

Hearing Panel's Preliminary Questions and Responses for General Hearing Chapter 3 – 22 June 2009

Question	Response
Planning Evidence and Recommendations Report	
<p>1. Part Three: Summary of key themes and recommendations. Please comment further on the respective considerations to be given to sections 6 and 7 of the RMA, including in relation to 3.4 Infrastructure and energy versus sustainable management of natural resources. In your view, does the final sentence of 3.3 relate just to Chapter 3 or to other chapters in the Plan?</p>	<p>The discussion in sections 3.3 and 3.4 of the Planning Evidence and Recommendations Report were intended to provide context to why the Regional Council dealt with infrastructure and energy in a separate chapter.</p> <p>There is substantial case law about the interpretation of Part 2 of the RMA. I note that the definition of “natural and physical resources” includes “all structures” and that case law indicates that the benefits of infrastructure and energy are relevant factors to be considered during decision-making under Part 2 of the RMA, particularly in terms of the section 5 considerations of enabling people to provide for their social, economic, and cultural well-being and their health and safety. Such factors are to be weighed by consent decision-makers in the normal course of evaluating whether an application, on balance, promotes the sustainable management of natural and physical resources. In my view this gives the Regional Council scope to make specific policy provisions for infrastructure and energy.</p> <p>The benefits to be derived from the use and development of renewable energy are a section 7 matter and the production of national strategies and national policy statements relating to energy and electricity transmission adds further weight for the Regional Council to make specific policy provisions for these matters.</p> <p>Some submitters appear to be concerned that a specific chapter on infrastructure and energy will somehow tip the balance in favour of those activities in some significant way. However, I consider those concerns will not be realised because of the consideration that must be given to matters of national importance in section 6 and the fact that consent decisions are generally determined on whether, on balance, granting an application promotes the sustainable management of natural and physical resources.</p> <p>My understanding of the role of sections 6, 7 and 8 are that they are all subordinate to the primary purpose of promoting sustainable management in section 5, but that it is considered that the words “shall have particular regard to” in section 7 and “shall take into account” in section 8 have less weight than “recognise and provide for” in section 6.</p>

	<p>I consider Chapter 3 adds value to the RPS by providing policy provisions generally guiding how the Regional Council will deal with infrastructure and energy in the Region. The intent of these policy provisions is to ensure that appropriate weight is given to the benefits of infrastructure and use of renewable energy resources in the regional plan, district plans and during consent decision-making processes. However they remain subservient to the overall assessment under Part II of the RMA during a consent decision-making process and for this reason I do not consider it will tip the balance in their favour.</p> <p>The final sentence in section 3.3 of the Planning Evidence and Recommendations Report states: “...submissions seeking amendment to policies so that infrastructure and energy are given no special level of consideration beyond that of any other activity are not supported...” I consider this statement does apply to the other chapters to the extent that where specific policies relating to these matters are made in other chapters of the Plan, they should not be inconsistent with those in Chapter 3. I note examples of this in the most recent recommended track changes versions of Policy 5-5 (Regulation of land use activities) and Policy 7-1A (Activities affecting indigenous biological diversity).</p>
<p>2. Pages 17 and 30. Please reconcile the recommendations in relation to 285/1 and 285/2</p>	<p>I have re-examined the original submission from Palmerston North Airport Ltd (submitter No 285). Although there is one submission point seeking an amendment to Policy 3-2, the other six submission points support the approach taken in Chapter 3. Given this context, it appears recommendations to accept all but submission point 285/6 are appropriate. That means the recommendation to accept 285/1 is correct and to reject submission point 285/2 is a drafting error. My recommendation is that submission point 285/2 be accepted.</p>
<p>3. Page 51. What was the reason for the rejection of 372/11 regarding "and are sustainably managed"?</p>	<p>I interpret the stance taken in the “Scope and Background” to be weighted toward an infrastructure viewpoint. The original statement was “Horizons wants to ensure the benefits and effects are balanced and managed appropriately.” It was considered that the addition of “...and are sustainably managed” as sought by submission point 372/11 would not add significant value to that statement.</p> <p>[I note that a change to the paragraph has been recommended in the Supplementary Recommendations Report to say “The Regional Council wants to ensure the benefits of infrastructure are recognised and appropriately weighed along with other matters in decision-making processes.” I consider the consideration of “weight” in a decision-making process is more appropriate than “balance.”]</p>

