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By email: [dhilum.nightingale@kschambers.co.nz](mailto:dhilum.nightingale@kschambers.co.nz)

Dhilum Nightingale  
Chairperson of the P1S1/FHP Panels  
**WELLINGTON**

## **PROCEDURAL ADVICE – PLAN CHANGE 1 TO THE REGIONAL POLICY STATEMENT FOR THE WELLINGTON REGION**

We refer to your emails dated 20 November 2023 and 4 January 2024, seeking our advice on procedural matters relating to the Part 1, Schedule 1 (**P1S1**) Hearings Panel and Freshwater Hearings Panel (**FHP**).

### **1. BACKGROUND**

1.1 On 19 August 2022, the Greater Wellington Regional Council (**GWRC**) notified Proposed Change 1 (**PC1**) to the Greater Wellington Regional Policy Statement (**RPS**). The stated purpose of PC1 was to account for new national direction.<sup>1</sup> The accompanying Section 32 Report summarised PC1's focus as follows:<sup>2</sup>

6. Change 1 is to implement the National Policy Statement on Urban Development (NPS-UD) and National Policy Statement for Freshwater Management (NPS-FM) in the RPS. These NPS will also be implemented through regional plan and district plan changes.

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<sup>1</sup> <https://www.gw.govt.nz/your-region/plans-policies-and-bylaws/updating-our-regional-policy-statement-and-natural-resources-plan/regional-policy-statement-change-1/>.

<sup>2</sup> Section 32 report Evaluation of provisions for Proposed Change 1 to the Regional Policy Statement for the Wellington Region, August 2022, pages 9 and 11:  
<https://www.gw.govt.nz/assets/Documents/2022/08/RPS-Change-1-Section-32-Report-August-2022.pdf>.

**National direction as a primary driver for Change 1**

19. Recent national policy statement direction has prompted these changes to the RPS and has been a primary influence on the scope, timing, processes and approach:
    - NPS-UD
    - NPS-FM.
  20. The NPS-UD is a primary driver for the timeframe and undertaking Change 1 in 2022 as it requires changes to the Regional Policy Statement and District Plans by 20 August 2022, to enable more urban development and housing intensification. While that timeframe is specific to the NPS-UD, the driver for the scope of Change 1 is all relevant national direction both NPS-UD, NPS-FM, and also other related national direction. It is important that inter-related issues are addressed at the same time. Hence the scope of this Change 1.
  21. Change 1 includes Te Mana o te Wai objective(s) for some whaitua and includes other related provisions needed to implement the NPS-FM in the Wellington Region. The NPS-FM requires Te mana o te Wai objectives to be embedded in the Regional Policy Statement by 2024. Objectives for other whaitua implementing the NPS-FM will be added later.
- 1.2 The GWRC identified<sup>3</sup> that part of PC1 is a freshwater planning instrument (**FPI**) to which section 80A and Part 4 of Schedule 1 of the Resource Management Act 1991 (**RMA**) applies. Changes under this process were identified as forming part of the FPI by way of a freshwater symbol (≈<sup>FW</sup>).
  - 1.3 The remainder of PC1 was identified<sup>4</sup> as being subject to the standard process for preparing a RPS under Part 1 of Schedule 1 of the RMA.
  - 1.4 Two hearings panels were appointed to hear and make recommendations on PC1:
    - (a) The FHP appointed by the Chief Freshwater Commissioner to hear submissions and make recommendations on the FPI component of PC1; and
    - (b) The P1S1 Panel appointed by GWRC to hear and make recommendations on submissions in relation to the Part 1, Schedule 1 provisions of PC1.
  - 1.5 As we understand it, there are seven hearing streams for PC1. Five of those hearing streams have now concluded and two are scheduled for early 2024.

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<sup>3</sup> Section 32 Report, at paragraph 33, and public notice for PC1 dated 19 August 2022: <https://www.gw.govt.nz/assets/Documents/2022/08/Public-Notice-to-notify-Proposed-Change-1-to-the-RPS-For-website-.pdf>.

<sup>4</sup> Ibid.

- 1.6 Initially, the composition of each Panel was different but overlapping, with the two Panels resolving to sit together from the outset.<sup>5</sup> The Chairs of the two Panels noted in May 2023 that:<sup>6</sup>

The reason for both Panels sitting together and for their overlapping membership is, as explained in the section 32 report, to mitigate the risk of the loss of integration which could occur if provisions which are written to be considered and decided on together, are put through separate planning processes...

