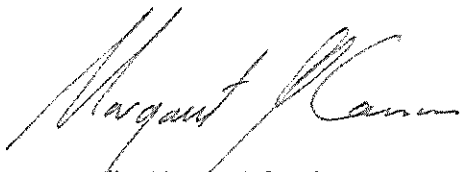
HCC does not oppose the inclusion of earthworks and vegetation clearance rules in the PNRP, but does wish to point out that this could result in resource consent being required from both GWRC and HCC in some situations. HCC requests that a note is added to the relevant rules to advise that approval may also be required from the relevant territorial authority.

Decision sought

Add note to the earthworks and vegetation clearance rules that approval may also be required from the relevant territorial authority.

Please contact Allison Tindale, Senior Policy Analyst, Environmental Policy on 04 570 6905 or Allison.Tindale@huttcity.govt.nz should you require additional discussion of the points raised above.

Yours faithfully



Councillor Margaret Cousins

Chair

Hutt City Council Policy and Regulatory Committee

#1530726584

Wellington Regional Council

23 OCT 2015

Mark Sutherland

From: Regional Plan
Sent: Friday, 23 October 2015 3:57 p.m.
To: Records
Subject: FW: Clarification of HCC's comments on Proposed Natural Resources Plan

Kind Regards,

Erin Campbell | Hearings Officer, Environmental Policy
GREATER WELLINGTON REGIONAL COUNCIL
Te Pane Matua Taiao
Shed 39, 2 Fryatt Quay, Pipitea, Wellington 6011

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From: Caroline Ammundsen
Sent: Friday, 23 October 2015 10:19 a.m.
To: Regional Plan
Subject: FW: Clarification of HCC's comments on Proposed Natural Resources Plan

Hi there,
Please lodge this as an amendment to submission number 84 for Hutt City Council.
I have already coded most of this submission, and will use the info from this email to code the rest.

Thanks
Caro

From: Allison Tindale [<mailto:Allison.Tindale@huttcity.govt.nz>]
Sent: Friday, 23 October 2015 9:55 a.m.
To: Caroline Ammundsen
Subject: FW: Clarification of HCC's comments on Proposed Natural Resources Plan

Dear Caroline,

Thank you for your phone call yesterday, seeking clarification of the Council's response on the above plan.

In relation to comments made in Section 1 of the HCC's submission, I confirm:

1. HCC generally objects to policies seeking avoidance and the use of a Non-Complying activity status, but does not rule out the possibility of their being appropriate in limited cases.
2. The Council does not object to every use of the word 'avoid' in the proposed plan or every use of the Non-Complying Activity Status. For example, there is no objection to the term 'avoid' for policy P24 which applies to areas of outstanding natural character or the Non-Complying Activity Status used in rule 108 for certain activities within natural wetlands.
3. The Council objects to the following policies, which contain the term 'avoid':

P27 – High Hazard Areas

P28 – Hazard Mitigation Measures

P102 – Reclamation or drainage of the beds of lakes or rivers

P138 – Structures in sites with significant value

P139 – Seawalls (although in this case the word inappropriate is used rather than the term avoid).

P148 – Motor vehicles in sites of significant value

4. The Council objects to the Non-Complying Activity Status used in the following rules:

R62 – New wastewater to freshwater

R127 – Reclamation of the beds of rivers or lakes

R162 – New structures, additions or alterations to structures inside sites of significance

R167 – Seawalls inside sites of significance

R198 – Motor vehicles inside sites of significance

R195 – Disturbance or damage inside sites of significance

R205 – Destruction, damage or disturbance inside sites of significance

R215 – Reclamation and drainage

Please let me know if you require any further clarification or information.

Kind Regards

Allison Tindale

Allison Tindale

Senior Policy Analyst

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