

**Before Independent Hearing Commissioners
Wellington City Council**

**I Mua Ngā Kaikōmihana Whakawā Motuhake
Te Kaunihera o Pōneke**

In the matter of **The Wellington City Proposed District
Plan**

**Legal submissions on behalf of
Wellington City Council
Hearing Stream 5**

28 July 2023



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Legal submissions on behalf of Wellington City Council

Hearing Stream 4

1 Matters addressed

1.1 Hearing Stream 5 includes chapters and submissions relating to:

- (a) Natural and coastal hazards;
- (b) Noise;
- (c) Subdivision;
- (d) Three Waters;
- (e) Earthworks.

1.2 I briefly outline two legal points for the Panel to be aware of when considering submissions.

2 ISPP and Schedule 1, Part 1 provisions

2.1 Unlike previous hearing streams which have almost exclusively dealt with submissions on provisions annotated within the PDP as forming part of the IPI and proceeding under the ISPP, Hearing Stream 5 includes submissions on chapters which have some provisions proceeding under the ISPP and others proceeding under the Schedule 1 process. These are earthworks, subdivision, and noise. The coastal hazards provisions in the Coastal Environment chapter are split between Schedule 1, Part 1 process and the ISPP. The Three Waters and Natural and chapters fall within the ISPP.

2.2 For ease of reference, the s 42A reports for earthworks, subdivision, and noise, list in the introductory material the provisions following the respective processes. The s 42A report for Natural and Coastal Hazards identifies the process that each of the specific plan provisions is following in the associated section of the report where submissions on each provision are considered.

2.3 Counsel is unaware of any applications to cross-examine witnesses in relation to ISPP provisions. Accordingly, in practical terms the only

difference in the Panel's approach to provisions is the degree to which for ISPP provisions the Panel may decide to make out-of-scope recommendations in accordance with cl 99(2)(b). Any out-of-scope recommendations must nonetheless be related to a matter identified by the Panel or any other person during the hearing (cl 99(2)(a)).

3 Noise

- 3.1 In his s 42A report from paras 196 to 203, Mr Ashby outlines an issue arising from WIAL's submission. WIAL is concerned that a number of standards (NOISE-S8 to NOISE-S15) duplicate conditions in WIAL's designations.
- 3.2 That duplication is necessary to provide for the full range of enforcement tools to remain available to the Council should third parties infringe the relevant standards. As Mr Ashby outlines, abatement notices may not be issued to prevent breaches of designation conditions. It follows that for the Council to be able to undertake enforcement short of Environment Court action for breach of these standards, duplication is a necessary evil. The practicalities of enforcement are a relevant matter for the Panel to consider in framing the provisions of the plan.
- 3.3 Mr Ashby has proposed a number of amendments to keep duplication to the minimum necessary while ensuring that the Council has the full range of enforcement options available to it.

Date: 27 July 2023



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Nick Whittington
Counsel for the Wellington City Council