

## WAIMAKARIRI DISTRICT COUNCIL

### MEMO

**FILE NO AND TRIM NO:** DDS-14-01 / Trim Number 230929154450

**DATE:** 29 September 2023

**MEMO TO:** Hearings Commissioners

**FROM:** Mark Buckley  
Principal Policy Planner

**SUBJECT:** The issue of 'Primacy' for Strategic Directions and Urban Form and Development

---

#### **Introduction**

1. Following on from the memorandum from Mr Bacon dated 8 September 2023 regarding the issue of primacy for Strategic Directions and Urban Form and Development, this memorandum responds to the points raise in paragraphs 8 and 9 of that memo.
2. The memo states that Council will provide a memo informed by legal advice that provides further definition on the range of these options (levels of primacy) for both SD and UFD chapters (attached), and a further memo from Mr Willis (attached) clarifying the process of identifying which matters were contained within the SD objectives and the matters covered in paragraph 7 (from Mr Bacon's memo of the 8 September 2023).

#### **Legal Advice on Primacy**

3. The legal advice letter from Buddle Findlay regarding primacy of strategic directions, dated 26 September 2023, provides context as to the different meanings of primacy on recent District Plan decisions, and commentary on the recent Supreme Court decision in Port Otago Limited v Environmental Defence Society Incorporated.
4. Paragraph [35] of the legal advice letter sets out examples that illustrate the different relationships between Strategic Directions and other objectives in a District Plan with respect to levels of primacy.
5. Buddle Findlay in their analysis of the Port of Otago Supreme Court decision, paragraph [61], note that:

*"The key takeaways in this context are that plans do not need to resolve all conflicts and there is no need to establish a hierarchy for strategic objectives (as between themselves). There are established principles for resolving conflicts in these situations."*

## **Memo on drafting of Strategic Directions and Urban Form and Development**

6. The memo from Mr Willis details the process that was followed by Council for the drafting of the Strategic Directions and Urban Form and Development chapters of the Proposed Plan.
7. Within the memo Mr Willis details his interpretation of how primacy is perceived within the National Planning Standards and how it is treated in other District Plans.
8. Paragraph [14] sets out the level of primacy from the drafting approach for Strategic Directions.

### **Differing Approaches to Primacy for Strategic Directions**

9. As stated in Minute 10, Council report authors will undertake an evaluation of potential implications for each chapter's objectives within the Proposed Plan based upon the following different primacy approaches:
  - (a) SD objectives have no "primacy" and sit on the same level as other objectives in the plan;
  - (b) SD objectives have "primacy" in one of the following different senses (dependent on how the district plan is crafted):
    - (i) SD objectives inform objectives and policies contained in other chapters;
    - (ii) Objectives and policies in other chapters must be expressed and achieved as being consistent with the SD objectives;
    - (iii) SD objectives are used to resolve conflict with objectives and policies in other chapters; and
    - (iv) SD objectives override all other objectives and policies in the plan.

26 September 2023

**To**

Mark Buckley  
Waimakariri District Council  
215 High Street  
Rangiora 7400

**Copy to**

Matt Bacon  
Kelly LaValley

**From**

Cedric Carranceja  
Jenna Silcock  
Elizabeth Everingham

**By Email**

Dear Mark

**Advice regarding primacy of strategic directions objectives**

1. You have sought advice regarding the concept of "primacy" in the context of the proposed Strategic Directions chapter of the Proposed Waimakariri District Plan (**PDP**). In particular, you have asked us to:
  - (a) Address the different meanings of primacy, having regard to recent District Plan decisions; and
  - (b) Comment on the Supreme Court's decision in *Port Otago Limited v Environmental Defence Society Incorporated* (**Port Otago**) and consider the implications of this decision to questions of "primacy".<sup>1</sup>
2. We understand our advice will inform a memorandum to the Hearings Panel on this issue which is due on **29 September 2023**.
3. Our advice:
  - (a) Sets out the background to this advice including the relevant provisions of the PDP;
  - (b) Addresses strategic directions and primacy in the context of District Plans;
  - (c) Outlines relevant principles from case law including the importance of articulating the role of strategic directions in plans and the role of strategic directions in interpreting plan provisions in the context of resource consents and plans; and
  - (d) Comments on the *Port Otago* decision.

**Executive summary**

4. Strategic directions chapters and strategic directions objectives (and in some cases strategic directions policies) are becoming more common-place in second generation District Plans. There is

---

<sup>1</sup> *Port Otago Limited v Environmental Defence Society Incorporated* [2023] NZSC 112.  
Auckland • Wellington • Christchurch

limited guidance available from the Ministry for the Environment as to the role of strategic directions and their relationship with other provisions in the Plan, particularly in terms of whether to afford "primacy" to strategic directions provisions, and if so, in what form.

5. As Council report authors have identified, the concept of primacy has different formulations and there are different permutations of "primacy" in second generation District Plans. There is a spectrum of options for providing varying degrees of primacy for strategic directions provisions, ranging from "consistency" at one end and "overriding effect" at the other. **Appendix A** to this letter includes extracts from a number of plans that incorporate the concept of primacy with respect to strategic directions.
6. The majority of the examples of strategic directions in the District Plans we have considered set the values, intentions and outcomes for a District, with plan provisions specifying that strategic directions objectives are achieved through the subsequent plan provisions which must be expressed and achieved to be consistent with those objectives. There are different approaches to the role of strategic directions in the context of plan development, plan changes, resource consents and designations.
7. Ultimately, the most appropriate approach as to whether strategic direction provisions should be given primacy, and if so, what type of primacy, must be informed by a section 32 analysis, while bearing in mind that the ultimate purpose of a District Plan is to assist the territorial authority to carry out its function in order to achieve the purpose of the RMA.
8. The Environment Court has expressed concern with "loose" and/or "unclear" language regarding the implementation of strategic directions in a proposed plan<sup>2</sup> and stated the importance of ensuring the role of the strategic directions chapter and its provisions are clearly articulated and understood.
9. The growing body of case law which provides guidance on how strategic directions objectives are to be considered in the context of both resource consents and proposed plans. The authorities support a "whole of plan" assessment, even where strategic directions objectives are at play.
10. While the Supreme Court's decision in *Port Otago* was considered in a different planning context, there are some principles from that decision which have some relevance to district plan making and the interpretation exercise.

### Background

11. The PDP includes a Strategic Directions (**SD**) chapter which begins by stating that:

***This chapter provides the overarching objectives to provide high level direction for the District Plan. The matters covered in the strategic directions are addressed in more detail by the district wide and area specific objectives and policies in other chapters of the District Plan.***

12. It goes on to say:

**For the purpose of District Plan development, including plan changes, the strategic objectives in this chapter provide direction for the more detailed provisions contained in the District Plan. For the purpose of District Plan implementation, including the determination of resource consent applications:**

1. **the strategic objectives may provide guidance for related objectives and policies in other chapters; and**

---

<sup>2</sup> *Darby Planning Limited Partnership v Queenstown Lakes District Council* [2019] NZEnvC 133.

2. **the relevant objectives and policies of the District Plan, including strategic objectives in this chapter, are to be considered together and no hierarchy exists between them.**

(Our emphasis)

13. The Urban Form and Development (UFD) chapter of the PDP also contains the following statement relevant to the issue of primacy:

**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.**

(Our emphasis)

14. The SD chapter contains district-wide objectives, while the UFD chapter contains both objectives and policies. The SD and UFD chapters are located within the "Strategic Direction" section of Part 2 District-Wide Matters of the PDP.

15. Two submissions were lodged on the PDP which sought that the SD objectives in the SD Chapter have primacy.<sup>3</sup>

16. These submissions were addressed in Mr Buckley's s42A report for Hearing Stream 1.<sup>4</sup>

17. Following the Stream 1 Hearing, the Panel asked:<sup>5</sup>

**(3) Having heard from submitters, and their discussions with the Hearings Panel, on whether the Strategic Directions Objectives and Urban Form and Development Objectives and Policies should have primacy or a higher weighting than other objectives and policies in the PDP, please advise if your recommendation in your Section 42A report has changed. If so, please explain why.**

18. Mr Buckley, as the Strategic Directions s42A report author, responded to this question (and others) in his Reply Report dated 16 June 2023.

19. Further questions were put to Mr Buckley by the Panel in Minute 6. In particular, the Panel asked:<sup>6</sup>

- 1. Can you please elaborate, with examples, on why you consider it necessary to reassess the framework and plan should the SD Chapter objectives have primacy. In particular, how would Council's s75 requirements be impacted?**  
**2. What are the advantages and disadvantages of the SD Chapter Objectives having primacy over the Objectives in other Chapters?**

**If you remain of the view that there is no primacy, please set out your opinion on what the value and purpose is of the Strategic Direction objectives if they are to be seen as simply having been used to develop other objectives and policies in other chapters of the Plan?**

20. The above questions were addressed by Mr Buckley in his memo to the Hearings Panel on SD Objectives – response to Minute 6 of the Hearing Panel dated 11 August 2023.

