

General Hearing - Preliminary Questions to Officers

CHAPTERS 1, 2, 10A, 11A and 18

	General	Response
1	Please comment in depth on the rationale for the very significant reorganising of Chapter 2.	<p>The rationale for re-organising Chapter 2 into two parts (Part I: Regional Policy Statement, Chapter 10A and Part II: Regional Plan, Chapter 11A) is as follows:</p> <ul style="list-style-type: none"> (i) Territorial authority submission points sought relocation of policies relating to regulatory methods from Part I to Part II of the Plan. This was agreed during pre-hearing meetings at the time of the Overall Plan and Land Hearings. (ii) Those parts of the chapter relating to cross boundary issues, plan monitoring and plan review have been retained in Part I because they are required in a regional policy statement under sections 62(1)(h) and (j) and 79 of the RMA. Inclusion of cross boundary issues and plan monitoring are “optional” in a regional plan (section 67(2)). (iii) It was agreed with territorial authorities that those parts of the chapter relating to regulatory methods such as consent conditions, duration and enforcement were more appropriately relocated to Part II of the Plan. (iv) Evidence supporting these changes can be found in: <ul style="list-style-type: none"> a. Helen Marr’s Planning Evidence and Recommendations Report to the Overall Plan Hearing, 2008/EXT/881, Recommendation OVR 2; b. Andrea Bell’s Section 42A Report to the Overall Plan Hearing, paragraphs 16 and 26; and c. Andrea Bell’s Section 42A Report to the Land Hearing, 4 November 2008 (generally responding to territorial authority submissions) , paragraph 3, page 1. d. Memorandum to Hearing Panel regarding Overall Plan issues raised by territorial authorities dated 19 March 2009. (v) The relocation of chapter 2 to chapter 10A at the conclusion of Part I is simply to move what can be considered an “administrative” chapter from one of the first to the last. I consider this relocation to be a minor change to improve the flow of the document.
2	Please be prepared to discuss the advantages and disadvantages of common catchment expiry review dates .	<p>The advantage of using a common catchment expiry date is that it provides an opportunity to deal with catchment-wide resource use in an integrated manner. This is consistent with the function of a regional council under section 30(1)(a) of the RMA to establish and implement objectives, policies and methods to achieve integrated management of the natural and physical resources of the region.</p>

