

Before the Hearing Panels

Under the Resource Management Act 1991 (**RMA**)

And

In the matter of Proposed Plan Change 1 (**PC1**) to the Natural Resources Plan for the Wellington Region

And

In the matter of Hearing Stream 1 (Overarching matters and region-wide changes)

**Legal submissions on behalf of Greater Wellington Regional Council
– legal framework, plan change tests and other legal issues**

Date: 3 October 2024



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MAY IT PLEASE THE PANELS

INTRODUCTION

- 1 These legal submissions are made on behalf of the Greater Wellington Regional Council (**Council**) in relation to Proposed Plan Change 1 (**PC1**) to the Natural Resources Plan for the Wellington Region (**NRP**), Hearing Stream 1 (Overarching and region-wide matters).
- 2 PC1 is in part a freshwater planning instrument (**FPI**), using the Freshwater Planning Process (**FPP**), and in part, a standard plan change instrument, using the usual Schedule 1 process for plan changes (**P1S1**). The differences in process and approach are outlined further below.
- 3 The purpose of these legal submissions is to set out the applicable legal framework for the PC1 process and address some high-level issues applicable to all hearing topics that have been raised through submissions on PC1 (and which are addressed in this Hearing Stream).

OUTLINE OF SUBMISSIONS AND COUNCIL EVIDENCE

- 4 These legal submissions address:
 - 4.1 the background to PC1;
 - 4.2 the scope of PC1;
 - 4.3 an overview of the P1S1 process and of the FPP;
 - 4.4 the legal framework applying to PC1;
 - 4.5 the implications of reform on PC1; and
 - 4.6 the implications of Change 1 to the Regional Policy Statement (**Change 1 to the RPS**) on PC1.

- 5 Council has filed four section 42A reports in respect of this topic:
- 5.1 Overarching matters (Mary O'Callahan);
 - 5.2 Beds of lakes and rivers (Sam O'Brien);
 - 5.3 Air quality (Sam O'Brien); and
 - 5.4 Schedules and Threatened Species objectives (Sam O'Brien).
- 6 For this topic, the Council has also filed supporting corporate and technical expert evidence from Mr Corry on introductory matters and from Dr Crisp in respect of the PC1 amendments to the Schedules contained within the NRP.

BACKGROUND TO PLAN CHANGE 1

- 7 Ms O'Callahan sets out an overview and the background to PC1 in Part A of the Overarching Section 42A Report. In summary, PC1 seeks to implement the NPS-FM in two of the five whaitua in the Wellington Region – Te Awarua-o-Porirua and Te Whanganui-a-Tara. PC1 implements the regulatory and some of the non-regulatory recommendations from the Whaitua Implementation Programmes that were produced by the Committees appointed by the Council for each of the whaitua community planning processes and the companion documents produced by mana whenua. The water allocation recommendations from the Te Whanganui-a-Tara whaitua documents have not been included in PC1.
- 8 PC1 also proposes a small number of amendments to the region-wide sections of the NRP, including rules for the beds of lakes and rivers, air quality and Schedule A2 (lakes with outstanding indigenous biodiversity values) and Schedule F (sites and habitats with significant indigenous biodiversity values).

9 PC1 was notified by the Council on 30 October 2023. 288 submissions and 46 further submissions were received.

SCOPE OF PC1

Scope of PC1 as notified

10 The issue of the scope of PC1 is an important legal issue. It defines the limits of what can be altered through this plan change process, in response to submissions made.¹

11 It is submitted that part of determining the scope of PC1 is looking at what it did propose to alter (as notified) and what it did not propose to alter (ie, the extent of change proposed). This can be determined by reading the plan change and accompanying information when it was notified:²

...the permissible scope of submissions was framed by the notified variation and accompanying information, particularly the s 32 report ...

Persons reading the variation and accompanying information when it was notified may have elected not to participate knowing the deliberately focussed scope of the proposed changes.

12 The section 32 report for PC1 sets out the purpose of PC1 in section 3.1 as follows:

10. The purpose of Plan Change 1 is to give effect to the NPS-FM including the implementation of the National Objectives Framework (NOF) within T AoP and TWT of the Wellington Region and update the region-wide rules for the beds of lakes and rivers and air quality and Schedule F (sites and habitats with significant indigenous biodiversity values).

