

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of Submissions and Further
Submissions on the
Proposed Wellington City
District Plan

Minute 58

Stream 11 Hearing Follow-Up

Minute 58 – Steam 11 Hearing Follow-Up

1. Following completion of the Stream 11 hearing on Friday 13 September, we have reviewed our notes of the hearing to identify follow-up actions.
2. Firstly, we record that we provided leave to various parties to provide additional material to us, as follows:
 - (a) Boston Real Estate Limited: We requested that Mr de Leijer provide us with a copy of the Certificate of Compliance that he referred to in his evidence. This is already in hand;
 - (b) Horokiwi Quarries Limited: We discussed with Ms Whitney the merits of an advice note in the ECO Chapter Rules providing greater clarity as to how Quarry extensions should be addressed. We gave Ms Whitney until close of Wednesday 18 September to provide us with draft wording of such an advice note. This is already in hand;
 - (c) WIAL: We gave WIAL leave to provide information on a variety of issues by close of Friday 20 September, as follows:
 - (i) General leave to reply to Forest and Bird’s legal submissions;
 - (ii) We requested that Ms O’Sullivan consider the potential for ECO-P33 to provide for temporary activities, and provide wording and Section 32AA evaluation if she recommends such a provision be added;
 - (iii) We requested that Ms O’Sullivan provide a discussion of Policy 24CC arrived at through joint witnessing conferencing in the GWRC RPS Change 1 process, with specific reference to the consistency of that policy with the NZCPS, having regard to the directions in Supreme Court’s majority decision in *Royal Forest and Bird Protection Society of New Zealand Inc v New Zealand Transport Agency* [2024] NZSC 26 (East/West);
 - (iv) We requested that Dr Anderson provide us with a map of the revised Lyall Bay SNA boundary he described verbally;
 - (v) We requested that Dr Anderson provide us with copies of the iNaturalist and eBird maps showing the locations of threatened bird sightings within and in the vicinity of the Lyall Bay and Moa Point SNAs that he discussed in his evidence;

- (vi) We requested that WIAL provide us with a legal analysis of what it means when built structures are described as being 'fixed', and in particular whether the Moa Point seawalls and reclaimed Moa Point Beach qualify in that regard.
- 3. We record that following its presentation to the hearing on 11 September, Greater Wellington Regional Council provided copies of maps and an expert assessment referenced in its presentation. We do not accept that material, for a number of reasons:
 - (a) We did not ask for it;
 - (b) The material contained expert analysis which, if it was going to be produced in evidence, should have been pre-circulated not later than 28 August; and
 - (c) Related to the previous point, the material was clearly prejudicial to other submitters, who have had no opportunity to respond to it.
- 4. Turning to the Council's position, as previously, we have considered issues on which we would be assisted by further feedback from the Council.
- 5. Firstly, in relation to legal issues, we request that Mr Whittington:
 - (a) Respond to the legal analysis we anticipate WIAL will provide on the interpretation of the term 'built structures' in the NPSIB definition of 'habitat';
 - (b) Confirm his view as to whether Sections 32 and 33 of the Legislation Act apply to completion of the PDP hearing process at first instance.
- 6. In relation to economic issues, we request that Mr Norman provide us with a table identifying the effect of the proposed rule constraining clearance of indigenous biodiversity outside SNAs on realisable Plan-enabled building capacity, considering variously the rule as it would operate with an exception for clearance of up to 100m², up to 200m² and up to 300m². Mr Norman has leave to provide any covering explanation he believes would be helpful for the Panel to understand his analysis.
- 7. We request that subject to Wildlands being provided with access to the relevant properties, Mr Goldwater provide additional commentary on the SNAs identified over the properties of Mr Sigal, Ms Sparagna, and Dr Layton. We also request that Mr Goldwater comment on whether the boundaries of

the SNA identified on road reserve on The Rigi, adjacent to Mr Edmonds' property, should be redrawn to exclude areas occupied by garages, cable car equipment and/or driveways. We also request that Mr Goldwater provide feedback on whether the SNA at 62 Kaiwharawhara Road merits recognition, should the Panel determine that the part of the site currently zoned NOSZ should not have an SNA identified over it (i.e. if the SNA were left covering part of the area on the site zoned Mixed Use).

8. Lastly, we have a number of requests for Mr McCutcheon to provide further feedback, as follows:
- (a) Can Mr McCutcheon please provide advice as to the number of properties within the now operative HRZ that had SNAs notified over them in the draft District Plan, and the approximate area of those SNAs?
 - (b) Can Mr McCutcheon please confirm how many additional Residential zoned properties there are not previously identified as covered by draft SNAs, variously with:
 - (i) Less than 100m² of indigenous vegetation;
 - (ii) Less than 200m² of indigenous vegetation;
 - (iii) Less than 300m² of indigenous vegetation;
 - (iv) 300m² or more of indigenous vegetation;
 - (c) Can Mr McCutcheon please confirm the extent of mana whenua input on the identification of relevant SNA values identified in the Proposed Plan?
 - (d) Can Mr McCutcheon please advise the status of the Te Ao Māori Plan Change and his prediction as to the timeline for that Plan Change to be notified?
 - (e) Can Mr McCutcheon please advise the location of the land in Tawa referenced in his Section 42A Report at paragraph 196?
 - (f) In relation to the commentary at page 77 of the Section 42A Report responding to Mr Insull's submissions, can Mr McCutcheon please both provide feedback on the relevance, if any, of the material produced in Stream 8 discussing the presence of speargrass weevil, and advise whether some of the species currently noted in WCC144 should be deleted (and if so which ones)?

