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19 August 2022

Kim Kelly
WRLC Programme Director
Wellington Regional Leadership Committee
By email

Dear Kim, **Subject to legal professional privilege**

FUTURE DEVELOPMENT STRATEGY DECISION MAKING

- 1 The Wellington Regional Leadership Committee (**WRLC**) are intending to prepare a Future Development Strategy (**FDS**) under the National Policy Statement for Urban Development 2020 (**NPS-UD**) for the wider Wairarapa-Wellington-Horowhenua region.
- 2 You have asked who has the power to approve both the draft FDS (for consultation) and final FDS. The answer to this question will have implications for the timing of the FDS process (in terms of the need for decisions to be made at various Council meetings).
- 3 In summary, our views are:
 - 3.1 It is beyond the scope of the WRLC powers to approve the FDS, draft or final, on behalf of the member Councils at present. Those decisions on the FDS currently must be made by each individual Council.
 - 3.2 To streamline the process for the joint FDS across the Wairarapa-Wellington-Horowhenua region, the Joint Committee Agreement (and terms of reference) could be amended in order to include the

FDS within WRLC's specific responsibilities.¹ The amendment to the Agreement should state that the WRLC has authority to make decisions to commence the FDS consultation and preparation process, approve the draft FDS (statement of proposal), to engage in consultation and hear submissions on the FDS as part of the special consultative procedure (SCP), and approve the final FDS. The Amendments could also put in place arrangements required to create a subcommittee to hear submissions on the FDS (so that this task does not fall to the WRLC), including adding members to the joint committee and providing for that subcommittee. Together with amendment to the Agreement, each Council would need to resolve to delegate its decisions on the FDS and its role in consultation and the SCP to the WRLC.²

3.3 This process would require only one resolution (and delegations) by each Council at the start of the FDS process and would facilitate a coordinated approach throughout the consultation and engagement process and would involve mana whenua, rather than requiring multiple Council resolutions from each Council to approve the draft and the final FDS (and potentially fractured hearings by each Council). It would also ensure that any actions taken by the WRLC in relation to the FDS are within its mandate.

3.4 Alternatively, the Councils could create a new joint committee to deal with the FDS or put in place other arrangements (such as coordinating hearings but reserving decisions on the FDS to each Council). The new joint committee would need to comply with the requirements of clauses 30, 30A and 31 of Schedule 7 to the Local Government Act 2002 (LGA) in terms of membership, quorums and arrangements. The new joint committee could provide for mana whenua membership and make provision for an appropriate subcommittee to hear submissions (just as would be the case for a variation to the WRLC).

4 We set out the analysis supporting these conclusions below.

Background

5 The WRLC operates pursuant to the Joint Committee Agreement July 2021 (**Agreement**) made under Clause 30A, Schedule 7 of the Local Government Act 2002 (**LGA**) and which contains the committee's terms of reference. There are 10 Council members³ of the WRLC, an independent Chair and it may also include members from various mana whenua entities⁴ and Crown representatives.

¹ Pursuant to clause 30 and 30A of Schedule 7 of the LGA as a joint committee.

² Pursuant to clause 32 of Schedule 7 of the LGA, the delegation of a decision on the FDS is not prevented.

³ The mayors of Carterton District Council, Hutt City Council, Kāpiti Coast District Council, Masterton District Council, Porirua City Council, South Wairarapa District Council, Upper Hutt City Council, Wellington City Council, Horowhenua District Council and the chair of Wellington Regional Council.

⁴ A person nominated by Te Rūnanga o Toa Rangatira Inc, Port Nicholson Block Settlement Trust, Rangitāne Tū Mai Rā Trust, Ngāti Kahungunu ki Wairarapa Trust, Raukawa ki te Tonga, Āti Awa ki Whakarongotai Charitable Trust, Muaupoko Tribal Authority Inc.

- 6 The Agreement sets out the Council powers delegated to the Committee as follows (which are also reflected in the terms of reference):

Delegations

Each local authority delegates to the Joint Committee, in accordance with the terms of reference, the following responsibilities:

1. Approval of all plans and implementation programmes necessary to fulfil the specific responsibilities of the Joint Committee, including:
 - Wellington Regional Growth Framework and the Wellington Regional Growth Framework Implementation Plan
 - Regional Economic Development Plan
 - Regional Economic Recovery Implementation Plan
2. Approval of all submissions and advocacy statements necessary to fulfil the specific responsibilities of the Joint Committee.
3. The setting of the Joint Committee's meeting schedule.

- 7 Consistent with this statement in the Agreement we understand that all Councils resolved to:⁵

(v) Appoint and establish the Wellington Regional Leadership Committee as a joint committee under clause 30(1)(b) of Schedule 7 of the Local Government Act 2002 on the terms set out in the Joint Committee Agreement and with effect from the date that the Joint Committee Agreement is signed by all local authority parties.