13 The scope of the provisions affected by PC1 is then set out in section 3.2 as follows:

¹ The difference between the P1S1 process and FPP in terms of scope is addressed further below.

² *Paterson Pitts Limited Partnership v Dunedin City Council* [2022] NZEnvC 234, at 101 and 102.

11. Plan Change 1 includes implementing NPS-FM, subpart 2 NOF requirements, as follows (referencing sections of the NPS-FM):

- section 3.8, identification of FMUs and special sites and features, including sites used for monitoring, primary contact sites, location of threatened species, monitoring sites for FMUs, and Māori freshwater values.
- sections 3.9, 3.10, identifying values and setting environmental outcomes as objectives, including compulsory values, environmental outcomes set as objectives for all fresh water (rivers, lakes, wetlands, and groundwater) and connected coastal water in the TAoP and TWT.
- sections 3.11, 3.13, setting target attribute states (TASs) and instream concentrations and exceedance criteria for TAoP and TWT.
- sections 3.12, 3.14, 3.15, policies and rules (rules or limits required by NPSFM) and methods (including action plans) to manage activities such as urban development, earthworks, stormwater, wastewater, and rural land use activities to achieve the objectives and target attribute states within TAoP and TWT, and
- section 3.16, 3.17, amendments to the water quantity policies and rules for TAoP, including amended minimum flows, and take limits.

12. Plan Change 1 includes other amendments to the NRP that are not directly related to the NPS-FM:

- insertion of icons where the existing objectives, policies, rules, or schedules no longer apply to TAoP and/or TWT.
- amendments to Schedule F biodiversity schedules updated due to new information arising since the NRP was notified in 2015. This update implements NRP Method 24 that requires updates to indigenous ecosystem schedules in the CMA as new information becomes available on significant indigenous biodiversity values within the Wellington Region

- amendments to NRP beds of lakes and rivers rule (Chapter 5.4) to resolve drafting issues to improve the interpretation and function of the rules, and
- amendment to NRP air quality rules (Chapter 5.1) to remove the coastal icon from selected permitted activity rules, and other minor amendments for recent updates to national standards and improvements and to improve rule uncertainties.

13. Plan Change 1 does not include reviewing and amending environmental flows and levels and take limits for TWT. Further monitoring and assessments are required before this can be completed. These additions will be added in a future plan change.

14 This scope of PC1, is also clearly set out in the introduction to the section 32 report, where in section 2 it states:

4. PC1 is focused on giving effect to the National Policy Statement for Freshwater Management (NPS-FM) in two of the five whitua of the Wellington region, Whitua Te Whanganui-a-Tara and Te Awarua-o-Porirua Whitua implementing the regulatory and some of the non-regulatory recommendations from the Whitua Te Whanganui-a-Tara Implementation Programme (TWT WIP) and Te Awarua-o-Porirua Implementation Programme (TAoP WIP). Consequently, the majority of changes and additions are in Chapters 8 and 9 of the NRP. Recommendations from the WIP's not implemented through PC1 are actioned through the Council's catchment programmes, and in some cases by the relevant territorial authority.
5. Plan Change 1 also includes amendments to region wide provisions including Schedule F (ecosystems and habitats with significant indigenous biodiversity values), amendments to Section 5.4.4 (uses of beds of lakes and rivers rules) and improvements to the air rules in the coastal marine area (CMA) to give effect to the New Zealand Coastal Policy Statement (NZCPS).
6. To fully give effect to the NPS-FM additional plan changes are planned to cover the remaining whitua, Ruamāhanga Whitua, Kāpiti Whitua and Wairarapa Coast Whitua. These are required to be completed by December 2024.

Why scope is relevant to the Panels?

15 As both a standard Schedule 1 change, and in reliance on section 80A(6)(a) for the FPI components, clause 6(1) of Schedule 1 to the RMA applies to all submissions on PC1 and provides:

6 Making of submissions under clause 5

(1) Once a proposed policy statement or plan is publicly notified under clause 5, the persons described in subclauses (2) to (4) may make a submission on it to the relevant local authority.