- (g) Does Mr McCutcheon have any further commentary on the Boston Real Estate submission in light of the Certificate of Compliance Mr de Leijer has provided to the Panel?
- (h) What is Mr McCutcheon's final view on the appropriate wording of ECO-P9. In particular, should it refer to minimising effects, and if not, what standard of effects management should be referenced, and why?
- (i) What is Mr McCutcheon's final view on the appropriateness of the definition of 'tree'. Should there be a definition, and if so, what should it say?
- (j) Should ECO-R4-1a and R4-2a refer to an existing area of indigenous vegetation, rather than existing indigenous vegetation?
- (k) Should the existing reference in recommended ECO-R4 to flood and hazard control works be deleted on the basis that they are 'infrastructure'?
- (l) Should a firebreak exception be added to ECO-R4-2?
- (m) Please provide details of the rules in the Auckland Unitary Plan governing removal of indigenous biodiversity outside SNAs (or their equivalent);
- (n) Should the proposed Introduction to the ECO Chapter be amended:
 - (i) To recognise that the NPSIB will only be implemented in part by the Chapter;
 - (ii) To qualify the reference to a continuing decline in biodiversity;
 - (iii) To reference REG as being governed within a stand-alone chapter;
 - (iv) To retain a reference to RPS Policy 23, at least as regards its recognition of mana whenua values.
- (o) Can Mr McCutcheon please discuss whether he considers, following the hearing, there to be merit in adding a reference in ECO-O1 to the coastal environment, as proposed by the Department of Conservation?
- (p) Should reference to infrastructure in the notified ECO-P2 be deleted?
- (q) Can Mr McCutcheon please confirm his response to TRoTR's submission regarding deletion from notified ECO-P2(6) of reference to commercial use?

- (r) Can Mr McCutcheon please provide commentary on the potential for an enhanced non-statutory method based around potential incentives for protection of SNAs, appropriately qualified to recognise the need for Council support to be provided for through the LTP process?
- (s) Can Mr McCutcheon please consider and provide commentary on the inter-relationship (if any) between ECO-R1 and the regulations governing exclusion of stock from waterways and their margins?
- (t) Can Mr McCutcheon please provide commentary on the desirability (or otherwise) of specific reference in ECO-R1 to provision of accessways on general land to SASMs?
- (u) Please identify the source of scope for the suggested information requirement discussed in the Section 42A Report at paragraph 664?
- (v) Is there merit in inserting an advice note in ECO-S1 referencing the regulations restricting vegetation in proximity to electricity lines?
- (w) Is there merit in amending ECO-S2 and S3 to specify a depth and/or area of vegetation removal in relation to activities other than access tracks?
- (x) Should Appendix 3 be amended to allow financial compensation to be offered?
- (y) Can Mr McCutcheon please comment on whether Appendix 15(2)(c) needs to be clarified as to when and how taonga are 'identified'?
- (z) Can Mr McCutcheon please provide additional commentary on his paragraph 763, given the potential relevance of maritime navigation aids?
- (aa) In relation to Section 42A Report paragraph 855, do the submissions that have sought implementation of the NPSIB provide scope for the amendment of the boundary to this particular SNA?
- (bb) In relation to notified ECO-R3-1a[v], should this refer to protection, as per ECO-P9 and is a verb required so that it is clear what mana whenua might do in accordance with the principle of kaitiakitanga?
- (cc) Can Mr McCutcheon please respond as appropriate, to the additional information we anticipate that WIAL and Horokiwi Quarries Limited will provide in accordance with leave reserved as above?

- (dd) Does Mr McCutcheon have any response to the drafting issues identified in Mr Anderson's submissions for Forest and Bird?
 - (ee) As regards the presentations of Mr Sigal and Ms Sparagna:
 - (i) Do those presentations raise an issue in Mr McCutcheon's mind regarding the potential that the proposed provisions are precluding reasonable use of the land in question, and if so what amendments might be required, taking account of Section 85 of the Act?
 - (ii) Can Mr McCutcheon please provide an analysis of rural properties, identifying any properties with more than, say, 15% of the land area the subject of an SNA, confirming the relevant percentage in each case?
 - (iii) More generally, at what point (whether in terms of percentage coverage or otherwise) does the identification of SNAs prevent reasonable use of rural land, and how should the Panel address the issue if it finds such a situation to have occurred?
 - (ff) In relation to Mr Edmonds' presentation, should the proposed rule governing indigenous biodiversity removal outside SNAs be amended to provide specifically for vacant sites, and if so, how would Mr McCutcheon suggest that this be done?
 - (gg) In relation to the presentations of Dr Layton and Mr West, can Mr McCutcheon please provide commentary on the merits of the rules exempting areas already the subject of QEII covenants, and/or private covenants?
 - (hh) Can Mr McCutcheon please provide comment on the case example put before the Panel by Mr Kelly of a large block of residentially zoned land with extensive areas of indigenous vegetation - whether, in particular, the suggested provision for 100m² of indigenous vegetation clearance is appropriate in that situation?
9. As previously, our requests are without prejudice to the Council's right to reply on any issues it has identified during the course of the hearing that warrant a response.



Trevor Robinson
Chair
For the Wellington City Proposed District Plan Hearings Panel
Dated 17 September 2024