

Wellington City Council

Hearing of Submissions and Further Submissions

on

Proposed District Plan

Report and Recommendations of Independent Commissioners

Hearing Stream 11

Report 11

Ecosystems and Indigenous Biodiversity INF-ECO Sub-Chapter

Commissioners

**Trevor Robinson (Chair)
Elizabeth Burge
Lindsay Daysh
Miria Pomare**

TABLE OF CONTENTS

1	INTRODUCTION.....	3
1.1	Topics of Hearing	3
1.2	Statutory Background.....	3
1.3	Hearing Arrangements	5
2	KEY ISSUES IN CONTENTION	9
2.1	Introduction	9
2.2	SNAs on residentially zoned land.....	15
2.3	SNAs on Private Rural Land.....	21
2.4	Indigenous Biodiversity Outside SNAs	25
3	SPATIAL SNA COVERAGE.....	32
4	OTHER GENERAL SUBMISSIONS	36
5	ECOSYSTEMS AND INDIGENOUS BIODIVERSITY CHAPTER AND RELATED PROVISIONS.....	38
5.1	General Submissions in Support or Opposition	38
5.2	Definitions	40
5.3	New Provisions Sought	47
5.4	New Objectives Sought.....	48
5.5	New Policies Sought	49
5.6	ECO Introduction.....	57
5.7	ECO Objectives as Notified.....	61
5.8	ECO Policies as notified.....	66
5.9	ECO Rules	80
5.10	ECO Standards.....	96
5.11	Appendix 2 - Biodiversity Offsetting.....	103
5.12	Appendix 3: Biodiversity Compensation	108
5.13	Appendix 15 - Ecological Assessment.....	114

5.14	Schedule 8 – Significant Natural Areas	117
5.15	Schedule 9 – Indigenous Tree Sizes	118
6	INFRASTRUCTURE – ECOSYSTEMS AND INDIGENOUS BIODIVERSITY CHAPTER (INF-ECO).....	119
6.1	General Submissions	121
6.2	New INF-ECO Provisions.....	123
6.3	INF-ECO Introduction.....	125
6.4	INF-ECO-Policies.....	126
6.5	INF-ECO Rules	132
6.6	INF-ECO Standards	138
6.7	Minor Consequential Changes	142
7	ALIGNMENT WITH PREVIOUSLY DETERMINED PROVISIONS.....	142
8	CONCLUSIONS.....	144

1 INTRODUCTION

1.1 Topics of Hearing

1. This Report addresses the matters heard as part of Stream 11 of the Proposed District Plan (**PDP**) process.
2. The subject matter of the Stream 11 was Ecosystems and Indigenous Biodiversity. In the initial Stream 11 hearing we heard submissions on:
 - (a) The Ecosystems and Indigenous Biodiversity (ECO) Chapter;
 - (b) Schedule 8 – Significant Natural Areas (SNAs);
 - (c) APP2 – Biodiversity Off-setting;
 - (d) APP3 – Biodiversity Compensation;
 - (e) APP15. – Ecological Assessment; and
 - (f) The Infrastructure – Ecosystems and Indigenous Biodiversity (INF-ECO) Sub-Chapter.
3. In the subsequent Wrap-Up Hearing, we heard submissions on the Infrastructure National Grid (**INF-NG**) Sub-Chapter relating to indigenous biodiversity as it affects and is affected by the National Grid. That is addressed in Report 11.
4. Our Report follows the format of Mr McCutcheon’s Section 42A Report, addressing the additional issues heard in the Wrap-Up Hearing at the end.

1.2 Statutory Background

5. The topics before us were heard pursuant to Part 1 of the First Schedule to the RMA. We refer readers to Report 1A for a discussion of the background to this Report, noting that matters discussed in Report 1A specific to the Intensification Streamlined Planning Process (ISPP) are not relevant to this hearing stream. In particular, Report 1A sets out relevant background on:
 - (a) Appointment of Commissioners;
 - (b) Notification and submissions;
 - (c) Procedural directions;
 - (d) Conflict management;

(e) General approach taken in Reports; and

(f) Abbreviations used.

6. As foreshadowed in Report 1A, we have adopted an exceptions approach to the matters before us, focussing principally on matters put in contention by the parties who appeared before us and aspects of the relevant Section 42A Reports we felt required closer examination. If we have not addressed a submission point in our Report, it is because we agree with the recommendations of the relevant Section 42A Reporting Officer.
7. Report 1B, which addresses strategic objectives, together with the Council's decisions on our recommendations in that Report, also provides relevant background to this Report.
8. We note that the provisions of the National Policy Statement for Indigenous Biodiversity 2023 (**NPSIB**) assume particular importance in our consideration of the matters we heard in this hearing.
9. The statutory framework governing the matters being heard in Stream 11 was made more complex by two processes going on in parallel with our hearing. Firstly, the hearing of submissions on Plan Change 1 to the Wellington Regional Policy Statement (**RPS Change 1**) was approaching a conclusion at the time of our hearing and decisions on submissions were expected soon after its completion. Prudently, Mr McCutcheon took note of the final Reply of the Regional Council's Reporting Officer, and we requested that, as part of his Reply he alert us to any changes from that position which, in his view, caused him to alter his recommendations. In the event, Mr McCutcheon did not consider that the Regional Council's decisions altered his recommendations
10. We gave Stream 11 parties leave to provide feedback on the Regional Council's decisions from their perspective and the only comment received¹ confirmed agreement with Mr McCutcheon's analysis. We proceed on that basis.
11. Secondly, prior to the hearing commencing, material changes relating to the application of the NPSIB had been proposed in the Resource Management (Freshwater and Other Matters) Amendment Bill. At the time of our hearing, the Select Committee's Report on

¹ From Transpower

that Bill was awaited. The Select Committee reported shortly thereafter, and the Bill was enacted on 24 October 2024. It took effect the following day.

12. We asked Mr McCutcheon to provide us with a review of the Resource Management (Freshwater and Other Matters) Amendment Act 2024 (**the Amendment Act**). His review, dated 5 November 2024, noted that the Parliamentary process had resolved some ambiguities in the Bill, but the changes did not cause him to change any of his recommendations.
13. Again, we gave the parties the opportunity to provide feedback on Mr McCutcheon's analysis. Some parties interpreted that leave as an opportunity to comment on Mr McCutcheon's reply more broadly. We have disregarded those contributions as falling outside the leave reserved. Counsel for Forest and Bird, however, provided submissions emphasising what he regarded as a significant aspect of the Amendment Act: that it removed the impediment previously found in the Bill as introduced to identification and implementation of new SNAs in this process. That prompted a material shift in position from Forest and Bird. In summary, it reverted to the position in its submission seeking that SNAs be identified in the Plan over urban residential land. That is a key issue in contention that we will discuss at length later in this report.

1.3 Hearing Arrangements

- (a) The Commissioners who sat on Hearing Stream 11 were:
 - (b) Trevor Robinson (Barrister) as Chair;
 - (c) Elizabeth Burge (Planner);
 - (d) Lindsay Daysh (Planner); and
 - (e) Miria Pomare (Resource Management Consultant).
14. The Stream 11 hearing commenced on 9 September 2024. The Hearing Panel sat for all five days of that week, with the hearing concluding at approximately 2pm on Friday 13 September. Over the course of the hearing, we heard from the following parties:
 - (a) For Council:
 - Nick Whittington (Counsel);
 - Adam McCutcheon (Planning);
 - David Norman (Economics);

- Nick Goldwater (Ecology).

(b) For Wellington International Airport Limited (WIAL)²:

- Amanda Dewar (Counsel);
- Jo Lester;
- Dr Michael Anderson (Ecology);
- Kirsty O'Sullivan (Planning).

(c) For Greater Wellington Regional Council (**GWRC**)³:

- Chloe Nannestad;
- Pam Guest.

(d) For Royal Forest and Bird Protection Society (**Forest and Bird**)⁴:

- Peter Anderson (Counsel).

(e) Dr Paul Blaschke⁵;

(f) For Lincolnshire Farm et al⁶:

- Rod Halliday.

(g) For Helen Grove⁷:

- Sky Sigal;
- Helen Grove;
- Eleonora Sparagna.

(h) For Johnsonville Community Association (**JCA**)⁸:

- Warren Taylor;

² Submission #406, Further Submission #36

³ Submission #351, Further Submission #84

⁴ Submission #345, Further Submission #85

⁵ Submission #435, Further Submission #129

⁶ Submission #25, Further Submission #75

⁷ Submission #197

⁸ Submission #429, Further Submission 114

- Mary Therese.

(i) For Horokiwi Quarries Limited⁹:

- Ross Baker;
- Vaughan Keesing (Ecology);
- Pauline Whitney (Planning).

(j) Graeme Doherty¹⁰;

(k) David Edmonds¹¹;

(l) For Tyers Stream Group¹²:

- Lynn Cadenhead.

(m) For Terawhiti Farming Co Ltd¹³, Te Kamaru Station Ltd¹⁴, and Te Marama Ltd¹⁵:

- Michael Grace;
- Steve Watson;
- Christine Watson.

(n) For Boston Real Estate Ltd¹⁶:

- Cameron de Leijer (Surveying);
- David Gibson.

(o) Steve West¹⁷;

(p) Dr Brent Layton¹⁸;

(q) For Trelissick Park Group¹⁹:

⁹ Submission #271, Further Submission #28

¹⁰ Further Submission #78

¹¹ Submission #1, Further Submission #22

¹² Submission #221

¹³ Submission #411

¹⁴ Submission #362

¹⁵ Submission #337

¹⁶ Submission #220

¹⁷ Submission #2, Further Submission #110

¹⁸ Submission #164

¹⁹ Submission #168

- Anne Tuffin;
- Peter Reimann.

(r) For Guardians of the Bays²⁰:

- Yvonne Weeber.

(s) Peter Kelly²¹;

(t) For WCC Environmental Reference Group²²:

- George Curzon-Hobson.

15. We also received tabled statements from:

(a) Smith Geursen²³ and John Mulholland²⁴;

(b) Powerco Limited²⁵; and

(c) Chorus New Zealand Limited, Spark New Zealand Trading Limited, One New Zealand Group Limited and Fortysouth Group LP (**Telcos**)²⁶.

16. Following the hearing we received additional material pursuant to leave reserved in our Minute 58:

(a) Mr de Leijer provided us with a copy of the Certificate of Compliance that he had discussed in his evidence for Boston Real Estate Limited;

(b) Ms Whitney provided us with a brief note with draft wording for Plan provisions on behalf of Horokiwi Quarries Limited;

(c) WIAL provided us with:

- (i) Additional legal submissions;
- (ii) Supplementary planning evidence from Ms O'Sullivan; and
- (iii) Copies of maps Dr Anderson had discussed as part of his evidence.

²⁰ Submission #452, Further Submission #44

²¹ Submission #16

²² Submission #377, Further Submission #112

²³ Submission #475

²⁴ Submission #497

²⁵ Submission #127, Further Submission #61

²⁶ Submission #99, Further Submission #25

17. We also received and declined to accept:
- (a) additional material, including expert commentary, provided by GWRC for reasons set out in Minute 58; and
 - (b) a commentary on the ridgeline and hilltop overlay as it affects the Grove/Sigal property on Hawkins Hill Road authored by Mr Sigal on the basis that the ridgeline and hilltop overlay was not the subject of the Stream 11 hearing, and Ms Grove's submission did not seek relief in relation to that overlay.
18. The Council provided a comprehensive written reply on 25 November 2024. This was supplemented by the commentary on the implications of the Resource Management (Freshwater and Other Matters Amendment Act) discussed above, and a revision to his recommendation in relation to the SNA identified over 328 Hawkins Hill Road, deleting an additional area on the basis of further ecological advice Mr McCutcheon had received.
19. We record that on 10 September, the Panel undertook a site visit following conclusion of the day's hearing, visiting the parts of Lyall Bay and Moa Point Beach where WIAL seeks that the SNA notation be uplifted, and the lower section of The Rigi, which is the subject of Mr Edmonds' submission. Subsequently, on 6 November, we visited 328 Hawkins Hill Road (the Grove/Sigal property) and 287 South Karori Road (the Layton property). The Panel thanks the owners of the latter two properties for hosting us and showing us around.

2 KEY ISSUES IN CONTENTION

2.1 Introduction

20. Mr McCutcheon summarised the key resource management issues in his Section 42A Report as being:
- (a) The principle of identifying Significant Natural Areas considering their impacts on property rights;
 - (b) How the NPSIB should be implemented;
 - (c) The tightening up of policy and rule frameworks in response to the NPSIB; and
 - (d) How indigenous biodiversity outside of Significant Natural Areas should be managed.

21. We will address the detail of the policy and rule frameworks later in this Report, but in this section of our Report, we will address the other three points, which tend to overlap. We will approach them under three headings:
- (a) SNAs on privately owned residential zoned land;
 - (b) SNAs on privately owned rural land;
 - (c) Indigenous biodiversity outside identified SNAs.
22. First, however, we need to discuss the regulatory framework within which these issues need to be considered in greater detail, and summarise the development of the PDP as it relates to these issues.
23. Consideration of indigenous biodiversity takes place against a background of large-scale loss of biodiversity across New Zealand that Mr McCutcheon advised was still continuing. He also noted, however, the efforts to retain biodiversity by Council in recent years through its 'Backyard Taonga' Project. We are also aware of the beneficial effects that the establishment and operation of Zealandia has had on indigenous biodiversity, particularly native birdlife, across large parts of the Wellington urban area and, more recently, extensive community efforts to enhance biodiversity through predator eradication and control. Submitters drew our attention in particular to their voluntary participation in the Capital Kiwi programme involving re-establishment of a wild kiwi population over a large area west of the urban area of the city²⁷.
24. Summarising the position within Wellington city, Mr McCutcheon described it as a case of 'unders and overs', with some aspects of indigenous biodiversity thriving, and others under pressure.
25. First in time to respond to those issues, the Operative Regional Policy Statement, which we are bound to give effect to, directed that District Plans identify and evaluate indigenous ecosystems and habitats with significant indigenous biodiversity values within the Wellington Region against specified criteria (Policy 23), and provide policies, rules and methods to protect such indigenous ecosystems and habitats from inappropriate subdivision, use and development (Policy 24).
26. That instruction is clearly not absolute, but the qualification referring to inappropriate subdivision, use and development needs to be read against the background of the

²⁷ See <https://www.capitalkiwi.co.nz/>

Supreme Court's decision in *EDS v The New Zealand King Salmon Company Limited*²⁸. The majority of the Court found that similar wording in the NZCPS and in some of the sub-sections of Section 6 of the RMA should be interpreted "*against the backdrop of what is sought to be protected or preserved*", rather than providing a wide-ranging discretion to determine what might be 'appropriate'.