[Emphasis added]

16 A person may, in the prescribed form, make a submission seeking decisions 'on' PC1. If the relief sought in the submission is not 'on' PC1, there is no jurisdiction for relief to be granted by the Panels, as discussed further below.

17 The legal principles relevant to determining whether a submission is 'on' a plan change, in accordance with clause 6 of Schedule 1, are well-settled. In summary, there are two parts to the scope test – scope of the plan change itself, and scope of relief sought through submissions.

18 In terms of the first part of the scope test – "whether a submission is within scope of PC1" or "whether a submission is "on" the plan change", two tests need to be satisfied:³

18.1 the submission must address the proposed plan change itself. That is, it must address the extent of the alteration to the status quo which the change entails; and

18.2 the Council must consider whether there is a real risk that any person who may be directly affected by the decision sought in the submission has been denied an

³ *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290 at [80]-[82].

effective opportunity to respond to what the submission seeks.

19 In terms of the second part of the scope test – whether there is scope within submissions to make the change, there is a difference between standard Schedule 1 provisions compared to the FPI provisions:

19.1 For standard Schedule 1 provisions, clause 10 of Schedule 1 requires the P1S1 Panel to provide recommendations on the provisions of the change and matters raised in submissions. For an amendment to be within the scope of clause 10(2) of Schedule 1, it must not go beyond what is 'reasonably and fairly raised' in submissions on the plan change.⁴ In other words, the P1S1 Panel is limited to making recommendations on the matters raised in submissions. Additionally, consequential changes which logically arise from the grant of relief requested and submissions lodged are permissible, provided they are reasonably foreseeable.⁵

19.2 For FPI provisions, the FHP is not limited to making recommendations in the same way. Clause 49(2) of Schedule 1 states:

(2) The freshwater hearings panel:

- (a) is not limited in making recommendations only within the scope of submissions made on the freshwater planning instrument; and
- (b) may make recommendations on any other matters relating to the freshwater planning instrument identified by the

⁴ *Countdown Properties (Northlands) v Dunedin DC* HC, Wellington AP 214/93 (7 March 1994) (1994) 1B ELRNZ 150 at p171, [1994] NZRMA 145. See also *Re Vivid Holdings* [1999] NZRMA 467 at [19].

⁵ *Westfield (New Zealand) Ltd v Hamilton City Council* (2004) 10 ELRNZ 254 (HC), at [73] - [77].

panel or any other person
during the hearing

19.3 In other words, for the FPI provisions the FHP can make recommendations that go beyond the scope of submissions on those provisions, as long as the issue is raised during the hearing.

20 Accordingly, both limbs of the scope test need to be met (ie, it is within scope of PC1 and within scope of submissions) for recommendations made through the P1S1 process, with only scope of PC1 (and not submissions on it) being required for changes recommended through the FPP process.

THE LEGAL FRAMEWORK FOR REGIONAL PLAN MAKING

21 The legal framework for a regional plan, including a regional coastal plan, is set out in sections 63-70 of the RMA. The purpose of a regional plan is to "assist a regional council to carry out any of its functions in order to achieve the purpose of this Act."⁶

22 The plan change test has been comprehensively summarised in *Colonial Vineyard v Marlborough District Council, Cabra Rural Developments Ltd v Auckland Council* and more recently in *Edens v Thames Coromandel District Council*.⁷ Since the *Colonial Vineyard* case, there have been various amendments to the RMA. An updated summary of the statutory tests that the Panels will need to consider is attached as **Appendix A** to these legal submissions (focusing on the regional plan requirements). However, it is submitted that the following are the most relevant in the PC1 context. PC1 must:

⁶ RMA, section 63.

⁷ *Colonial Vineyard v Marlborough District Council* [2014] NZEnvC 55 at [17], updating the summary from *Long Bay-Okura Great Park Society v North Shore City Council*, EnvC Auckland, 16/7/2008 A78/08 at [34]. *Cabra Rural Developments Ltd v Auckland Council* [2018] NZEnvC 90 at [279], *Edens v Thames Coromandel District Council* [2020] NZEnvC 013, at [11].