21. The Panel then signalled, at the end of Hearing Stream 5, that Council s42A report writers would be required to include their own professional assessment of any potential implications that may arise for the particular chapter's objectives if the Strategic Directions (including Urban Form and Development objectives) had primacy in future reports.<sup>7</sup> Report authors from earlier hearing streams were requested to address this as well.

---

<sup>3</sup> Submission of MainPower New Zealand Limited (#249.197) and submission of Kāinga Ora Homes and Communities (#325.1).

<sup>4</sup> Mark Buckley, Officer's Report: Rautaki ahunga - Strategic Directions dated 13 April 2023, section 3.2.

<sup>5</sup> Minute 4 of the Hearings Panel (Matters and questions arising from hearing streams 1 and 2), Appendix 1, question 3.

<sup>6</sup> Minute 6 of the Hearings Panel (Matters and questions arising from hearing stream 4 and the new NPS-IB), paragraph 7.

<sup>7</sup> Minute 10 of the Hearings Panel (Rezoning requests and strategic directions), paragraph 6.

22. Council officers lodged a further memo with the Panel on 8 September providing information about the steps taken by Council report authors in respect of the Panel's directions and proposed a "two-pronged approach" to respond to those directions:<sup>8</sup>
  - (a) A memorandum, informed by legal advice, that sets out what is meant by "primacy" based on different options;
  - (b) An evaluation of potential implications for a particular chapters' objectives.
23. The Panel's Minute 10 generally agreed with the proposed approach, *noting it will carefully consider the implications for submitters that may arise and next steps after receipt of the memorandum ...*.<sup>9</sup> The Panel encouraged consideration of any recent District Plan decisions and the recent Supreme Court *Port Otago* case.
24. The Council's memorandum, which this legal advice will inform, will also annex a memo from Mr Andrew Willis, the chapter author for the Strategic Directions chapter. This memo further clarifies the process of identifying which matters were contained within the Strategic Directions chapter and the approach in the Urban Form and Development Chapters.

#### **Strategic directions and primacy in the context of District Plans**

25. A district plan forms part of a hierarchy of RMA policy and planning documents, with the RMA prescribing particular requirements for a district plan to align with higher order documents. Hierarchies and the related concepts of primacy, and weight, are evident in multiple aspects of and processes within the RMA.
26. In the district plan context, the concept of primacy with respect to strategic directions has its genesis in the Christchurch Replacement District Plan (**Christchurch Plan**), which became operative on 19 December 2017. The Independent Hearings Panel (**IHP**) appointed to make decisions on the Christchurch Plan took a novel approach to providing strategic direction by implementing an internal plan hierarchy to give strategic directions objectives primacy.
27. The IHP considered that the Strategic Directions chapter should contain objectives with primacy over all other provisions in the Replacement Plan. The IHP was conscious that the RMA establishes a hierarchical relationship between objectives, policies and rules in a plan: objectives lie at the top of the hierarchy, policies implement the objectives, and rules implement the policies.
28. To avoid undermining the primacy of the chapter, the Panel considered that strategic directions should be expressed as objectives, not policies, with their primacy codified by a bespoke interpretation provision. The interpretation provision established an internal hierarchy within the Christchurch Plan. It explicitly states that the objectives and policies in all other chapters of the Christchurch Plan are to be expressed and achieved in a manner consistent with the strategic directions objectives. The interpretation provision also gives two strategic directions objectives primacy over the remaining strategic directions objectives so that all other strategic directions objectives are to be expressed and achieved in a manner consistent with the first two.

---

<sup>8</sup> Minute 10, paragraph 7 and Waimakariri District Plan Review Memo to Hearings Panel dated 8 September 2023.

<sup>9</sup> Paragraph 8.

29. The IHP considered that:
- (a) The SD chapter should identify and give overarching direction on district-wide sustainable management priorities.<sup>10</sup>
  - (b) To qualify as a SD objective, the matter must have:
    - (i) Been strategically important for achieving integrated management and for ensuring the RMA's purpose is achieved; and/or
    - (ii) Given effect to relevant national policy statements, the New Zealand Coastal Policy Statement<sup>11</sup> and the Canterbury Regional Policy Statement.<sup>12</sup>
30. While the Christchurch Plan process had some unique features that are different from the PDP process,<sup>13</sup> we do not consider these process differences to materially impact the issue of whether strategic directions should be given primacy and if so, in what way.
31. Following the IHP's decision on the SD chapter on the Christchurch Plan, a number of second-generation District Plans have included new SD chapters, objectives and in some cases policies and considered and addressed the question of primacy.
32. The Ministry for the Environment (**MFE**) has since noted that strategic directions is "an area of emerging best practice in second-generation plans".<sup>14</sup>
33. The National Planning Standards, first published by MFE in November 2019, provide for a SD chapter, and requires a UFD chapter as a SD matter. The MFE guidance for District Plans Structure and Chapter Standards notes that the "*strategic direction heading provides a location for the high-level direction that district councils are working towards for their city and/or district ... Strategic direction is often supported with objectives and policies that tend to relate to the whole city and/or district and may include cross-cutting issues.*"<sup>15</sup> Examples of strategic issues are also provided.<sup>16</sup> We have not identified any further MFE guidance on the relationship of strategic directions and other provisions of the Plan, particularly in terms of whether to afford "primacy" to strategic directions provisions, and if so, in what form.
34. **Appendix A** to this letter includes some examples of relevant provisions from second-generation District Plans. The examples provided illustrate that there are different approaches to the role strategic objectives / directions have, including whether and the extent to which those objectives / directions have primacy. A number of the examples in Appendix A are proposed plan provisions, with a number still awaiting decisions and/or final provisions.

---

<sup>10</sup> IHP Decision 1 – Strategic Directions and Strategic Outcomes (and relevant definitions) dated 26 February 2015 at [106].

<sup>11</sup> This was the only relevant NPS at the time of the decision on the Strategic Directions chapter.

<sup>12</sup> IHP Decision 1 – Strategic Directions and Strategic Outcomes (and relevant definitions) dated 26 February 2015 at [107].

<sup>13</sup> For example, the post-earthquake rebuild context, a bespoke plan-making process and a staged approach to the plan drafting and decision-making process.

<sup>14</sup> Ministry for the Environment, Guidance for District Plans Structure and Chapter Standards (published April 2019 and updated September 2020), page 6.

<sup>15</sup> Page 6.

<sup>16</sup> These examples are: recognising special characteristics of a city or district, recognising the impacts of climate change and climate change mitigations adopted in the plan, significant investment in transport that will in turn influence land-use change over the life of the plan and strategic resource management issues specific to the city and/or district (e.g., tourism and energy).

35. The examples illustrate that there are different ways to define the role and relationship of strategic directions in district plans, with different approaches to the level of primacy (if any) given to strategic objectives. Examples of different approaches include:
- (a) SD objectives have no "primacy" and sit on the same level as other objectives in the plan;
  - (b) SD objectives have "primacy" in one of the following different senses (dependent on how the district plan is crafted):
    - (i) SD objectives inform objectives and policies contained in other chapters;
    - (ii) Objectives and policies in other chapters must be expressed and achieved as being consistent with the SD objectives;
    - (iii) SD objectives are used to resolve conflict with objectives and policies in other chapters; and
    - (iv) SD objectives override all other objectives and policies in the plan.
36. There is a spectrum of options for providing varying degrees of primacy for SD provisions, ranging from "consistency" at one end and "overriding effect" at the other. Furthermore, there are variations in how District Plans apply this range of approaches to different areas or processes: for example, the plan could provide for an "overriding effect" approach to primacy for all or no resource consents or significant resource consents, while providing for a "consistency" approach to primacy for all or no plan changes, and a different approach again for all or no designations.
37. We have not identified any case law which analyses or provides commentary on the different permutations of primacy, and no case law preference for a particular approach. Accordingly, there is no right or wrong approach to primacy. Ultimately, the most appropriate approach as to whether SD provisions should be given primacy, and if so, what type of primacy, must be informed by a section 32 analysis, while bearing in mind that the ultimate purpose of a District Plan is to assist the territorial authority to carry out its function in order to achieve the purpose of the RMA.<sup>17</sup>
38. The majority of the examples in Appendix A sit at the consistency end of the spectrum with SD objectives setting the values, intentions and outcomes for a District, with provisions specifying that SD objectives are achieved through the subsequent plan provisions (objectives, policies and rules) which must be expressed and achieved to be consistent with the SD objectives. There are variations as to where the SD are to be considered relevant – including plan development, plan changes, resource consents and designations.
39. The strategic directions in these plans are often "high-level" or broad objectives, with the detail left to chapter objectives and policies and rules. The decision on the proposed Selwyn District Plan, SD chapter, commented that the strategic directions were "*deliberately crafted to provide high-level direction, with underlying provisions of the Plan that give effect to the strategic objectives by providing the necessary detail as to how these strategic outcomes are achieved in the context of the relevant proposal.*"<sup>18</sup>

---

<sup>17</sup> Section 72 of the RMA.

