

BEFORE THE GREATER WELLINGTON REGIONAL COUNCIL

IN THE MATTER of the Resource Management Act 1991

AND of proposed Change 1 to the Wellington Regional Policy Statement.

**Evidence of Murray John Brass on behalf of
the Director-General of Conservation / *Tumuaki Ahurei*
Hearing Stream 3 Climate Change, Topic: Natural Hazards
dated 14 August 2023.**

Department of Conservation / *Te Papa Atawhai*
RMA Shared Services
Operations Group
Private Bag 4715
Christchurch 8140
Solicitor: Katherine Anton
Email: kanton@doc.govt.nz

Introduction

1. My full name is Murray John Brass.
2. I have been asked by the Director-General of Conservation / *Tumuaki Ahurei* ('the D-G') to provide planning evidence on the proposed Wellington Regional Policy Statement Change 1 ('WRPS PC1').
3. This evidence relates to Hearing Stream 3 Climate Change, specifically the Natural Hazards topic.

Background information

4. I am employed by the Department of Conservation (DOC) in Dunedin as a Senior RMA Planner. My qualifications and experience are as set out in my earlier evidence for Hearing Stream 2 Integrated Management.
5. I confirm that I have read the code of conduct for expert witnesses as contained in the Environment Court Practice Note 2023, and the equivalent in the Chief Freshwater Commissioner and Freshwater Hearings Panels Practice and Procedures Note 2020. I have complied with those Practice Notes when preparing my written statement of evidence and will do so when I give oral evidence before the hearing.
6. The data, information, facts, and assumptions I have considered in forming my opinions are set out in my evidence to follow. The reasons for the opinions expressed are also set out in the evidence to follow.
7. Unless I state otherwise, this evidence is within my sphere of expertise, and I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

Scope of evidence

8. This evidence covers three related provisions, being Policies 29, 51 and 52.

Material Considered

9. I have read the following documents:
 - Wellington Regional Policy Statement Proposed Change 1;
 - The s32 Evaluation Report dated August 2022;
 - The D-G's submission dated 12 October 2022;

- The D-G's further submission dated 19 December 2023;
- Other submissions where they are referred to in my evidence;
- The s42A report for Hearing Stream Three: Climate Change, Topic: Natural Hazards, dated 14 August 2023.

Statutory considerations

10. The s32 Report identifies the overall planning context for the Proposed Change, with further specific assessment relevant to natural hazards provided in the s42A Report. I am generally comfortable with those assessments, and where I have specific points to make these are addressed in the content of my evidence below.

Overview of provisions

11. The D-G's submission covered three related provisions, which provide the overall framework for managing natural hazards:
- Policy 29 sets out requirements for regional and district plans in managing subdivision, use and development in areas at risk from natural hazards;
 - Policy 51 sets out considerations for decision-makers on consents and planning matters to minimise risk and consequences of natural hazards;
 - Policy 52 sets out considerations for decision-makers on consents and planning matters to minimise the adverse effects of hazard mitigation measures.
12. As a general comment, I support that structure as it logically addresses the natural hazards themselves, development which could be affected by natural hazards, and the effects of measures to address natural hazards.

Policy 29 – District and regional plans

Avoiding increased risk in the coastal environment

13. The D-G's submission sought an addition to this policy to ensure that regional and district plans are required to give effect to the New Zealand Coastal Policy Statement 2010 (NZCPS), with the new clause being:

“include objectives, policies and rules to avoid subdivision, use or development within the coastal environment that would increase the risk of adverse effects from coastal hazards”

14. The point of this proposed addition was to avoid increasing risk, as required by Policy 25 of the NZCPS (key wording highlighted in bold):

“In areas potentially affected by coastal hazards over at least the next 100 years:

- a. **avoid increasing the risk** of social, environmental and economic harm from coastal hazards;
- b. **avoid** redevelopment, or change in land use, **that would increase the risk** of adverse effects from coastal hazards;...”