27. That suggests that the qualification to the requirement in the Regional Policy Statement to protect indigenous ecosystems and habitats with significant indigenous biodiversity values was more limited than it would appear at first blush.
28. Seeking to implement that regional direction, the Council undertook extensive analysis of indigenous biodiversity across the district and identified a large number of SNAs across both rural and urban areas. The draft District Plan that was circulated showed the proposed SNAs and we understand they were the subject of extensive submissions, both as to the spatial boundaries shown, and the desire evident in the draft District Plan that those areas be identified and protected.
29. Mr McCutcheon noted that the draft District Plan was accompanied by an invitation to request a site visit, and as a result a total of 148 site visits to private property took place. We heard evidence that the boundaries of some SNAs were altered following ground-truthing of the necessarily high level assessment that formed the basis for the initial identified SNAs.
30. As part of the process for finalising the PDP for notification, the then Planning and Environment Committee of the Council resolved that SNAs on residentially zoned properties be removed from the notified District Plan "*until the National Policy Statement on Biodiversity has been gazetted and a SNA incentives programme has been developed and considered by Council*".
31. Mr McCutcheon advised us that as a result of this decision, some 181 hectares of previously identified urban SNAs were removed from the PDP as notified. He advised further that that decision affected some 1,300 private landowners. SNAs on Council land (principally but not solely within the Inner and Outer Town Belt) and on privately owned rural land remained subject to the provisions of the ECO Chapter related to SNAs. Mr McCutcheon advised us that a total of 5,239 hectares of SNA were identified in the notified PDP, affecting approximately 400 private landowners.

²⁸ [2014] NZSC 38 at [105]

32. The Plan was notified in mid-July 2022. Subsequent progress on the incentives programme councillors envisaged, however, has stalled. Mr McCutcheon advised that competing financial priorities led to the draft programme officers had developed not being brought forward into the 2024 Long Term Plan. We do not know when, or if, it will be progressed in the future.

33. Almost exactly a year after notification of the PDP, the NPSIB was gazetted. The NPSIB has one objective, worded as follows:

“The objective of this National Policy Statement is:

- (a) to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date; and*
- (b) to achieve this:*
 - (i) through recognising the mana of tangata whenua as kaitiaki of indigenous biodiversity; and*
 - (ii) by recognising people and communities, including landowners, as stewards of indigenous biodiversity; and*
 - (iii) by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity; and*
 - (iv) while providing for the social, economic and cultural wellbeing of people and communities now and in the future.”*

34. 17 policies support that objective and provide direction as to how it is achieved. Among other things, those policies direct:

- (a) Adoption of a precautionary approach when considering adverse effects on indigenous biodiversity (Policy 3);
- (b) Management of indigenous biodiversity in an integrated way, within and across administrative boundaries (Policy 5);
- (c) Identification of SNAs using a consistent approach (Policy 6);
- (d) Protection of SNAs “by avoiding or managing adverse effects from new subdivision, use and development” (Policy 7);
- (e) Recognising and providing for the importance of maintaining indigenous biodiversity outside SNAs (Policy 8);
- (f) Providing for both specified established activities within and outside SNAs and specified other activities contributing to social, economic, cultural, and environmental wellbeing (Policies 9 and 10);

- (g) Promoting and providing for restoration of indigenous biodiversity (Policy 13); and
- (h) Promoting increased indigenous vegetation cover in both urban and non-urban environments (Policy 14).
35. Clause 4.1 of the NPSIB directed that every local authority give effect to it “as soon as reasonably practicable”. A longstop deadline for public notification of Plan Changes to give effect to the NPSIB was specified of 8 years after the NPSIB’s commencement (i.e. by early August 2031).
36. In his Section 42A Report²⁹, Mr McCutcheon summarised areas in which the notified Plan was inconsistent with the NPSIB as:
- “a. Being focused on the protection of significant biodiversity, rather than the maintenance of biodiversity generally;*
- b. Being more enabling of modifying SNAs for activities that do not have a need to locate within a SNA (eg do not have a functional or operational need);*
- c. Not containing the required avoidance framework for effects on SNAs;*
- d. Omitting provisions to protect indigenous biodiversity outside of identified SNAs; and*
- e. Not containing carve-outs for national grid electricity transmission infrastructure.”*
37. Importantly, however, Mr McCutcheon summarised the approach Council had undertaken to identifying SNAs based on the Operative Regional Policy Statement as being very similar to that directed by the NPSIB. A detailed examination of the differences undertaken by Wildlands (Council’s Ecology advisors) did point out some potential for the differences between the two approaches to produce additional areas qualifying as SNAs, and vice versa. However, it appeared to us that such areas would be very much the exception rather than the rule.
38. As noted above, the Regional Policy Statement was the subject of RPS Change 1, the hearing of which occurred in parallel with the PDP. The Regional Council decisions version of RPS Change 1 was notified on 4 October 2024 and exhibits a clear intention to give effect to the NPSIB where possible within the constraints of existing submissions and information available to the Regional Council. Relevant to the matters we have to consider, we note that RPS Change 1 (as per Regional Council decisions) extended Policy 24 to include “other significant habitats of indigenous fauna” and inserted

²⁹ Section 42A report of Adam McCutcheon, paragraph 88

direction that District Plan policies, rules and methods to protect be put in place “as soon as reasonably practicable, and by no later than 4 August 2028”.

39. As previously noted, the Resource Management (Freshwater and Other Matters) Amendment Act 2024 took effect on 25 October 2024. As regards the NPSIB and management of SNAs, this Amendment Act introduced a three year pause in the obligation to give effect to the NPSIB as soon as practicable. As Mr McCutcheon pointed out, however, that pause does not apply to protection of indigenous biodiversity outside SNAs. In addition, and as noted by counsel for Forest and Bird, the new section 78(6)(b) directs that the provisions of the Amendment Act in relation to SNAs do not affect the completion of, among other things, a Proposed Plan
40. We interpret section 78(6)(b) as having the result that we should consider how we might give effect to the NPSIB without reference to the amendments to the Act effected by the Resource Management (Freshwater and Other Matters) Amendment Act 2024.
41. As regards the potential for identification of SNAs, or introduction of new controls on clearance of indigenous biodiversity not within SNAs, within the Wellington Urban Area, the provisions of the National Policy Statement on Urban Development 2020 (**NPSUD**) also need to be considered.
42. Mr McCutcheon’s view, as set out in his Section 42A Report, was that SNAs on residentially zoned properties would not function as a qualifying matter for the purposes of the NPSUD, and the statutory provisions directing its implementation, because they do not modify a density standard. Discussing the point with Mr Whittington, Counsel for the Council, however, he agreed that if a SNA covered more than 50% of a property, that would prevent development with the site coverage mandated in the Medium Density Residential Standards (**MDRS**) and would need to be justified as a qualifying matter. He also accepted that even if a SNA covered less than 50% of a site, the fact that it precluded development in practice of 50% of the property might possibly also need to be justified as a qualifying matter.
43. Be that as it may, Mr McCutcheon acknowledged that regulatory controls related to biodiversity on a residentially zoned site would curtail the ability to use the permitted activity rule and standards of the MDRS to construct up to three residential units. That fact has implications for implementing the objectives and policies of the NPSUD that we also need to take into account.

44. Nor, in our view, are the issues limited to achieving the MDRS. We asked Mr McCutcheon to consider the potential constraint on development of sites zoned for high density residential development. In his Reply, he gave us a map showing a number of sites in Ngaio/Khandallah where SNAs have been identified in the draft District Plan on land that is now zoned HRZ. There is also one area within the Aro Valley.
45. The intention of the NPSUD is that land zoned HRZ be able to be developed to a significantly greater extent than land zoned MRZ. This heightens the level of potential conflict as between the objectives and policies of the NPSUD and the NPSIB that we need to consider.

2.2 SNAs on residentially zoned land

46. At paragraph 181 of his Section 42A Report, Mr McCutcheon noted some 14 submitters and organisations either neutral or supportive of the identification of SNAs on residential land.
47. At paragraphs 182-183, he listed a further 13 submitters opposed to any subsequent identification of SNAs on residential land, along with an additional 7 seven submitters opposed to identification of SNAs on private land, irrespective of location.
48. Analysing these competing submissions, Mr McCutcheon acknowledged that the NPSIB does not distinguish between urban residential land and other land. If indigenous biodiversity on a site meets the specified criteria, SNAs are required to be identified, irrespective of zoning. Notwithstanding that, Mr McCutcheon did not recommend acceptance of submissions seeking identification of SNAs on residentially zoned land, principally because of what he saw as substantial natural justice concerns if that course were followed. Mr McCutcheon drew our attention, in particular, to the fact that over 1,300 landowners would be directly affected by identification of SNAs, the overwhelming majority of whom had not lodged a submission *“on the understanding that no SNAs affecting their land would be included in the PDP”*.
49. Mr McCutcheon recommended, in consequence, that identification of SNAs on residentially zoned land should follow a separate RMA Plan Change process in the future.
50. As part of his analysis, Mr McCutcheon appeared to put some weight on the then Resource Management (Freshwater and Other Matters) Amendment Bill. He also relied on economic evidence we heard from Mr David Norman who had analysed the

potential public benefits of identifying and protecting SNAs on urban residential land as being significantly outweighed by the costs borne by individual residential landowners.

51. While Mr McCutcheon accepted that loss of property values was not a reason in itself to prevent inclusion of SNAs on residential land, this added to his concerns that residential landowners had not had a suitable opportunity to participate in the hearing process and outline their concerns in that regard.
52. Of those parties attending the hearing, Mr McCutcheon's analysis was supported, in particular, by the representatives of JCA, and Dr Brent Layton. Dr Layton is an eminent retired economist. Although his focus was on SNAs covering rural land, he drew our attention to the timing difference between the imposition of the costs and accrual of the benefits assessed by Mr Norman, in that the benefits are spread over time, whereas the costs are immediate. Dr Layton suggested that appropriate discounting would materially increase the assessed difference between costs and benefits.
53. As against that position, we heard a number of parties taking the contrary stance. We note, for instance, the submissions we heard from Counsel for Forest and Bird, Mr Anderson, that emphasised the legal requirement to identify and protect SNAs and disputed Mr McCutcheon's reliance on natural justice considerations. In Mr Anderson's submission, the provision in the RMA for further submissions is a complete answer to natural justice concerns:

"Any member of the public could lodge a further submission in opposition to the submissions seeking reinstatement of the SNAs in the urban area."
54. Mr Anderson also noted the need for a structured analysis of potential conflicts between National Policy instruments, applying the Supreme Court's decision in *Port Otago Limited v Environmental Defence Society Inc.*³⁰
55. Mr Anderson submitted that, in this case, the policies of the NPSUD appear reconcilable with the NPSIB without the need for a structured analysis or balance between the two.
56. Mr Anderson did not advise how the two might be reconciled, and we asked him that question. His response was that the NPSUD seeks certain densities in certain places. Further facts were required but it may be that some lower value SNAs would need to

³⁰ [2014] NZSC 112

give away to NPSUD imperatives and vice versa. What was required was greater analysis.

57. We also asked Mr Anderson about the practicality of relying on the availability of further submissions to address natural justice issues. Counsel did not address that point specifically, emphasising that against the background of the then Resource Management (Freshwater and Other Matters) Amendment Bill, the Society pragmatically took the view that the emphasis should be on protecting indigenous biodiversity outside SNAs. We note, as recorded above, that indication was clearly conditional on the Bill being enacted essentially as introduced. Accordingly, the Society resiled from that pragmatic position in the light of what has been enacted, as it was entitled to do.
58. Other strong submissions supporting identification of SNAs came from Mr Graeme Doherty, who made a personal submission, and the representative of the Wellington City Council Environmental Reference Group, Mr Curzon-Hobson. Both emphasised the legal obligation to identify SNAs. Mr Doherty argued that the Council's original decision to remove urban SNAs from the PDP was legally flawed and that if there are natural justice issues, then these are the result of that flawed decision.
59. Mr Curzon-Hobson also put it strongly to us that natural justice concerns could not prevail over our legal obligations. By analogy with the legal principles governing legitimate expectations, such expectations should be fulfilled *"so long as implementation does not interfere with its statutory duty"*.
60. As regards Mr Norman's analysis, Mr Curzon-Hobson submitted that it was not up to local decision-makers to assess the costs and benefits of complying with the law.
61. On the merits, Mr Curzon-Hobson agreed that Wellington City was doing better than most in terms of maintaining and enhancing biodiversity values. He described the city as a leader in biodiversity protection. However, his description was that the city was on a trajectory to a positive outcome, but it was not there yet. This was not, therefore, reason to abdicate its statutory duty to identify and protect SNAs.
62. We agree with the submissions we have received that it is not for us to second guess the costs and benefits of giving effect to the NPSIB. That is not to say that we should not have regard to those costs and benefits. Section 32AA requires us to do that when contemplating material changes to the notified PDP.

63. Further, as above, Mr McCutcheon did not seek to rely on Mr Norman's evidence as a substantive reason not to give effect to the NPSIB in its own right. Rather, he used it as a further indication of the need to ensure that the views of affected landowners were properly heard.
64. It is not necessary for us to address the weight given to the Amendment Bill in this context. To the extent it might have been a factor in this context, it has fallen away.
65. Without necessarily agreeing that it is 'erroneous' (Mr Doherty's characterisation), we also think there is force in the view that, particularly when viewed with the benefit of hindsight, the rationale for the decision not to identify SNAs on residentially zoned land in the notified PDP was somewhat dubious. As above, the development of an incentives programme that was one of the premises of the Council decision has stalled, and we do not know when, or whether, it will be resurrected. Similarly, the NPSIB has been Gazetted and reinforces the direction to identify SNAs meeting the biodiversity criteria specified, without any exception for urban land.
66. Be that as it may, like Mr McCutcheon, we are very concerned about the sheer number of affected landowners, the likelihood that they regarded the Council's decision as the end of the matter, the extent to which they would be affected by our re-introducing SNAs over their land, and the lack of any meaningful ability for them to express their concerns to us.
67. We do not agree with the submissions of Mr Anderson (for Forest and Bird) and Mr Curzon-Hobson (for WCC Environmental Reference Group) that the availability of a right of further submission is a complete answer.
68. While, as Mr Curzon-Hobson noted, the precise concern expressed by the High Court in its decision in *Palmerston North City Council v Motor Machinists Limited*³¹ was the inadequacy of the further submission process to deal with that the Court described as 'submissional side winds', it is worth recording what the Court said about that process. Specifically, having noted the clear legislative intention that persons directly affected by submissions proposing further changes to a Proposed Plan Change (as it was in that case) may lodge a further submission, the Court continued³²

"The difficulty, then, is not with their right to lodge that further submission. Rather it is with their being notified of the fact that such a submission has been

³¹ [2013] NZHC 1290

³² Ibid at [43]

made. Unlike the process that applies in the case of the original proposed plan change, persons directly affected by additional changes proposed in submissions do not receive direct notification. There is no equivalent of Clause 5(1A). Rather, they are dependent on seeing public notification of a summary of submissions is available, translating that awareness into reading the summary, apprehending from summary that it actually affects them, and then lodging a further submission. And all within the 10 day timeframe provided for in clause 7(1)(c). Persons “directly affected” in the second round may have taken no interest in the first round, not being directly affected by the first....”.