<sup>18</sup> See Strategic Directions decision at section 3.1 available for download at [District Plan Review - Hearings \(selwyn.govt.nz\)](https://www.selwyn.govt.nz/district-plan-review-hearings).



40. We have not identified any examples where a plan provides for a SD objective to override or overrule other provisions of a plan. We note that SD objectives often address different "issues" or "topics" which might overlap or even conflict with one another. Again, we have not identified any examples of interpretation provisions or directions in a SD chapter that seek to address tensions or conflicts between SD objectives (i.e. by applying an internal hierarchy). We make some observations on "conflict resolution" between provisions in the context of the Supreme Court's decision in the *Port Otago* case below.

### Clarity regarding role of strategic directions in Plan

41. There is case law which supports having clarity around the role of strategic directions in a District Plan. In *Darby Planning Limited Partnership v Queenstown Lakes District Council* the Environment Court considered appeals on Stage 1 of the Queenstown Lakes District Council's District Plan Review, which included a new, proposed Chapter 3 – Strategic Directions.<sup>19</sup> Chapter 3 was "intended to operate as a strategic directions chapter whose objectives and policies can provide guidance on what more detailed ODP provisions are seeking to achieve". The Court considered "it was particularly important that the role of the Strategic Directions chapter within the ODP as a whole is clearly understood."<sup>20</sup> The Environment Court said "it is particularly important that its intended influence is clear":<sup>21</sup>
- "(a) in the formulation of other PDP provisions, bearing in mind the expectation that Ch 3 would be operative, as part of the ODP, before other PDP provisions under appeal are determined; and**
  - (b) in the interpretation of other chapter objectives, policies and other provisions of the ODP of which it will be part."**
42. The decisions version of Stage 1 included a narrative around the purpose of chapter 3. The Court expressed concern that the narrative was "loose and unclear"<sup>22</sup>. The question of primacy of the strategic objectives and strategic policies was addressed, with differing views expressed by relevant experts.<sup>23</sup> Expert conferencing was directed, with the Environment Court noting in its Minute that:<sup>24</sup>
- "[6] An overall guiding principle is that the RMA defines an intended hierarchical relationship between pt 2 RMA and plan objectives, policies and rules (eg ss 75(1) and 32). Clarity and certainty in objectives and serving policies and rules is important for maintaining plan integrity in accordance with the RMA's intentions."**
43. The Court ultimately recommended amendments to the SD chapter including the introduction of interpretation provisions that articulated the role of the strategic objectives (**SOs**) and strategic policies (**SPs**) for the purpose of plan development and plan implementation.
44. The Court also considered a suggestion, from Otago Regional Council, to add an interpretation provision that expressed the relationship of enabling strategic objectives to protective ones. The Environment Court did not take up the suggestion, saying:
- "[74] ... Adding a provision of this nature would risk changing the provisions beyond the scope of the appeals. Overall, we find the more appropriate drafting approach is for particular SOs to speak for themselves in these terms."**

---

<sup>19</sup> *Darby Planning Limited Partnership v Queenstown Lakes District Council* [2019] NZEnvC 133.

<sup>20</sup> *Darby Planning Limited Partnership v Queenstown Lakes District Council* [2019] NZEnvC 133 at [34].

<sup>21</sup> At [64].

<sup>22</sup> At [67].

<sup>23</sup> At [66].

<sup>24</sup> Minute annexed to *Darby Planning Limited Partnership v Queenstown Lakes District Council* [2019] NZEnvC 133 dated 22 February 2019, paragraph 6.

**[75] Ultimately, our evaluation comes back to what best expresses the intended purposes of SOs and SPs within the ODP. We are mindful that Ch 3 is overarching. In addition to its significance during the formulation of other PDP provisions, it is intended to have an ongoing interface with the entire ODP, including those parts of it that are not the subject of the partial plan review. With a partial plan review of the nature QLDC has instigated here, it is important that the ultimate product, ie the updated ODP, is fully coherent and integrated and clear in its intentions to the ordinary reader."**

45. The Court's conclusion on this illustrates that:
- (a) Scope considerations will be relevant in considering changes to strategic directions;
  - (b) Interpretation provisions can have material consequences for the application of substantive plan provision;
  - (c) Plan provisions can speak for themselves in some instances; and
  - (d) Established principles of plan interpretation remain and should be borne in mind in considering strategic directions.
46. There are some unique features of the *Darby Planning* decision including the fact it was a staged and partial plan review, with parts of the Operative Plan being unchanged. However, we consider the principles regarding certainty and clarity remain sound and in accordance with good planning principles.

Statutory directions in the Environment Court

47. There is also a developing body of case law which addresses the role of SD objectives in the context of resource consent applications and plans. We have included a discussion of relevant principles below with a view to providing further context for, and assisting Council's and the Panel's understanding of the implications of, the primacy issue and ultimate approach that might be adopted in the District Plan.
48. In *Rogers v Christchurch City Council* the Environment Court mentioned the following in relation to the type of primacy provided for in the Christchurch Plan:<sup>25</sup>

**"[48] Chapter 3: Strategic Directions provides overarching direction for the other plan chapters and has primacy over the objectives and policies in them. Chapter 3 is said to provide a series of high-level objectives for the district leaving the articulation of activity-specific and location-specific objectives and policies to subsequent chapters.**

**[49] As the Environment Court has said previously, the wording of the strategic directions is very general and their discrete application on a case-by-case basis was not intended. Rather, the strategic directions are given effect to by the objectives and policies in the balance of the District Plan and are to be interpreted and applied accordingly; per *Pickering v Christchurch City Council*, *Yaldhurst Quarries Joint Action Group v Christchurch City Council* and *Fright v Christchurch City Council*. It is disappointing to see a fourth case where the Plan's strategic directions have been applied directly to an application for resource consent by planning witnesses."**

49. Similar sentiment was expressed in *Gladstone Family Trust v Dunedin City Council* in addressing a planning assessment undertaken directly against the strategic directions (objectives and policies) of the proposed Dunedin District Plan:<sup>26</sup>

**"[21] In *Blueskin Energy Limited v Dunedin City Council* and *Granger & ors v Dunedin City Council* the Environment Court observed the strategic directions are achieved through the subsequent detailed plan provisions. Further, the strategic directions were to be borne in mind**

---

<sup>25</sup> *Rogers v Christchurch City Council* [2019] NZEnvC 119 at [48]-[49].

<sup>26</sup> *Gladstone Family Trust v Dunedin City Council* [2020] NZEnvC 67 at [21]-[22].

when interpreting and applying the subsequent, detailed provisions of the plan and that they were not intended to be applied directly to applications for resource consent ....

**[22] While strategic directions are given as guidance for applications for non-complying activities, I do not consider that the relevant rules require their prior assessment ahead of the lower order objectives and policies. That is because the lower order objectives and policies are intended to implement the strategic directions. To directly assess the proposal under the strategic directions in the way undertaken by Ms Lindsay, may be to miss entirely the nuances in the sustainable management of natural and physical resources across the district or the relevant zone as articulated by the lower order objectives and policies. Rather than adopt the approach of the City Council's planning witness, which was to commence her evidence with an assessment under the strategic directions, my approach will be to consider strategic directions when deciding whether to exercise my discretion to make the orders sought."**

50. In *Rogers* the Environment Court went on to look at the strategic directions for guidance on the implementation and administration of the specific objective and related policies which were relevant to the consent application under appeal.<sup>27</sup> The Court read two relevant strategic objectives alongside each other, in deciding whether a particular policy implemented strategic objectives.<sup>28</sup>

51. A common theme in the case law is a recognition that there can be a number of provisions which sit alongside one another and which may overlap. That occurs as between objectives themselves and as between objectives and policies. In *Gladstone* the Court said:<sup>29</sup>

**... In common with many District Plans, we found the supporting policies of Dunedin's District Plans present different but overlapping ways to achieve the objectives and, when read as an integrated whole, the objectives and policies inform and build upon and sometimes constrain one another.**

52. In *Yaldhurst Quarries Joint Action Group v Christchurch City Council* the Environment Court addressed relevant Christchurch Plan strategic directions which sat alongside, and overlapped, one another.<sup>30</sup> The Environment Court referred to a High Court decision of Justice Gendall in *Rational Transport Society Inc v New Zealand Transport* as a "useful reminder to interpret and apply the District Plan as a whole ...".<sup>31</sup> Justice Gendall in that case said that:<sup>32</sup>

**"... depending on the circumstances [there may be] more than one objective having different, and overlapping, ways of achieving sustainable management of natural and physical resources (the purpose of the Act). But objectives cannot be looked at in isolation, because "the extent" of each may depend upon inter relationships."**

53. The case law supports a comprehensive assessment of a Plan, as a whole, in both the planning<sup>33</sup> and resource consent<sup>34</sup> contexts. Notably, in considering district plan provisions, the Courts pay attention to what type of primacy a Plan affords to its strategic directions provisions, and tailors its approach accordingly.