15. The s42A report rejects this submission point, on the basis that the policy already has wording to avoid increasing risk, so “*some relief is provided for implicitly*”. However, I have been unable to find such wording within the policy. Following the revisions to Policy 29 recommended in the s42A report, the only remaining reference to ‘avoiding’ is for subdivision, use and development in areas where the hazards and risks are assessed as high (excluding where there is a functional or operational locational need to be in the high risk area). In low or moderate risk areas, the only requirement would be to ‘*manage*’ subdivision, use and development.
16. I have considered whether the related policies assist in this regard. However, Policy 51 only requires that risks are “*avoided or minimised*”, and follows a similar structure to Policy 29 regarding low, medium and high risk areas. Policy 52 does include reference to not increasing the risks from natural hazards, but only in respect of the hazard mitigation measures themselves, not the actual subdivision, use and development.
17. As a result, my reading of Policy 29, even in conjunction with other provisions, is that regional and district plans would still be able to allow risk from hazards to increase – in general within areas assessed as low or moderate risk, and where there is a functional or operational locational need within high risk areas. Within the coastal environment this would be directly inconsistent with the NZCPS.
18. I therefore consider that the D-G’s submission point remains valid and has not been addressed.
19. I suggest two options to address this. One would be to make an addition to Policy 29, as was suggested in the D-G’s submission. Alternatively, it may be clearer drafting and better structure to place the addition in Policy 51.
20. My preference would be to make the addition to Policy 51 rather than Policy 29. I consider that this would be the more effective and efficient way to give effect to the NZCPS and to achieve Objectives 19 (avoiding or minimising risks) and 21

(strengthening resilience) of the WRPS PC1. My view is that Policy 51 is the primary policy for implementing Objectives 19 and 21, as it sets out the approach to be taken to all decisions relating to natural hazards. Policy 29 then provides more detail about how this applies to the preparation of plans, and Policy 52 provides more detail about how this applies to mitigation measures. Placing the addition in Policy 51 would therefore be structurally more logical. It would mean that the addition would apply directly to all decisions, rather than addressing the issue indirectly through a requirement for inclusion in future plans, and it would also more usefully give direction for Policy 52. This approach would also respond to changes to Policy 52 recommended in the s42A report, which have reduced the need to include a similar addition in that policy.

21. Whichever policy the addition is placed within, I consider that the appropriate wording would be essentially the same given that the intended effect is the same. I note that the D-G's submission used slightly different wording for Policy 29 to Policy 52, the key difference being whether to include specific reference to "*social, environmental and economic harm*" (wording taken from NZCPS Policy 25(a)). To best give effect to the NZCPS I consider that it would be preferable to include this wording, regardless of which policy the addition is placed in.

Functional or operational need

22. The s42A report recommends an addition to Policy 29, to provide an exemption to the direction to avoid activities within high risk areas, i.e.: "*unless there is a functional or operational need to be located in those areas*".
23. The reasoning for this in the report derives from submissions from a range of infrastructure interests (primarily Wellington International Airport Limited, but also the Fuel Companies, and Masterton and South Wairarapa District Councils). I accept that there can be significant benefits for people's wellbeing, health and safety by providing for infrastructure, and that a range of national direction instruments reflect this.
24. However, the drafting proposed does not limit the exemption in any way, let alone just to infrastructure. In my experience such drafting would be likely to lead to a range of non-infrastructure activities seeking to utilise the exemption (housing, industry etc). My understanding of the submissions and the s42A report is that this is not the intention of the proposed change, and that the concerns raised in submissions would still be addressed if the exemption was limited to infrastructure. I suggest an appropriate revision to the s42A report drafting would be:

~~“unless there is~~ except for infrastructure which has a functional or operational need to be located in those areas”.

25. I note that this additional wording would also be required for consistency in the addition to Policy 29 sought by the D-G, as discussed above.
26. I consider that such an approach would be a more efficient and effective way to achieve the natural hazard objectives of WRPS PC1, by directing the exemption to where it is most justified and reducing the potential for natural hazard risks to be increased. It would also address the issue that a general exemption would be inconsistent with NZCPS Policy 25, noting that Policy 25 treats infrastructure differently to other activities covered by its clauses a. and b.:

“d. encourage the location of infrastructure away from areas of hazard risk where possible.”