69. Here, the additional problem superimposed on the structural issues the Court described is not that the High Court considered in *Motor Machinists* of a submissional side wind that people are not expecting, but rather of the sheer scale of the PDP process. Literally thousands of submission points were set out in the Council’s summary of submissions. Moreover, even if landowners understood that it was being proposed that SNAs be applied to residential properties, the subsequent Gazettal of the NPSIB means that the consequences of identification of a SNA over their land are much greater than would previously have been anticipated.
70. One answer to natural justice concerns is that even if affected landowners were heard, there is nothing meaningful that they could add to the discussion. The Council is required to give effect to the NPSIB and nothing a private landowner can say will alter that.
71. Cases on the rules of natural justice are, however, replete with statements of principle about the need to hear the other side, even when the path forward appears entirely clear.
72. Moreover, we think in this case that there are at least two meaningful contributions that an affected landowner with a SNA on their land could make to the discussion. The first is as to the spatial ambit of the SNA. While the draft District Plan process included an invitation for landowners to provide feedback on the areas identified as potential SNAs, and a large number of people took up that offer, we cannot discount the possibility that an affected landowner could provide meaningful evidence that the vegetation coverage on their land had changed, or that the initial necessarily high level assessment of SNA boundaries was flawed from the outset.
73. Secondly, in the case of urban SNAs, we have to consider the interaction between the NPSIB and the NPSUD. Individual landowners could give meaningful evidence on the extent to which development of their land would be precluded by a SNA overlay in practice.

74. Mr Anderson told us that the competing provisions of the NPSIB and the NPSUD could readily be reconciled, but when we asked him about that reconciliation, he fell back on the need for further factual analysis.
75. The problem we have is that we do not have the evidence before us to quantify the extent to which reimposition of SNAs would constrain development envisaged and directed by the NPSUD. Moreover, because the status quo is an absence of SNAs on residentially zoned land, the onus is on those parties seeking to alter that position. It is those parties who need to satisfy us that in terms of Section 32AA, the change they support is appropriate.
76. We could not undertake the kind of reconciliation that Mr Anderson did suggest to us (foregoing selected lesser quality SNAs that had imposed significant constraints on urban development but retaining the higher quality SNAs that did not have such a large effect), because those parties did not provide us with the evidence to enable us to undertake that kind of analysis.
77. Looking at the issue more generally, we consider that the arguments put to us that we were required to identify SNAs, in our view, overstated the position. What we are required to do is to implement the NPSIB (and the Regional Policy Statement provisions related to protection of significant biodiversity).
78. As we have already noted, the exact requirement of the NPSIB is to give effect to it as soon as reasonably practicable. The Regional Council's RPS Change 1 decisions align the Regional Policy Statement provisions with that requirement.
79. Accordingly, the question is what is "*reasonably practicable*" in this situation. That is clearly a broader inquiry than asking what is possible. It incorporates considerations of cost. Most importantly it incorporates considerations of reasonableness. We do not consider it reasonable to reintroduce SNAs on residentially zoned land at this time, essentially for the reasons we have set out above. There are too many affected people who, in our view, have not had a proper opportunity to be heard.
80. In determining what is reasonable, we also consider it important to note that Wellington City is not facing a biodiversity crisis. Rather the reverse. We agree with Mr Curzon-Hobson's description that the trajectory is positive. We accept that more could be done, but the evidence did not suggest to us that the imposition of SNA requirements is a critical element in ensuring that that occurred.

81. We emphasise that this is not a finding for all time. The obligation to give effect to the NPSIB (and the Regional Policy Statement) remains. In our view, however, this is a matter for a future Plan Change that enables the implications of SNA identification for urban development to be properly analysed (and reconciled with the NPSUD) and for affected parties to be properly heard.
82. Accordingly, we recommend rejection of submissions seeking reintroduction of the SNAs identified in the draft District Plan.

2.3 SNAs on Private Rural Land

83. Many of the points put to us in relation to urban SNAs applied equally to SNAs identified in rural areas. Some did not.
84. In particular, the starting point was different. The notified PDP identified SNAs and submissions were seeking to remove them in whole or in part, rather than the reverse.
85. Further, and by definition, the same issues as regards the integration/reconciliation of the NPSIB with the NPSUD did not arise.
86. Mr Norman provided an assessment of costs and benefits in relation to SNAs on rural land. That assessment concluded that the balance between the two was much more finely balanced than was the case for urban land, with the benefit cost ratio being between 0.8 and 2.1³³. That conclusion was subject to the point Dr Layton made that we have summarised above, but we need to keep in mind that it is not for us to second guess the economic analysis underpinning the NPSIB. We recognise that it is the directing document that has to be given effect to, albeit subject to that occurring as soon as reasonably practicable.
87. The submissions we heard on this point, opposing identification of rural SNAs on other grounds explored two lines of argument. Firstly, Mr Sigal, Ms Sparagna and Ms Grove, addressing Ms Grove's submission, opposed SNAs on rural land because of the extent to which they constrain use of the land. This was also the fundamental position put by Mr and Mrs Watson who spoke in support of the submission for Terawhiti Farming Co Ltd, Te Kamaru Station Ltd, and Te Marama Ltd. All of them emphasised the percentage of their respective properties, which are located west of Hawkins Hill Road on steep country, are covered by a SNA notation. Mr Sigal also raised the extent of the constraint SNA provisions create in combination with the ridgeline and hilltop overlay

³³ A benefit cost ratio of over 1.0 means the benefits outweigh the costs

also applying to his and Ms Grove's property at 328 Hawkins Hill Road, although Ms Grove's submission did not oppose the ridgeline and hilltop overlay in itself.

88. The second line of argument was provided by Mr Michael Grace, speaking for Terawhiti Farming Co Ltd, Te Kamaru Station Ltd, and Te Marama Ltd, emphasising the important voluntary conservation efforts they had made, and the disincentive imposition of SNAs created for continuation of such efforts.
89. Addressing the first strand of reasoning, although none of the parties who addressed us explicitly put their position on the basis of Section 85 of the RMA, it appeared to us that this was the only route by which the substance of their concerns could be addressed given, as above, the legal obligation to give effect to the NPSIB.
90. Although Section 85 is principally framed around the powers of the Environment Court, there is authority³⁴ to the effect that a Council at first instance can consider challenges to planning provisions on the basis that they render land incapable of reasonable use and may amend or delete the proposed provision if the submitters challenge is found to be convincing.
91. We asked Mr McCutcheon to give us some advice as to the extent to which rural properties were covered by a SNA notation, and at what point (whether in terms of percentage coverage or otherwise) the identification of SNAs prevents use of rural land.
92. Mr McCutcheon's advice³⁵ was that there are 142 properties with more than 15% SNA coverage, of which 10 are publicly owned, and 59 rural properties with over 50% SNA coverage. A table Mr McCutcheon provided in his Reply contained a more detailed breakdown on a property-by-property basis. We noted that one property (in Newlands) has 100% SNA coverage. A further 7 properties have SNA coverage in excess of 90% of the land. Some of these properties are relatively small (the Newlands property with 100% coverage is 434m², but some are in excess of 10 hectares.
93. Mr McCutcheon's response³⁶ to the second question was that in order to render a rural site incapable of reasonable use it would have to:

- Be 100% covered in SNA;

³⁴ Riddiford v Masterton District Council and Others [2010] NZEnvC 262; Gordon v Auckland Council [2012] NZEnvC 7

³⁵ Stream 11 Council Reply at page 25

³⁶ Stream 11 Council Reply at paragraph 129

- Not be currently used for rural activities or residential activities permitted in the General Rural zone;
- Not have any previously consented activities;
- Not be able to benefit from any of the permitted activities in ECO-R1; and
- [Involve] Activities permitted in the zone chapter unable to avoid adverse effects on indigenous biodiversity under clause 3.10 of the NPSIB, such that there is no realistic consenting pathway for the use of land.

94. He noted that the criteria he had suggested were largely theoretical until the specifics of a proposal and the values and quality of a SNA are considered in detail through a site visit.
95. We agree with Mr McCutcheon that a site by site analysis is required but we consider that the criteria which he advanced is posing too high a bar for a valid Section 85 objection. We would have thought that a property with an excess of 50% SNA coverage certainly requires further consideration. Picking up on Mr Sigal's point, it is also important that SNAs are seen in the context of the package of overlays that potentially apply to properties to determine whether they are in fact capable of reasonable use.
96. Having said that, percentage coverage is not decisive. If SNAs are identified over steep gullies that would be unusable even if the vegetation is cleared, that would not be a Section 85 issue. Mr McCutcheon's advice was that the Newlands property with 100% coverage is probably a balance lot from earlier subdivisions, because the topography and location mean that any use of the site would be challenging.
97. Similarly, if clearance of vegetation is precluded by other mechanisms (Mr McCutcheon advised that the Sigal/Grove property we heard about is the subject of a consent notice derived from its original subdivision), duplication of restrictions through a SNA notation could not be challenged on Section 85 grounds. Exceptions of this nature reinforce Mr McCutcheon's point about the need for site-specific consideration.
98. We have other issues with Mr McCutcheon's suggested criteria though. The fact, for instance, that the landowner is able to widen an existing track (one of the Permitted Activities in ECO-R1) does not solve a problem created by the absence of existing tracks to other parts of the property, or the inability to undertake any useful activities at either end of the track.

99. Mr McCutcheon made the point that the version of the Plan recommended in his Reply provides for consent applications to be made and the Discretionary Activity status of activities not meeting the Permitted Activity conditions in ECO-R1 allows for consideration of the strategic direction of the Plan and reconciliation with other relevant Plan policies, including those enabling use and development.³⁷ However, the problem identified by some of the parties who appeared before us was that it is impractical for someone seeking to establish a rural activity on land largely covered by a SNA to seek consent every time they need to do something.
100. We find that the extent of SNA coverage over some rural properties means that that notation is likely to preclude reasonable use being made of at least some of the properties in question. However, we have not identified any submission specifically raising Section 85 as a ground for relief (at most it was inferred) and those parties who raised the constraints on their legitimate use of their land as an issue tended to take an 'all or nothing' approach. They did not, in particular, go down the track of identifying what lesser SNA coverage would enable them to make reasonable use of their land. Rather, they sought that SNAs be entirely removed from their land. Given the terms of the NPSIB, we do not consider that the latter is an option open to us and we did not have the evidence to make findings as to what changes to SNA boundaries might be required in order to ensure SNAs did not render any rural land in the city incapable of reasonable use.
101. Another problem is that some of the parties who spoke to us about the problems SNA coverage over their land (Mr and Mrs Watson and Ms Sparagna) were speaking to the submissions of other parties which did not specifically address the position of their land, as Section 85 would require.
102. We find that at the very broad level at which these issues were pitched, we do not have the evidential basis or (in most cases) jurisdiction to support redrawing SNA boundaries in an endeavour to address the concerns of submitters on this basis. The extent to which properties in the rural domain are the subject of SNA notation is, however, a very real concern to us and we recommend that Council undertake a more comprehensive review on a property by property basis to ensure both that the extent of SNA coverage is justified, and that properties with a high proportion of SNA coverage are not rendered incapable of reasonable use by reason of the SNA notation.

³⁷ Stream 11 Council Reply at [132]

103. Turning to the issues raised by Mr Grace, Mr McCutcheon addressed that in the context of a submission from Capital Kiwi Trust Board³⁸ expressing concern that identification of SNAs will prevent private landowners from participating in valuable conservation work. Mr McCutcheon expressed sympathy for this point of view, but highlighted an inherent tension within the NPSIB, which requires councils both to promote and provide for restoration, while at the same time requiring restrictions on land to protect indigenous biodiversity. He acknowledged that there is a risk that landowners may consider opting out of participation in conservation work, but he did not consider any substantive amendment was appropriate, given the directive nature of the NPSIB. He did recommend, however, consideration of how this inherent tension was playing out at the next Plan review.
104. For our part, we agree with Mr McCutcheon's analysis. We also note that similar arguments were put to the Environment Court in its consideration of SNAs within New Plymouth City. In its decision in *Royal Forest and Bird Protection Society of New Zealand Inc v New Plymouth District Council*³⁹ the Court expressed the view that if people were genuinely supportive of maintenance of indigenous biodiversity values, it was difficult to see how they could logically object to being subject to a rural rule seeking to do precisely the same thing.
105. In summary, therefore, we do not recommend any substantive change to the PDP to respond to these 'big picture' issues around SNAs on private rural land. We have had regard to the points made to us in the context of specific provisions in the ECO Chapter and we discuss site-specific challenges to SNA boundaries in Section 3 of our Report. However, we recommend that Council review the SNA provisions as they relate to the rural environment to see if they deprive landowners of the ability to make reasonable use of their land and, if so, whether it is appropriate to ameliorate that effect through a future Plan Change.

2.4 Indigenous Biodiversity Outside SNAs

106. In Section 11.2 of his Section 42A Report, Mr McCutcheon considered Forest and Bird submissions⁴⁰ that sought an objective, policy and rule to manage indigenous biodiversity outside SNAs. Mr McCutcheon described the rule requested as limiting permitted indigenous vegetation removal to 200m² in any ten year period, defaulting to

³⁸ Submission #91.1

³⁹ [2015] NZEnvC 219, at [92]

⁴⁰ Submissions #345.173, #345.176 and #345.178

Restricted Discretionary Activity status “*with a new policy aimed at maintenance of biodiversity as the matter of discretion*”.

107. Mr McCutcheon classified these submissions as raising a general issue of reconciling the NPSIB and NPSUD while maintaining indigenous biodiversity outside of SNAs as required by Policy 8 and clause 3.16 of the NPSIB.
108. Mr McCutcheon drew our attention to the distinction drawn in clause 3.16 of the NPSIB between significant adverse effects of new subdivision, use or development on indigenous biodiversity outside SNAs, which must be managed by applying the effects management hierarchy defined in the NPS, and all other adverse effects on indigenous biodiversity outside of SNAs that “*must be managed to give effect to the objective and policies of this National Policy Statement*”.
109. He saw this as providing scope to develop management responses in the context of the environment in which they are located and in the context of other national instruments which must be implemented.
110. We are not so sure about the last point. Clause 3.16(2) talks about giving effect to the objective and policies of **this** National Policy Statement.
111. Clearly, though, consideration of controls over indigenous biodiversity removal within urban areas needs to take the NPSUD into account also and we will return to that.
112. This reasoning prompted Mr McCutcheon to recommend a new objective, a new policy and most significantly, a new rule. We will address the proposed new objective and policy in Sections 5.4 and 5.5 of our Report. Here, we focus on the proposed rule.
113. The background for Mr McCutcheon’s proposed new rule is his advice⁴¹ that the Council’s resource consent team has been routinely requiring ecological assessments of effects on indigenous biodiversity where an area of indigenous vegetation totalling 50m² or more is proposed to be removed, in order to give effect to the NPSIB where there is discretion to do so under the Operative District Plan.
114. Mr McCutcheon’s advice was that the 50m² trigger was based on initial ecological advice that requiring ecological assessments was a suitable proxy in the interim before the PDP provided greater guidance.