54. It is also important to note that the drafting of strategic directions objectives is also relevant. They may be intentionally drafted to be more or less directive, and this will have implications for other provisions in the plan. The legal requirements for plan provisions, including those in ss 74, 75 and 32 are also important to bear in mind, particularly the expression of the roles of objectives vis-à-vis Part 2 of the RMA, and the hierarchy and roles of objectives, policies and rules in a plan.

---

<sup>27</sup> *Rogers v Christchurch City Council* [2019] NZEnvC 119 at [53].

<sup>28</sup> At [73].

<sup>29</sup> *Gladstone Family Trust v Dunedin City Council* [2020] NZEnvC 67 at [23] citing *Blueskin Energy Limited v Dunedin City Council* [2017] NZEnvC 150 at [94]-[95].

<sup>30</sup> *Yaldhurst Quarries Joint Action Group v Christchurch City Council* [2017] NZEnvC 165 at [62].

<sup>31</sup> At [64].

<sup>32</sup> *Rational Transport Society Inc v New Zealand Transport* 12 NZRMA 298 at [46]

<sup>33</sup> For example, *Rational Transport Society Inc v New Zealand Transport*.

<sup>34</sup> For example, *Yaldhurst Quarries Joint Action Group v Christchurch City Council*.

55. In summary, the relevant case law demonstrates that even where strategic objectives have "primacy" in the sense of providing over-arching guidance which is then articulated in objectives and policies in subsequent chapters which are to be interpreted and applied to give effect to the strategic directions:
- (a) Strategic directions should not be the first "port of call" for a planning assessment;
  - (b) Strategic directions can be particularly helpful where there is ambiguity and uncertainty in the lower order provisions of a plan; and
  - (c) When exercising judgement, the Plan needs to be read as whole, with consideration given to the inter-related parts of a District Plan including, but not limited to, the strategic directions. That is because there will inevitably be numerous provisions which are relevant, some of which will overlap and some which may conflict with one another.

***Port Otago Limited v Environmental Defence Society***

56. We understand the Panel has also requested commentary on the Supreme Court's recent decision in *Port Otago Limited v Environmental Defence Society Inc and Others* [2023] NZSC 112 (**Port Otago**). This decision concerned a proposed regional ports policy (**Ports Policy**) in the Otago Regional Policy Statement (**ORPS**). The appeal, and decision, addresses "*important issues about the relationship between the policies in the New Zealand Coastal Policy Statement (NZCPS) and how such policies should be reflected in lower-order planning documents*".<sup>35</sup>
57. The Port Otago decision considers the principles established in *King Salmon*<sup>36</sup> and *Sustain Our Sounds Inc*<sup>37</sup> in a different context. It addresses the issue of potential conflicts within higher order documents and the question of where potential conflicts in higher order documents should be addressed – in regional policy statements, plans or resource consents. While the decision addresses a regional plan, which had to give effect to a NZCPS policy relating to strategic planning (Policy 7), and interpreted NZCPS policies relevant to the Ports, we consider there are principles from this decision which will be relevant to the interpretation of policy documents and conflict issues in other contexts.
58. The key principles to highlight in this context include:
- (a) The meaning of a planning document should be ascertained from the text and in light of its purpose and context. This requires close attention to the context and purpose of the policies. It also includes the context of the instrument as a whole.<sup>38</sup> The Court's approach in this regard is consistent with orthodox plan interpretation principles.
  - (b) The language in which policies are expressed is "*significant, particularly in determining how directive they are intended to be and thus how much or how little flexibility a subordinate decision-maker might have*".<sup>39</sup> Differences in expression matter.<sup>40</sup>

---

<sup>35</sup> *Port Otago Limited v Environmental Defence Society Inc and Others* [2023] NZSC 112 at [1].

<sup>36</sup> *Environmental Defence Society v The New Zealand King Salmon Co Ltd* [2014] NZSC 38, [2014] 1 NZLR 593.

<sup>37</sup> *Sustain Our Sounds Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 40, [2014] 1 NZLR 673.

<sup>38</sup> *Port Otago Limited v Environmental Defence Society Inc and Others* [2023] NZSC 112 at [60].

<sup>39</sup> *Port Otago Limited v Environmental Defence Society Inc and Others* [2023] NZSC 112 at [61].

<sup>40</sup> *Ibid*.

- (c) Enabling, not just avoidance, policies can be directive. All directive policies must be considered. The Court said that "*There can be no presumption that one directive policy will always prevail over another.*"<sup>41</sup>
  - (d) The interpretation exercise must be undertaken utilising a structured analysis on a case by case basis.<sup>42</sup>
  - (e) With respect to the question of where conflicts should be addressed, the Supreme Court found that reconciliation of conflict should be dealt with at the regional policy statement and plan level as far as possible. Leaving resolution of all possible conflicts to the resource consent stage would be "unsatisfactory" given the large degree of uncertainty that would result. However, the Court also acknowledge that the extent to which a plan can anticipate conflicts, and the means of resolving them, may be limited.<sup>43</sup>
59. The Court also cited with approval a number of findings in *King Salmon* regarding the rarity of conflicts, if policies are properly construed and close attention is paid to the way in which they are expressed, and that where conflicts do exist the area of conflict should be kept as narrow as possible.
60. The Court's approach and findings in *Port Otago* support proactive resolution of conflicts in plans although there is express recognition that it will not always be possible having regard to the issue and the available evidence. Tensions will inevitably exist, some of which may not be apparent or foreseen until the resource consent stage. Conflicts and tensions can be resolved applying established interpretation principles in "structured analysis".
61. The key takeaways in this context are that plans do not need to resolve all conflicts and there is no need to establish a hierarchy for strategic objectives (as between themselves). There are established principles for resolving conflicts in these situations.

### **Concluding comments**

62. We trust the advice is of assistance. However, please do not hesitate to contact us if you have any questions or would like us to elaborate on any of the issues addressed above.

Yours sincerely



**Jenna Silcock**  
Senior Associate

DDI • 64 3 353 2323  
M • 64 27 259 2001  
[jenna.silcock@buddlefindlay.com](mailto:jenna.silcock@buddlefindlay.com)

---

<sup>41</sup> *Port Otago Limited v Environmental Defence Society Inc and Others* [2023] NZSC 112 a [77].

<sup>42</sup> *Port Otago Limited v Environmental Defence Society Inc and Others* [2023] NZSC 112 at [78].

<sup>43</sup> *Port Otago Limited v Environmental Defence Society Inc and Others* [2023] NZSC 112 at [72]-[73].

## Appendix A – Extracts from selection of second-generation district plans which address "primacy" of strategic directions

The underlining in the extracts from the plans summarised below is our emphasis.