Explanation - guidance

27. The s42A report recommends adding in the Explanation a list of guidance documents that can assist with risk management and planning. I support this change – while it does not have statutory effect, it is helpful for plan users and should improve implementation of the policy. However, for completeness I consider that coastal hazard guidance should be included as follows:

“• NZCPS guidance note: Coastal Hazards, Department of Conservation (2017)”

Policy 51 – Natural hazard considerations

Avoiding increased risk in the coastal environment

28. As discussed above, I consider that an alternative way of ensuring consistency with the NZCPS would be an addition to Policy 51 using similar language to that proposed in the D-G’s submission on Policies 29 and 52, ideally to be located within the subset of clauses which are focussed on avoiding or minimising effects. To confirm, although this was not specifically sought in the D-G’s submission point on Policy 51, I consider that it is “to like effect” to the submission points on Policies 29 and 52, and is likely a more efficient and effective way of achieving the same intent. I suggest that suitable wording, drawing from both submission points, would be:

“within the coastal environment, avoiding subdivision, use and development that would increase the risk of social, environmental and economic harm or

other adverse effects from coastal hazards except for infrastructure which has a functional or operational need to be located in these areas; and,

Recognising climate change impacts on risk

29. The D-G's submission sought the reinstatement of wording which is contained in clause (b) in the operative RPS, but now proposed to be removed:
- "the potential for climate change and sea level rise to increase the frequency or magnitude of a hazard event".
30. The s42A report recommends that this request be declined, on the basis that the matters raised in the operative clause (b) are covered by the proposed changes to clause (a) which would require that particular regard be given to natural hazards that *"may be exacerbated by climate change and sea level rise"*.
31. Although I consider that the operative wording is more detailed, I accept that its intent is captured in the proposed changes. Therefore, subject to the proposed addition to clause (a) being retained, I would not oppose the removal of clause (b).

Functional or operational need

32. The s42A report recommends an equivalent addition to clause (g) as is discussed above for Policy 29. I have the same concerns about its application in this policy, and recommend the same change be made here as I recommend for Policy 29, i.e.:

"(g) avoiding subdivision, use or development and hazard sensitive activities where the hazards and risks are assessed as high, ~~unless there is~~ except for infrastructure which has a functional or operational need to be located in these areas"

Policy 52 – Hazard mitigation measures

Avoiding increased risk in the coastal environment

33. The D-G's submission on this Policy was essentially the same issue as raised for Policy 29, i.e avoiding an increase in risk in the coastal environment. The wording sought to address this was:

"avoiding hazard mitigation measures within the coastal environment that would increase the risk of social, environmental and economic harm or other adverse effects from coastal hazards".

34. The s42A report opposed that addition, but recommended the addition of “*so that they minimise and do not increase the risks from natural hazard*” at the end of the policy. I accept that this generally addresses the concern raised in the D-G’s submission, and support the change. I note that the option of an addition to Policy 51 as discussed above would also provide useful certainty in this regard.

Nature-based solutions

35. The s42A report also recommends adding an express reference to ‘*nature-based solutions*’ in addition to soft engineering options in clause (b) of this policy. Further evidence on the nature and value of nature-based solutions has been provided in the technical evidence of Mr Stuart Farrant for the Council, dated 7 August 2023.
36. I confirm that I strongly support this addition. For the coastal environment specifically, such an approach is consistent with Policy 25 of the NZCPS “*.e. discourage hard protection structures and promote the use of alternatives to them, including natural defences...*”. However, I consider that it is also an appropriate approach outside of the coastal environment, as nature-based solutions allow for appropriate protection of human values, while better providing for natural values.



