

WAIMAKARIRI DISTRICT PLAN REVIEW
MEMO TO HEARINGS PANEL

DATE:	8 September 2023
MEMO TO:	PDP Hearing Panel
FROM:	s42A Reporting Authors
SUBJECT:	Addressing the issue of 'Primacy' for Strategic Directions and Urban Form and Development.

Introduction

1. At the conclusion of Hearing Stream 5, report authors were asked to consider the issue of 'primacy' in strategic directions for future and retrospective reports.
2. Reporting Officers have met to discuss this request. As a first step to providing a comprehensive response to the Hearing Panel, the report authors consider that there is a need to refine what is meant by the term 'primacy'. It is noted that this question is covered in the memo¹ of Mr Buckley dated 9 August 2023. That definition was prepared by Mr Buckley as a framework for assessing the questions raised by the Panel and provided one response on how to define 'primacy'.
3. Reporting authors have reviewed other recent contemporary plans including the Christchurch City Plan, Partially Operative Selwyn District Plan (Decisions Version), New Plymouth District Plan (Decisions Version), the recently reviewed and operative Strategic Directions in the Mackenzie District Plan, and proposed Porirua District Plan and have noted the introductory wording of each plan does suggest the potential for a range of interpretations on the question of 'primacy'.
4. As an example, reporting officers consider that within the range of matters that could be considered within the ambit of a 'primacy' definition are the following approaches:
 - a. The strategic directions provide 'direction' for plan development and plan changes, but for the purposes of plan implementation (including in the determination of resource consent application and notices of requirement), all relevant objectives and policies in the Plan should be had regard to²; and/or
 - b. Chapter objectives and policies being read and implemented (including via resource consent applications) in a manner that gives effect to, and is consistent with, the SD objectives³; and/or
 - c. SD/ UFD objectives providing a mechanism to resolve any 'conflict' between objectives in other chapters, and the degree to which these are relevant in significant resource consent applications; and/or
 - d. SD/ UFD objectives 'override' or 'void' other objectives within the plan; and/or
 - e. All, or a combination of, the above

¹ https://www.waimakariri.govt.nz/_data/assets/pdf_file/0013/141520/PLANNING-OFFICERS-MEMORANDUM-IN-REPOSE-TO-MINUTE-6-STRATEGIC-DIRECTION-9-AUGUST-2023.pdf

² Operative Strategic Directions provisions in the recently reviewed Mackenzie District Plan.

³ As an example, the Partially Operative Selwyn District Plan (Decisions Version).

5. The report authors are also conscious of the need to specifically consider the different approaches to future plan changes and consent applications. They note that not all of the plans looked at expressly address these matters; however, it is considered that this context is important when considering how 'primacy' might be applied in practice.
6. In addition to the above, reporting officers are also aware of the recent Supreme Court decision of *Port Otago Limited vs. Environmental Defence Society Inc et al SC6/2022* and the need to consider the principles within this decision into any discussion on 'primacy'.
7. Reporting authors note that the Proposed Waimakariri District Plan UFD chapter contains a stronger statement on this matter than the SD chapter as this chapter's introduction states that:

*"For the purpose of District Plan development, including plan changes and resource consents, the objectives and policies in this chapter **must be given effect to** through more detailed provisions contained in the District Plan."* [emphasis added].

Those authors that provided input into the drafting of the plan note that this different approach between the SD and UFD chapters was purposeful and consider that it would be beneficial for the reasons for this purpose to be outlined further.

8. Given the above, Reporting Officers consider that for process efficiency, that prior to the requested 'primacy' exercise being undertaken that Council provides a memo, informed by legal advice, that provides further definition on the range of these options for both the SD and UFD chapters.
9. The memo will also provide a further memo from Mr Willis⁴, further clarifying the process of identifying which matters were contained within the SD objectives and the matters covered in paragraph (7) above.
10. The reporting officers appreciate the need for early advice on this matter and consider an appropriate time to complete this memo is by **29 September 2023**.
11. Following this memo, it is anticipated that Reporting Officers would consider the matters contained in the complete memo and then evaluate any potential implications that may arise on that chapter's objectives based on their consideration of the 'primacy' options and any subsequent changes that would be required in relation to the interface between chapter objectives and SD objectives. It is noted that depending on the position of the reporting author, this may necessitate a revised officer recommendation. Scheduling of this could occur at the conclusion of hearing Stream 6 from the 9th of October 2023.

⁴ Chapter author of the strategic directions chapter