Part B: Section 2

Hearing Stream 1 – General submissions

1. There were two s 42A Reports in this Hearing Stream. The first was an Overview Report which provided background and context to Proposed Change 1. Much of the content in this Overview Report has been discussed in Part A of our Report.

2. The second s 42A Report was on General submissions, namely submissions which apply to the entire change proposal rather than being directed to a specific topic.[1] The Reporting Officer did not recommend any amendments to the provisions in response to general submissions. The s42A Report addressed:

    (a) The allocation of provisions between the FPP and P1S1 process;

    (b) Providing for mana whenua in the RPS;

    (c) The scope of Change 1;

    (d) Drafting issues;

    (e) The appropriateness of general plan provisions;

    (f) Implementation; and

    (g) Whether engagement was sufficient.

3. Many of these matters have been addressed in specific topic chapters of this report including in Part A where we discuss our approach to the categorisation of provisions.

4. We otherwise agree with the recommendations of the Reporting Officer on the General submissions topic for the reasons provided in the s 42A Report, Rebuttal or Reply Evidence. We also agree with the Officer's assessment of submissions considered to be outside the scope of Change 1.[2] We comment on three matters that came up in Hearing Stream 1 and in other Hearing Streams.

[1] Section 42A Hearing Report, Hearing Stream 1, General Submissions, 26 May 2023, para 22.
[2] Section 42A Hearing Report, Hearing Stream 1, General Submissions, 26 May 2023, para 54.

1.1 Providing for mana whenua in the RPS

5. Numerous submissions sought amendments relating to mana whenua / tangata whenua and partnership values. These have been considered through the specific topic chapters.

6. The topic chapters also discuss relief sought by Muaūpoko Tribal Authority (**Muaūpoko**) to specific provisions in Proposed Change 1. Muaūpoko also requested specific acknowledgement of mana whenua status due to their connections to Te-Whanganui-a-Tara. Their submission detailed the history and whakapapa of the iwi and they raised concern about lack of consultation during the preparation of Proposed Change 1.

7. Muaūpoko requested that they be referenced wherever tangata whenua is referenced in Proposed Change 1. Legal submissions from Mr Bennion articulated the relief Muaūpoko was seeking, saying without these amendments, there is essentially no protection for Muaūpoko in relation to their taonga in Te-Whanganui-a-Tara and northwards to Ōtaki. Mr Bennion sought a 'non-exclusionary approach' in the RPS to the identification of iwi in the region[3] and sought that Muaūpoko be referenced wherever tangata whenua is referenced in PC1. Mr Bennion commented specifically on 'non-exclusionary' wording relating to tangata whenua and as discussed in the legal submissions of Counsel for the Council (presented by Mr Allan). We note that some of this relief relates specifically to the Freshwater/Te Mana o te Wai hearing stream and we address that relief in that chapter of our report.

8. Mr Bennion stated that the relief sought by Muaūpoko was within scope, there was "overwhelming evidence" before Council to support the amendments proposed, the relief did not threaten other Māori groups, and it was not the role of the Council to determine the relative strength of Muaūpoko customary interests.[4]

9. Ātiawa sought that Muaūpoko's entire submission be disallowed. The HS1 reporting Officer did not make any recommendations on the relief sought by Muaūpoko for recognition as mana whenua.

10. We have considered the submissions from Muaūpoko, Mr Bennion's legal submissions and the legal submissions of Counsel on this complex and sensitive issue. We find that we have no ability to determine competing

[3] Legal submissions of Mr Bennion, Counsel for Muaūpoko Tribal Authority, paras 26 – 28.
[4] Legal submissions of Mr Bennion, Counsel for Muaūpoko Tribal Authority, paras 14 and 16.

viewpoints on mana whenua / tangata whenua status. We accept Mr Allan's legal submissions (presented for the Council) where he said, citing the High Court case of *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whaia Maia Ltd:*[5]

> *"It is not the role of Wellington Regional Council to confer, declare or affirm tikanga-based rights, powers or authority. Determination of those rights or mana whenua status is a matter for mana whenua themselves in accordance with tikanga Māori."*

11. As Mr Allan explained, decision-makers must "meaningfully respond" to iwi claims that a particular outcome is required where that is necessary and relevant to meet the directions in sections 6(e), 7(a) and 8 in the RMA, or other obligations to Māori. We address Mr Bennion's concerns regarding what he describes as 'exclusionary' provisions in PC1, in both the Freshwater/Te Mana o te Wai and Indigenous Biodiversity chapters, where the issue has specific impact and reach.