<p>4. Page 60, Section 4.3.2. Does the second paragraph in the evaluation also refer to requests for clarification, e.g., 433/21 and 433/22?</p>	<p>The intent of the second paragraph was to deal with those submission points seeking clarification or additions to the infrastructure items listed, not clarification of the meaning of the phrases identified in submission points.</p> <p>Submissions such as 433/21 and 433/22 seeking clarification of phrases in this section were rejected because it was considered the meaning was clear enough in the context of a general scope and background statement. These submission points were rejected, however, I refer the Panel to my supplementary recommendation to amend the Scope and Background because it may provide the clarification sought by the submitter (Introductory Statement and Supplementary Recommendations Report, Recommendation IEW 2A).</p>
<p>5. Page 113. Where did 6.6kV come from in recommended change to Policy 3-1(a)(iii)? (I note 272/2 regarding 11/33kV distribution feeders.)</p>	<p>The reference to 6.6kV was recommended after an informal pre-hearing meeting with Powerco Ltd (submitter 272) on 9 May 2008. Although Powerco Ltd sought inclusion of 11/33kV distribution feeders in its original submission, this was modified to include 6.6kV distribution feeders. (Note that transmission and distribution networks operate on a range of voltages. The 6.6kV lines are the lowest of the medium voltage distribution lines.) The purpose of this amendment is to ensure Policy 3-1 captures both the electricity transmission and distribution networks.</p> <p>This wording was confirmed following Pre-hearing Meeting 33 on 16 February 2009 when the Regional Council sought feedback from the “linear network operators” on appropriate wording to ensure that Policy 3-1 captured both networks. This resulted in the changes to and consolidation of Policy 3-1 clauses (ii) and (iii) as recommended in the Introductory Statement and Supplementary Recommendations Report.</p>
<p>6. Pages 122 and 123. Could you please comment further on the issue of introducing material by reference into the RPS in the context of this chapter?</p>	<p>Documents are introduced by reference in Policies 3-2 (three documents) and 3-12 (one reference). Policy 3-9 also has eight references, but these are intended to be in the form of guidance rather than their content incorporated into the Plan by reference.</p> <p>I note that John Maassen states that documents may not be incorporated by reference in an RPS in his Section 42A Report to the Overall Hearing dated 3 July 2008. Although I accept John Maassen’s interpretation may be sound from a legal perspective, it is particularly unhelpful because it would prevent the Regional Council from providing clear and certain policy direction for regional and district plans. I understand that the Hearing Panel is seeking comment from other parties on this matter and may hear further evidence from submitters on the matter during this hearing. I would not be uncomfortable should</p>

	<p>the Panel be persuaded by arguments that document references are appropriate from a good planning practice point of view.</p> <p>If deleting the document references is unavoidable, I note John Maassen suggests that the policy could be changed so that it recognises the application of industry codes of practice in the regulation of activities in regional plans (and district plans) without specifying what those codes of practice are. Although I consider this to be an inferior option to referencing the documents directly it is a better than not providing for codes of practice or standards at all.</p> <p>I can assist the Panel by providing alternative recommendation for wording these policies in my end of hearing report should this be required.</p>
<p>7. Pages 133. Could you please comment further on the issue raised by 340/21?</p>	<p>This submission seeks certainty as to whether Policy 3-3 applies to infrastructure of regional or national importance as described in Policy 3-1 or “all” infrastructure as defined in the RMA definition. The submission point was rejected because I considered that the term “infrastructure” was clearly defined as a glossary term which means “all” infrastructure as defined in the RMA.</p> <p>Recommended changes to Policy 3-3 in the Introductory Statement and Supplementary Recommendations Report are consistent in the use of “infrastructure” as a RMA defined term.</p>
<p>8. Page 154. Please comment further on the point raised about the term “functional constraint” not being tested in the courts.</p>	<p>The term “functional constraint” was used in the original wording of Policy 3-3 as follows: “...unless functional constraints require them to locate in those areas...” It would form a key test under this policy wording and was highlighted as a term that had not been tested in Environment Court proceedings during a legal review of the policy by John Maassen. He suggested it may be more appropriate to use a term that had been tested by the Court. A note to this effect was made in the Planning Evidence and Recommendations Report for the Panel’s information.</p> <p>Substantial change is recommended to Policy 3-3 in Recommendation IEW 11A of the Introductory Statement and Supplementary Recommendations Report. The term functional constraint is used in the new recommendation as follows: “...unless this is impracticable due to functional, operational and technical constraints...” I do not consider the term functional constraint holds such a key role in this phrase and therefore the fact it has not been tested in the environment Court is no longer a concern.</p>