⁴¹ Stream 11, Section 42A Report at [366]

115. Mr McCutcheon noted that any constraints on indigenous biodiversity removal within urban areas needed to take account of the restrictions on rules prohibiting or restricting the felling, damaging or removal of trees that are not specifically described and scheduled⁴² in urban areas. This meant, in his view, that any rule applying within the urban areas could only apply to other forms of indigenous vegetation (than trees), *“presumably shrubby bushes, flaxes and other types of vegetation”*.
116. Mr McCutcheon noted that he had taken advice from Mr Goldwater (of Wildlands) as to appropriate triggers and, as a result, proposed a clearance area threshold, differing by zone. More specifically, he proposed to provide a permitted activity limit of 3000m² of indigenous biodiversity clearance on any site in the General Rural, Open Space and Recreation Zones, and Wellington Town Belt Zone, and 100m² on any site in all other zones.
117. He recommended that these controls relate to indigenous vegetation as at the date of Council decision, to avoid disincentivising planting of new indigenous vegetation.
118. We consider here the principle of the rule recommended, rather than the detail.
119. We note the evidence of Ms Whitney for Horokiwi Quarries Limited. At paragraph 5.6 of her evidence in chief, Ms Whitney queried whether the same natural justice issues that had concerned Mr McCutcheon in relation to identification of SNAs within urban areas applied equally to his recommended rule restricting clearance of indigenous biodiversity outside SNAs, and in particular the permitted rules and thresholds. She observed that the de facto 50m² currently being applied by consenting officers is only triggered through another rule. She expressed the view that a Plan Change would be the appropriate process by which to introduce the recommended provisions.
120. Responding in rebuttal, Mr McCutcheon expressed the view that there was a clear difference of degree in the natural justice issues that arise, compared to the possibility of recommending that SNAs be identified on residential land. He noted specifically:
- The proposal allows for a wide range of permitted activities for the maintenance and use of existing buildings and structures etc, unencumbered by permitted standards;

⁴² Sections 76(4A) to 76(4D)

- The proposal allows for greater areas of permitted clearance of vegetation (100m²/3000m²), whereas there would be no such permitted clearance within a residential SNA;
- The policy assessment and resource consent requirements are less restrictive (effects management hierarchy or minimise approach, compared to an avoid framework);
- Resource consents would be precluded from notification (whereas this would not be the case if residential SNAs were identified); and
- The removal of trees is permitted, whereas this would not be the case within a residential SNA⁴³.

121. That said, he referred us to Mr Norman's evidence to the effect that there are significant costs of such a proposal, "*and that even when parameters for permitted clearance are trebled (to 300m²) from my recommended proposal (100m²), the benefits are overwhelmingly exceeded by its costs*"⁴⁴.
122. We found Mr Norman's evidence somewhat difficult to follow and we discussed it extensively with him. This led to clarification in his Reply that with a 100m² consent trigger, the implied relative loss in realisable housing capacity was within a range of 700-15,088 dwellings, with a base case estimate of 4,121.
123. Mr McCutcheon also supplied further information regarding the number of properties that would be affected by his rule. In summary, he identified some 17,377 residentially zoned properties with an excess of 100m² indigenous canopy coverage. He emphasised that that estimate identifies both indigenous and exotic species and does not consider indigenous shrub patches that have no associated tree canopy. Taking Mr Norman's advice that approximately 50% of tree canopy might be assumed to be indigenous, this still leaves us with a conservative estimate of in excess of 9,500 properties affected.
124. It is fair to say that we found these numbers somewhat startling.

⁴³ Reflecting the fact that the former are subject to the restrictions in Sections 76(4A) –76(4D) of the Act. In his Section 42A Report (at para 381) Mr McCutcheon noted that Council did not have enough information to meet the requirements of those sections in relation to indigenous tree species on residential sites.

⁴⁴, Reply of Adam McCutcheon, paragraph 124

125. We appreciate that Mr McCutcheon was addressing what he saw as inherent flaws in the uncompromising approach of the NPSIB to the protection of indigenous biodiversity outside of SNAs, which fails to adequately consider the impacts on the urban environment and the enablement of urban development which has also been mandated by a recent National Policy Statement (i.e. the NPSUD).⁴⁵
126. We accept Mr McCutcheon's view that the restrictions on removal of indigenous biodiversity he has recommended are significantly less than those that would apply to a SNA. What concerns us, however, is how much they exceed the status quo (no controls) by, and whether even a fraction of the property owners estimated to be affected would have been aware of the possibility of such a rule being introduced.
127. Viewed in that light, we consider that the natural justice issues are very significant, largely for similar reasons as discussed above in Section 2.2 of our Report.
128. We also need to factor in the implications for urban development capacity.
129. In Stream 1, Mr Phillip Osborne gave evidence that the demand reconciled realisable capacity provided by the PDP as notified was 49,876 dwellings.⁴⁶ As discussed in Report 10, in Stream 10, the Hearing Panel was provided with an updated economic analysis presented by Ms Natalie Hampson based on the modelling of Mr Osborne and his colleagues at Property Economics. That analysis indicated that long-term realisable capacity was estimated at 39,678 dwellings⁴⁷. We understand that the reduction in the interim, notwithstanding the increase in theoretical development capacity brought about by the Council's IPI decisions in early 2024, was due to adverse economic conditions.
130. Ms Hampson noted that Mr Osborne's modelling did not include greenfield capacity in the northern catchment, which she recorded (again based on Property Economics work) has a realisable capacity of over 4,000 dwelling units⁴⁸. Given the Panel's recommendation in Report 6 that the Development Areas in the northern catchment be upzoned to allow for immediate residential development, we consider that that additional capacity needs to be considered 'live' in this context. That indicates that current realisable capacity might conservatively be estimated at 43,678 dwelling units.

⁴⁵ Adam McCutcheon, Stream 11 Reply statement at [19]

⁴⁶ P Osborne, Stream 1 Evidence in Chief, Table 4.

⁴⁷ N Hampson, Stream 10 Evidence in Chief, Table 4

⁴⁸ N Hampson, Stream 10 Evidence in Chief, paragraph 45

131. Estimates of dwelling capacity need to be compared with predicted demand. Ms Hampson's evidence in Stream 10 was that predicted demand over the long-term is 30,407 dwelling units⁴⁹. That figure was stated to include the competitiveness margin required by the NPSUD to be maintained of 15%⁵⁰. Subtracting that margin gives a revised long-term demand figure of 26,441 dwelling units⁵¹. Subtracting 26,441 from the predicted capacity of 43,678 (as above) gives a surplus of 17,237 dwelling units⁵². Including the competitiveness margin, the surplus is 13,271 over and above predicted demand.
132. Adopting the base case Mr Norman estimated of a loss of realisable housing capacity of 4,121 dwelling units associated with a consent trigger of 100m² permitted clearance of indigenous vegetation, the rule Mr McCutcheon recommended would make a significant dent in the surplus of realisable capacity over the long-term, compared to predicted demand. It would reduce to 13,116 dwelling units.
133. Even more concerning, the wide range of potential outcomes predicted by Mr Norman suggests, in a worst case scenario (a loss of realisable capacity of 15,088), the Plan would not provide the required margin for competitiveness.
134. These are serious outcomes given the importance of providing for predicted demand, emphasised by the NPSUD.
135. We sought to test whether these adverse effects on development capacity might be ameliorated by adopting a higher threshold (that is to say permitting a greater level of indigenous vegetation clearance), notwithstanding Mr Goldwater's assessment that this would be detrimental to maintenance of indigenous biodiversity. Mr Norman's analysis confirmed that if a 300m² consent trigger was adopted, the loss of capacity would be lower, with a predicted range of 454-9,783 and a base case of 2,672, but even at this level the loss of capacity is material, albeit meeting the strict requirements of the NPSUD.
136. This analysis suggested to us the need for a very careful reconciliation of the competing directions in the NPSIB and NPSUD. Like SNAs in residentially zoned areas, Section 32AA requires any change from the status quo (no explicit controls on indigenous

⁴⁹ N Hampson, Stream 10 Evidence in Chief, Table 4

⁵⁰ Clause 3.22(2)(c)

⁵¹ Compared with the estimated long term demand of 31,242 dwelling units in Property Economics November 2022 report (Table 4)

⁵² Reduced from 18,634 based on Mr Osborne's Stream 1 evidence in February 2023, noting that that analysis did not make any allowance for greenfield capacity in the northern catchment.

vegetation clearance outside SNAs) to be justified. Mr McCutcheon freely acknowledged the constraints/costs in urban capacity terms of the rule he was recommending, but felt his hands were tied by the directive language of the NPSIB. We would not class his analysis as satisfying the need for a structured analysis of the competing direction of the two National Policy Statements. No other submitter addressed the issues in this detail.

137. Combined with the natural justice issues we have highlighted above, we do not recommend acceptance of Mr McCutcheon's recommendation of a new rule to limit clearance of indigenous vegetation outside SNAs in urban areas. Again, this is a matter which requires further analysis and development of a Plan Change that appropriately reconciles the competing higher order direction. We take comfort in reaching this conclusion from Mr McCutcheon's analysis in rebuttal⁵³ of the remaining provisions in the Plan, and his conclusion that we might find that those provisions are consistent with NPSIB clause 3.16 and find an appropriate balance with the requirements of the NPSUD.
138. Turning to the application of Mr McCutcheon's proposed rule outside urban areas, obviously the issue of conflict with the NPSUD falls away. The natural justice concerns we have about the proposed rule remain. In addition, the concerns we have already expressed about the extent to which SNA controls over rural zoned land already render that land incapable of reasonable use are exacerbated by the potential overlaying of a rule that, even if indigenous vegetation does not qualify as a SNA, its clearance is still restricted except for a limited range of purposes.
139. We accept that Mr McCutcheon's proposed trigger of 3000m² indigenous vegetation clearance ameliorates the potential effect, but we consider that we have too little information as to the incremental effects of the suggested rule over and above SNA constraints that may already be excessively great for rural landowners.
140. We consider that a proper process involving greater analysis of effects, and engagement with affected landowners, needs to occur before such a rule could be promulgated.

⁵³ A McCutcheon, Supplementary Evidence at [134]

141. In summary, this is a matter that needs to be progressed through a future Plan Change in our view. We do not recommend Mr McCutcheon's suggested rule constraining indigenous vegetation clearance in rural areas.

3 SPATIAL SNA COVERAGE

142. In this section, we address submissions seeking to delete specific SNAs and/or to amend their boundaries.
143. In Table 5 of his Section 42A Report, Mr McCutcheon reviewed each of these submissions, based on the information available to him, and made recommendations, in some cases that SNA boundaries be amended, and in some cases that no amendment be made. Where Wildlands had undertaken site visits at a landowner's request, Mr McCutcheon noted the recommendation Wildlands had made.
144. For those submitters that we did not hear from at the hearing, we have no reason to take a different view to Mr McCutcheon.
145. A subset of the submitters took issue with the spatial ambit of SNAs at the hearing, prompting a shift in position on the part of the Council.
146. This process started at the rebuttal evidence phase, where Mr Goldwater reconsidered his position in relation to a SNA over land owned by Horokiwi Quarries Ltd in response to the expert evidence for that company of Dr Vaughan Keesing and his learning that in Stream 8, landscape experts for both the Council and the Quarry operator had agreed that the disputed SNA should sit outside a revised Coastal Environment overlay boundary. Mr Goldwater consequently recommended acceptance of Dr Keesing's position and removal of that part of WC109 in contention from the land owned by Horokiwi Quarries Ltd.
147. Again, we have no reason to doubt that Mr Goldwater's revised recommendation is appropriate, and like Mr McCutcheon, we adopt it.
148. In his Rebuttal Evidence, Mr McCutcheon advised that he had received further information from Mr Rod Halliday in relation to development of the Lincolnshire Farm. As Mr McCutcheon noted, the proposed location of development on the Lincolnshire Farm site was canvassed in Stream 6 and largely agreed by Mr Halliday (for the developer) and the Reporting Officer, (Ms van Haren-Giles). We note that the Hearing Panel has accepted their consensus position in Report 6. Mr McCutcheon recommended amendment to applicable SNA boundaries where they would extend into

this development area. In Reply, he also recommended SNA boundaries be amended where he was satisfied that vegetation had already been cleared. We agree with his reasoning on these matters.

149. Narrowing of issues in contention continued in the Council's Reply with the result that following site visits, Mr Goldwater recommended additional changes/reductions in the spatial ambit of SNAs, as follows:
 - (a) Removing a segment of road reserve within WC092 on the properties at 6/8 The Rigi, and 2/4 Governor Road in response to the submissions and representations of Mr David Edmonds;
 - (b) Removal of three of the four areas in dispute forming part of notified WC125 at 287 South Karori Road in response to the submission and representations of Dr Layton;
 - (c) Removal of parts of WC132 within 328 Hawkins Hill Road in response to the submission of Ms Grove and the representations of her and her partner, Mr Sigal, along with shifting parts of WC142 into WC132.
150. Mr Goldwater also recommended amendment to site descriptions to respond to the submission of Mr Barry Insull and amendment to the SNA boundary at 331 Southernthread Road.
151. Mr McCutcheon initially expressed concerns about the scope to make the suggested amendment to the SNA boundary at 331 Southernthread Road but, having considered the matter further in his Reply, recommended to us that this change could be made within scope.
152. In each case, we recommend Mr Goldwater's revised position in the absence of any expert evidence contradicting his view.
153. At the hearing, we heard from Mr de Leijer on behalf of Boston Real Estate Limited in relation to a SNA at 62 Kaiwharawhara Road. This site had a split zoning of NOSZ and MUZ. Mr de Leijer noted that in Stream 7, the Reporting Officer had recommended the NOSZ component be rezoned MRZ. He suggested that, consistent with the Council's resolution not to identify SNAs over residentially zoned land, the SNA notation should be removed from the proposed rezoned residential land. He also advised that the landowner had a current certificate of compliance permitting clearance of the vegetation on both that part of the site and the adjacent MUZ. He subsequently provided a copy of the certificate of compliance.

154. We note that in Report 7, the Hearing Panel has recommended acceptance of the proposed rezoning of the site.
155. In Reply, Mr McCutcheon, recommended removal of the SNA from the entire site, notwithstanding Mr Goldwater's support for its retention. We concur. While this is different to the position of other residentially zoned land, because it was notified with a SNA notation, the clear intention to develop the site, and the legal ability to clear vegetation from it, indicates to us that retention of the SNA notation is somewhat futile.
156. The remaining SNA boundaries that were in dispute were the subject of submissions by WIAL, as the principal affected party. The SNAs in question were at the eastern end of Lyall Bay Beach, where it adjoins the Moa Point seawall, and the western end of Moa Point Beach, again where it adjoins the Moa Point seawall.
157. We heard extensive evidence from WIAL both in this and in previous hearings about the importance of the seawall to ongoing Airport operations, and to the safety and security of Moa Point Road and the infrastructure under it. We were told that WIAL has plans to upgrade the seawall and is accordingly very concerned about ensuring a consenting pathway is available to it for such an upgrade.
158. Dr Michael Anderson gave ecological evidence for WIAL, responding to the evidence of Mr Goldwater. While Mr Goldwater relied on records of the presence of threatened and at-risk indigenous species in the general area, Dr Anderson highlighted the precise location of such records and sought to exclude areas where there were no such records.
159. The progressive exchange of evidence, and the discussion we had with both experts prompted a narrowing of the competing positions. Mr Goldwater (and Mr McCutcheon) accepted that SNAs in this, and other areas, should not be identified within the District Plan as extending into the CMA, which is outside the City Council's jurisdiction. We concur.
160. Having initially been in contention, it appeared to us that the two experts largely if not entirely agreed on a reduced area of SNA on Moa Point Beach. In the absence of any substantive contention between them, we accept Mr Goldwater's final position as per his Reply.
161. As regards Lyall Bay, Dr Anderson reduced the area he said should be excluded from the SNA, and Mr Goldwater likewise reduced the area he recommended be retained within the SNA.