Murray Brass

DATED this 14th day of August 2023

Appendix 1: Consolidated changes sought (tracked against the s42A report recommended drafting) – shaded changes are two alternative options as discussed in the evidence

Policy 29: Managing subdivision, use and development in areas at risk from natural hazards – district and regional plans

Regional and district plans shall manage subdivision, use and development in areas at risk from natural hazards as follows:

- a) identify areas affected by natural hazards; and
- b) use a risk-based approach to assess the consequences to new or existing subdivision, use and development from natural hazard and climate change impacts over at least a 100 year planning horizon which identifies the hazards as being low, medium or high;
- c) include hazard overlays, objectives, polices and rules to manage subdivision, use and development in those areas where the hazards and or risks are assessed as low to medium moderate; and
- d) include hazard overlays, objectives, polices and rules to avoid subdivision, use or and development and hazard sensitive activities where the hazards and risks are assessed as high, ~~unless there is~~ except for infrastructure which has a functional or operational need to be located in these areas; and
- e) include objectives, polices and rules to avoid subdivision, use or development within the coastal environment that would increase the risk of social, environmental and economic harm or other adverse effects from coastal hazards, except for infrastructure which has a functional or operational need to be located in these areas; and.

Policy 51: Avoiding or Minimising the risks and consequences of natural hazards – consideration

When considering an application for a resource consent, notice of requirement, or a change, variation or review to a district or regional plan, the risk and consequences of natural hazards on people, communities, their property and infrastructure shall be avoided or minimised, and/or in determining whether an activity is inappropriate particular regard shall be given to:

- (a) the likelihood and consequences of the range of natural hazards that may adversely affect the subdivision, use or development, including those that may be exacerbated by climate change and sea level rise;
- (c) whether the location of the subdivision, use or development will foreseeably require hazard mitigation works in the future;
- (d) the potential for injury or loss of life, social and economic disruption and civil defence emergency management implications – such as access routes to and from the site;
- (e) whether the subdivision, use or development causes any change in the risk and consequences from natural hazards in areas beyond the application site;
- (f) minimising effects of the subdivision, use or development on any natural features that may act as a buffer to reduce the impacts from natural hazards;
- (g) avoiding subdivision, use or development and hazard sensitive activities where the hazards and risks are assessed as high, ~~unless there is~~ except for infrastructure which has a functional or operational need to be located in these areas
- (ga) within the coastal environment, avoiding subdivision, use and development that would increase the risk of social, environmental and economic harm or other adverse effects from coastal hazards except for infrastructure which has a functional or operational need to be located in these areas; and,
- h) appropriate hazard risk management and/or adaptation measures for subdivision, use or development in areas where the hazards and risks are assessed as low to moderate, including an assessment of residual risk; and
- (i) the allowance for floodwater conveyancing in identified overland flow paths and stream corridors; and
- (j) the need to locate floor levels of habitable buildings and buildings used as places of employment above the 1% AEP (1:100 year) flood level, in identified flood hazard areas.

Policy 52: Minimising adverse effects of hazard mitigation measures – consideration

When considering an application for a resource consent, notice of requirement, or a change, variation or review of a district or regional plan, for hazard mitigation measures, particular regard shall be given to:

- (b) whether nature-based solutions, Mātauranga Māori or soft engineering options provide a more appropriate solution;

- (c) avoiding structural protection works or hard engineering methods unless it is necessary to protect existing development, regionally significant infrastructure or property from unacceptable risk and the works form part of a long-term hazard management strategy agreed to by relevant authorities that represents the best practicable option for the future;
 - (d) the long-term viability of maintaining the structural protection works with particular regard to how climate change may increase the risk over time;
 - (e) adverse effects on Te Mana o te Wai, mahinga kai, Te Rito o te Harakeke, natural processes, or indigenous ecosystems and biodiversity;
 - (f) sites of significance to mana whenua/tangata whenua identified in a planning document recognised by an iwi authority and lodged with a local authority or scheduled in a district or regional plan;
 - (g) a no more than minor increase in risk to nearby areas as a result of changes to natural processes from the hazard mitigation works;
 - (h) the cumulative effects of isolated structural protection works;
 - (i) any residual risk remaining after mitigation works are in place,
- so that they minimise and do not increase the risks from natural hazards.