- 22.1 give effect to any national policy statement, the NZCPS, national planning standard and the Operative Regional Policy Statement;⁸
- 22.2 state the objectives for the region, the policies to implement those objectives, and any rules to implement those policies;⁹
- 22.3 be prepared in accordance with:¹⁰
 - 22.3.1 the Council's functions under section 30 of the RMA and Part 2 of the RMA; and
 - 22.3.2 all relevant national policy statements, the NZCPS and the national planning standards;
- 22.4 have an evaluation report prepared under section 32 of the RMA which the Panels must have particular regard to and also have regard to:¹¹
 - 22.4.1 any proposed regional policy statement;
 - 22.4.2 any relevant management plans and strategies prepared under other Acts; and
 - 22.4.3 any emissions reduction plan or national adaptation plan made under the Climate Change Response Act 2002; and
- 22.5 when making a rule, have regard to the actual or potential effect on the environment of the activities, including in particular, any adverse effect;¹² and

⁸ RMA, section 67(3).

⁹ RMA, section 67(1).

¹⁰ RMA, section 66(1).

¹¹ RMA, section 66(1)(e) and section 66(2)(a)-(g).

¹² RMA, section 68(3).

- 22.6 when making an objective, examine the extent to which it is the most appropriate way to achieve the purpose of the RMA;¹³ and
- 22.7 when making policies and methods, ensure the policies implement the objectives¹⁴ and the policies and methods are the most appropriate way to achieve the objectives.¹⁵
- 23 In addition, a further analysis prepared in accordance with section 32AA of the RMA is required where changes are proposed to the provisions of PC1 following the completion of the original section 32 report.¹⁶ It is to be undertaken at a level of detail that corresponds to the significance of the changes. The section 42A authors for Hearing Stream 1 have completed section 32AA assessments in relation to all changes they have recommended. Section 42A report authors for subsequent hearing streams will do the same.
- 24 It is important to record that as PC1 was notified on 30 October 2023, the version of the RMA that applies to the PC1 process is that which was in place at the date of notification. This is relevant as the RMA was amended on 23 December 2023,¹⁷ and it is anticipated that further amendments to the RMA may be made by amendment legislation during the PC1 process. Counsel will provide updates on any relevant legislative reform (including to national direction) if, and when, that happens and how that might impact on decision-making for the Panels, including in respect of any issues with scope to make changes that may arise.
- 25 Some submitters have raised concerns with the Council proceeding with PC1 in light of indications from the Government that it will be seeking to substantially change, or replace, the

¹³ RMA, section 32(1)(a).

¹⁴ RMA, section 67(1)(b).

¹⁵ RMA, section 32(1)(b).

¹⁶ RMA, section 32AA(1).

¹⁷ By the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023.

NPS-FM. Following amendments to the timeframes by which plan changes to implement the NPS-FM are to be notified, which occurred post notification of PC1, the Council expressly considered whether or not to proceed with PC1.

26 As set out in the Overarching section 42A report, the Council decided to proceed. PC1 is part of a comprehensive work programme of plan changes to be notified by the end of 2027 (the new date by which a freshwater planning instrument is to be notified by). The Council decided it could not simply wait and see what changes may or may not be made to the RMA or the NPS-FM. This is expanded on in the Overarching section 42A report. It is submitted that determining to continue with PC1 was an option available to the Council and that there is nothing in the RMA that requires the Council to do otherwise.

27 Accordingly, PC1 and the Panels consideration of it needs to proceed on the basis of the currently applicable framework. It is submitted that the Council cannot simply push pause on its obligations under the RMA and the NPS-FM because something might change in the future. As noted in Ms O'Callahan's section 42A report, the NPS-FM has already been amended multiple times since first coming into effect in 2011 so the current uncertainty around further changes to this national direction is nothing new.

THE ROLE OF THE REGIONAL POLICY STATEMENT

28 As the Panels will be aware, there is currently both an Operative RPS, and a proposed change to the RPS (Change 1 to the RPS) that are relevant to PC1.