162. The end result was that the area in contention was limited to part of Lyall Bay Beach inland of the CMA boundary.
163. That means that we do not need to resolve the difficult issue of interpretation that Ms Dewar, Counsel for WIAL, and Mr Whittington, Counsel for the Council disagreed on relating to the definition of “*habitat*” and whether built structures are excluded entirely, or where an organism is present only fleetingly.
164. Manifestly the area of beach in contention is not a built structure.
165. Our understanding of the competing ecological arguments in this area is that they turned on whether there was evidence of more than fleeting presence of threatened or at risk indigenous species.
166. As regards the area of Lyall Bay Beach which remains in contention, the evidence produced by Dr Anderson indicates that there are records of little penguins/kororā within the disputed area. On that basis, we would prefer Mr Goldwater’s evidence that the disputed section should be retained within WC175, and therefore adopt his recommended boundaries for that SNA.
167. The submission of GWRC⁵⁴ sought new SNAs covering areas of significant bird habitat in parts of Island Bay, Lyall Bay, Owhiro Bay, Tongue Point, Makara Estuary and Pipinui Point South, together with active and stable dunelands in Worser Bay (Southern End), Seatoun Beach, Churchill Park, Island Bay (North area), playground (South End), Owhiro Bay (South-East end), Waiariki Stream and Makara Beach (East end). The areas concerned are obviously extensive and GWRC failed to provide expert evidence to support its submission within the required deadline. Its representatives appeared, and told us that material had been provided to Mr McCutcheon after the deadline. As we observed to those representatives, in the absence of expert evidence, we had no basis to take the matter further.
168. As noted above, following their appearance before us, GWRC sought to table the detailed material which it had provided to Mr McCutcheon. We did not accept that material on the basis that it was far too late to be providing such material, and its receipt would have been potentially prejudicial to other parties who had complied with the Panel’s timetabling directions.

⁵⁴ Submission #351.347

169. Accordingly, the position remains one where we have no basis on which to recommend acceptance of GWRC's submission.
170. We also heard from submitters arguing SNAs should not duplicate other legal mechanisms. Dr Layton told us that part of his property in South Karori Road was the subject of a Queen Elizabeth the Second (**QEII**) covenant. Mr West gave us information about private covenants applying to his land within the Harbour Lights Subdivision in Ngaio.
171. We asked Mr McCutcheon to respond to their points in Reply. He pointed us to provisions in the ECO Chapter providing for activities consistent with and required by QEII covenants. He also noted that the NPSIB does not differentiate land subject to QEII covenants in the context of provisions requiring that SNAs be identified.
172. As regards private covenants, Mr McCutcheon noted the potential for private covenants to be more enabling than the NPSIB would envisage. The Harbour Lights covenants Mr West referred us to, for instance, provided that vegetation might be trimmed to preserve views. He noted also that other covenants might not be for conservation purposes at all.
173. We accept Mr McCutcheon's reasoning. We do not consider a general exception could properly be made to allow exclusion of covenanted areas from SNAs.

4 OTHER GENERAL SUBMISSIONS

174. In Section 9.2 of his Section 42A Report, Mr McCutcheon noted a series of submissions related to management of freshwater issues.
175. In particular, DoC⁵⁵ expressed the view that the Plan does not adequately give effect to the National Policy Statement for Freshwater Management 2020 (**NPSFM**) and sought the following amendments:
- (a) That objectives, policies and methods are added to address effects on the health and wellbeing of water bodies, freshwater ecosystems and receiving environments;
 - (b) That the Council work with GWRC to identify any additional sites or areas that should be protected in the District Plan in line with the NPSFM; and
 - (c) That any policies and rules related to wetlands align with the NZCPS.

⁵⁵ Submissions #385.1-5

176. In addition, Mr McCutcheon noted submissions from:
- (a) GWRC⁵⁶ considering that the PDP has a role in the integrated management of adverse effects on wetlands and their functions;
 - (b) Heidi Snelson and others⁵⁷ seeking planting around natural watercourses and on steep contours to maintain hillsides during severe weather events;
 - (c) Tyers Stream Group⁵⁸ seeking provisions to provide public access to Tyers Stream;
 - (d) Heidi Snelson and others⁵⁹ seeking protection of Porirua Stream and Porirua Harbour; and
 - (e) Tawa Community Board⁶⁰ seeking more stringent District Plan measures to provide greater protection against increased erosion of the Porirua Stream bed.
177. Mr McCutcheon's view was that management of wetlands is a Regional Council responsibility and therefore that it was inappropriate for the PDP to contain specific provisions relating to wetlands. Having said that, he noted that seven SNAs set out in Schedule 8 are described as having wetlands within them and those wetlands are managed by the SNA provisions in the ECO Chapter. He considered that position consistent with integrated management.
178. He suggested that given the 'work in progress' status of RPS Change 1, preparation of District Plan provisions without a full understanding of the Regional Council's decisions would risk inconsistency with those decisions.
179. Mr McCutcheon noted also that arguably the most significant inland wetland in Wellington is located within Zealandia, and is the subject of bespoke provisions for ongoing operation of the Sanctuary.
180. As regards working together with GWRC, Mr McCutcheon considered that this would need to be through the mechanism of future Plan Changes. As regards the Snelson et al submission requesting planting, Mr McCutcheon did not consider that this was appropriately addressed within the ECO Chapter. He pointed to the provisions in the Earthworks Chapter as already addressing that.

⁵⁶ Submission #351.15

⁵⁷ Submission #276.1

⁵⁸ Submission #221.4

⁵⁹ Submissions #276.3 and #276.4

⁶⁰ Submission #294.2

181. Similarly, he noted that the Public Access Chapter addresses public access to streams and, in his view, achieves the relief sought by the Tyers Stream Group.
182. He also considered that provisions in the Earthworks and Natural Hazards Chapters would achieve the relief sought by Snelson et al in relation to Porirua Stream and Porirua Harbour, and that sought by Tawa Community Board.
183. Accordingly, he did not recommend any changes to the District Plan as a result of these submissions. Of the submitters, we heard only from the Tyers Stream Group and GWRC. In their presentation, the Tyers Stream Group did not address this particular point, but rather focussed more generally on identification and protection of SNAs, and the need to incentivise positive actions.
184. The representatives of GWRC similarly did not address these particular submission points.
185. Accordingly, we find that we have no basis on which to disagree with Mr McCutcheon's recommendation that no amendments are required to the PDP in order to address these submissions.

5 ECOSYSTEMS AND INDIGENOUS BIODIVERSITY CHAPTER AND RELATED PROVISIONS

5.1 General Submissions in Support or Opposition

186. We now turn to submissions made on the notified PDP provisions themselves. Firstly, we acknowledge that the following submitters supported the ECO chapter and sought that it be retained as notified.

(a) Oliver Sangster⁶¹. Mr Sangster also sought a public education campaign to raise awareness about the benefits of SNAs;

(b) Tawa Community Board⁶²;

⁶¹ Submissions #112.9, 112.10

⁶² Submission #294.10

- (c) GWRC⁶³, insofar as the Council has identified SNAs in accordance with policies 23 and 24 of the RPS, but subject to amendments addressed elsewhere in this Section 42A Report;
 - (d) Meredith Robertshawe⁶⁴;
 - (e) Paul M Blaschke⁶⁵, subject to extending the SNAs to include residential land and applying the ECO provisions to residential SNAs;
 - (f) Chris Horne, Sunita Singh, Julia Stace and Paul Bell-Butler⁶⁶ supported the protection of Indigenous Biodiversity and SNAs; and
 - (g) Taranaki Whānui⁶⁷, subject to amendments set out elsewhere in their submission.
187. However, Dominic Hurley⁶⁸ opposed the ECO chapter and sought that it is deleted. We agree with the reporting officer's advice that the Council is required under section 6(c) of the RMA, as well as the RPS and NPSIB to identify and protect areas of significant indigenous biodiversity.
188. GWRC⁶⁹ made a number of general submissions on the chapter where it:
- (a) Identified that ECO-P2 is incorrectly referenced in a number of provisions and requested that these references are amended to ECO-P1. This error was identified by a number of submitters in relation to specific provisions;
 - (b) Sought that the ECO chapter be amended to require partnering with mana whenua in the management of activities that affect indigenous biodiversity;
 - (c) Sought that the PDP be amended to provide for mana whenua / tangata whenua involvement in the mapping of indigenous biodiversity, including to identify taonga species; and
 - (d) Considered that amendments are required to have regard to policies IE.1 and IE.2 of the proposed RPS Change 1 – through the inclusion of a new matter of discretion

⁶³ Submission # 351.144

⁶⁴ Submissions #344.1 – 444.3

⁶⁵ Submissions #435.5, 435.7

⁶⁶ Submission #456.3

⁶⁷ Submission #389.73

⁶⁸ Submission #260.1

⁶⁹ Submissions #351.14, 351.147, 351.148, 351.149

or control to consider adverse effects on mahinga kai, other customary uses, and access for these activities.

189. Mr McCutcheon acknowledged the referencing errors and that the ECO chapter provisions relating to partnering with mana whenua in the management of activities that affect indigenous biodiversity and the identification/mapping of indigenous biodiversity, including to identify taonga species, require further amendments. He advised that this work has been deferred to a future Te Ao Māori plan change. We also note that the incorrect references to ECO-P2 have now been corrected in the ePlan by way of a clause 16 amendment. We do not therefore address the submissions raising the issue further.
190. Steve West⁷⁰ and Brett Layton⁷¹ sought that the Council work with landowners to develop site-specific rule frameworks for SNAs, rather than having a blanket district-wide framework.
191. We agree with Mr McCutcheon that it is not practical for the Council to develop site-specific rule frameworks for each SNA in the District nor is such an approach supported by the NPSIB given its blanket and directive approach. We note that where a resource consent is required it will be treated on its merits in the context of the SNA in question.

5.2 Definitions

192. In assessing requested changes Mr McCutcheon noted that many definitions were considered as part of the ISPP process with decisions notified in April 2024. Definitions including those relating to indigenous biodiversity that were not determined have been considered in later hearing streams.
193. He advised that his approach to definitions is to
 - (a) Generally amend notified definitions to be the same as the NPSIB definition; and
 - (b) Add new definitions into the plan from the NPSIB where necessary to interpret policies or rules.

⁷⁰ Submission #2.4

⁷¹ Submission #164.4

194. We note that Forest and Bird⁷² supported the definitions in the Interpretation section of the 2024 District Plan in a general sense, albeit seeking a number of amendments as detailed below.

Biodiversity compensation

195. Transpower⁷³ and DoC⁷⁴ supported the existing definition and sought that this be retained as notified.
196. Forest and Bird⁷⁵ opposed the definition and sought its deletion. If the definition is retained, then Forest and Bird sought that it is amended for clarity as shown below:

"... The goal of biodiversity compensation is to achieve an outcome for indigenous biodiversity values that is ~~disproportionately positive relative to the values lost~~ of no net loss and preferably a net gain."

197. We were advised that the NPSIB defines this term in a manner which differs from the notified version. We asked Mr McCutcheon if we had scope to recommend amendments to this and other definitions that were not sought in submissions, in order to give effect to the NPSIB. His position, which we accept, was that those general submissions seeking Plan alignment with the NPSIB⁷⁶ provide scope. As the PDP must give effect to higher order direction, we recommend the addition of the NPSIB definition, amended to correctly cross reference the relevant appendix in the PDP, as follows:

*"**biodiversity compensation** means a conservation outcome that meets the requirements in Appendix 3 – Biodiversity Compensation and results from actions that are intended to compensate for any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, remediation, and biodiversity offsetting measures have been sequentially applied."*

Biodiversity offsetting

198. Transpower⁷⁷ and DoC⁷⁸ supported the definition and sought that this be retained as notified.
199. We agree with Mr McCutcheon that the notified version should be replaced with the NPSIB definition of 'biodiversity offset', albeit with the amended reference to Appendix

⁷² Submission #345.3

⁷³ Submission #315.16

⁷⁴ Submission #385.11

⁷⁵ Submission #345.4, 345.5

⁷⁶ E.g. DoC [#385.6]

⁷⁷ Submission #315.16

⁷⁸ Submission #385.11

3, which should be replaced with 'Appendix 2 – Biodiversity Offsetting'. We recommend the definition read as follows:

Biodiversity offset means a measurable conservation outcome that meets the requirements in Appendix 2 – Biodiversity Offsetting and results from actions that are intended to:

- (a) Redress any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, and remediation measures have been sequentially applied; and
- (b) Achieve a net gain in type, amount, and condition of indigenous biodiversity compared to that lost.

Drain

200. GWRC⁷⁹ sought to amend the definition of Drain to align with the regional plan definition. Drain is defined in the NRP as follows:

Drain: An open watercourse, designed and constructed for the purpose of land drainage of surface or subsurface water.

Note: For the avoidance of doubt, channels or swales that only convey water during or immediately following rainfall events are not drains. Many watercourses that are considered to be drains are natural watercourses that have been highly modified, often over many decades, and include channels dug to drain natural wetlands.

201. Mr McCutcheon advised that there is no NPSIB definition for 'drain' and the notified definition differs from the definition requested by GWRC. However, it is directly from the National Planning Standards 14. Definitions Standard. As the latter is the higher order planning document, we agree with retention of the notified definition, as follows:

Drain means any artificial watercourse designed, constructed, or used for the drainage of surface or subsurface water, but excludes artificial watercourses used for the conveyance of water for electricity generation, irrigation, or water supply purposes.

Eco-sourced local indigenous vegetation

202. DoC⁸⁰ supported this definition and sought that it be retained as notified. There is no definition of 'eco-sourced local indigenous vegetation' in the NPSIB, and so we recommend the notified definition be retained.

⁷⁹ Submission #351.38

⁸⁰ Submission #385.14

Indigenous vegetation

203. Forest and Bird⁸¹ opposed the exclusion for indigenous vegetation as defined in and regulated by the National Environmental Standards for Plantation Forestry 2017 (the **NESPF**)⁸² on the basis that it allows for plans to be more stringent to protect significant biodiversity and that would not be possible with this definition in place. It sought the definition be amended as shown below:

Means vegetation or plant species, including trees, which are native to Wellington district. Indigenous Vegetation does not include "indigenous vegetation" as defined in and regulated by the NESPF.

204. This definition is also defined in the NPSIB and we support replacement of the notified version as follows:

indigenous vegetation means vascular and non-vascular plants that, in relation to a particular area, are native to the ecological district in which that area is located.

Pest

205. Forest and Bird⁸³ supported this definition and sought that it be retained as notified. We were advised that 'Pest' is not defined in the NPSIB, but is a term used throughout the ECO chapter. We recommend the notified definition be retained.

Restoration

206. Forest and Bird⁸⁴ supported the existing definition of restoration, but sought that this is amended so that it clearly applies to ecological restoration as shown below:

Means an alteration to return a place to a known earlier form, by reassembly and reinstatement, and/or by removal of elements that detract from its heritage value, or the rehabilitation of sites, habitats or ecosystems to support indigenous flora and fauna, ecosystem functions and natural processes that would naturally occur in the ecosystem and locality.

207. GWRC⁸⁵ sought that the definition is amended to align with the definition in the Regional Plan. Restoration is defined in the NRP as follows:

⁸¹ Submission #345.8

⁸² Subsequently renamed the National Environmental Standards for Commercial Forestry or NESCF

⁸³ Submission #345.9

⁸⁴ Submissions #345.11, 345.12

⁸⁵ Submission #351.47

The rehabilitation of sites, habitats or ecosystems to support indigenous flora and fauna, ecosystem functions and natural processes that would naturally occur in the ecosystem and locality.

