

BEFORE THE HEARINGS PANEL

IN THE MATTER of hearings on
submissions concerning
the Proposed One Plan
notified by the
Manawatu-Wanganui
Regional Council

**REPORT ON SCOPE FOR WATER CHAPTER RECOMMENDATIONS BY
BARRY GILLILAND
ON BEHALF OF HORIZONS REGIONAL COUNCIL**

1. INTRODUCTION

1. There have been a number of recommendations for amendments to the provisions of the Proposed One Plan by submitters and Regional Council officers to the Hearing Panels on the Proposed One Plan. In some cases the Hearing Panels and Regional Council Officers have raised questions about whether there is scope for such amendments.
2. This report has been prepared specifically to assist the Water Hearing Panel; however, some of more general sources of scope identified in this report are also relevant to recommendations and decisions from other Hearings. In particular I refer to scope relating to recommendations seeking improvements to clarity, certainty, user-friendliness and policy links.

2. LEGAL EVALUATION

3. John Maassen has provided a legal evaluation¹ and advises that the Courts have taken a pragmatic approach to decisions about scope. He refers to clause 15 of Judge Jackson's decision in *Christchurch International Airport Ltd and Canterbury Regional Council [Applicants] and Christchurch City Council [Respondent]* and I consider this especially helpful. Mr Maassen's evaluation was provided to the Panel in January 2010; however, the full text of clause 15 is attached for convenience.

Excerpt from Decision No: C77/99, Judge J R Jackson, 12 May 1999: *Christchurch International Airport Ltd and Canterbury Regional Council and Christchurch City Council*.

[This was an application to the Environment Court for a declaration under section 311 of the RMA.]

15. *I hold that, as part of the ultimate question as to whether an amendment to a proposed plan is fairly and reasonably within the submissions filed, the local authority must consider whether interested persons would reasonably have appreciated that such an amendment could have resulted from the decision sought by the submitter as summarised by the local authority. As the Full Court pointed out in Countdown this is very much a question of degree. An amendment to a proposed plan may, as a result of other submissions and further deliberation, be in quite different words but to be "fairly and reasonably" within a submission, the amendment must at least bear a family resemblance to:*

¹ John Maassen, 26 January 2010: *General Legal Commentary on Scope*.

- (a) *the original proposed plan; or*
- (b) *a submission and the relief sought as summarised by the Council, or*
- (c) *something in between (a) and (b) - including possibly new objectives, policies and rules.*

An amendment to a proposed plan cannot be the opposite or completely different from the relief in at least one of the local authority's clause 7 summaries. If it is, then such a procedural defect can be just as fatal as a substantive decision going outside the scope of a submission.

4. Using clause 15 as a reference, I conclude that the questions to be considered in evaluating scope are:

- i. Is the amendment “fairly and reasonably” within the submissions filed?
- ii. Would other interested parties reasonably have appreciated that such an amendment could have resulted from the decision sought by the submitter as summarised by the local authority?

5. I also note that an amendment may be in quite different words, and to be “fairly and reasonably” within a submission, the amendment must at least bear a “family resemblance” to:

- i. The original proposed plan; or
- ii. A submission and the relief sought as summarised by the Council; or
- iii. Something in between (a) and (b) – possibly including new objectives, policies and rules.

6. I consider that Regional Council Officers have used the word “intent” when discussing policy provisions during the hearings in a similar way to which Judge Jackson uses the words “family resemblance” in his decision.

3. APPROACH TO RECORDING SCOPE

7. Scope has been recorded differently in the End of Hearing Track Changes documents for Chapters 6, 13, 15, 16 and Glossary; and those for Schedules B, Ba, D and H as they relate to the Water Hearing.

8. Scope for Chapters 6, 13, 15 and 16 is identified in footnotes to the Track Changes documents. Some of those footnotes cross-reference to specific submissions and others to generic scope outlined in clauses (ii) to (v) below.
9. Scope for Schedules B, Ba, D and H is detailed in the tables provided as Appendices I, II, III, and IV to this report.

4. APPROACH TO EVALUATING SCOPE

10. The general approach used by Regional Council officers to identify scope for recommendations follows:
 - i. Where there is a **specific submission** requesting the amendment, this is used as scope for the recommendation. The specific submission is referenced as a footnote in the Water Hearing End of Hearing Track Changes documents.
 - ii. Where an amendment is recommended to improve **clarity, certainty or the structure of the Plan**, eg. relocation of polices between Part I and Part II of the Plan and inclusion of objectives in Part II, there are several submissions that provide scope for this:

Submitter	Submission No.	Decision Requested
Ruapehu District Council	151/1	Withdraw the One Plan ; and Notify a Regional Plan which is consistent with the outcomes sought in a Regional Policy Statement, the outcomes of which are consistent with Regional Plan rules.
Matt Bell	256/1	Redraft the One Plan so there are two separate documents, a RPS and a RP.
Wanganui District Council	291/3	<ul style="list-style-type: none">- Withdraw the whole plan; and- Notify a regional plan which is consistent with the outcomes sought in a regional policy statement, the outcomes of which are consistent with regional plan rules.
Horowhenua District Council, Manawatu District Council, Rangitikei District Council, Ruapehu District Council,	381/1	Redraft the One Plan to meet the concerns regarding the concerns in relation to creating of a clear distinction between its two parts of the principal territorial local authorities of the Manawatu-Wanganui region.