- 1.7 As of 24 August 2023, both panels have completely overlapping membership, with a single Chair.<sup>7</sup>
- 1.8 Consistent with the position described above, we understand that all current Panel members have sat together for all hearings to date (and will continue to do so).

## 2. YOUR QUESTIONS

- 2.1 Against the above background, you have asked us to advise the Panels on the following procedural matter:

Are there any procedural / legal issues with the panels writing one joint recommendation report with the P1S1 and FW provisions clearly identified (so appeal rights / scope issues are clear?). Or do we need to write 2 recommendation reports (one from each panel), or perhaps one report with our FW recommendations in one Appendix and our P1S1 recommendations in another Appendix?

- 2.2 You have also asked us to address a follow up question arising from recommendations by reporting officers in their section 42A reports / reply evidence, and by some submitters, that some provisions move from the FHP process to the P1S1 process. Your question relates to where in the reporting the Panels' assessment and recommendations of any proposals for "re-categorisation" of provisions should be addressed.

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<sup>5</sup> P1S1 Panel initially comprised Dhilum Nightingale (Chair), Glenice Paine & Ina Kumeroa Kara-France. The FHP initially comprised Craig Thompson (Chair), Gillian Wratt, Glenice Paine & Ina Kumeroa Kara-France.

<sup>6</sup> First minute and directions of Hearings Panels dated 26 May 2023, paragraph 16:  
<https://www.gw.govt.nz/assets/Documents/2023/05/FIRST-MINUTE-AND-DIRECTIONS-OF-HEARINGS-PANELS.pdf>.

<sup>7</sup> Dhilum Nightingale (Chair), Gillian Wratt, Glenice Paine and Ina Kumeroa Kara-France (Craig Thompson having resigned from the FHP). Refer Minute 11 of the Hearings Panels dated 24 August 2023:  
<https://www.gw.govt.nz/assets/Documents/2023/08/Minute-11-Changes-to-Membership-of-Independent-Hearing-Panels-240823.pdf>.

### 3. SUMMARY

#### 3.1 In summary:

- (a) Beyond ensuring that the relevant RMA requirements for decisions / recommendations are met (e.g. those specified in clauses 10, 49 and 50 of Schedule 1), there is nothing in the RMA itself which mandates a particular approach to the preparation of the recommendation reports in the present circumstances. We consider that this is a matter for the Panels to determine, having regard to:
- i. in terms of section 39(1) and clause 48(1) of Schedule 1 to the RMA, what is fair and appropriate in the circumstances; and
  - ii. the procedural principles under section 18A of the RMA.
- (b) As you are aware, there are important differences to the process that applies to the freshwater component of PC1 on the one hand, and the non-freshwater component of PC1 on the other, including in respect of matters of scope and the applicable appeal rights.
- (c) In relation to each of the three possible approaches to preparing the report(s) alluded to in your question:

i. A single joint report

A single report is an option potentially open to the Panels. A number of potential issues of procedural fairness that might have arisen as a consequence of two parallel hearing processes<sup>8</sup> have been addressed by the measures adopted at the outset by the Panels, as outlined briefly at paragraphs 1.6 to 1.8 above.

However, in our opinion, a potential procedural risk in having a single combined report is that it may not achieve a sufficient distinction / delineation between the reasons that apply to each process. Even if some care is taken to identify which reasons and recommendations apply to which process, there is still a possibility that at a later point in time, for example at the appeal/ judicial review stage, issues may arise in terms of discerning which reasons apply to which provisions. For this reason, we consider it is important that the reasons and recommendations for each process are kept distinct.

ii. Two separate reports

Having two entirely separate reports is the clearest way of ensuring that the reasons for recommendations relating to each process are clearly delineated from one another. However, it is not necessarily the most efficient way of presenting the Panels' recommendations, and could result in unnecessary repetition and potential complications (e.g. with cross-referencing between reports).