208. We were advised that the notified PDP contained definitions for ‘restoration’ and ‘restored’ but the definition of restoration in respect of historic heritage had been removed. In his Section 42A Report, Mr McCutcheon noted that the NPSIB defines ‘restored’ and recommended that this definition should be used instead. We agree in principle, noting that this will generally address the relief sought by Forest and Bird. However, we note that in Stream 8, the reporting officer (Mr Sirl) recommended that the definition of ‘restoration’ have inserted on the end, “*This definition applies to the use of the term restoration in the context of the natural environment and natural character.*” The Stream 8 Hearing Panel agreed with that addition, while noting that the substance of the definition would be considered in this context. We agree with the suggested addition, which works equally well with the NPSIB definition.
209. DoC⁸⁶ sought an additional definition for ‘Restoration or Enhancement Activity’, as the provisions in the ECO chapter refer to these activities but there is no associated definition. The submitter did not suggest any specific wording. Mr McCutcheon was of the view that the provisions in the ECO chapter refer to ‘restoration’ but not ‘enhancement’ and did not consider further amendments to the definition to be necessary. We agree. The definition recommended to be included in the PDP reads as follows:

restoration means the active intervention and management of modified or degraded habitats, ecosystems, landforms, and landscapes in order to maintain or reinstate indigenous natural character, ecological and physical processes, and cultural and visual qualities, and may include enhancement activities. This definition applies to the use of the term restoration in the context of the natural environment and natural character.

Significant Natural Area

210. Transpower⁸⁷ supported the definition and sought that this is retained as notified.
211. To capture SNAs on residential land, or that have not yet been identified in the District Plan, Forest and Bird⁸⁸ sought that the definition is amended as follows:

⁸⁶ Submission #385.10

⁸⁷ Submission #315.35

⁸⁸ Submission #345.14

Means an area of significant indigenous vegetation or significant habitat of indigenous fauna that meets any of the criteria in Policy 23 of the Wellington Regional Policy Statement, whether identified in SCHED8 - Significant Natural Areas, SCHED9- Urban Environment Allotments, or as part of a consenting process.

212. Mr McCutcheon explained that the NPSIB defines 'significant natural area' as follows:

SNA, or significant natural area, means:

- a. any area that, after the commencement date, is notified or included in a district plan as an SNA following an assessment of the area in accordance with Appendix 1; and*
- b. any area that, on the commencement date, is already identified in a policy statement or plan as an area of significant indigenous vegetation or significant habitat of indigenous fauna (regardless of how it is described); in which case it remains as an SNA unless or until a suitably qualified ecologist engaged by the relevant local authority determines that it is not an area of significant indigenous vegetation or significant habitat of indigenous fauna.*

213. He also noted that the notified definition is as follows:

Significant natural area means an area of significant indigenous vegetation or significant habitat of indigenous fauna identified in SCHED8 - Significant Natural Areas.

214. We agree with Mr McCutcheon's view that for clarity and simplicity, retaining the notified District Plan definition is to be preferred. The NPSIB definition is more appropriate to that document as it references Appendix 1 of the NPSIB and the technicalities around anything that has already been identified in a plan after the NPSIB commencement date.

215. We do not support Forest and Bird's proposed amendment, because the notified definition refers to Schedule 8 that contains the SNAs that have been included in the district plan following an assessment by qualified ecologists. This is consistent with clause (a) of the NPSIB definition.

216. Further to the amendments requested in submissions, Mr McCutcheon reviewed the NPSIB to:

- (a) Check that the definitions in the 2024 District Plan align with the NPSIB definitions or whether additional amendments are necessary; and
- (b) Determine whether any additional NPSIB definitions should be added to the District Plan.

217. As a result of this review, Mr McCutcheon identified ten definitions that should be added to the District Plan to assist with interpretation. He recommended that these definitions are added, because the defined terms are used within the recommended provisions, notably new ECO-P2 (avoid policy).
218. Mr McCutcheon further outlined that while no specific submissions were received on these definitions, he was satisfied that there is scope to make these changes through the submissions of DoC, Forest and Bird and GWRC requesting better alignment with the NPSIB.
219. We agree that this is a pragmatic approach and note that there was no discussion on this matter from any party at the hearing. We therefore recommend the inclusion of the following additional definitions:
- a) **Buffer** refers to a defined space between core areas of ecological value and the wider landscape that helps to reduce external pressures;
 - b) **Connectivity** refers to the structural or functional links or connections between habitats and ecosystems that provide for the movement of species and processes among and between the habitats or ecosystems;
 - c) **Ecosystem** means the complexes of organisms and their associated physical environment within an area (and comprise: a biotic complex, an abiotic environment or complex, the interactions between the biotic and abiotic complexes, and a physical space in which these operate).
 - d) **Ecosystem function** means the abiotic (physical) and biotic (ecological and biological) flows that are properties of an ecosystem;
 - e) **Fragmentation**, in relation to indigenous biodiversity, refers to the fragmentation of habitat that results in a loss of connectivity and an altered spatial configuration of habitat for a given amount of habitat loss;
 - f) **Habitat** means the area or environment where an organism or ecological community lives or occurs naturally for some or all of its life cycle, or as part of its seasonal feeding or breeding pattern; but does not include built structures or an area or environment where an organism is present only fleetingly;
 - g) **Indigenous biodiversity** means the living organisms that occur naturally in New Zealand, and the ecological complexes of which they are part, including all forms of indigenous flora, fauna, and fungi, and their habitats;

- h) **Mosaic** means a pattern of two or more interspersed ecosystems, communities, or habitats that contribute to the cumulative value of ecosystems in a landscape;
- i) **Sequence** means a series of ecosystems or communities, often physically connected, that replace one another through space;
- j) **Threatened or At Risk, and Threatened or At Risk (declining)** have, at any time, the meanings given in the New Zealand Threat Classification System Manual (Andrew J Townsend, Peter J de Lange, Clinton A J Duffy, Colin Miskelly, Janice Molloy and David A Norton, 2008. Science & Technical Publishing, Department of Conservation, Wellington), available at: <https://www.doc.govt.nz/globalassets/documents/science-and-technical/sap244.pdf>, or its current successor publication.

5.3 New Provisions Sought

- 220. A number of submitters sought that there be new provisions inserted within the Ecosystems and Indigenous Biodiversity chapter.
- 221. In response Mr McCutcheon provided an extensive analysis of the NPSIB as the framework for these provisions, while noting that the NPSIB was Gazetted after the notification of the PDP. Specifically, Mr McCutcheon focused on:-
 - a) Objective 1, particularly maintaining indigenous biodiversity so that there is not net loss;
 - b) Policy 3 requiring a precautionary approach;
 - c) Avoidance and effects management hierarchy frameworks (clauses 3.10/3.11); and
 - d) Reconciling the NPSIB and NPS-UD while maintaining indigenous biodiversity outside of significant natural areas (policy 8/clause 3.16).
- 222. It should be noted that we have already outlined our position on the three key matters in contention being SNAs on residentially zoned land, SNAs on private rural zoned land and indigenous biodiversity outside of SNAs, which were the predominant matters where additional provisions were sought.
- 223. Forest and Bird made extensive submissions requesting a number of additions to the plan provisions relating to Ecosystems and Indigenous Biodiversity. While we had legal submissions its behalf from Mr Anderson, Forest and Bird did not provide a detailed analysis of the plan provisions in support of its submissions.

5.4 New Objectives Sought

224. Forest and Bird⁸⁹ sought that a new objective is added to the ECO chapter:

The District's indigenous biodiversity is maintained and enhanced.

225. In addition to supporting this new objective, Meridian sought to amend Forest and Bird's submission⁹⁰ to qualify "enhanced" with "where appropriate".

226. In respect of this proposed new objective, Mr McCutcheon considered that Forest and Bird's relief would be achieved through the inclusion of a proposed new ECO-O1, and these submission points should be accepted in part (noting that alternative wording is proposed). Mr McCutcheon did not support the relief sought in the associated further submission point from Meridian on the basis that the wording he proposed better aligned with the objective of the NPSIB.

227. We agree with Mr McCutcheon's position and the wording he proposed to add a new Objective 1 to the Chapter, as it aligns with that part of the NPSIB Objective focussed on maintaining a no net loss approach to Indigenous Biodiversity. Recognising that there will need to be consequential renumbering of the objectives that follow, the new Objective reads:-

ECO-O1

Indigenous biodiversity is maintained so that there is at least no overall loss in Wellington City.

228. As part of the package, he proposed to give effect to Clause 3.16 of the NPSIB concerning indigenous biodiversity outside of SNA's, Mr McCutcheon also proposed a new Objective:

ECO-O2

The maintenance of indigenous biodiversity outside of significant natural areas recognises the need to create a well-functioning urban environment.

229. He was of the view that this objective also reflects the intent of the now operative Strategic Objective UFD-O7 with regard to 'creating a well-functioning urban environment' and overarching objective, UFD-O7(5), which states that development can contribute to creation of a well-functioning urban environment that enables all people and communities to provide for the four well beings by being undertaken in an

⁸⁹ Submission #345.175

⁹⁰ Submission #345.173

ecologically sensitive manner. His view was that there is a clear line of sight from this Strategic Objective to the proposed new ECO-O2.

230. In Section 2.4, we have discussed our position on the workability of proposed rules relating to indigenous biodiversity outside of SNA's and the Natural Justice concerns that we have if they were to be put in place at this point. However, we accept that the Objective supports Strategic Objective UFD-O7 and the accompanying proposed policy (which we discuss under new Policies below), gives effect to Clause 3.16 of the NPSIB concerning indigenous biodiversity outside of SNA's. We do not consider that the same issues arise as with the proposed rules, and therefore recommend the proposed new objective be inserted in the Plan.

5.5 New Policies Sought

231. Forest and Bird⁹¹ sought to add a new suite of objectives, policies and rules to provide for the protection of wetlands. In addition to its support of Forest and Bird, GWRC sought to ensure that urban development is located and designed in a way that protects wetlands in accordance with the NPSFM and (at the time of submitting) proposed RPS Change 1 FW 3.
232. GWRC⁹² also sought to add a policy to protect and enhance the health and well-being of water bodies and freshwater ecosystems, including wetlands. This would also lead to rules in the subdivision and future urban zone chapters, requiring that waterways and wetlands have been identified for structure planning or subdivision prior to any development occurring.
233. We agree with Mr McCutcheon who advised, in relation to the protection of wetlands, that the plan's approach is to include a variety of mechanisms such as setbacks, three waters controls, and esplanades, in addition to the specific NRP provisions that apply. We received no evidence to the contrary and agree that no additional changes are therefore required.
234. Forest and Bird⁹³ sought the addition of a new policy for the identification of new significant natural areas.
235. Mr McCutcheon agreed that in order to protect SNAs, these need to first be identified. He recommended a new policy that achieves the relief sought in the submission point,

⁹¹ Submission #345.174

⁹² Submission #351.150

⁹³ Submission #345.175

but with different wording. He advised that this change would align with the Historic Heritage chapters (including Historic Heritage, Notable Trees and Sites and Areas of Significance to Māori), all of which include a policy relating to the identification of the heritage items.

236. However, we note the comprehensive assessments that have been undertaken on behalf of the Council, and so we consider that SNA identification has largely been carried out and new areas that are yet to be identified likely to be the exception.
237. In this regard, we see some utility in a new policy, should new or more detailed information on biodiversity values come to hand. We therefore recommend that the following policy is added as ECO-P1, with a consequential renumbering of the policies that follow.

ECO-P1 – Identification of significant natural areas

Identify areas of significant indigenous vegetation or significant habitats of indigenous fauna in the Wellington district and schedule these areas as significant natural areas.

238. Forest and Bird⁹⁴ sought the addition of a new policy to maintain indigenous biodiversity. We have already our position on the practicalities of additional regulation of indigenous biodiversity in the urban environment and in areas outside of identified SNAs in Sections 2.2 and 2.4 of this report.
239. In his Section 42A Report, Mr McCutcheon advised that Policy 3 and clause 3.7 of the NPSIB require a precautionary approach to be applied to indigenous biodiversity. He considered that the premise of a precautionary approach is to emphasise caution, pausing and reviewing where effects are uncertain, unknown, little understood or could cause significant or irreversible damage. Within this element lies an implicit reversal of the onus of proof. That is, under the precautionary principle, it is the responsibility of an applicant to establish that the effects are sufficiently certain and the proposed activity will not (or is very unlikely to) result in significant harm.
240. We note also Mr McCutcheon's advice that the precautionary principle is a key policy directive of the NPSIB, whereas it is not treated as such in the notified ECO chapter. We therefore agree that given the elevation of the principle to policy level as a key component of the NPSIB, a new policy should be added modelled on the wording of

⁹⁴ Submission #345.176

clause 3.7, while noting that there was little discussion on this recommendation at the hearing.

241. We therefore recommend the insertion of a new ECO-P2 as follows:-

ECO-P2 – Precautionary approach

Require that a precautionary approach be applied where the effects on indigenous biodiversity are uncertain, unknown, or little understood, but those effects could cause significant or irreversible damage to indigenous biodiversity.

242. Another NPSIB implementation amendment proposed by Mr McCutcheon was based on Clause 3.10 of NPSIB, which generally seeks that the adverse effects of new subdivision, use and development on SNAs be avoided. He outlined that this is one of the key differences between the NPS and the notified ECO chapter which provided an 'effects management hierarchy' pathway to adverse effects in the first instance (notified ECO-P1). It is also very different to the approach of as notified ECO-P3 which uses 'only allow' language.

243. We agree that it is worthwhile to include this policy as a replacement for as notified ECO-P3, as it replicates the relevant reasons why adverse effects on SNAs should be avoided. Recommended new Policy ECO-P3 is:

ECO-P3 – Avoiding adverse effects

Avoid the following adverse effects of new use or development on significant natural areas, unless the activity is provided for under ECO-P4:

- 1. Loss of ecosystem representation and extent;*
- 2. Disruption to sequences, mosaics, or ecosystem function;*
- 3. Fragmentation of SNAs or the loss of buffers or connections within a SNA;*
- 4. A reduction in the function of the SNA as a buffer or connection to other important habitats or ecosystems; and*
- 5. A reduction in the population size or occupancy of Threatened or At Risk (declining) species that use a SNA for any part of their life cycle.*

244. ECO-P3 refers to avoiding adverse effects of new use or development on significant natural areas, unless the activity is provided for under ECO-P4. This reflects Mr McCutcheon's recommendation that a new ECO-P4 be added detailing where specific activities may use the effects management hierarchy.

245. Specifically, in his Section 42A Report, Mr McCutcheon recommended that the following policy be added, based on Clause 3.11 (Exceptions to clause 3.10(2) of the NPSIB) to address activities that are not covered under the INF-ECO provisions.