(ix) Make the following delegations to the Joint Committee:

- a) Approval of all plans and implementation programmes necessary to fulfil the specific responsibilities of the Joint Committee, including:
 1. Wellington Regional Growth Framework and the Wellington Regional Growth Framework Implementation Plan
 2. Regional Economic Development Plan
 3. Regional Economic Recovery Implementation Plan

⁵ Minutes of Upper Hutt City Council Policy Meeting 17 February 2021 for example.

Analysis

Process for FDS approval

- 8 The NPS-UD anticipates that the Councils go through a series of steps when preparing a FDS:
- 8.1 Clause 3.14 of the NPS-UD relating to what the FDS is to be informed by,
 - 8.2 Clause 3.15 of the NPS-UD, which sets out who must be engaged with by the Councils when preparing the draft FDS,
 - 8.3 Clause 3.15 of the NPS-UD, which requires the SCP to be used to make the FDS.
- 9 The draft FDS that is necessary for use in the SCP will need to be adopted by the Councils as part of the statement of proposal, which commences the SCP.⁶
- 10 The SCP (section 83(1)(b)-(e) of the LGA) also requires that Councils undertake the following steps, while complying with the principles of consultation in section 82⁷:
- 10.1 ensure that the following is publicly available:
 - 10.1.1 the statement of proposal; and
 - 10.1.2 a description of how the local authority will provide persons interested in the proposal with an opportunity to present their views to the local authority in accordance with section 82(1)(d); and
 - 10.1.3 a statement of the period within which views on the proposal may be provided to the local authority (the period being not less than 1 month from the date the statement is issued); and
 - 10.2 make the summary of the information contained in the statement of proposal prepared in accordance with paragraph (a)(ii) (or the statement of proposal, if a summary is not prepared) as widely available as is reasonably practicable as a basis for consultation; and
 - 10.3 provide an opportunity for persons to present their views to the local authority in a manner that enables spoken (or New Zealand sign language) interaction between the person and the local authority, or any representatives to whom an appropriate delegation has been made in accordance with Schedule 7; and
 - 10.4 ensure that any person who wishes to present his or her views to the local authority or its representatives—

⁶ Sections 83 and 87(2)-(3) of the LGA.

⁷ *Karaka Point Environs Residents Inc v Marlborough DC* [2013] NZHC 2577.

10.4.1 is given a reasonable opportunity to do so; and

10.4.2 is informed about how and when he or she may take up that opportunity.

11 This means that each Council will need to give notice of the proposal and hear and consider submissions on the FDS (unless that function is delegated). We have not considered here the delegations for each Council which may already exist on a general basis concerning the SCP requirements and/or FDS specifically, given the number of Councils involved and the scope of your question. However, this may be an analysis that you wish to undertake as part of deciding the best way for a FDS to be prepared, consulted on, made publicly available, submitted on, and finalised when there are 10 Councils involved.

12 Accordingly, in light of the required steps above, the key Council decisions required to be made in relation to the FDS are:

12.1 To prepare and consult on the contents of the FDS (in accordance with the requirements of the NPS-UD).

12.2 The adoption of the statement of proposal (and summary if required), being the draft FDS under section 83(1) and section 87(2)(a) of the LGA.

12.3 The decision to approve the final FDS, after hearing submissions.

Who can make these decisions on the FDS now?

13 The 'specific responsibilities' of WRLC are set out in the Agreement as being the:

13.1 Wellington Regional Growth Framework (focused solely on the Framework document),

13.2 Regional Economic Development (focused on providing leadership in this area, monitoring and reporting on it, advocated on regional economic development matters and developing a regional economic development plan) and

13.3 Regional Economic Recovery (focused on providing leadership in this area, monitoring and reporting on it, advocating on regional economic recovery matters and developing a programme of regional economic recovery initiatives and coordinating their implementation).

14 In our view, these delegations do not provide the power to WRLC to make decisions relating to the FDS, including approving a draft or final FDS or any other step in the consultation and engagement process for the FDS. There are no Council resolutions that we have been made aware of which delegate these decisions on the FDS to the WRLC either.

15 Accordingly, our view is that it is beyond the scope of the WRLC powers to approve the FDS, draft or final, on behalf of the member Councils at present. All decisions on the FDS currently must be made by each individual Council.

What can be done to streamline the process?