		<p>I consider the advantages of this approach are:</p> <ul style="list-style-type: none"> • It allows a convenient one-stop-shop for weighing and providing for the interrelated effects and needs of water takes and discharges; • It allows for cumulative effects to be considered and dealt with at the same time; • It provides an opportunity for resource users to collaborate prior to or during the resource consent process, e.g., establish mutually beneficial water allocation and/or trading regimes; • It provides an opportunity for “overhead” cost savings for consent holders with multiple consents and for the Regional Council if applications are dealt with in this manner; • It provides an opportunity for the Regional Council to prepare resource information summaries as part of a structured programme based on the information needs of applicants prior to the common catchment expiry dates; • It provides resource users a periodic opportunity to understand how their resource use integrates with other activities in the catchment and, through a greater sense of “community” may result in an increased commitment to consent compliance as a result. <p>I consider the disadvantages of this approach are that:</p> <ul style="list-style-type: none"> • Significant resources may be required by consent holders to prepare consent applications where multiple applications are required in high use catchments; and • Significant resources may be required by the Regional Council to process resource consents in high use catchments within statutory timeframes. <p>I consider the disadvantages are perceived on the basis that past practice and performance will carry on unchanged into the future. Common catchment expiry dates provide an opportunity to change that for the better by developing:</p> <ul style="list-style-type: none"> • A structured programme of resource investigations and reporting by the Regional Council based on the information requirements of the common catchment expiry dates to reduce these costs for applicants; • Good communication between the Regional Council and consent holder/applicants in terms of their information requirements to ensure information is tailored to the needs of applicants; • A structured programme of resource use (compliance) data collection to ensure that it meets both the short-term needs of consent compliance and long-term needs of consent applications; and • Efficient management and processing of consent applications by the Regional Council to ensure the
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		potential for cost savings through common catchment expiry dates is realised.
3	Page 41. Ravensdown 379/4: If a short list of priority catchments was to be included what would it be?	Table 13.1 in Part II of the Plan sets out the target water management zones (priority catchments) where management of intensive farming land-use activities will be specifically controlled. These are: Mangapapa Stream, Mowhanau Stream, Mangatainoka River, Upper Manawatu River above Hopelands, Lake Horowhenua, Waikawa Stream, Manawatu River above gorge, other south-west catchments (Waitarere and Papaitonga), other coastal lakes, coastal Rangitikei, and Mangawhero/Makotuku Rivers.
4	Page 74. Please comment on the different recommendations for 172/6 and 340/8 on the one hand and 151/14 on the other. (I note the recommendation on page 86.)	The recommendation to “reject” Ruapheu District Council submission point 151/14 and Palmerston North City Council cross submission point 481/79 (Page 74) is an error and both need to be amended to read “Accept in part.” This will be consistent with recommendation STS 11(h) on page 88.
5	Page 110. Is new Method 10A-3 actually a method?	<p>Method 10A-3 specifies that the english text be used for interpretation of the Plan where there is any difference in meaning between that and the Māori text in the Plan. It is recommended as a result of accepting Horizons Regional Council submission point 182/4</p> <p>I consider guidance on this matter to be necessary in the Plan for clear and consistent interpretation. I also consider that such guidance is most appropriately located in the administrative chapter.</p> <p>I accept however, that the content is not the most appropriate for a method and therefore I suggest that the text be included as a guidance note as it is guidance regarding interpretation.</p>
6	Page 132. Please expand on 4.16.2 Evaluation, in regard to the submission of Fish and Game NZ (417/5).	<p>Fish and Game NZ –Wellington Region sought two amendments to Issue 2-1 Consent Duration, Review and Enforcement. The submission point was rejected because it is recommended that Issue 2-2 be deleted as part of relocation of the regulatory policies into Part II of the Plan (Recommendation ADM 5).</p> <p>One of the amendments sought related to expanding the scope of the issue from “resource users” to “adversely affected or interested parties.” The submitter also sought the same change to Objective 2-1 and I recommend be accepted in part in recommendation ADM 6. I have noted this in the evaluation simply as a cross reference to show that although the submission point is rejected in recommendation ADM 5, there is no follow-on effect to also reject the same submission point made by the submitter in recommendation ADM 6.</p>

7	Page 168. Under Policy 11A-5(c) why do officers think consents can be granted for durations longer than those applied for?	<p>I am not aware of any restriction imposed by the RMA that would prohibit decision-makers from granting consents with a term longer than that sought by the applicant. I therefore hold the view that it is appropriate to retain flexibility for decision-makers in this policy.</p> <p>I consider Policy 11A-5(c)(ii) and (v) provide guidance on when a longer term than sought may be appropriate. These relate to adoption of systems for good environmental practice and the balance between environmental protection and investment by the applicant. I anticipate the clauses will be triggered where:</p> <ul style="list-style-type: none"> • the life of the activity extends beyond the term sought; • additional measures to avoid, remedy or mitigate adverse effects are adopted by an applicant during a consent process; and • these measures are substantive enough to make a longer term than sought more appropriate.
8	Page 182. RDC 151/27 appears to be in the wrong officer's report?	<p>The focus of the submission point is on implementation of Water Quality Standards, particularly Table 16 of Schedule D. The submitter seeks a transitional period to their introduction.</p> <p>Although I considered the submission point under Recommendation ADM 12, on further consideration the submission point should be dealt with during the Water Hearing and I will recommend this change in my end of hearing report.</p>
9	Page 185. Environmental Working Party 386/18 and Nga Pae o Rangitikei 427/18. Which recommendation is correct?	<p>I intended that both submission points be accepted. The uncertainty is due to a drafting error in clause (a) of Recommendation ADM 12. The recommendation should read: "Accept the submissions from Environmental Working Party Network Manawatu and Nga Pae o Rangitikei." The submission of Environmental Network Manawatu is dealt with in clause (c).</p>
10	Page 214. Ministry of Education 43/2 appears to be in the wrong officer's report?	<p>Although the submission point appears to have been included as a submission point under Policy 11-4 Common Catchment Expiry and Review because on initial reading it appears to relate to consent review, the substantive focus of the submission point is on priority of use and refers to Policy 6-19 and Rule 15-5.</p> <p>Although I considered the submission point under Recommendation ITR 9, on further consideration the submission point should be dealt with during the Water Hearing and will recommend this change in my end of hearing report.</p>