ECO-P4 – Specific activities to use effects management hierarchy

Manage the adverse effects of the following forms of new use and development on significant natural areas in accordance with the effects management hierarchy at ECO-P5:

- 1. Mineral extraction that provides significant national public benefit or aggregate extraction that provides significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand; and*
- 2. New use or development that has a functional or operational need to be in that particular location and where there are no practicable alternative locations for the new use or development; or*
- 3. The construction of a single household unit on a vacant allotment that was created prior to 7 July 2023 and where there is no practicable location within the allotment where the residential unit can be constructed in a manner that avoids the adverse effects specified in ECO-P3; or*
- 4. New use or development is for the purpose of maintaining or restoring a significant natural area that does not involve the permanent destruction of the significant natural area.*

246. Mr Anderson⁹⁵ on behalf of Forest and Bird considered that Policy 4, as proposed in the Section 42A Report was poorly drafted and does not give effect to the NPSIB.
247. He identified first that if Policy 4(1) and (2) are intended to give effect to Clause 3.11(1) of the NPSIB, it is not clear that Clauses 1 and 2 are conjunctive not disjunctive. He proposed wording changes to address this.
248. Mr Anderson was also critical of the drafting of Clause 4 of the proposed policy. His submission was that it provides that you can undertake restoration work as long as you don't destroy the SNA itself. He was of the view that Clause 4 is intended to give effect to Clause 3.10(3) of the NPSIB that states:

- (3) If a new use or development is for the purpose of maintaining or restoring an SNA and does not involve the permanent destruction of significant habitat of indigenous biodiversity, clause 3.10(2) does not apply, and any adverse effects on the SNA must be managed:*
- a. in accordance with clause 3.10(3) and (4); or*

⁹⁵ Legal Submissions for Forest and Bird, Paragraphs 59 to 64

- b. under any alternative management approach that is consistent with the objectives, policies and methods developed for the purpose of clause 3.21.*

249. He further outlined that the clause refers to the destruction of significant indigenous biodiversity, not the SNA, and proposed the following amendment to clause 4.

4. New use or development is for the purpose of maintaining or restoring a significant natural area that does not involve the permanent destruction of ~~the~~ significant indigenous biodiversity ~~natural area~~

250. In his Reply, Mr McCutcheon⁹⁶ agreed with Mr Anderson that the drafting of new ECO-P4 can be modified so that the relationship between clauses 1 and 2 is clearer, but in a different way to that which he suggested. He advised that he had copied the structural approach of Clause 3.11 of the NPSIB, but on reflection, recommended the amended approach set out below. He also agreed with Mr Anderson's proposed amendment to Clause 4.

251. Mr McCutcheon also proposed two new lists, one for mineral extraction, and one for aggregate extraction. His reasoning was based on the nuance in the significance tests that have to be met under Clause 3.11 of the NPSIB between these two forms of extraction: mineral extraction has to have significant national benefit, while aggregate extraction has to have significant national or regional benefit.

252. Forest and Bird⁹⁷ sought the addition of a new policy for development of existing vacant lots (including private residential lots). Mr McCutcheon noted that Clause 3.11(3) provides an exemption for the construction of one new residential building on a vacant allotment created prior to the commencement of the NPSIB and where there is no practicable alternative location. There was no additional comment on this issue from Mr Anderson. We therefore do not agree with the submitter that a specific policy relating to the creation of vacant lots is necessary as clause 3 of new ECO-P4 replicates the NPSIB direction.

253. Overall, we agree with Mr McCutcheon's approach, and consider it resolves the submitter's primary concerns with the policy. We therefore endorse the wording of new ECO-P4 as follows:

ECO-P4 Specific activities to use effects management hierarchy

⁹⁶ Reply of Adam McCutcheon, Paragraphs 106 and 107

⁹⁷ Submission #345.177

Manage the adverse effects of the following forms of new use and development on significant natural areas in accordance with the effects management hierarchy at ECO-P5:

1. *Mineral extraction:*
 - a. *that provides significant national public benefit that could not otherwise be achieved using resources within New Zealand; and*
 - b. *has a functional or operational need to be in that particular location; and*
 - c. *there are no practicable alternative locations; or*
2. *Aggregate extraction*
 - a. *that provides significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand; and*
 - b. *has a functional or operational need to be in that particular location and*
 - c. *there are no practicable alternative locations; or*
3. *The construction of a single household unit on a vacant allotment that was created prior to 7 July 2023 and where there is no practicable location within the allotment where the residential unit can be constructed in a manner that avoids the adverse effects specified in ECO-P3; or*
4. *New use or development is for the purpose of maintaining or restoring a significant natural area that does not involve the permanent destruction of significant indigenous biodiversity.*

254. The effects management hierarchy referred to as ECO-P5 in this policy is considered under ECO-P1 as notified and is discussed below.
255. As an accompanying policy to new Objective ECO-O2, Mr McCutcheon also proposed a new Policy ECO-P8:

ECO-P8 Maintaining indigenous biodiversity outside of significant natural areas

Manage any adverse effects of new use and development on indigenous biodiversity outside of significant natural areas by:

1. *Applying the effects management hierarchy at ECO-P5 where there are significant adverse effects; and*
2. *Minimising other adverse effects.*

256. Mr McCutcheon's reasoning was that:

- (a) Clause 1 of the proposed policy is taken directly from Clause 3.16(1) of the NPSIB, which requires that significant adverse effects are managed by the effects management hierarchy;
 - (b) Clause 2 supports his approach to reconcile the NPSIB and NPS-UD by establishing a pathway for adverse effects which are not significant to be managed by minimising removal of vegetation;
 - (c) This approach accepts that the most significant effects should follow the effects management hierarchy approach, while lesser effects can be minimised in the pursuit of both the use and development of land and the management of indigenous biodiversity; and
 - (d) Less than significant adverse effects should not be managed through a 'one tree out, one tree in' type approach which could result from application of the effects management hierarchy.
257. As set out at length in Section 2.4, we have considerable difficulties with the rule that is proposed governing removal of indigenous biodiversity outside SNAs (Mr McCutcheon's proposed ECO-R4), but have no issue with the Policy remaining. It can be applied whenever a resource consent is sought that may require an evaluation of effects on biodiversity.
258. There are four interrelated submissions from Forest and Bird on this topic. Firstly⁹⁸, it sought the addition of a new rule to manage vegetation clearance outside SNAs. This rule would:
- (a) Limit permitted indigenous vegetation removal to 200m² in any 10 year period; and
 - (b) Where Permitted Activity status is not met, it becomes a Restricted Discretionary Activity with a new policy aimed at maintenance of biodiversity as the matter of discretion.
259. The second submission⁹⁹ also sought to add a new rule to manage vegetation clearance in all areas of the Coastal Environment.

⁹⁸ Submission #345.178

⁹⁹ Submission #345.179

260. Thirdly, Forest and Bird¹⁰⁰ sought to add a new rule to manage vegetation clearance outside of SNAs, with trimming or removal being permitted if:
- (a) It is done to address an imminent threat to people or property provided that a standard is complied with;
 - (b) It is for the operation or maintenance of lawfully established buildings, infrastructure, walking, cycling or private vehicle access or fences or existing farming activities; and
 - (c) The removal does not exceed 200m² per record of title as at notification.
261. If these Permitted Activity requirements are not met, then the submitter sought that a Restricted Discretionary Activity rule apply.
262. As a further matter, the submitter¹⁰¹ sought that the ECO standards in the Draft District Plan relating to SNAs in residential zones are reintroduced.
263. Finally, Forest and Bird¹⁰², sought the addition of a new rule to manage indigenous vegetation clearance outside of SNAs to maintain biodiversity, with the rule also applying in the Rural Zone. DoC¹⁰³ also sought to add a policy to require the protection of indigenous biodiversity outside of SNAs.
264. Mr McCutcheon proposed a new Rule ECO-R4 that would have the effect of requiring resource consent for >3000m² of vegetation in the General Rural, Open Space, Recreation and Town Belt Zones and for >100m² of vegetation in all other zones. This proposed rule was subject to a number of exceptions.
265. For reasons outlined in our evaluation of key issues in Section 2.4 of this report, we consider that without considerable evaluation and consideration of practicalities for urban development in the city, such a rule is not workable at this time. We also have considerable concern about the natural justice issues that it raises. We therefore do not recommend its acceptance.
266. GWRC¹⁰⁴ sought that the Council impose additional controls through the ECO chapter, such as buffer zones and ecological corridors, to manage the effects of intensification

¹⁰⁰ Submission #345.180

¹⁰¹ Submission #345.181

¹⁰² Submission #345.182

¹⁰³ Submission #385.35

¹⁰⁴ Submission #351.145

where this occurs adjacent to SNAs. Nga Kaimanaaki o te Waimapihi¹⁰⁵ also sought that a buffer zone is included around SNAs.

267. Likewise, DoC¹⁰⁶ sought the addition of a new standard to manage development setbacks, as follows:

New buildings, building additions, structures, and swimming pools shall be setback 5m from the boundary of a Significant Natural Area.

268. We agree with Mr McCutcheon that the ECO chapter does not specifically address any form of setback for construction works. For this reason, we do not consider that the inclusion of a standard that requires a setback (or buffer zone) is appropriate in this chapter. We also consider that this may automatically penalise urban zoned properties that adjoin SNAs from being able to use part of their property which may otherwise be suitable and permitted by the PDP. We note that we had no additional evidence to support a contrary view.

5.6 ECO Introduction

269. Transpower¹⁰⁷ supported the Introduction to the ECO chapter, whereby it identifies that provisions specific to infrastructure are addressed in the INF-ECO chapter.
270. Forest and Bird¹⁰⁸ considered that the Introduction is silent on the Council's function to maintaining biodiversity, which is wider than only protection of SNAs. The submitter noted that purpose of this chapter is to identify significant natural areas within Wellington City, to protect and maintain the remaining areas of indigenous biodiversity, and to maintain biodiversity outside of significant natural areas. The submitter noted that the ECO chapter contains provisions which support that function. It sought that the Introduction is amended as follows:

The purpose of this chapter is to identify significant natural areas within Wellington City to protect and maintain the remaining areas of indigenous biodiversity. In addition to the requirement to identify and protect significant natural areas, Council also has the job of maintaining biodiversity outside of significant natural areas. This chapter contains provisions which support that function.

...

The SNAs that are covered by this chapter are contained in SCHED8 – Significant Natural Areas, SCHED 9 – Urban Environment Allotment, and any

¹⁰⁵ Submission #215.1

¹⁰⁶ Submission #385.36

¹⁰⁷ Submission #315.162

¹⁰⁸ Submission #345.172

area that biodiversity values that meet Policy 23 RPS. Where SNAs are within an urban environment allotment the trees and location are identified in SCHED9 – Urban Environment Allotments to meet the requirements of s76 of the RMA.

271. Mr McCutcheon was of the view that it is necessary to amend the ECO Introduction to capture the intent of the NPSIB and the additional regulatory requirements that this imposes.
272. In that respect, Mr McCutcheon agreed with Forest and Bird that the NPSIB directs that the Council's function includes maintaining biodiversity outside of SNAs (clause 3.16 of the NPSIB). He recommended that the Introduction is amended, including changes to the arrangement of paragraphs, and deletion of outdated references to the RPS and previous Council decisions which he considered are minor and inconsequential.
273. Mr McCutcheon did not support the inclusion of residential SNAs or the requested reference to Schedule 9 of the draft District Plan (Urban Residential Allotments), which was not included as part of the notified PDP.
274. In our Minute 58, we requested that Mr McCutcheon respond to the following in respect of the Chapter Introduction:

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.*

275. Mr McCutcheon recommended changes to address the above matters. We accept the majority of the above amendments and those already provided for in the Section 42A Report. However, we have not included the following sentence.

The chapter also includes controls to manage the loss of indigenous biodiversity outside of SNAs across the city by allowing a contiguous area of indigenous vegetation to be cleared after which a resource consent is required.

276. There is a sentence to similar effect earlier in Mr McCutcheon's proposed amendments to the Introduction that we also recommend not be included.
277. We have outlined our views extensively in Section 2.4 why this cannot be supported for natural justice reasons, certainly at this point in the plan process. We also consider

that there are potential impacts of controls to manage the loss of indigenous biodiversity outside of SNAs across the city upon anticipated housing supply in urban areas that have not been thoroughly assessed and reconciled against the NPSUD. In the Rural Zone, there has been extensive areas of SNAs identified already, to the point where we have expressed concern that a number of property owners might not be able to make reasonable use of their land, and further control outside of these areas may conflict with the Rural Activities promoted through that zone.

278. We also recommend a minor change to Mr McCutcheon's suggested text, consequential on his agreement that the Chapter only partially fulfils the relevant higher order policy direction.
279. The Chapter Introduction is recommended to be amended as follows:

Introduction

~~The purpose of this chapter is to identify significant natural areas within Wellington City in order to protect and maintain the remaining areas of indigenous biodiversity partially fulfil the Council's requirements under the National Policy Statement on Indigenous Biodiversity 2023 (NPS-IB) and New Zealand Coastal Policy Statement 2010 (NZCPS) as relevant to indigenous biodiversity.~~

~~Historic urban and rural land use activities have contributed to the continuing decline of indigenous biodiversity over time. The effects not only reduce native biodiversity but result in soil loss through increased erosion and sedimentation loss to streams, rivers, lakes and harbours adversely impacting on water quality and habitats of those areas.~~

~~This chapter does this by identifyiesing areas of indigenous ecosystems and habitats with significant biodiversity values as significant natural areas ("SNAs"). These are district wide overlays which apply within all zones except residential zoned land, in accordance with the adopted amendment by the Wellington City Council Planning and Environment Committee on 23 June 2022. The method of identifying SNAs is consistent with the criteria of the NPS-IB, and within Policy 23 of the Greater Wellington Regional Policy Statement (with respect to mana whenua values).~~

~~Historic urban and rural land use activities have contributed to decline of indigenous biodiversity. The effects not only reduced native biodiversity but resulted in soil loss through increased erosion and sedimentation loss to streams, rivers, lakes and harbours adversely impacting on water quality and habitats of those areas. In recent times there have been positive trends of regeneration and restoration of indigenous biodiversity through a combination of natural regeneration and community and individual level restoration efforts.~~

The objectives, policies and rules manage the effects of activities on the indigenous biodiversity values within the City and are guided by the NPS-IB and NZCPS. In respect of SNAs ~~The rules recognise some activities can occur with limited impacts on the value of SNAs and are provided for as permitted activities. Other activities could result in a greater level of effect, and such activities will require a resource consent. This is to enable an assessment of the activity and effects against the SNA values.~~

~~There are also additional~~ For allowances provisions related to ~~for the removal of vegetation in a SNA relating to Infrastructure and the National Grid refer to the INF-ECO and INF-NG subchapters, and also for the removal of branches near power lines in accordance with Electricity (Hazards from Trees) Regulations 2003. Other activities could result in a greater level of effect, and such activities will require a resource consent. This is to enable an assessment of the activity and effects against the SNA values. Likewise, renewable energy generation activities are regulated by the standalone REG chapter.~~

~~The effects management hierarchy forms a central approach to assessing effects of activities on identified SNA values. This comprises a sequence of steps prioritising the approach to avoid, minimise and remedy the effect on identified values before considering biodiversity offsetting and lastly biodiversity compensation, which is the least preferred option and may only be considered after demonstrating how the preceding steps have been addressed. The principles guiding what constitutes offsetting or compensation are included as appendices to this chapter (see APP2—Biodiversity Offsetting and APP3—Biodiversity Compensation). The overall intent of this sequential approach is to maintain and, where appropriate, restore indigenous biodiversity values while still providing for some subdivision, use and development. Where offsetting is required the overall outcome should be no net loss and preferably a net gain in biodiversity values.~~

The SNAs that are covered by this chapter are contained in SCHED8 – Significant Natural Areas.