1.2 Scope

12. Various submitters sought that the scope of Proposed Change 1 be limited to amendments required to implement the NPS-UD (eg BLNZ [S78.001]. This relief was opposed including by Wellington Water [FS19.064] and Ātiawa [SFS20.003].

13. Part A and other chapters of our Report discuss the rationale for the scope of Proposed Change 1 including the Council's intention to view inter-related national direction together rather than in isolation of each other. We agree with Council, for the reasons set out in the s32 Report, that the changes in Proposed Change 1 are required to implement national direction and support changes to the regional plan and Wellington region district plans. We agree with the HS 1 Reporting Officer's reasoning for rejecting the relief sought by BLNZ and others to limit the scope of the Change proposal to only amendments required to implement the NPS-UD.[6] Similar reasoning is provided by other Reporting Officers in subsequent hearing streams.

14. We also agree with the further submission from Ātiawa [FS20.208] that delaying responding to national direction is not an appropriate course of

[5] [2020] NZHC 2768, referenced at para 5 of Mr Allan's legal submissions, Hearing Stream 1, Providing for Tangata Whenua / Mana Whenua in Proposed Change 1, 8 June 2023.
[6] Section 42A Hearing Report, Hearing Stream 1, General Submissions, 26 May 2023, paras 130 – 137.

action. For the reasons we have further discussed in topic chapters, we similarly do not support relief sought by WFF [S163.079] and other submitters that specific chapters of Proposed Change 1, such as the climate change chapter, are deleted and deferred to a full review of the RPS in 2024.

1.3 Consideration policies

15. PCC [S30.0123] opposed all consideration policies and this relief was supported by PPFL [FS25.041]. PCC's counsel stated that one key concern with consideration policies is that where a TA had given effect to RPS provisions relating to the same matter as a consideration policy, it was then not clear whether the consideration policy continues to apply.[7] Including a 'expiry date' or clear statement that the policy only had interim effect until the regulatory policy had been given effect to in the plan, would resolve some of these interpretation issues in PCC's submission.

16. This was a recurring issue in PCC's evidence throughout the hearings. For example, Mr McDonnell's planning evidence in Hearing Stream 3 expressed the concern in this way:[8]

> *"My understanding is that 'consideration' policies are applied in order to guide resource consenting processes in the absence of district and regional plan rules (as well as notices or requirement, plan changes etc as noted by the reporting officer in paragraph 291). Once plan provisions are in place following the 'regulatory' or plan making RPS policies, I see no reason that 'consideration' policies should continue to apply. This is because there is risk that a 'consideration' policy could duplicate or conflict with district and regional plans..."*

17. Kāinga Ora [S158.001] was also concerned that the consideration policies read as assessment criteria for the consideration of consent applications and NoRs (and were therefore not within the jurisdiction of an RPS). Other submitters sought amendments to clarify the statutory weighting of consideration policies to planning and consenting (eg Forest and Bird [S165.060]).

18. Consideration policies are contained in section 4.2 of the Operative RPS. They contain a range of directions to decision-makers to have regard to, particular regard to, or recognise and provide for specific matters when

[7] Legal submissions of Counsel for PCC, para 3.2.
[8] Statement of evidence of Torrey James McDonnell on behalf of Porirua City Council, Planning, Natural hazards, 14 August 2023, para 37.

considering resource consents, NoRs, or the change/variation of planning documents. Proposed Change 1 proposes the inclusion of 14 new consideration policies, and other policies were recommended through Officers' s 42A Reports or in Rebuttal or Reply Evidence.