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<sup>8</sup> See paragraph 5.7(c) below.

iii. A 'hybrid' approach

We tend to the view that the third 'hybrid' option alluded to in the second sentence of your question has merit, as it would provide an appropriate balance between the need for separation of reasons and recommendations, and the principle that functions should be exercised as efficiently as possible. This could be achieved by structuring the report in several discrete parts as follows (or similar):

- Part A Report – an overview report which sets out the background to PC1 and an overview of the processes followed, and which also explains how the subsequent reports are structured. In our opinion, this report should not contain any reasons or recommendations – those matters should be confined to the subsequent reports.
  - Part B Report – addressing the freshwater provisions and the reasoning and recommendations relating to those provisions.
  - Part C Report – addressing the P1S1 provisions and the reasoning and recommendations relating to those provisions.
  - Finally, an appendix could be attached, with a mark-up of the recommended provisions. The provisions that relate to the FPI and those that relate to P1S1 parts of PC1 would need to be clearly distinguished from one another using colour coding (or similar), and through use of the  $\approx$ FW symbol for FPI provisions (similar to the approach taken in the notified version of PC1).
- (d) Finally, in relation to your follow up question as to where in the reporting the Panels should provide their assessment and recommendations of any proposals for re-categorisation of provisions from the FHP process to the P1S1 process, we recommend that the Panels adopt a 'belt and braces' approach to that matter, along the lines outlined at paragraph 5.13 onwards below.

#### **4. LEGAL BACKGROUND**

4.1 We address several matters of legal background below of immediate relevance to your question.

##### ***Regional Policy Statements***

4.2 Every regional council is required by the RMA to prepare and adopt one RPS. Section 60(1) provides:

##### **60 Preparation and change of regional policy statements**

- (1) There shall at all times be for each region 1 regional policy statement prepared by the regional council in the manner set out in Schedule 1.

- 4.3 Section 59 provides that the purpose of the single RPS is for it to provide an overview of the issues for a region, and policies and methods to achieve integrated management of the region's resources:

**59 Purpose of regional policy statements**

The purpose of a regional policy statement is to achieve the purpose of the Act by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region.

**FPI Process v Schedule 1 Process**

- 4.4 Section 80A of the RMA sets out the planning process to be followed when preparing a FPI. Section 80A defines a FPI as follows:

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).

- 4.5 Section 80A(3) provides that a regional council “...*must prepare a freshwater planning instrument in accordance with this subpart and Part 4 of Schedule 1*”. While pursuant to section 80A(6) a number of provisions in Part 1, Schedule 1 apply to a FPI, Part 4 of Schedule 1 sets out a more streamlined planning process to the standard Part 1 process.

- 4.6 Under Part 4, a Panel is not limited to making recommendations only within the scope of submissions, and may make recommendations on any other matters related to the FPI that are identified by the Panel or any other person during the hearing.<sup>9</sup> Merit appeals to the Environment Court are limited to situations where a regional council rejected the panel's recommendation and decided an alternative solution.<sup>10</sup> In other situations, appeal rights

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<sup>9</sup> Clause 49(2) of Part 4, Schedule 1 of the RMA.

<sup>10</sup> Clause 55, Part 4, Schedule 1 of the RMA.

are limited to an appeal to the High Court on a question of law.<sup>11</sup> By contrast, the ‘usual’ appeal rights apply to the non-freshwater aspects of PC1 under clause 14 of Schedule 1 and section 299 of the RMA.

4.7 The High Court held in *Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Inc*<sup>12</sup> that, consistent with the purpose of the Resource Management Amendment Act 2020 and participatory rights under the RMA, the starting point must be that all of a proposed regional statement will be subject to the standard planning process, and only those parts that directly relate to the maintenance or enhancement of the quality or quantity of freshwater would qualify as a FPI.<sup>13</sup>

4.8 In their legal submissions to the High Court, some parties (such as the Canterbury Regional Council (**CRC**)) had expressed reservations as to how a RPS could be effectively split between two planning processes,<sup>14</sup> with a concern identified as to the impact that such an approach would have on ensuring integrated management. Counsel for CRC observed that there are:<sup>15</sup>

... ways risks as to integrated management could be reduced if different parts of the instrument go through different processes. For instance, councils could nominate people to be members of both freshwater hearings panels and panels dealing with other matters.