Submitter	Submission No.	Decision Requested
Tararua District Council and Wanganui District Council jointly ("The Territorial Authorities Collective")	381/5	Redraft the One Plan to meet the concerns regarding a "one size fits all approach" - of the principal territorial local authorities of the Manawatu-Wanganui region.
Manawatu Branch of NZ Green Party	433/2	Make clear in the One Plan the Objectives that Rules are relating to.
Ecologic Foundation	456/1	The council should structure its general objectives and policies in a manner which establishes its long term aspirations for environmental bottom lines for the region in Part I, and sets out what it aims to achieve within 5 and 10 years on Part II. In both cases, objectives should be expressed with greatest possible clarity and be linked to dates for achievement.

11. Where this scope is relied on for a recommendation, a footnote is made referring to Clause (ii).

- i. It appears that s10(2)(b) of Schedule 1 of the RMA provides for **consequential amendments** that may result from accepting a submission to amend a particular provision of the Plan. In that case scope would appear to be provided by the RMA; however, some submitters requested that consequential amendments be made as a result of their submissions and I have listed some of these below.

Submitter	Submission No.	Decision Requested
Ngati Kahungunu Iwi Incorporated	180/107	We also ask for any consequential changes to the One Plan in order to make it cohesive with our requested amendments. While implementing its decision-making role, we agree to Horizons altering the amendments sought via the NKII submission provided the meaning and intent remain substantially the same.

Submitter	Submission No.	Decision Requested
Horizons Regional Council	182/148	Horizons would be happy with any changes made which are not specifically requested but which provide the same intent as those sought. We also seek any consequential changes to the plan as a result of this submission.
Transpower New Zealand Ltd	265/1	1. The specific amendments sought in the attached schedules, and any additions, deletions or consequential amendments made necessary as a result of the matters raised in these submissions. 2 Any other such relief as to give effect to the submissions.
Trust Power Ltd	Sought in most submission points	Any consequential amendments that stem from the amendment of ... as proposed in this submission.
Meridian Energy Limited	Sought in most submission points	Any consequential amendments to give effect to this submission.

12. Where this scope is relied on for a recommendation, a footnote is made referring to Clause (iii).

i. Where recommendations are made to include **policy links**, the scope is:

Submitter	Submission No.	Decision Requested
Ruapehu District Council	151/10	The One Plan needs to be redrafted so that the relationship between objectives, policies and means of implementation (in particular rules), is made clear, coherent and lawful for both the RPS (Part I) and the Regional Plan (Part II)
Bruce & Marilyn Bulloch	237/3	It would be a useful attempt to link Part I with Part II, that is, link Policies and Methods with the relevant Rules in Part II.
Powerco Limited	272/1	A1 - Council to review the linkages between the rules and the objectives and policies they are designed to give effect to.

Submitter	Submission No.	Decision Requested
Manawatu Branch of NZ Green Party	433/2	Make clear in the One Plan the Objectives that Rules are relating to.

13. I also note that, although the territorial authorities that made a joint submission to the Plan did not specifically request policy links as a decision requested, it is clear from the overall content of the submission that one of the many improvements sought was that the links between Issues, Objectives and Policies were made very clear in the Plan. This was confirmed during the course of pre-hearing meetings and was an agreed outcome from that process.
14. Where this scope is relied on for a recommendation, a footnote is made referring to Clause (iv).
- i. Where an amendment is made to **improve the general user-friendliness** of the Plan, and the intent or purpose of the provision is unchanged, it is argued that such amendments can be classified as being allowed by s16 of Schedule 1 of the RMA. However, there are two submission points that request this kind of improvement.

Submitter	Submission No.	Decision Requested
Ruapehu District Council	151/9	(a) The following general submissions highlight the areas in need of redrafting, replacement or removal in order to make the One Plan understandable and functional. (b) The One Plan maps must provide more definitive and useable information as necessary. In particular, the maps for "Floodable Area Maps", Highly Erodible Land and Significant Landscapes are not adequate and need to be enlarged to give the necessary detail. New Maps should be issued or there should be access to the GIS tool to view data at a farm and community level. Data at a Regional level is not adequate.
Jill Strugnell	366/2	No decision requested, but submitter would

Submitter	Submission No.	Decision Requested
		like council to give the plan a more user friendly format and make clear the proper role of territorial authorities.

15. Where this scope is relied on, a footnote is made referring to Clause (v).

- i. There are a number of **very minor amendments** recommended, such as capitalisation, correction of spelling and grammar, identification of defined terms and consistent use of terms. These are considered to be provided for by s16 of Schedule 1 of the RMA and a footnote to that effect is provided in the Track Changes documents.

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POLICY ADVISOR

9 April 2010