Plan	Relevant chapter	Extract
Partially Operative Selwyn District Plan (Decisions version)	Strategic Directions (SD-Overview)	<p><i>This chapter sets out the overarching direction for the District Plan as expressed through Strategic Directions.</i></p> <p><i>These directions reflect those factors which are considered to be key to achieving the overall vision for the pattern and integration of land use within Selwyn District.</i></p> <p><i>The Strategic Directions are intended to demonstrate:</i></p> <ol style="list-style-type: none"> <li><i>1. <u>commitment to, and articulation of Council's partnership with Ngāi Tahu mana whenua;</u></i></li> <li><i>2. <u>alignment with Council's aspirations for the development and environmental quality of the District as expressed through its District Development Strategy;</u></i></li> <li><i>3. <u>integrated management through the grouping of environmental considerations which combine to achieve strategic outcomes; and avoiding strategic objectives becoming isolated within various chapters of the District Plan;</u></i></li> <li><i>4. <u>achievement of particular aspects of the use, development, or protection of natural and physical resources that have been elevated to matters of national importance by the Resource Management Act and those matters of national and regional significance by National and Regional Policy Statements;</u></i></li> <li><i>5. <u>a prosperous economy through enabling a wide range of business activities;</u></i></li> <li><i>6. <u>the management of urban growth integrating existing and future infrastructure, providing sufficient land, or opportunity to meet growth demands for housing and business.</u></i></li> </ol> <p><i><u>For the purposes of preparing, changing, interpreting, and implementing the District Plan, all other objectives and policies in all other chapters of this District Plan are to be read and implemented in a manner that gives effect to and is consistent with these</u></i></p>



Plan	Relevant chapter	Extract
		<p><u>Strategic Directions. This includes decisions on resource consent applications and notices of requirement for designations.</u></p> <p><u>There is no hierarchy between the stated Objectives i.e., no one Strategic Objective has primacy over another Strategic Objective and the Strategic Objectives should be read as a whole.</u></p> <p>Activity and location specific objectives and policies are located in the relevant chapter of the District Plan. The planning standards require that 'like' matters are grouped together in a chapter with the relevant objectives.</p>
Christchurch City Plan (referred to as Replacement Plan in our advice)	Chapter 3 Strategic Directions (3.1 Introduction)	<p>a. <i>This Chapter:</i></p> <ul style="list-style-type: none"> <li>i. <u>Provides the overarching direction for the District Plan, including for developing the other chapters within the Plan, and for its subsequent implementation and interpretation; and</u></li> <li>ii. <u>Has primacy over the objectives and policies in the other chapters of the Plan, which must be consistent with the objectives in this Chapter.</u></li> </ul> <p>b. <i>This Chapter recognises and sets the statutory planning context for the other chapters of the Plan, in order that they:</i></p> <ul style="list-style-type: none"> <li>i. <i>Clearly articulate how decisions about resource use and values will be made in order to minimise:</i> <ul style="list-style-type: none"> <li>i. <i>reliance on resource consent processes; and</i></li> <li>ii. <i>the number, extent, and prescriptiveness of development controls and design standards in the rules, in order to encourage innovation and choice; and</i></li> <li>iii. <i>the requirements for notification and written approval;</i></li> </ul> </li> <li>ii. <i>Set objectives and policies that clearly state the outcomes that are intended for the <u>Christchurch district</u>;</i></li> <li>iii. <i>Recognise and provide for the relationships of Ngāi Tahu mana whenua and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, have particular regard to their role as kaitiaki and take into account the <u>principles of the Treaty of Waitangi</u>;</i></li> <li>iv. <i>Provide for the effective functioning of the urban environment of the <u>Christchurch district</u>, reflecting the changes resulting from the Canterbury earthquakes, including changes to population, land suitability, infrastructure, and transport;</i></li> </ul>

Plan	Relevant chapter	Extract
		<ul style="list-style-type: none"> <li>v. Facilitate an increase in the supply of housing, including by: <ul style="list-style-type: none"> <li>i. confirming the immediate residential intensification changes included in the <a href="#">Land Use Recovery Plan</a>; and</li> <li>ii. ensuring that the <i>District Plan</i> has capacity to accommodate a minimum of 55,950 additional dwellings by 2048; and</li> <li>iii. addressing further intensification opportunities, in line with the <a href="#">Land Use Recovery Plan</a> principle of supporting the <a href="#">Central City and Key Activity Centres</a>; and</li> <li>iv. having regard to constraints on environmental and infrastructure capacity, particularly with regard to natural hazards; and</li> <li>v. providing for a wide range of housing types and locations;</li> </ul> </li> <li>vi. Ensure sufficient and suitable development capacity and land for <i>residential activities</i>, commercial and industrial activities;</li> <li>vii. Provide for a range of temporary and construction activities as permitted activities, recognising the temporary and localised nature of the effects of those activities;</li> <li>viii. Provide, as appropriate, for transitional provisions for the future of temporary activities established under the <a href="#">Canterbury Earthquake (Resource Management Act Permitted Activities) Order 2011</a> after that order expires;</li> <li>ix. Set a clear direction on the use and development of land for the purpose of avoiding or mitigating natural hazards; and</li> <li>x. Use clear, concise language so that the Plan is easy to understand and use.</li> </ul> <p>c. ...</p> <p>d. <u>Focussing as it does on Strategic Directions, this Chapter provides a series of high-level objectives for the district, and leaves the articulation of activity-specific and location-specific objectives and policies to the subsequent chapters of the Plan. However, the objectives and policies in the other chapters of the Plan must be consistent with the objectives in this Chapter.</u></p> <p>e. <u>Within this Chapter, <a href="#">Objectives 3.3.1</a> and <a href="#">3.3.2</a> have primacy, meaning that the remaining objectives must be expressed and achieved in a manner consistent with <a href="#">Objectives 3.3.1</a> and <a href="#">3.3.2</a>. The other objectives in this Chapter are to be read as a whole and no statutory hierarchy applies.</u></p> <p>f. <u>In all other Chapters of the Plan, the objectives and policies must be expressed and achieved in a manner consistent with the objectives in this Chapter.</u></p>



Plan	Relevant chapter	Extract
		<a href="#"><u>(Proposed Plan Change 14)</u></a>
New Plymouth District Plan (Decisions version)	<p>General approach – District Plan Framework and strategic directions for:</p> <ul style="list-style-type: none"> <li>• historic and cultural (HC)</li> <li>• infrastructure and energy (IE)</li> <li>• national environment (NE)</li> <li>• rural environment (RE)</li> <li>• tangata whenua (TW)</li> <li>• urban form and development (UFD)</li> </ul>	<p><i>The District Plan is comprised of the following interrelated parts:</i></p> <ol style="list-style-type: none"> <li><b>1. Part 1 - Introduction and General Provisions.</b> <ol style="list-style-type: none"> <li>a. <i>These chapters explain the District Plan's context and how it works, and provide definitions that assist to interpret the District Plan. They also provide context and process-related information in relation to tangata whenua.</i></li> </ol> </li> <li><b>2. Part 2 - District-wide Matters</b> <ol style="list-style-type: none"> <li>a. <u><i>Strategic Objectives: The strategic objectives address key strategic and/or significant matters for the district and provide district-wide strategic considerations to guide decision making at a strategic level. All other objectives and policies in the District Plan are to be read and achieved in a manner consistent with the strategic objectives. The strategic objectives are not repeated in the other chapters in the District Plan but are given effect to by policies within those relevant chapters. For the purpose of plan development, including plan changes, the Strategic Objectives provide guidance on the key strategic or significant matters for the district that are relevant when developing District Plan provisions. For the purpose of plan implementation (including in the determination of resource consent applications and notices of requirement), the Strategic Objectives provide guidance on what the related objectives and policies in other chapters of the District Plan are seeking to achieve in relation to key strategic or significant matters for the district.</i></u></li> <li>b. <i>District-wide Matters: These relate to:</i> <ol style="list-style-type: none"> <li>i. <i>to specific areas, including overlays (e.g. significant natural areas). An overlay spatially identifies distinctive values, risks or other factors that require management in a different manner from underlying zone provisions. A number of overlays relate to matters of national importance under the Act; and</i></li> <li>ii. <i>specific activities that occur across the district (e.g. noise and earthworks).</i></li> </ol> </li> </ol> </li> <li><b>3. Part 3 - Area-specific Matters</b></li> </ol>

Plan	Relevant chapter	Extract
		<p>a. <i>Zones: A zone spatially identifies and manages an area with common environmental characteristics or where particular environmental outcomes are sought. The entire district is zoned and all land is identified as part of a 'zone' on the planning maps, with rules which manage activities in that particular zone. The zones seek to enable similar, compatible activities or effects to be located in appropriate areas together, while managing those that are incompatible.</i></p> <p>b. <i>Precincts: A precinct spatially identifies and manages an area where additional place-based provisions apply to modify or refine aspects of the policy approach or outcomes anticipated in the underlying zone(s) (e.g. for the port or the airport).</i></p> <p>c. <i>Development Areas: A development area identifies and manages areas that are suitable for urban growth purposes, where a structure plan applies. Additional provisions apply to enable integrated and coordinated growth in accordance with the structure plan for each area.</i></p> <p>d. <i>Designations: these areas identify where a designation is included in the District Plan under section 168, section 168A or clause 4 of Schedule 1 of the Act. Designations authorise the use of land for a particular project or public work (such as a school, police station, state highway, substation or other infrastructure). The District Plan rules do not apply to a public work, project or work undertaken by a requiring authority pursuant to the designation. However, if the designated land is used for a purpose other than the designated purpose, then the provisions of the District Plan do apply. Other people may not, without the prior written consent of the requiring authority, do anything in relation to the designated land that would impede the public work, project or work.</i></p> <p><b>4. Part 4 - Appendices</b></p> <p>a. <i>These contain technical information and data, such as schedules of identified areas, landscapes and features and design guides.</i></p> <p><b>5. Planning Maps</b></p> <p>b. a. <i>Electronic planning maps spatially define zones, areas, overlays and features referred to within the District Plan chapters. Although most rules apply spatially, there are some that do not.</i></p>