4.9 This was also something contemplated prior to the enactment of section 80A. For example, in its decision, the High Court referred to a report prepared by the Ministry for the Environment on the Amendment Bill in March 2020, which mentioned and considered submissions made to the Environment Committee. The relevant report noted that “*Councils may be able to have members in common for freshwater hearings panels and panels dealing with other matters*”.<sup>16</sup>

4.10 At the time that the Court issued its *Otago Regional Council* decision, section 80A(3) differed to its present wording. It provided clearer guidance as to the separate processes to be used for FPIs and changes to other parts of a RPS:

- (3) A regional council must prepare a freshwater planning instrument in accordance with this subpart and Part 4 of Schedule 1. However, if the council is satisfied that only part of the instrument relates to freshwater, the council must –
  - (a) prepare that part in accordance with this subpart and Part 4 of Schedule 1; and

<sup>11</sup> Clause 56, Part 4, Schedule 1 of the RMA. See clause 57 in relation to judicial review.

<sup>12</sup> *Otago Regional Council v Royal Forest and Bird Protection Society of New Zealand Inc* [2022] NZHC 1777.

<sup>13</sup> *Ibid* at [203] and [236].

<sup>14</sup> *Ibid* at [70].

<sup>15</sup> *Ibid* at [71].

<sup>16</sup> *Ibid* at [143].

- (b) prepare the parts that do not relate to freshwater in accordance with Part 1 of Schedule 1 or, if applicable, subpart 5 of this Part.

4.11 The current wording of section 80A(3), which only retains the first sentence of the former provision, was inserted on 24 August 2023 by section 805(4) of the Natural and Built Environment Act 2023, along with several other subsections which seem to allow for a broader discretion for regional councils as to when it may use the freshwater planning process. As amended, it provides that the freshwater planning process must be used to give effect to the NPS-FW, and “may” be used when preparing other provisions relating to freshwater, or even for broader changes or variations if satisfied it is necessary to do so to achieve integrated management of the region’s natural and physical resources.<sup>17</sup> This change in wording does not have any direct impact on PC1, which was notified well before the amendment to section 80A of the RMA. We also note that the current government repealed the Natural and Built Environment Act 2023 under urgency in December 2023.<sup>18</sup> While the repeal legislation does amend the compliance timeframe in section 80A(4) of the RMA,<sup>19</sup> it does not reverse the amendments to section 80A(3). As such, pursuant to section 32(1)(c) of the Legislation Act 2019, the repeal of the Natural and Built Environment Act 2023 will not have the effect of reversing the changes to s 80A(3) of the RMA.

### **General Procedural Matters**

4.12 Section 18A of the RMA sets out general procedural principles that apply when exercising powers and performing functions under the RMA:

#### **18A Procedural principles**

Every person exercising powers and performing functions under this Act must take all practicable steps to—

- (a) use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed or exercised; and
- (b) ensure that policy statements and plans—
  - (i) include only those matters relevant to the purpose of this Act; and
  - (ii) are worded in a way that is clear and concise; and

[...]

4.13 Section 39(1) of the RMA provides that those with authority to hold hearings, including in relation to regional policy statements, “shall establish a procedure that is appropriate and fair in the circumstances.” This provision specifically applies to a FHP.<sup>20</sup>

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<sup>17</sup> Section 80A(6B) of the RMA.

<sup>18</sup> Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Act 2023.

<sup>19</sup> See Part 4 of Schedule 2 to the Act.

<sup>20</sup> Clause 40(1)(a), Part 4 of Schedule 1 of the RMA.



4.14 Clause 48(1), Part 4, Schedule 1 of the RMA also provides that a freshwater hearings panel must “*regulate its own proceedings in a manner that is appropriate and fair in the circumstances*”.

***Requirements of clauses 10, 49 and 50 of Schedule 1 for contents of decision / recommendation reports***

4.15 Clause 10 of Schedule 1 sets out the requirements applying to decisions<sup>21</sup> on the non-freshwater aspects of PC1. A decision:

- (a) must include the reasons for accepting or rejecting the submissions and, for that purpose, may address the submissions by grouping them according to:<sup>22</sup>
  - i. the provisions of the proposed statement or plan to which they relate; or
  - ii. the matters to which they relate; and
- (b) must include a further evaluation of the proposed policy statement or plan undertaken in accordance with section 32AA;<sup>23</sup> and
- (c) may include:<sup>24</sup>
  - i. matters relating to any consequential alterations necessary to the proposed statement or plan arising from the submissions; and
  - ii. any other matter relevant to the proposed statement or plan arising from the submissions.
- (d) for the avoidance of doubt, is not required to address each submission individually.<sup>25</sup>