<p>9. Page 165: Evaluation. The final sentence on page 165 states that "The purpose of Policy 3-4 is to recognise that there are advantages in developing and using renewable energy resources instead of non renewable resources." Does this mean, in your view, that adverse effects of renewable energy resources should receive a greater level of tolerance than non-renewable energy resources?</p>	<p>Firstly I note that I have recommended some changes to Policy 3-4 to clarify the specific benefits derived from the use and development of renewable energy resources.</p> <p>In my view the intent of the Policy 3-4 is not to specifically give a greater level of tolerance to the adverse effects of renewable energy resources beyond that otherwise provided for in the Plan, but to ensure that the benefits are given appropriate weight in decision-making processes. I consider the intent of Policy 3-3(aa) is to indicate that proposals using non-renewable energy resources should not be encouraged in regional or district plan policy provisions and the specific adverse effects of using non-renewable energy resources need to be recognised in decision-making processes.</p>
<p>10. What is your view on cumulative effects of infrastructure? (I note that at least one submission made mention of this aspect.)</p>	<p>Submissions were made seeking inclusion of "cumulative effects" into the list (clauses (i) to (v)) in Policy 3-3(a). This was rejected because the intent of the clauses was to specify the significant or special "resources" that the Policy applied to. It was not a list of "effects."</p> <p>Substantial change is recommended to Policy 3-3 in the Introductory Statement and Supplementary Recommendations Report (Recommendation IEW 11A). This change means that Policy 3-3(a) "Effects to be avoided" is no longer recommended for inclusion in the Plan in its original form.</p> <p>Policy 3-3 remains an adverse effects based policy. The term "effects" is marked as an RMA defined term. The RMA definition includes cumulative effects, so I would expect cumulative effects of infrastructure to be assessed and dealt with as part of the general assessment of effects in decision-making processes.</p>
<p>Tracked Changes – Yellow Version</p>	
<p>11. Objective 3-1. Is the use of the term "recognised and enabled" appropriate given the closeness of this to the "recognise and provide for" of section 6 of the RMA?</p>	<p>I agree the use of the term "recognised and enabled" is very close to "recognise and provide for" in Section 6 of the RMA.</p> <p>I recommend the objective be changed in the Introductory Statement and Supplementary Recommendations Report by splitting out the infrastructure and renewable energy components into two objectives (Recommendation IEW 6A). This makes it much clearer that the objective is to recognise the benefits of infrastructure by providing for the establishment of new infrastructure and allowing the operation, maintenance and upgrading of existing infrastructure.</p> <p>I consider this a more appropriate way to frame the objective.</p>

<p>12. Policy 3-1(xi). Is stormwater included in "drainage schemes managed by a local authority"?</p>	<p>I consider that "drainage schemes managed by a local authority" would specifically relate to "schemes" and not include municipal storm water infrastructure.</p> <p>The reason for this is as follows:</p> <ol style="list-style-type: none"> 1. I note that the definition of "infrastructure" in the RMA includes "a drainage or sewerage system." Given the use of drainage and sewerage in the same clause, I interpreted "drainage system" to mean storm water; 2. I also note that the list of physical resources of regional or national importance in the notified Plan included "community wastewater and water treatment plants managed by territorial authorities", <u>but not</u> "drainage systems." I interpret this to mean that "drainage systems" (storm water systems by my interpretation) were not considered by the Regional Council as physical resources of regional or national importance." <p>This means that storm water infrastructure is not included as a physical resource of regional or national importance in Policy 3-1(a), but is covered by all other policy provisions relating to "infrastructure" if my interpretation of the meaning of "drainage system" is correct.</p> <p>The Panel will note that although the clause "Flood protection and drainage schemes managed by a local authority" was recommended to be inserted into Policy 3-1(a) following submissions, I have reversed that recommendation in the Introductory Statement and Supplementary Recommendations Report (Recommendation IEW 9A). This is because I have re-examined the RMA definition of infrastructure and do not consider it applies to flood protection and drainage schemes.</p>
<p>13. Policy 3-3(a). Given " (a) Effects to be avoided", what does the change from "shall be avoided to the same extent, etc..." in the notified Plan to "shall be managed..." mean? (I note the comment about consistency across chapters in the Report p.154)</p>	<p>The change in wording was intended to provide more certainty by removing inconsistencies identified by submitters between Policy 3-3 and policies in the resource-based chapters.</p> <p>The change was an attempt to clarify that the Regional Council intended to treat infrastructure like any other activity where it was located in sites or areas of significance. The intention of Policy 3-3(b) was to indicate that minor adverse effects would be tolerated if Policy 3-3(a) did not apply.</p> <p>Substantial change is recommended to Policy 3-3 in the Introductory Statement and Supplementary Recommendations Report Recommendation IEW 11A, so it provides general policy where there is no specific policy in other chapters and direction to Part II of the Plan which must give effect to the provisions of Policy 3-3. This recommendation follows clarification of submitter</p>