Plan	Relevant chapter	Extract								
		<p><i>Within Part 2 (excluding the Strategic Direction chapters, which only contain objectives) and Part 3 of the District Plan, each chapter contains objectives, policies, rules and standards to address resource management issues:</i></p> <ol style="list-style-type: none"> <li><i>1. Objectives are a statement of what is to be achieved to resolve a particular resource management issue or to promote an opportunity/positive outcome;</i></li> <li><i>2. Policies are the course of action to achieve or implement the objectives; and</i></li> <li><i>3. Rules and effects standards are tools used to implement or give effect to the policies. Other methods to implement the policies can include non-regulatory methods such as monitoring, advocacy and education.</i></li> </ol> <p>...</p> <p><b><i>HC – Historic and cultural</i></b></p> <p><u><i>For the purposes of preparing, changing, interpreting and implementing the District Plan all other objectives and policies in all other chapters of this District Plan are to be read and achieved in a manner consistent with these strategic objectives.</i></u></p> <table border="1" data-bbox="981 772 2018 1182"> <thead> <tr> <th colspan="2" data-bbox="981 772 2018 820"><b><i>Strategic Objectives</i></b></th> </tr> </thead> <tbody> <tr> <td data-bbox="981 820 1189 932"><i>HC-1</i></td> <td data-bbox="1189 820 2018 932"><i>The district's historic heritage contributes to a sense of place and identity and social and cultural well-being, and is recognised and provided for.</i></td> </tr> <tr> <td data-bbox="981 932 1189 1043"><i>HC-2</i></td> <td data-bbox="1189 932 2018 1043"><i>The cultural, spiritual and historical values associated with historic heritage, including sites and areas of significance to Māori, are protected from inappropriate activities.</i></td> </tr> <tr> <td data-bbox="981 1043 1189 1182"><i>HC-3</i></td> <td data-bbox="1189 1043 2018 1182"><i>Tangata whenua relationships, interests and associations with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes, and other taonga of significance, are recognised and provided for.</i></td> </tr> </tbody> </table> <p>...</p> <p><i>*The introductory phrase, underlined above the table of Strategic objectives for HC – Historic and Cultural is repeated for every topic in the strategic directions chapter (e.g. infrastructure and energy, natural environment etc).</i></p>	<b><i>Strategic Objectives</i></b>		<i>HC-1</i>	<i>The district's historic heritage contributes to a sense of place and identity and social and cultural well-being, and is recognised and provided for.</i>	<i>HC-2</i>	<i>The cultural, spiritual and historical values associated with historic heritage, including sites and areas of significance to Māori, are protected from inappropriate activities.</i>	<i>HC-3</i>	<i>Tangata whenua relationships, interests and associations with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes, and other taonga of significance, are recognised and provided for.</i>
<b><i>Strategic Objectives</i></b>										
<i>HC-1</i>	<i>The district's historic heritage contributes to a sense of place and identity and social and cultural well-being, and is recognised and provided for.</i>									
<i>HC-2</i>	<i>The cultural, spiritual and historical values associated with historic heritage, including sites and areas of significance to Māori, are protected from inappropriate activities.</i>									
<i>HC-3</i>	<i>Tangata whenua relationships, interests and associations with their culture, traditions, ancestral lands, waterbodies, sites, areas and landscapes, and other taonga of significance, are recognised and provided for.</i>									

Plan	Relevant chapter	Extract
Mackenzie District Plan	Part 2 – District Wide Matters / Strategic Directions	<p><i>This section of the Plan sets out the overarching strategic direction for the District Plan. This strategic direction responds to those resource management issues that are of particular importance to the Mackenzie District, matters of national and regional importance that are particularly relevant within the District, or issues that traverse more complex matters. The matters addressed in these chapters are then responded to, in an integrated and more detailed manner, across multiple chapters of the District Plan.</i></p> <p><u><i>For the purpose of plan development, including plan changes, the Strategic Objectives in this section, as well as other requirements in the RMA, provide direction for the development of the more detailed provisions contained elsewhere in the District Plan. For the purpose 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 to.</i></u></p> <p><u><i>There is no hierarchy between the stated Objectives i.e. no one Strategic Objective has primacy over another Strategic Objective and the Strategic Objectives should be read as a whole.</i></u></p>
Proposed Porirua District Plan	<p>Strategic direction for:</p> <ul style="list-style-type: none"> <li>• Centres, Employment and Industry (<b>CEI</b>)</li> <li>• Eastern Porirua (<b>EP</b>)</li> <li>• Functioning City (<b>FC</b>)</li> <li>• Historical and Cultural Heritage (<b>HCH</b>)</li> <li>• Housing Opportunities (<b>HO</b>)</li> <li>• Natural Environment (<b>NE</b>)</li> </ul>	<p><b>The Proposed Porirua District Plan contains the following statement within the introductory text for each of the Strategic directions listed in the left hand column.</b></p> <p>...</p> <p><i>The strategic objectives set the direction for the District Plan and help to implement the Council's community outcomes set out in its Long Term Plan. They reflect the intended outcomes to be achieved through the implementation of the District Plan.</i></p> <p><i>The objectives, policies and rules in Parts 2 and 3 of the District Plan implement the strategic objectives and reconcile any tensions between them.</i></p> <p><i>The strategic objectives will be particularly relevant for any future changes to the Plan and any significant resource consent applications.</i></p> <p><i>Details of the steps Plan users should take when using the District Plan are provided in the General Approach chapter.</i></p>

Plan	Relevant chapter	Extract
	<ul style="list-style-type: none"> <li>• Resilience, Efficiency and Energy (<b>REE</b>)</li> <li>• Rural Environment (<b>RE</b>)</li> <li>• Tangata Whenua (<b>TW</b>)</li> <li>• Urban Form and Development (<b>UFD</b>).</li> </ul>	
Dunedin City Plan (appeals version)	Chapter 2 – Strategic Directions	<p><b>2.1 Introduction</b></p> <p><i>The strategic directions section focuses on key issues for the city and establishes the overall management approach for the Plan, including zoning and other methods used in the Plan. These strategic directions reflect the strategic directions of the Spatial Plan for Dunedin adopted in September 2012, key goals for Dunedin identified by the community in the development of the Plan, and the purpose and principles of the Resource Management Act 1991.</i></p> <p><i>There are six overall strategic directions. Each strategic direction includes objectives and policies which outline key methods. The strategic directions include the spatial distribution policies necessary to achieve strategic city-wide objectives.</i></p> <p><i><u>The objectives and policies in the strategic directions section are generally incorporated into the objectives, policies and methods of the rest of the Plan, but they may also be relevant to the assessment of resource consent applications, notices of requirement for designations, and in directing future changes to the Plan.</u></i></p> <p><i><u>The strategic directions, and the objectives and policies within them, are not ordered in any particular way.</u></i></p>

**WAIMAKARIRI DISTRICT PLAN REVIEW**  
**MEMO TO HEARING PANEL**

<b>DATE:</b>	5 September 2023
<b>MEMO TO:</b>	Matthew Bacon
<b>FROM:</b>	Strategic Directions Chapter Author – Andrew Willis
<b>SUBJECT:</b>	Background to the development of the Strategic Directions and Urban Form and Development chapters and the issue of ‘primacy’.

**Introduction**

1. At the conclusion of Hearing Stream 5, the issue of ‘primacy’ in strategic directions was questioned by the Panel. The Council provided a memo to the Panel in early September 2023 setting out the intended approach to respond to the Panel’s questions. This approach included the Strategic Directions (SD) chapter author providing a memo on the background to the drafting of the chapter and the chapter’s primacy statement. This memo responds to this proposal.
2. While the Urban Form and Development chapter was drafted by a different author this memo will also touch on the different approach adopted in that.