4.16 Clauses 49 and 50 of Schedule 1 set out the similar (although not identical) requirements applying to recommendations on the freshwater / FPI aspects of PC1:

- (a) As noted already, the FHP is not limited to making recommendations only within the scope of submissions made on the FPI, and may make recommendations on any other matters relating to the FPI identified by the FHP or any other person during the hearing.<sup>26</sup>
- (b) The FHP must provide its recommendations to the relevant regional council in 1 or more written reports.<sup>27</sup>

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<sup>21</sup> In the case of the P1S1 Panel, the Panel has been appointed to make recommendations.

<sup>22</sup> See clause 10(2)(a) of Schedule 1.

<sup>23</sup> See clause 10(2)(ab) of Schedule 1.

<sup>24</sup> See clause 10(2)(b) of Schedule 1.

<sup>25</sup> Clause 10(3) of Schedule 1.

<sup>26</sup> Clause 49(2) of Schedule 1.

<sup>27</sup> Clause 49(3) of Schedule 1.

- (c) Each report must include:<sup>28</sup>
  - i. the FHP’s recommendations on the provisions of the FPI covered by the report, and identify any recommendations that are out of scope of the submissions made in respect of those provisions; and
  - ii. the FHP’s recommendations on the provisions and matters raised in submissions made in respect of the provisions covered by the report; and
  - iii. the FHP’s reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—
    - A. the provisions of the FPI to which they relate; or
    - B. the matters to which they relate.
- (d) Each report may also include:<sup>29</sup>
  - i. matters relating to any consequential alterations necessary to the FPI arising from submissions; and
  - ii. any other matter that the panel considers relevant to the FPI that arises from submissions or otherwise.
- (e) Again, it is not necessary to address each submission individually.<sup>30</sup>
- (f) The FHP must include in its recommendations a further evaluation of the FPI undertaken in accordance with section 32AA.<sup>31</sup>

## **5. DISCUSSION**

- 5.1 In our opinion, each of the possible approaches to preparing the Panels’ recommendations report(s) outlined in your question is, strictly speaking, permissible.
- 5.2 Beyond ensuring that the relevant RMA requirements for decisions / recommendations are met (e.g. those specified in clauses 10, 49 and 50), there is otherwise nothing in the RMA itself which mandates a particular approach to report writing in the present circumstances. On the contrary, this type of consideration falls squarely as a matter of process, which the Panels are entitled to decide for themselves, provided the approach taken is both appropriate and fair,<sup>32</sup> and consistent with the procedural principles in section 18A of the RMA (e.g. by using “timely, efficient, consistent and cost-effective processes”).

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<sup>28</sup> Clause 49(4) of Schedule 1.

<sup>29</sup> Clause 49(5) of Schedule 1.

<sup>30</sup> Clause 49(6) of Schedule 1.

<sup>31</sup> Clause 50(c) of Schedule 1. The FHP must ensure that the various other requirements in clause 50 are observed, in formulating its recommendations.

<sup>32</sup> To use the language in section 39 and clause 48 of Schedule 1.

5.3 In terms of what is “fair”, we observe that:

- (a) When providing reasons for recommendations, procedural fairness requires that the reasons for recommendations on provisions must be clearly stated and discernible, to be capable of analysis and criticism and enable a submitter to understand why their submissions were accepted or rejected, even if those submissions are grouped together (as the Court of Appeal noted in *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel*<sup>33</sup>).
- (b) Where there are two separate processes occurring in tandem, as here, an additional element is that a submitter should be able to clearly understand which process applies to their submission.

5.4 The Court of Appeal’s general discussion in *Belgiorno-Nettis* concerning the obligation to give reasons and the adequacy of reasons, including in circumstances where (as in the case of the FPI) circumscribed appeal rights are available, may also be of interest to the Panels.<sup>34</sup>

5.5 In terms of what is “appropriate”, we observe that:

- (a) In the present instance there are two different statutory processes, with different appeal rights.
- (b) It is critical, in our opinion, that the reasoning and recommendations relevant to each component of PC1 – the freshwater component and non-freshwater component – are kept entirely distinct.
- (c) As counsel for CRC observed in the *Otago Regional Council* case,<sup>35</sup> there must be some level of clarity regarding which provisions are to proceed through which process in order to determine whether an appeal on the merits of the decision is available or not.