19. The issue of the scope and drafting of consideration policies came up in all hearing streams and we wish to make some general comments here. We accept the legal submissions of Ms Anderson for the Counsel setting out the rationale for consideration policies.[9] They are not 'new' to the Change proposal and exist in the Operative RPS. The statutory weighting to be given to matters (for example, to 'have regard' to provisions in an RPS in a s 104 consent assessment) cannot be amended through the Change 1 provisions.

20. We agree with Reporting Officers that the consideration policies are an important 'backstop' particularly where there is a time lag in a council implementing the regulatory policies.[10] Ms Foster for Meridian commented at the Climate Change hearing that consideration policies do not:[11]

> *"...fall away or become irrelevant when plans have given effect to [them]... they still have to considered. But the work has been done. So, the heft if you like in driving plan changes is in the lower numbered directing policies in my opinion."*

21. Ms Foster was talking here about the consideration Policies 39 and 65 and the 'lower numbered policies' are Policies 7 and 11 which set the regulatory direction for plan-making.

22. Mr Brass for the DGC, also at the Climate Change hearing said that the consideration policies (here he was discussing Policy 51 specifically), create an "ongoing obligation" for future plan changes.[12] Later in Hearing Stream 7, Mr Brass explained the point further in his written evidence in this way:[13]

> *"In my opinion, it would be overly simplistic to assume that once a new or reviewed plan is in place that an end-point has*

[9] Legal submissions on behalf of Wellington Regional Council – key terminology used and consideration policies in Hearing Stream 1, 23 June 2023.
[10] Hearing Transcript, HS1, pages 82 – 83, lines 4199 – 4212.
[11] Hearing Transcript, HS3, Day 2, page 8, lines 357 – 363.
[12] Hearing Transcript, HS3, Day 4, page 75, lines 3805 and 3820.
[13] Evidence of Murray John Brass on behalf of the Director-General of Conservation, Hearing Stream 7 – Small topics, wrap up and Variation 1, 27 March 2024, paras 17 – 20.

been reached. Rather, my experience is that circumstances and issues can change and develop over time, and that plan provisions do not always play out exactly as originally intended. It can therefore be useful to retain the ability to refer to higher order provisions. This provides improved certainty of outcomes, and improved clarity for plan users. I do not see any cost in doing so – if a higher order provision adds nothing to subsequent provisions, then that requires negligible time or effort to address for applicants or s42A report authors and would not alter the outcome. I therefore support the s42A Report and consider that higher order provisions should remain in effect unless specific assessment has shown that this is no longer required."

23. We agree that the consideration policies have an important function in providing direction to lower order planning and consenting processes, particularly where there is a large time lag until regional and district plans give effect to the relevant RPS provisions. We do not think they need to all include a 'sunset clause' (*i.e.* all have blanket interim effect) but that this may be justified in the particular circumstances depending on the nature and context of the policy itself. For instance, a sunset clause may be appropriate to state that the policy no longer applies once a regional plan is updated to give effect to mandatory direction in clauses 3.22 and 3.24 of NPS-FM (see Policies 40A and 40B of the Hearing Stream 5 provisions).[14] But in other contexts, it is appropriate for the consideration policies to continue to apply to assist with implementation of policy direction where it is not clear that the regulatory policy has been given full effect in the lower order instrument. We agree with Ms Pascall's rationale provided as part of the Hearing Stream 7 Reply.[15] Importantly, consideration policies have legal effect earlier, and so must be considered as part of any consenting or plan change proposal, regardless of whether the regulatory policies in Chapter 4.1 have been given effect to.

24. A question came up during Hearing Stream 7 regarding the consistency in the drafting of the consideration policies. Ms Pascall said that Officers did not support consistent drafting at this stage as submitters would not have the opportunity to comment, but that this could be addressed in the next full review of the RPS.[16]

[14] Response to questions in Minutes 23 and 27, 30 May 2024, para 16.
[15] Response to questions in Minutes 23 and 27, 30 May 2024, para 17.
[16] Response to questions in Minutes 23 and 27, 30 May 2024, para 13.