**National Planning Standards**

3. The Proposed District Plan (PDP) chapter arrangement was driven by the National Planning Standards (NPS). As set out in s2.2.1 of the chapter s32, the NPS require a ‘strategic directions’ heading to be included in district plans, with chapters underneath that heading relating to key strategic or significant resource management matters (as set out in the NPS section 7)a.
4. There is no express requirement to have an SD chapter. The only chapter heading that is required is UFD chapter (as stated in the MfE NPS guidance),<sup>1</sup> because the UFD chapter is where councils are expected to put content relating to the NPS-UD. Section 7 simply stipulates that if the matters listed in section 7(1) are addressed that they must be located under the strategic direction heading.
5. There is no stated requirements in the NPS or its guidance that the SD chapter must be developed first or that the SDs have primacy over other Plan objectives. Nor is there any requirement or guidance for how SDs are to be applied to plan changes and resource consents. The NPS only states that strategic objectives ‘guide decision making at a strategic level’. It could be argued that making strategic directions have any stronger role than as a ‘guide’ for ‘decision making at a strategic level’ could actually be contrary to the NPS, because the NPS carefully prescribes the structure for district plans, and does not expressly envision or require a stronger hierarchy than set out in the NPS.
6. The MfE NPS guidance (page 6), states that the SD heading provides a location for the high-level direction that district councils are working towards for their city and/or district. The guidance notes that this is an area of emerging best practice in second generation plans and that SDs are often supported with objectives and policies that tend to relate to the whole city

---

<sup>1</sup> Guidance for District Plans Structure and Chapter Standards, April 2019

and/or district and may include cross-cutting issues. Some examples of strategic issues identified by the guidance in such chapters include:

- recognising special characteristics of a city or district;
- recognising the impacts of climate change and climate change mitigations adopted in the plan;
- significant investment in transport that will in turn influence land-use change over the life of the plan;
- strategic resource management issues specific to the city and/or district (eg, tourism and energy).

7. As they relate to a whole city or district, this can result in SDs that are general in nature.

### **Development of the PDP Strategic Directions Chapter**

8. The NPS was the guiding document for the preparation of the SDs. Consistent with the NPS, the SDs aimed to cover matters that were considered particularly significant for the whole District and address these at a high level, with the detail covered in the topic chapters. The SD s32 sets out how the SD chapter was developed and the SDs identified. The stated criteria are:

- Whether the topic covered is significant within the district or at a district level that would benefit from coverage in the SD Chapter;
- Whether the topic covered is a matter of national importance or something to have particular regard to;
- Whether the strategic direction is required at an overarching level to respond to an NPS or NES;
- Whether the topic covered is significant within a Greater Christchurch context or significant by virtue of direction provided in the Canterbury Regional Policy Statement, Urban Development Strategy or the Land Use Recovery Plan;
- Whether the strategic direction is required at an overarching level to respond to the District Development Strategy or town centre plans; and
- Whether the topic is strategically important for achieving integrated management and the purpose of the RMA.

9. Following the above approach, topics such as historic heritage, notable trees, cross boundary matters, earthworks, servicing standards, waste management, contaminated land, light, signs and temporary activities were not included as SDs. These matters are still important, but they were not identified as suitable for inclusion in the SD Chapter after applying the above criteria.

10. It is acknowledged that this exercise required judgement and that others may disagree with the conclusions reached. The option of covering more topics to create a 'line of sight' with each of the proposed chapters was considered, but discounted as each topic needed to meet the bulleted requirements. A risk with giving the SD chapter 'full' or stronger primacy is that consent and plan change applicants could argue that because a topic such as historic heritage is not covered in the SD chapter then it is not important and other matters covered by the SDs take priority. This approach is not appropriate as historic heritage is still important (and indeed is a s6 matter of national importance).

11. The SDs were workshopped internally with the Council's DPU (policy planning) and PIU (resource consents) teams and Councillors (DPRC) in January and February 2018. There was significant commonality in issues /directions identified across the three workshops. Some differences arose due to how the topics were grouped, for example natural character could be under environmental, rural or urban growth considerations, or covered separately.
12. The SD topics (and issue groupings) were also informed by the District Development Strategy (DDS)<sup>2</sup>. The DDS is arranged in topics / groupings such as: our environment (aligns to SD-O1 Natural Environment); Our Growing Communities (aligns to SD-O2 Urban Development); our rural area and small settlements (aligns to SD-O4 Rural land); and our connections (aligns to SD-O3 Energy an infrastructure).
13. The strategic directions objectives were developed through an iterative process, having regard to the provisions being developed through each of the chapters that cover the topic in more detail. All the chapter authors were required to identify the key matters the chapter covered. Towards the end of drafting, each chapter author was required to assess the relevant SD(s) and identify if the chapter was consistent with it these or not and to recommend SD amendments if required. As such, they and the individual chapters should be consistent. This approach was taken as the intention for the redrafted plan was that the plan is to be read as a whole.
14. Assuming this exercise was accurately completed, stronger primacy could be applied for the SDs in terms of developing the detailed chapters, without interpretation or unforeseen issues arising. While this approach could be applied, this approach was not considered necessary given the iterative drafting process adopted and that the plan was developed in one go – there would be no obvious benefit to be gained from this. I note that the SD introduction already states that for the purpose of District Plan development, including plan changes, the strategic objectives in this chapter provide direction for the more detailed provisions contained in the District Plan and as such, there is already a plan development hierarchy proposed, albeit a 'light touch' hierarchy.
15. The option of having only UFD provisions (i.e. with no SD chapter) was considered as these are the only ones required under the NPS. Under this approach, SD-O2 (Urban Development) would have been included in the UFD chapter along with the UFD provisions, with the individual chapters being relied upon to provide the required direction. This option was discounted as it was considered necessary to include a Ngāi Tahu mana whenua / Te Ngāi Tūāhuriri Rūnanga SD (SD-O5)<sup>3</sup> and the chapter would be 'un-balanced' if there was only this SD in it.
16. The option of including policies in the SD chapter (in addition to the UFD chapter) was considered. This option was discounted because of the greater likely overlap between the policies and the provisions contained within the topic-specific chapters. The overlap could

---

<sup>2</sup> Our District, Our Future Waimakariri 2048 District Development Strategy July 2018

<sup>3</sup> It is noted that the Mana whenua chapter does not include objectives within the chapter.



result in duplication or inconsistency, especially when developed through a submission and hearing process with amendment scope restrictions.<sup>4</sup>

17. Given the breadth of topic areas covered by the SDs, these needed to be grouped and aggregated. Grouping of sub-issues sometimes required the SDs to be worded such that they became an amalgam of the various RMA s6 and s7, CRPS, DDS and WDP chapter requirements and direction. A common consequence of such an approach is to 'soften' the language used, for example avoid, remedy, mitigate, recognise and encourage end up being covered by the single word 'manage'. This approach, while accurate, does not provide any direction for the management of the topic and therefore the SD has less usefulness. Given this, effort was made to avoid this approach, however 'manage' is still used in places (for example SD-O3(2)(b)(i) and (ii) for managing adverse effects from and on infrastructure). Giving SDs with aggregated language full or stronger primacy does not advance the Plan's response to the topic and can actually undermine the more detailed / nuanced approaches set out in the topic chapters. This is one of the reasons stronger primacy was not proposed in the SD chapter.
18. Another consequence of aggregated language is that the SD could end up being blunt and therefore inaccurate, rather than accurately reflecting the nuanced approach in the planning hierarchy. An example of this is SD-O1(2) covering natural character in the coastal environment (covered by the Natural Character Chapter and the Coastal Environment Chapter). This SD seeks:
  2. *the natural character of the coastal environment, freshwater bodies and wetlands is preserved or enhanced, or restored where degradation has occurred.*
19. RMA s6(a) requires the preservation and protection of natural character, while RMA s7(f) requires the maintenance and enhancement of the quality of the environment and amenity values. These sections do not strictly require the enhancement or restoration of natural character, although CRPS Objective 8.2.4(2) requires restoration or enhancement. The NZCPS Policy 13 includes very specific statements requiring: the avoidance of adverse effects on natural character only on areas with outstanding natural character; and for significant adverse effects on other areas of the coastal environment to be avoided, remedied or mitigated (this is the approach in the CE chapter for natural character), whereas SD-O1(2) appears to treat all natural character areas and effects in the same way. I note CE-O1 also requires maintenance (which is not specified in SD-O1(2), while NATC-P(4) seeks to promote opportunities to restore and rehabilitate natural character while CE-P3 seeks to enable opportunities to restore and rehabilitate natural character, rather than require it where degradation has occurred under SD-O1(2). When SD-O2 is applied with no stronger hierarchy that already proposed in the Plan, this aggregated and slightly inconsistent language is not overly problematic as the detail is in the chapters. However, if SD-O1(2) was applied with a stronger primacy for plan changes and also for resource consent applications it would arguably require greater protection, restoration and enhancement than the RMA and NZCPS requires and greater restoration than required in the Natural Character and Coastal Environment chapters.

---

<sup>4</sup> For example, a detailed submission might amend a chapter policy, but not the relevant SD policy, potentially creating misalignment.