	<p>issues at a pre-hearing meeting, consideration of expert evidence and review of the provisions recommended for dealing with infrastructure at the Land and Biodiversity Hearings.</p> <p>The recommended change removes any concern the Panel may have with the initial wording of the provision.</p>
<p>14. Policy 3-3(b). Are financial contributions as offsets the only suggested method of dealing with adverse effects which are more than minor and which are not covered in Policy 3-3(a)?</p>	<p>I consider that the intent of the policy was to tolerate minor adverse effects but that adverse effects that were more than minor would need to be avoided, remedied or mitigated. Financial contributions were therefore intended to be an off-set or mitigation option only for minor adverse effects, but I acknowledge this is not clear.</p> <p>Substantial change is recommended to Policy 3-3 in the Introductory Statement and Supplementary Recommendations Report. The policy now provides for financial contributions as just one matter to be taken into account where adverse effects cannot be adequately avoided, remedied or mitigated.</p>
<p>15. Policy 3-4(a)(i). Is specifying parts of RMA s5 consistent with the remainder of the draft Plan?</p>	<p>In my view specifying parts of the RMA without adding value is inappropriate. I consider this is resolved by recommended changes to Policy 3-4 (a)(i) in the Supplementary Report. These changes add value by specifying some of the social, economic, cultural and environmental benefits of the use and development of renewable energy resources that the Regional Council and territorial authorities shall have particular regard to in implementing the policy.</p>
<p>16. Policy 3-4(a)(ii). Which part of the RMA is being alluded to in this proposed change?</p>	<p>Some submitters identify the Region as having potential for further development of renewable energy resources, e.g., the Region is identified as having some of the best wind resources in New Zealand. The purpose of Policy 3-4(a)(ii) is to ensure this is a matter the Regional Council and territorial authorities will have particular regard to in decision-making. It is consistent with Section 7(b) of the RMA which relates to efficient use and development of natural and physical resources.</p>
<p>17. Policy 3-5(a) What work has been done on what constitutes "efficient use of energy" in this context?</p>	<p>The Regional Council has done no specific work on what constitutes "efficient use of energy," apart from determining how it can be directly encouraged at a regional level in decision-making processes. I note here that Policy 3-5(b) and (c) relating to territorial authorities are effectively carried over from the operative Regional Policy Statement.</p> <p>In my view this lower priority given to this is consistent with the Regional Council's decision to focus resources on the four key issues identified in the Proposed One Plan. I also consider energy efficiency is a matter for leadership at a national level and organisations such as</p>

	<p>the Energy Efficiency and Conservation Authority (EECA) already have a leadership role in this area.</p> <p>I note that EECA is a submitter to the Plan but not make any submission points to Policy 3-5.</p>
<p>18. Policy 3-9. What is the extent of the usefulness to resource consent decision-makers of the sentence "Taking into account the applicability of these guidelines and standards....the following guidelines <u>may</u> be considered appropriate"?</p>	<p>The wording was amended after considering submission points from territorial authorities. They sought the list of guidelines either be deleted or included as an explanatory note. I accepted their submission point on the basis that the applicability of some guidelines is dependent on the scale and type of activity proposed. This could range from a large engineered landfill to a small disused landfill subject to a closure plan. The introductory sentence was modified accordingly from "shall" to "may."</p> <p>I acknowledge that the use of "may" gives consent decision-makers a lower level of direction, but considered it appropriate for the reasons outlined above.</p> <p>I note that there may be an issue with reference of these documents in the Regional Policy Statement (refer to question 6) and if the Panel decides it cannot make such references after hearing further evidence, I recommend that the wording suggested by the territorial authorities (see for example Ruapehu District Council, 151/41) or a similar phrase would be appropriate.</p>
<p>19. Policy 3-11. Would it be useful to have a note here stating the processes that must be carried out for the hazardous substances which fall into this category?</p>	<p>Policy 3-11 directs the Regional Council not to grant resource consents for discharges that contain or result in the production of environmentally persistent hazardous chemicals or hazardous chemicals that will bio-accumulate to a level that has acute or chronic effects on humans or other non-target species.</p> <p>I note that this policy is given effect to in Part II of the Plan in consent decision making Policies 13-1(b), 13-2(e) relating to discharges into water and onto land; and Rule 14-7 prohibiting burning of halogenated plastic, polyvinylchloride (PVC) and halogenated organic chemicals.</p> <p>The potential for such chemicals to be produced will depend on the processes undertaken by a consent applicant and I consider the consent process an appropriate way to identify whether such chemicals will be produced in any particular situation.</p>

Barry Gilliland
POLICY ADVISOR
22 June 2009