5.6 In terms of the different options for preparing the recommendations of the Panels, your question broadly alludes to three possibilities: a single joint report; two entirely separate reports; and what could be called a ‘hybrid’ option involving a single report, split into several distinct parts. We address each possibility in turn below.

### **A Single Joint Report**

5.7 The first possibility is a single joint report by the two Panels. We have some concerns about the potential implications of a single joint recommendation report, even if the P1S1 and freshwater provisions are clearly identified (so that appeal rights / scope issues are clear):

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<sup>33</sup> *Belgiorno-Nettis v Auckland Unitary Plan Independent Hearings Panel* [2019] 3 NZLR 345 at [58] and [65].

<sup>34</sup> *Ibid*, e.g. at [46] onwards. *Belgiorno-Nettis* concerned recommendations / decisions on provisions in the Proposed Auckland Unitary Plan. A bespoke legislative process, similar to the freshwater planning process, applied under the Local Government (Auckland Transitional Provisions) Act 2010.

<sup>35</sup> At [71].

- (a) While it may be possible to draft the report in such a way that the reasoning relating to each process and distinct recommended set of provisions is clear, there is some risk that difficulties may emerge at the appeal / judicial review stage, in terms of discerning the reasoning relating to a particular provision or set of provisions.
- (b) It seems to us that a single combined report may not deliver a clear enough delineation to the two separate processes, and as such, could be more vulnerable to challenges of a procedural nature. We tend to the view that even if the same reasons apply to recommendations in both processes, it is still important to keep those reasons separate, to enable clarity as to which reasons apply to which processes. If the 'hybrid' approach discussed below were used, this could potentially be achieved by having two separate sets of reasons, but with cross-referencing where appropriate / necessary.
- (c) If the Panels had been differently composed and / or not conducted joint sittings, the issuing of a single report may also have posed issues in terms of natural justice. For example, questions could potentially have arisen as to whether the reasons for recommended provisions were given by those who had heard the applicable evidence. However, given that both Panels held joint sittings (even before the composition of the Panels was completely aligned), we do not see any natural justice issues of this kind arising here.

### **Two Separate Reports**

- 5.8 The second possible approach of preparing entirely separate reports (one from each Panel) is capable of meeting the requirements of the RMA. It would also ensure that the reasons relevant to each process are distinct from one another. However, in our opinion, there are also some disadvantages in terms of the efficiency of preparing entirely separate reports:
- (a) It would inevitably result in some repetition (e.g. repetition of background information concerning the hearing process etc) and could give rise to potential complications (e.g. with cross-referencing discussion which may be of relevance to recommendations under both processes).
  - (b) Issues of consistency and ensuring integrated decision-making may also arise, although this may be less of a significant concern here, given that the composition of both hearing Panels is the same.

### **A 'Hybrid' Approach**

- 5.9 Finally, you refer in your question to an approach based on a single report, but with the freshwater recommendations in one appendix and the P1S1 recommendations in another appendix. In our opinion, a structure / approach along these lines has merit.
- 5.10 The Panels could prepare a single introductory report (Part A Report), dealing for instance with background matters common to both hearing processes, as well as outlining how the subsequent reports are structured. Importantly, the Part A Report itself should not provide any reasons or recommendations, as this could risk 'muddying the waters', in a similar way to the concerns raised in paragraph 5.7 above. The Part A Report could then be accompanied by two separate reports:

- (a) Part B Report: addressing the freshwater provisions and the recommendations and reasoning relating to those provisions; and
- (b) Part C Report: addressing the non-freshwater / P1S1 provisions and the recommendations and reasoning relating to those provisions.

5.11 Following this approach, there could then be an appendix which shows all recommended changes to the PC1 provisions, in a way that clearly identifies which changes relate to which process through:

- (a) The use of colour coding, for instance by applying different coloured underlining / ~~striketrough~~ text for each set of changes (one colour for FPI / freshwater changes, and another colour for P1S1 / non-freshwater changes); and
- (b) For consistency with the approach taken by the GWRC in its notified version of PC1, the use of the ≈<sup>FW</sup> symbol for recommendations made by the FHP.