20. Some SDs are not able to be implemented when assessed against individual plan changes or resource consents. An example of this is SD-O1(1) which seeks across the district that there is an overall net gain in the quality and quantity of indigenous ecosystems and habitat, and indigenous biodiversity. This SD is achieved through the combined protection of mapped and unmapped SNAs (ECO-R1), other indigenous vegetation clearance and management rules (e.g. ECO-R2), other district wide provisions (e.g. within the NFL and NATC chapters), and significantly, the bonus residential unit and allotment rules (ECO-R5 and ECO-R6). If applied with full primacy and individually against a plan change or resource consent application, arguably this SD goes beyond the RMA s6(c) protection and RMA s31 maintenance requirements.
21. As the SDs were not developed with the intention of having stronger primacy, some have been purposefully drafted as aspirational. An example of this is SD-O1(5) which seeks that across the District land and water resources are managed through an integrated approach which recognises the importance of ki uta ki tai to Ngāi Tahu and the wider community, and the inter-relationships between ecosystems, natural processes and with freshwater. There are no rules or cross boundary provisions that expressly seek to deliver this SD, although there are many rules, such as within the ECO and NATC chapters that help to implement it. If this SD had stronger primacy and is applied to individual plan changes or resource consent applications then this SD could be problematic as it is not clear how or when it is to be implemented.
22. Because the topic specific chapters were drafted at a much greater level of detail and addressed integration matters (such as natural hazard mitigation in NFL and SASM areas), the topic chapters address any tensions that occur between the topic chapters. This was not a required function of the SDs during drafting and therefore this benefit of primacy would not be achieved, or indeed would undermine the carefully considered approach in the topic chapters.
23. Overall, for the reasons set out above, I consider it would be acceptable for the SDs to have primacy over the objectives and policies in the other chapters of the Plan, which have been developed collectively at the same time to be in alignment. The current interpretation statement included in the SD instruction already provides a 'light' or 'soft' hierarchy for plan development, including plan changes. Given how the Plan was developed I am not sure of the value of any stronger approach for plan development. Given the shortcomings identified above and noting that it is the chapters and not the SDs that reconcile tension between competing provisions, I consider it would not be appropriate for the SDs to have primacy for resource consent applications and instead that all the objectives and policies in the Plan are equally considered relevant for these. This approach is consistent with a number of second-generation plans assessed later in this memo.

#### **Urban Form and Development Chapter**

24. This chapter has been drafted with the intention of having primacy. This was proposed given this chapter's requirement to give effect to the NPS-UD, the significant development pressures the District is under, and the desire to provide stronger direction in this chapter, including through greater detail provided from the proposed policies. I have not assessed whether this should change through this exercise, but understand that it will be assessed by chapter authors.

## Other District Plan Approaches

25. The Christchurch District Plan (CDP), expressly includes a statement that strategic directions should explicitly have primacy, providing ‘overarching direction’ for other chapters in the Plan. Although sharing a boundary, the CDP is not a good comparison example for the Waimakariri District Plan. Firstly, the plan was developed pre the NPS and as such it was open to the IHP to structure the plan how it wanted. Secondly, it was developed over three distinct stages, with decisions released during its staged development.<sup>5</sup> The SD chapter decision was one of the first decisions released and was intended to guide the remaining chapter development. This improved efficiency and certainty for subsequent chapter development (both the chapter drafters and submitters). Thirdly, the Plan was developed under a Statement of Expectations from central government which was intended to guide the whole plan review.<sup>6</sup> Some SDs, such as SD 3.3.3 (clarity of language) are directly attributable to this statement and there was value in the SD chapter addressing this statement upfront and ensuring it applied across the plan. Finally, the CDP was developed in the aftermath of the Canterbury earthquakes, where significant redevelopment was occurring and development uncertainty still remained. None of these factors exist for the Waimakariri District Plan.
26. Despite the CDP development context, I note that the Planning Experts’ Joint strategic directions version prepared as part of the development of the CDP SDs recommended that it be explicit that no hierarchy was intended between the objectives (and proposed policies) of the SDs and those of other chapters of the Replacement CDP.<sup>7</sup> Rather, the planners’ joint recommendation was that the provisions should be read as a whole, alongside each other – see the JWS sections copied below in italics.<sup>8</sup> I note the Panel did not follow this expert advice.

### *“Purpose of SD chapter*

*Agreed: The objective and policies in the Strategic Directions chapter provide direction for the rest of the plan and all resource management decision making by CCC.*

*Agreed Wording to be inserted in the Plan: “This chapter provides strategic objectives and policies for broad and collective matters of land use integration and recovery within the district. However the plan is to be read as a whole with other chapters providing more guidance on specific matters.”*

*Agreed Principle: The plan is to be read as a whole – the broad objectives and policies need to be considered alongside any zone or activity specific objectives and policies – no statutory hierarchy is intended.”<sup>9</sup>*

---

<sup>5</sup> The Strategic Direction Decision was dated 26<sup>th</sup> February 2015 and was one of the first decisions, whereas subsequent decisions were released through to the end of 2017.

<sup>6</sup> Schedule 4 of the Canterbury Earthquake (Christchurch Replacement District Plan) Order 2014): <https://legislation.govt.nz/regulation/public/2014/0228/latest/DLM6189907.html>

<sup>7</sup> Paragraph 101 IHP Decision on Strategic Directions and Strategic Outcomes (and Relevant Definitions) dated 26 February 2015.

<sup>8</sup> Unfortunately reasons were not provided in the JWS for this recommendation.

<sup>9</sup> CDP Planning Expert Conferencing Statement Drafting of Proposals 1-3 Regarding Strategic Directions dated 22 December 2024 – prepared by 11 planning witnesses representing the Council, Crown, Ngai Tahu and submitters (including infrastructure providers such as CIAL and Transpower and land developers / owners).

27. The Selwyn District Plan (SDP) appears to follow the CDP primacy approach, as does the reviewed New Plymouth District Plan. However, the draft Timaru District Plan and operative Mackenzie District Plan (MDP) SDs are more consistent with the WDP SD approach. The recently reviewed operative MDP SD chapter states as follows:

*For the purpose of plan development, including plan changes, the Strategic Objectives in this section, as well as other requirements in the RMA, provide direction for the development of the more detailed provisions contained elsewhere in the District Plan. For the purpose 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 to.*

28. The recently reviewed Operative Dunedin District Plan (DDP) SD chapter does not apply a hierarchy, even for plan development, stating:

*“The objectives and policies in the strategic directions section are generally incorporated into the objectives, policies and methods of the rest of the Plan, but they may [my emphasis] also be relevant to the assessment of resource consent applications, notices of requirement for designations, and in directing future changes to the Plan.”*

29. The Porirua District Plan appears to apply a hybrid approach. The SDs are stated as setting the direction for the District Plan and are stated as being particularly relevant for any future changes to the Plan and for significant resource consent applications. However, the plan states: *“the objectives, policies and rules in Parts 2 and 3 of the District Plan implement the strategic objectives and reconcile any tensions between them”*. In other words, the SDs do not act in an overruling or deciding way where there are tensions amongst the detailed chapter provisions.

30. I consider that there is clearly a divergence in approach across the assessed plans and this is to be expected given the nature of the chapter, that this is an area of emerging best practice in second generation plans, the NPS description of the chapter as a ‘guide’ for decision making at a ‘strategic level’ and the likely different approaches to drafting the SDs. Some plans express the SDs as having primacy for the interpretation of the other chapters, plan changes and resource consents (e.g. CDP and SDP). Other plans apply a primacy of sorts for the development of the chapters but not determining resource consent applications (e.g. MDP), while others apply no primacy at all (e.g. DDP).

### **Summary and Conclusion**

31. The SDs were developed with reference to identified criteria and grouped or aggregated into topics. They were developed iteratively and intended to be consistent / in alignment with the relevant chapter provisions. Because primacy was not intended while drafting, some SDs are arguably generic / blunt, while others are arguably aspirational. Depending on the level of primacy applied, these SDs could create application issues. A more detailed assessment of this will be provided by each chapter author.
32. Overall, for the reasons set out above (and in advance of the detailed assessment by the chapter authors), I consider it acceptable for the SDs to have some primacy over the objectives

and policies in the other chapters of the Plan, which have been developed collectively at the same time and are supposed to be consistent with the SDs, and also for plan changes.

33. Given the shortcomings identified above, I consider it would not be appropriate for the SDs to have primacy for resource consents applications or stronger primacy for plan development unless SDs were amended where required to be more accurate and directive. I have not assessed whether there is scope to make the required changes to the SDs as I expect this will be assessed by each chapter author in their assessments.