- 16 In order to streamline the process for the FDS across all 10 Councils, the Agreement could be amended in order to include the FDS within WRLC's specific responsibilities.⁸ Such an amendment should state that the WRLC has authority to make decisions to commence the FDS consultation and preparation process, approve the draft FDS (statement of proposal) and commence SCP, to engage in consultation and hear submissions on the FDS as part of the SCP, and approve the final FDS (with reporting to the Councils at relevant steps).
- 17 The Agreement expressly allows for amendment to its terms, stating:
- This agreement may be varied by the parties from time to time but only with the endorsement of the Wellington Regional Leadership Committee.
- 18 The terms of reference also provide for variation, stating:
- These terms of reference may be varied from time to time. It is envisaged that changes may be made to add or remove specific responsibilities as the circumstances require. Changes will be approved by the parties to the agreement establishing the Wellington Regional Leadership Committee on the recommendation of the Joint Committee.
- 19 Together with the amendment to the Agreement, each Council would need to make a resolution specifically delegating its functions and decisions on the FDS, including its role in the SCP to the WRLC.⁹ In making these delegations it should be clear who will hear the submissions on the FDS and make the relevant decisions and/or recommendations – ie, will it be the full membership or a subcommittee of the WRLC.
- 20 If this process was adopted only one resolution (and delegation) would be required by each Council (and the WRLC) at the start of the FDS process agreeing to amend the Agreement/terms of reference and delegating the FDS process and decision making to the WRLC, rather than needing to obtain multiple Council resolutions, including to approve the draft and final FDS from each Council. It would also ensure that as this is a wider Wairarapa-Wellington-Horowhenua region strategy, that it remains consistent and cohesive, as one entity will be making the decisions. Mana whenua are able to nominate members to the WRLC and therefore, be involved in this process.
- 21 The key issue in this approach is who would hear and determine/make recommendations on any submissions on the FDS as this can be a time-consuming process. The Council members of the WRLC are all the Mayors of the Councils (and the Chair of the regional council), and Mayors are members of every committee of a Council under the LGA.¹⁰ The Mayors of each Council may not have the necessary time available to commit to that process, so there may be a need for another entity to undertake that step and make recommendations back to the WRLC.

⁸ Pursuant to clause 30 and 30A of Schedule 7 of the LGA as a joint committee.

⁹ Pursuant to clause 32 of Schedule 7 of the LGA, the delegation of a decision on the FDS is not prevented.

¹⁰ Section 41A(5) of the LGA.


- 22 From a practical perspective the best approach may be for each local authority to appoint additional members to the WRLC, who could then form a subcommittee to hear the submissions on the FDS and make recommendations concerning submissions to inform the final decision to approve the FDS. The Agreement and terms of reference for the WRLC would need to be updated to reflect that approach.
- 23 The issue arising is whether there could be a subcommittee of the WRLC (being a joint committee. Under clause 30(1) of Schedule 7 of the LGA:
- (1) A local authority may appoint—
 - (a) the committees, subcommittees, and other subordinate decision-making bodies that it considers appropriate; and
 - (b) a joint committee with another local authority or other public body in accordance with clause 30A.
 - (2) A committee may appoint the subcommittees that it considers appropriate unless it is prohibited from doing so by the local authority.
- 24 'Committee' is defined in section 5 of the LGA in such a way that makes it clear that a joint committee can have a subcommittee.¹¹ Accordingly, the WRLC could validly appoint a subcommittee to hear submissions on the FDS. The subcommittee appointments would need to comply with clause 31 of Schedule 7 of the LGA, which requires that:
- (3) The members of a committee or subcommittee may, but need not be, elected members of the local authority, and a local authority or committee may appoint to a committee or subcommittee a person who is not a member of the local authority or committee if, in the opinion of the local authority, that person has the skills, attributes, or knowledge that will assist the work of the committee or subcommittee.
 - (4) Despite subclause (3),—
 - (a) at least 1 member of a committee must be an elected member of the local authority; and
 - (b) an employee of a local authority acting in the course of his or her employment may not act as a member of any committee unless that committee is a subcommittee
- 25 This issue would need to be considered and addressed at the time of Council resolutions concerning the mandate of the WRLC on the FDS, but it would allow for involvement of mana whenua in the subcommittee.

¹¹ committee includes, in relation to a local authority,—

- (a) a committee comprising all the members of that local authority; and
- (b) a standing committee or special committee appointed by that local authority; and
- (c) a joint committee appointed under clause 30 of Schedule 7; and
- (d) any subcommittee of a committee described in paragraph (a) or paragraph (b) or paragraph (c)

- 26 The alternative, if no changes are made to the WRLC Agreement/terms of reference and the Councils' delegations, is that all the decisions on the FDS and the SCP process will need to be made by each Council individually, unless some other arrangement is put in place.
- 27 The Councils could choose to create a new joint committee for the purposes of the FDS (pursuant to clause 30A and 30(1)(b) of Schedule 7 to the LGA) or put in place other arrangements (such as coordinating hearings but reserving decisions on the FDS to each Council). The joint committee could be tasked with hearing submissions on the FDS jointly and making decisions on it. The new joint committee could include members additional to the Mayors (for example, in the Nelson/Tasman example, the Joint Committee was all the elected members from both Councils, a total of 27 members) who could then form a joint committee subcommittee to hear submissions on the FDS, as discussed above. Mana Whenua could be included in the new joint committee on a similar basis as in the WRLC (in reliance on clause 31(3) of the LGA which applies to joint committees pursuant to the definition of 'committee') and could also be included in the joint subcommittee. In the Nelson/Tasman case, they appointed 3 Tasman elected members, the Nelson Mayor and 2 other Nelson elected members and up to 3 iwi representatives.
- 28 While an available option, this might be less efficient than using the WRLC, which is already established.
- 29 Please do not hesitate to call and discuss.

Yours sincerely



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