5.12 This third hybrid approach would be consistent with:

- (a) The fact that, while two parallel hearing processes are being followed, PC1 is a single plan change to the RPS, which should achieve integrated management of natural and physical resources in the region, in accordance with section 60 of the RMA. The ability to annex a single mark-up depicting all recommended changes to the PC1 provisions is one obvious benefit of a hybrid approach, enabling the reader to appreciate the combined / 'net' outcome of the two processes; and
- (b) The general principle of procedural efficiency set out in section 18A, given that it would avoid unnecessary repetition of the background and would also enable easier cross-referencing (where that is appropriate and necessary) than if completely separate reports were prepared.

### **Proposed 'Re-Categorisation' of Provisions**

5.13 You have also asked us to address a follow up question arising from recommendations by reporting officers in their section 42A reports / reply evidence, and by some submitters, that some provisions move from the FHP process to the P1S1 process. Specifically, you have asked us to consider where in the reporting the Panels' assessment and recommendations on proposals for "re-categorisation" of provisions should be addressed.<sup>36</sup>

5.14 Assuming the Panels agree with our recommended 'hybrid' approach, then we suggest that:

- (a) The Part A Report could include a section with an introduction / overview of the approach taken by the Panels to proposals for the re-categorisation / re-allocation

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<sup>36</sup> We record that you have not asked us to provide broader advice concerning any legal issues relating to the 'reallocation' of provisions, and we have confined our advice to the specific question posed as to where in the reporting the Panels' assessment / recommendations should be located. The Panels outlined their approach to the issue of reallocation of provisions between the FHP and P1S1 processes in Minute 5 dated 4 July 2023, having considered *inter alia* a legal opinion by barrister James Winchester, dated 8 March 2023, provided to the Chair of the Independent Hearings Panel conducting hearings on the Wellington City Proposed District Plan and the Wellington City Intensification Planning Instrument.

of provisions between the FHP and P1S1 processes. The commentary in the Part A Report would broadly traverse:

- i. How the issue has arisen;
  - ii. The GWRC's and other parties' views and submissions on the issue;
  - iii. Relevant discussion in the section 42A reporting and evidence;
  - iv. Any relevant Minutes issued by the Panels, and Minute 5 in particular (including the opinion by James Winchester attached to that Minute);
  - v. The Panels' adopted approach, with cross-referencing to relevant sections and tables in the Part B and Part C Reports (see below); and
- (b) The Part B and C Reports could then **each** contain a section:
- i. Cross-referencing to the general discussion in Part A, with a brief precis of the issue and approach taken by the Panels (but without repeating all the Part A detail); and
  - ii. Providing the Panels' assessment and recommendations in relation to any proposals for 're-allocation' of provisions from the FHP process to the P1S1 process. One option for the Panels is to provide the assessment and recommendations in tabular form, with a column recording the reason(s) for any recommended re-allocation and referring to any relevant discussion in reports / evidence. Where any proposed re-allocation is in contention, we suggest that the differing views be captured and contrasted.

5.15 We acknowledge that the above approach may result in a small amount of repetition,<sup>37</sup> however it represents a 'belt and braces' approach, minimising the risk of a submitter / reader overlooking the Panels' relevant assessment and recommendations.

### **Conclusion**

5.16 It is open to the Panels to choose to structure its reports as entirely separate reports or as a combined report with separate subparts, provided that the reporting is structured in such a way that the reasons for separate recommendations are clear and there is appropriate delineation between the freshwater / FPI and non-freshwater / P1S1 recommendations.

5.17 Having said that, for the reasons outlined above, we tend to the view that the 'hybrid' approach outlined in this letter would effectively achieve the need to separate out the

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<sup>37</sup> E.g. the content of the suggested sections within the Part B and C reports would be similar.

reasons and recommendations for each process, while also achieving a more efficient process than if entirely separate reports were prepared.

Yours faithfully  
**BROOKFIELDS**



**Matt Allan / Lisa Wansbrough**  
Partner / Special Counsel

Direct dial: +64 9 979 2128 / +64 27 530 4556  
email: [allan@brookfields.co.nz](mailto:allan@brookfields.co.nz) / [wansbrough@brookfields.co.nz](mailto:wansbrough@brookfields.co.nz)