11	p. 218, 4.34.2 Evaluation. Exactly how has Policy 11A-5 addressed the submission of NZ Pharmaceuticals (274/16)?	<p>This submission point seems to seek an amendment, but when read literally simply restated the policy as written. However it is clear from the commentary in the submission itself, that the intended decision was to seek recognition of infrastructure in terms of setting a consent duration.</p> <p>In this respect the submission point is the same as those made by territorial authorities and is addressed in part through clause (v) that provides for consideration of “the most appropriate balance between environmental protection and investment by the applicant.</p>
12	Page 218 – where is the recommendation regarding RDC 151/130 etc implemented?	Ruapehu District Council and other territorial authorities sought recognition of infrastructure in terms of setting a consent duration. I consider this is addressed in part in clause (v) that provides for consideration of “the most appropriate balance between environmental protection and investment by the applicant.
13	Pages 233, 236-237, 241-243 and 246-248. Is the omission of recommendations in the Tables of Submissions, etc., deliberate?	The omission of recommendations in the Tables of submissions is a drafting error. This is corrected in Appendix 1 of the Supplementary Recommendations Report dated 21 May 2009 relating to this chapter.
14	Page 231. p. 231. What is the background to the 'Newbury tests'?	<p>The tests for the validity of conditions in a resource consent were laid down in the English decision of <i>Newbury DC v Secretary of State for the Environment</i> [1980].</p> <p>The tests are:</p> <ul style="list-style-type: none"> • The condition must be for a resource management purpose, not an ulterior one; • The condition must fairly and reasonably relate to the development authorised by the consent to which the condition is attached; • The condition must not be so unreasonable that no reasonable planning authority duly appreciating its statutory duties could have approved it. <p>In <i>Housing NZ Ltd v Waitakere CC</i> (2000) the Court of Appeal held that the Newbury test remains of general application and New Zealand Courts should continue to apply it in relation to the provisions of the RMA .</p>
Yellow tracked changes		
15	Page 2-6. Please outline the development of 10A.4 Methods.	<p>Method 10A-1 is a consequential amendment from the Overall Plan Hearing and is consistent with Andrea Bell’s section 42A report to the Land Hearing (4 November 2008). In that report she:</p> <ul style="list-style-type: none"> • Notes that statutory mechanisms used to implement the policies of the RPS such as regional and district plans are not listed as methods in the RPS; • Recommends that the RPS is amended to identify the role of statutory methods;

		<ul style="list-style-type: none"> • Suggests that this could be either done in each chapter or done once and cross-referenced to each relevant chapter; and • Notes that the recommended changes are within the scope of submissions on the Proposed One Plan made by the territorial authorities <p>Recommendation ADM 1 has resulted from the Regional Council choosing the option of identifying statutory methods once as Method 10A-1 and make cross-references to the relevant objectives and policies once these are finalised by the Panel at the end of the Hearing.</p> <p>Method 10A-2 is recommended as a result of Horizons Regional Council's submission point 182/3. The Regional Council sought a paragraph or a policy to provide a transitional arrangement for changing district plans to give effect to the RPS. It is intended that the changes are made within a reasonable time-frame, but without unreasonable costs for territorial authorities.</p> <p>Method 10A-3 is recommended as a result of Horizons Regional Council's submission point 182/4. The Regional Council sought a paragraph or policy to provide clarity where there may be disagreement of the meaning of the meaning of an objective in Māori or English. This matter is discussed further in Question 5.</p>
16	In proposed policies 11A-5 and 11A-6 what consideration has been given to resourcing issues for territorial authorities in regard to the common expiry date?	<p>The matter of common catchment expiry dates has been the subject of discussion between the Regional Council and territorial authorities. At the time the Planning Evidence and Recommendations Report was completed, this was an unresolved issue, but since then the Regional Council and territorial authorities have established an agreement in principle on possible ways that concerns about the approach can be resolved. A memorandum to this effect currently under preparation and I expect it to be presented to the Panel during presentation of evidence by territorial authorities on Thursday 2 July 2009.</p> <p>See also discussion of advantages and disadvantages in Question 2 for further information.</p>
17	In Policy 11A-6: Consent review, does "providing certainty to resource users" apply only to (d)?	<p>The way Policy 11A-6 is worded, providing certainty to resource users applies to clause (d) only. However I note on reconsidering submission point 241/11 that the submitter may have intended such a proviso to refer to all of Policy 11A-6.</p>