29 The NRP must "give effect to" the Operative RPS. In terms of what "give effect to" means, the Supreme Court has stated that to give effect to a policy, simply means to implement it.¹⁸ In other

¹⁸ *King Salmon*, at [77].

words, the RMA requires that direction in the Operative RPS must be *implemented* by the NRP.

- 30 In respect of Change 1 to the RPS, the direction in section 66(2)(a) of the RMA is that regard must be had to Change 1, when making decisions on PC1.
- 31 At the time of writing these submissions, the hearings on Change 1 to the RPS have concluded, with the Council making its decisions on Change 1 to the RPS on 26 September 2024. That decision is due to be notified on 4 October 2024. The appeal periods for both the P1S1 provisions and FPI provisions then run from that date.
- 32 Both clauses 10 and 52 of Schedule 1 to the RMA state that from the date the decision on Change 1 of the RPS are notified, the provisions of Change 1 are amended in accordance with the Council's decisions.
- 33 The purpose of Change 1 to the RPS was effectively to make amendments to the Operative RPS to address the following key issues:
- 33.1 lack of urban development capacity;
 - 33.2 degradation of freshwater;
 - 33.3 loss and degradation of indigenous biodiversity; and
 - 33.4 the impacts of climate change.
- 34 In addition to these key changes, Change 1 to the RPS makes minor updates to ensure ongoing implementation of the NZCPS and the NRP. These updates related to natural character in the coastal environment and regionally significant infrastructure.
- 35 Change 1 to the RPS was notified by the Council on 19 August 2022. 151 submissions and 31 further submissions were

received. Variation 1 to Change 1 was notified in October 2023, and was heard as part of the Change 1 hearings process. It has effectively 'caught up' to Change 1, and now forms part of it post the Council's decisions.

36 In respect of Change 1 to the RPS, the Panels are required to "have regard to" Change 1. The meaning of "have regard to" has been judicially considered and its meaning is well defined:¹⁹

...By way of starting point, the High Court refers to *New Zealand Co-operative Dairy Co Ltd v Commerce Commission* where Wylie J said:

"We do not think there is any magic in the words 'have regard to'. They mean no more than they say. The tribunal may not ignore the statement. It must be given genuine attention and thought, and such weight as the tribunal considers appropriate. But having done that the tribunal is entitled to conclude it is not of sufficient significance either alone or together with other matters to outweigh other contrary considerations which it must take into account in accordance with its statutory function."

Similar observations are made by the Court of Appeal in *New Zealand Fishing Industry Association Inc v Minister of Agriculture and Fisheries* and by the High Court in *Foodstuffs (South Island) Ltd v Christchurch City Council*. Provided that the court gives genuine attention and thought to the matters in question it is free to allocate weight as it sees fit but does not necessarily have to accept them.

37 Accordingly, "have regard to" means that the Panels need to give genuine attention and thought to Change 1, but it is at the Panels' discretion what weight it can allocate to it. It is submitted that this means material consideration is required, not just cursory consideration. The Supreme Court in *Royal Forest and Bird Protection Society Inc v NZTA* [2024] NZSC 26 has very recently stated:²⁰

However, he erred in his application of the duties to have regard/particular regard to relevant objectives and policies. Again, those duties do not invest

¹⁹ *Taggart Earthmoving Ltd v Heritage New Zealand Pouhere Taonga* [2016] NZEnvC 123 at [51] - [52].

²⁰ At [169].

consent authorities with a broad discretion to "give genuine attention and thought" to directive policies, only to then refuse to apply them. That would contradict what we have already described as the consistently strong "avoid" language employed from top to bottom in the RMA hierarchy of objectives and policies. It would also be to waste the significant resources invested by public and private stakeholders in the processes by which those objectives and policies are settled.

38 Further, whilst recorded in the minority Judgment of Glazebrook J, the following statement was made:²¹

A relevant plan provision is "not properly had regard to (the statutory obligation) if it is simply considered for the purpose of putting it on one side".

39 It is submitted that it is for the Panels to decide what weight should be given to Change 1. The Council's position on how PC1 reflects the key components of Change 1 to the RPS will be addressed through the relevant section 42A reports, along with the author's views on the weight that should be given to Change 1 to the RPS. Counsel will advise the Panels as to any change in status of Change 1 to the RPS as it moves through the Schedule 1 process.

40 Several submitters have raised concerns with PC1 being progressed by the Council ahead of the RPS Change 1 process being completed. It is submitted that there is clearly a process in the RMA that anticipates this will occur (ie, the difference between the weight given to an Operative RPS and a proposed Change to the RPS in decision making on a regional plan) and there is no legal reason that prevents PC1 proceeding while Change 1 to the RPS is still proposed.

41 Further, it is submitted that it would not be appropriate to delay implementation of the NPS-FM, or the Council's functions more generally under the RMA for an unforeseen period of time until Change 1 is resolved. Proceeding now prevents planning

²¹ At [224], cross referring to the Court of Appeal decision in *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316, at [73].

paralysis. This is expanded on in the Overarching section 42A report of Ms O'Callahan.

THE FRESHWATER PLANNING PROCESS

42 In July 2020, the RMA was amended as a result of the Resource Management Amendment Act 2020, to incorporate a new planning process, being the FPP. Section 80A of the RMA sets out the FPP and the scope of its application.²² The most relevant parts of section 80A of the RMA for these submissions are (2), (6A), (6B) and (8) (emphasis added):

- (2) A **freshwater planning instrument** means—
- (a) any part of a proposed regional plan or regional policy statement that relates to objectives that give effect to the national policy statement for freshwater management;
 - (b) any provisions of a proposed regional plan or regional policy statement in relation to which the regional council has decided to use the freshwater planning process under subsection (6B)(b):
 - (c) any regional policy statement (including any change or variation to the statement) in relation to which the council has decided to use the freshwater planning process under subsection (6B)(c):
 - (d) any change or variation to a proposed regional plan or regional policy statement if the change or variation—
 - (i) relates to objectives that give effect to the national policy statement for freshwater management; or
 - (ii) relates to a provision described in paragraph (b).

²² We note here that there are some changes to section 80A that are applicable to this PC1 process that are different to what was applicable to Change 1 to the RPS.

...

(6A) A proposed regional plan or regional policy statement (or any part of it) relates to freshwater if—

(a) it relates (in whole or in part) to an objective of the regional plan or regional policy statement; and

(b) the objective relates to the performance of a function in section 30(1)(c), (e), (f), (fa), (g), or (ga).

(6B) A regional council—

(a) must use the freshwater planning process when preparing any part of a regional plan or regional policy statement that relates to objectives that give effect to the national policy statement for freshwater management; and

(b) may use the freshwater planning process when preparing other provisions of a regional plan or regional policy statement that relate to freshwater; and

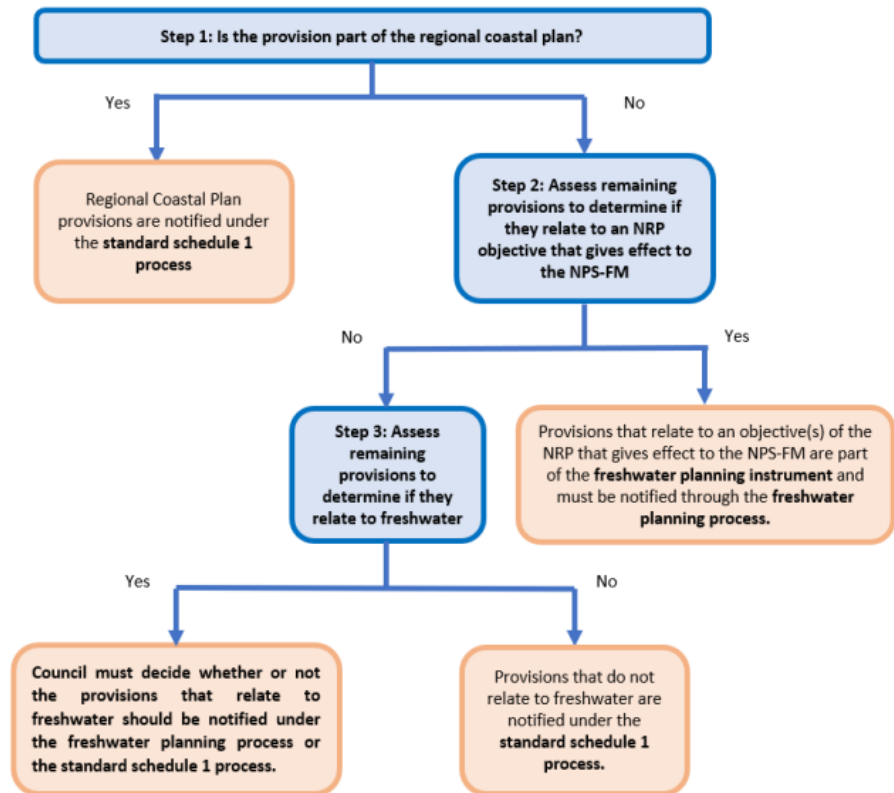
(c) ...

(8) In subsection (2), a proposed regional plan does not include a proposed regional coastal plan or a change or variation to that plan.

43 Part 4 of Schedule 1 then sets out the procedural requirements for a FPP. Although, in accordance with section 80A(6) of the RMA, selected parts of the standard Schedule 1 process continue to apply.

44 When assessing the new provisions proposed in PC1, and changes proposed to provisions in the NRP by PC1, the Council took the following approach to categorisation of provisions as FPI

or P1S1 provisions, which is set out in more detail in Ms O'Callahan's report:²³



45 It is submitted that this reflects the legislative framework. Where submitters have challenged the categorisation of provisions between the FPI and the P1S1 process, the section 42A report authors will expressly consider the categorisation as part of their section 42A reports.

CONCLUSION

46 Counsel for the Council will appear at the commencement of the hearing on PC1 to speak to these submissions and are available

²³ Overarching matters section 42A report, Figure 2, Figure A2 in the section 32 report.

to address any specific legal issues that arise throughout the hearing.

Date: 3 October 2024

Two handwritten signatures in blue ink, one on the left and one on the right, both appearing to be stylized and illegible.

.....
Kerry M Anderson / Emma L Manohar / Kate H Rogers
Counsel for Wellington Regional Council

Appendix A – Plan change tests for a regional plan (including a change)²⁴

A. General requirements

1. A regional plan (change) should be designed to accord with - and assist the regional council to carry out – its functions in section 30 so as to achieve the purpose of the Act.²⁵
2. The regional plan (change) must also be prepared in accordance with any regulations²⁶ and any direction given by the Minister for the Environment.²⁷
3. When preparing its regional plan (change) the regional council must give effect to any national policy statement or New Zealand Coastal Policy Statement or National Planning Standards.²⁸
4. When preparing its regional plan (change) the regional council shall:
 - (a) have regard to any proposed regional policy statement;²⁹ and
 - (b) give effect to any operative regional policy statement.³⁰
5. The regional plan (change) must not be inconsistent with any other regional plan for the region or a water conservation order.³¹
6. When preparing its regional plan (change) the regional council must also:
 - (a) have regard to the Crown's interests in the coastal marine area,³² any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations, and any relevant project area or project objectives under the Urban Development Act 2020 to the extent that their content has a bearing on resource management issues of the region,³³ and to consistency with plans and proposed

²⁴ Taken from *Colonial Vineyards Ltd v Marlborough District Council* [2014] NZEnvC 55 but updated to reflect a regional plan change and legislative change since 2014.

²⁵ RMA, section 63 and 66(1).

²⁶ RMA, section 66(1).

²⁷ RMA, section 66(1).

²⁸ RMA, section 67(3).

²⁹ RMA, section 66(2)(a).

³⁰ RMA, section 67(3)(c).

³¹ RMA, Section 67(4).

³² RMA, Section 66(2)(b).

³³ RMA, section 66(2)(c).

plans of adjacent regional councils,³⁴ and regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012;³⁵

- (b) take into account any relevant planning document recognised by an iwi authority,³⁶
- (c) not have regard to trade competition or the effects of trade competition;³⁷
- (d) have regard to any emissions reduction plan or national adaptation plan made in accordance with the Climate Change Response Act 2002;³⁸ and
- (e) in relation to planning documents prepared by customary marine title groups under the Marine and Coastal Area (Takutai Moana) Act 2011, recognise and provide for some matters, and take other matters into account.³⁹

7. The formal requirement that a regional plan (change) must also state its objectives, policies and the rules (if any) and may state other matters.⁴⁰ The regional plan (change) must also record how a regional council has allocated a natural resource under section 30(1)(fa) or (fb) and (4) of the RMA, if the council has done so.⁴¹

B. Objectives [the section 32 test for objectives]

8. Each proposed objective in a regional plan (change) is to be evaluated by the extent to which it is the most appropriate way to achieve the purpose of the Act.⁴²

C. Policies and methods (including rules) [the section 32 test for policies and rules]

9. The policies are to implement the objectives, and the rules (if any) are to implement the policies.⁴³
10. Whether the provisions (the policies, rules or other methods) are the most appropriate way to achieve the purpose of the regional plan change and the objectives of the Natural Resources Plan by:⁴⁴

³⁴ RMA, section 66(2)(d)

³⁵ RMA, section 66(2)(e).

³⁶ RMA, section 66(2A)(a).

³⁷ RMA, section 66(3).

³⁸ RMA, section 66(2)(f) and (g).

³⁹ RMA, section 66(2A)(b).

⁴⁰ RMA, section 67(1) and 67(2).

⁴¹ RMA, section 67(5).

⁴² RMA, section 66(1) and section 32(1)(a).

⁴³ RMA, section 67(1)(b) and 68.

⁴⁴ See summary of tests under section 32 of the RMA for 'provisions' in *Middle Hill Limited v Auckland Council* Decision [2022] NZEnvC 162 at [30].

- (a) identifying other reasonably practicable options for achieving the objectives;⁴⁵ and
- (b) assessing the efficiency and effectiveness of the provisions in achieving the objectives, including by:⁴⁶
 - i. identifying and assessing the benefits and costs of the environmental, economic, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for:
 - economic growth that are anticipated to be provided or reduced;⁴⁷ and
 - employment that are anticipated to be provided or reduced;⁴⁸
 - ii. if practicable, quantifying the benefits and costs;⁴⁹ and
 - iii. assessing the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the provisions.⁵⁰

D. Rules

- 11. In making a rule the regional council must have regard to the actual or potential effect of activities on the environment. ⁵¹
- 12. Rules have the force of regulations.⁵²
- 13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive than those under the Building Act 2004.⁵³
- 14. There are special provisions for rules about restricted coastal activities,⁵⁴ maximum or minimum levels or flows or rates of use of water, or minimum standards of water quality or air quality or temperature or pressure ranges of geothermal water,⁵⁵ contaminated land,⁵⁶ regulations applying to the regional coastal

⁴⁵ RMA, section 32(1)(b)(i).

⁴⁶ RMA, section 32(1)(b)(ii).

⁴⁷ RMA, section 32(2)(a)(i).

⁴⁸ RMA, section 32(2)(a)(ii).

⁴⁹ RMA, section 32(2)(b).

⁵⁰ RMA, section 32(2)(c).

⁵¹ RMA, section 68(3).

⁵² RMA, section 68(2).

⁵³ RMA, section 68(2A).

⁵⁴ RMA, section 68(4).

⁵⁵ RMA, section 68(7), and also section 69 in respect of water quality.

⁵⁶ RMA, section 68(11).

plan,⁵⁷ dumping and incineration of waste in the coastal marine area,⁵⁸ contaminated land,⁵⁹ aquaculture activities,⁶⁰ and discharges.⁶¹

E. Other statutes

16. Finally regional councils may be required to comply with other statutes.

⁵⁷ RMA, section 68(8)

⁵⁸ RMA, section 68(9) and (10).

⁵⁹ RMA, section 68(11).

⁶⁰ RMA, section 68A.

⁶¹ RMA, section 70.