The provisions of this chapter do not apply to work or activity of the Crown within the boundaries of any area of land held or managed under the Conservation Act 1987 or any other Act specified in Schedule 1 of that Act.

5.7 ECO Objectives as Notified

ECO-O1: Significant natural areas are protected from inappropriate subdivision, use and development and where appropriate, restored (Now ECO-O3)

280. Kilmarston¹⁰⁹ supported ECO-O1 and sought that the objective is retained, albeit with concerns should SNAs be extended over paper roads and access areas. No changes were requested to the objective.
281. Tyers Stream Group¹¹⁰ sought that ECO-O1 is amended to delete the word 'inappropriate'. No reason was given for this request, and it was not expanded on by Ms Cadenhead at the hearing.
282. In a related submission, Forest and Bird¹¹¹ sought that ECO-O1 be amended to delete the phrase "*from inappropriate subdivision, use and development*" on the basis that section 6(c) of the RMA does not include this. It sought that ECO-O1 be amended as shown below:

ECO-O1 – Significant natural areas are protected ~~from inappropriate subdivision, use and development~~ and where appropriate, restored.

283. Mr McCutcheon considered that this change would have the result of signalling that subdivision, use and development should not occur in SNAs in any circumstances. The NPSIB sets out in clause 3.11 specific circumstances and activities where an effects management hierarchy is appropriate to manage effects on SNAs as a result of subdivision, use and development. We accordingly agree that there is, by inference, the possibility of appropriate subdivision, use and development within SNAs.
284. TRoTR¹¹² supported ECO-O1 in part but sought that this is amended to mention protection of SNAs from incompatible activities. Mr McCutcheon disagreed on the basis that the notified provision is consistent with policy 7 of the NPSIB. We agree with this position, noting that no specific wording was proposed for this change, nor any further clarification provided at the hearing.

¹⁰⁹ Submission #290.34

¹¹⁰ Submission #221.32

¹¹¹ Submission #345.183

¹¹² Submission #488.49, 488.50

285. Meridian¹¹³ supported the objective in part but sought that this is amended to clarify that it is the values of the SNAs that should be protected and not the geographical areas they occupy. It sought that ECO-O1 is amended as shown below:

ECO-O1 – The ecological and indigenous biodiversity values of sSignificant natural areas are protected from inappropriate subdivision, use and development and where appropriate, restored.

286. Mr McCutcheon disagreed that it is the values of the SNAs that should be protected and not the geographical areas they occupy. He noted that policy 7 of the NPSIB is focused on SNAs, rather than their values. We accept that view as did Ms Foster¹¹⁴ for Meridian.

287. WCC Environmental Reference Group¹¹⁵ considered that it is crucial that SNAs are protected, as is required by law, and sought an amendment to put the emphasis on restoration as the default position, rather than a possible option. The amendment sought by the submitter is shown below:

ECO-O1 – Significant natural areas are protected from inappropriate subdivision, use and development and where ~~appropriate~~ possible, restored.

288. We agree with Mr McCutcheon that we should not recommend the words “where appropriate” be changed to “where possible” on the basis that this wording would diverge from the wording in the NPSIB, while providing no difference with respect to the outcome achieved by the objective.

289. DoC¹¹⁶ opposed ECO-O1 in part, on the basis that ECO-O1 and ECO-O2 are seeking the same outcome and should be combined into one objective. The submitter sought the following amendment, which it considered would better align with Policies 7 and 14 of the NZCPS:

ECO-O1 – Significant natural areas (including those within the coastal environment) are protected from inappropriate subdivision, use and development and where appropriate, restored or rehabilitated.

290. Mr McCutcheon agreed with DoC that ECO-O1 and ECO-O2 are seeking the same outcome and should be combined into one objective. He considered that this would reduce Plan complexity while achieving the outcomes sought by having two separate

¹¹³ Submission #228.68, 228.69

¹¹⁴ Evidence of Christine Foster paragraph 5.1

¹¹⁵ Submission #377.116

¹¹⁶ Submission #385.37, 385.38

objectives. This is because ECO-O1 is sufficiently broad to cover all types of activities, including in his view ECO-O3, which we discuss below.

291. We agree therefore that the combination of ECO-O1 and ECO-O2 does not reduce the level of protection afforded to SNAs in the Coastal Environment, as the PDP seeks to protect the ecological and biodiversity values within SNAs regardless of their location. Strictly speaking, the words DoC proposed to add in brackets are not necessary, but we see no harm making the point more explicitly.
292. On the other parts of the submission, we agree that the use of the phrase “*and where appropriate restored*” is complementary to the intent of policy 11 of the NZCPS, which also anticipates restoration works where activities have an adverse effect. We do not see that it is necessary to add the words “*or rehabilitated*” to the end of the objective as we consider that this term is interchangeable with the term restoration. Further, we note that Clause 1.4 of the NPSIB clarifies that both the NZCPS and NPSIB apply to SNAs within the Coastal Environment, with the NZCPS to prevail if any conflict arises. We therefore agree that there is no requirement to include a specific objective relating to the Coastal Environment as long as the intent of both the NPSIB and NZCPS policy 11 are achieved.
293. Therefore, we recommend ECO-O1 (now ECO-O3) be amended as follows:

ECO-O13 – Significant Natural Areas, including those within the coastal environment, are protected from inappropriate subdivision, use and development and where appropriate, restored.

ECO-O2: Significant natural areas within the coastal environment are protected

294. Tyers Stream Group, Kilmarston, Forest and Bird and WCCERG¹¹⁷ supported ECO-O2, and sought that the objective is retained as notified.
295. Victoria University of Wellington Students’ Association¹¹⁸ sought that building activities around the coast are restricted to protect biodiversity, along with natural character and amenity values. As such, the submitter supported ECO-O2 but sought that building activities around the coast, including airport runway extensions, acknowledge the large range of indigenous birds that nest around the coastline.
296. We agree with Mr McCutcheon, who was of the view that the revised ECO-O1 and the policies and rules that follow it achieve the relief sought by Victoria University of

¹¹⁷ Submissions #221.33, 290.35, 345.184, 377.117

¹¹⁸ Submissions #123.39, 123.40

Wellington Students' Association. SNAs around the south coast in the vicinity of the airport are an INF-ECO matter, but there are also controls in the Coastal Environment and Natural Character Chapters to manage non-infrastructure development.

297. Meridian¹¹⁹ supported the objective in part, but sought that this is amended as shown below:

The ecological and indigenous biodiversity values of ~~S~~significant natural areas within the coastal environment are protected.

298. We note Mr McCutcheon's support for, and Ms Foster's acceptance of, deletion of ECO-O2 for the reasons outlined above in relation to ECO-O1.

299. GWRC¹²⁰ sought to amend the wording of ECO-O2 so that it differs from that of ECO-O1. The change sought by the submitter was as follows:

ECO-O2 – Significant natural areas within the coastal environment are protected and, where appropriate, restored or rehabilitated.

300. As above, DoC¹²¹ considered that as ECO-O1 and ECO-O2 both seek the same outcome, they should be incorporated into a single objective. The submitter sought that, subject to its' requested amendments to ECO-O1, that ECO-O2 is deleted in its entirety.

301. In respect of these two submissions we consider that the combining of ECO-O1 and ECO-O2 achieves the relief sought by GWRC and DoC. We therefore agree that ECO-O2 as notified should be deleted.

ECO-O3: Significant natural areas are protected from the adverse effects of plantation forestry activities (now ECO-O4)

302. Tyers Stream Group, Kilmarston, Forest and Bird, TRoTR and WCCERG¹²² supported ECO-O3 and sought that the objective is retained as notified.
303. Mr McCutcheon's preferred outcome, for which there was no submission scope, was to delete ECO-O4 in its entirety on the basis that its intent is already covered by ECO-O3, and employing the same logic that there need not be a specific objective for each type of activity which may have an inappropriate effect.

¹¹⁹ Submissions #228.70, 228.71

¹²⁰ Submission #351.151

¹²¹ Submission #385.39

¹²² Submissions #221.34, 290.36, 345.185, 488.51, 377.118

304. Further, we were advised that clause 3.14 of the NPSIB relates to plantation forestry activities. Clause 3.14(1) requires that, where an existing plantation forest includes a SNA, the effects on the SNA are managed in a manner that both protects the indigenous biodiversity as much as possible and allows the plantation forestry activity to continue. Clause 3.14(2) requires that where vegetation for plantation forestry is planted within a SNA, this must be managed to maintain long-term populations of any Threatened or At Risk (declining) species present in the area. Clause 3.14(3) requires that the District Plan is consistent with this clause.
305. Saying that, we agree that in the absence of scope to delete it, the retention of notified ECO-O4 is appropriate. It sets an expectation that the effects of new plantation forestry within a SNA should be avoided, and existing plantation forestry managed, within the policy and rule framework.

ECO-O4: Significant natural areas are maintained or restored by mana whenua in accordance with kaitiakitanga (now ECO-O5)

306. Tyers Stream Group, Kilmarston (while noting that this should not apply to areas earmarked for public access or roads), Forest and Bird and WCCERG¹²³ supported ECO-O4 and sought that the objective is retained as notified.
307. GWRC¹²⁴ sought to amend the wording of ECO-O4 for consistency with ECO-O1. The change sought by the submitter was as follows:

ECO-O4 - Significant natural areas are ~~maintained~~ protected or restored by mana whenua in accordance with kaitiakitanga

308. Mr McCutcheon explained that ECO-O4 relates to kaitiakitanga of SNAs by mana whenua and seeks to give effect to objective 1(a) and 1(b)(i) of the NPSIB. The stated objective at 1(a) is “to maintain indigenous biodiversity...” with 1(b)(i) recognising that tangata whenua have a role as kaitiaki. This leads into policy 2 and sets a pathway for the development of bespoke planning frameworks for indigenous biodiversity on Māori land in partnership with tangata whenua and landowners (clause 3.18). Clause 3.18(1)(a) refers to maintenance and restoration of indigenous biodiversity on such land, whereas 3.18(1)(b) requires the protection of SNAs and identified taonga.
309. He noted in this regard that kaitiakitanga implies protection, rather than maintenance.

¹²³ Submissions #221.35, 290.37, 345.186, 377.119,

¹²⁴ Submission #351.152

310. We agree with Mr McCutcheon that it may be appropriate within ECO-O4 to use the word “*protect*” rather than “*maintain*”, as requested by GWRC.
311. However, the NPSIB includes a number of specific requirements about working with mana whenua to develop planning provisions in partnership. Accordingly, Mr McCutcheon did not support that change, because neither Taranaki Whānui, TRoTR, nor any other submitter had sought any change. We agree with the reporting officer that this work should be deferred to a later plan change to allow for a more fulsome process to be followed. Therefore, we agree that ECO-O4 is retained as notified at present.
312. As with ECO-O3, a minor and inconsequential change has been made to the capitalisation of significant natural areas in the objective.

5.8 ECO Policies as notified

ECO-P1: Protection of significant natural areas

313. Tyers Stream Group, Horokiwi Quarries Limited, Aggregate and Quarry Association and Paul Blaschke¹²⁵ supported ECO-P1 and sought that the policy be retained as notified.
314. Transpower¹²⁶ supported ECO-P1 and sought it be retained as notified, subject to the deletion of the cross-references to this policy within INF-ECO-P36 and INF-ECO-P37.
315. Meridian¹²⁷ opposed the policy in part and sought that it be amended on the basis that the mitigation hierarchy within the policy should focus on biodiversity and compensation initiatives in relation to adverse effects that are more than minor (not all residual adverse effects).
316. Forest and Bird¹²⁸ had a number of concerns in relation to ECO-P1 and sought amendments as follows:
- (a) It is currently not clear that ECO-P5 would apply as a first step in the Coastal Environment. As such, a specific clause is required in ECO-P1;
 - (b) In its view, the SNA provisions should apply to any area of significant biodiversity that meets the Policy 23 RPS criteria, as there may be such areas that are not

¹²⁵ Submissions #221.36, 271.22, 303.14, 435.8

¹²⁶ Submission #315.163

¹²⁷ Submissions #228.72, 228.73

¹²⁸ Submission #345.187

included in Schedule 8. This would include the Urban Development Allotments identified in Appendix 9 to the Draft District Plan (i.e. the SNAs on residential land);

(c) The effects management hierarchy in ECO-P1 only requires avoidance of effects “where practicable”. In the submitter’s view, this low standard is not sufficient to ensure the requirements of the RMA (including Sections 6 and 31) are met, and some effects must be avoided in order to meet these requirements;

(d) The policy should refer to mitigating, rather than minimising adverse effects; and

(e) Biodiversity compensation is not supported, and clause 7 of the policy should be deleted.

317. GWRC¹²⁹ sought that ECO-P1 be amended to delete the words “*where practicable*” from subclause 1, as this is restated in clause 2:

318. WCCERG¹³⁰ sought that clause 3 of the policy is either clarified to state how remedying of effects may exist, or it be deleted in its entirety. Additionally, WCCERG sought the deletion of clause 5 of the policy.

319. DoC¹³¹ opposed ECO-P1 in its current form and sought that it be amended to be consistent with the exposure draft of the NPSIB. The submitter did not recommend any specific wording.

320. In relation to all of these submissions, Mr McCutcheon explained that the intent of notified ECO-P1 was to incorporate the effects management hierarchy. It was also the primary policy for the assessment of effects on SNAs.

321. Given that the NPSIB is now in effect, and the effects management hierarchy it details is clear, in Mr McCutcheon’s view, the best approach is to align the wording of ECO-P1 with the definition provided in clause 1.6 of the NPSIB and amend the policy accordingly.

322. We agree with this approach, while noting that there was little discussion about this policy change at the hearing. Therefore, we endorse the recommendations from the reporting officer, subject to a minor wording change for consistency (referring to “*significant natural areas*” in full). We recommend the submission points from Transpower, Meridian and GWRC are accepted in part, insofar as the relief sought is

¹²⁹ Submission #351.153

¹³⁰ Submission #377.120, 377.121

¹³¹ Submission #385.40, 385.41

partially achieved through the amended wording. We note that the Forest and Bird submission points largely do not align with the NPSIB definition.

323. We also note that as a consequence, the following changes are required:

- (a) Renumbering of the policy, with a consequential renumbering of all policies and rules in the ECO and other chapters that reference this policy; and
- (b) The removal of the reference to SCHED8 in the chapeau, on the basis that this is addressed by the definition of SNA.

324. We recommend therefore that notified ECO-P1 is replaced with the Effects Management hierarchy replicated from the NPSIB as ECO-P5, as follows:

ECO-P5 Effects management hierarchy

Manage any adverse effects of use and development on significant natural areas that are not referred to in ECO-P3 or that are specified activities in ECO-P4 by applying the effects management hierarchy as follows:

- 1 Adverse effects are avoided where practicable; then*
- 2 Where adverse effects cannot be avoided, they are minimised where practicable; then*
- 3 Where adverse effects cannot be minimised, they are remedied where practicable; then*
- 4 Where more than minor residual adverse effects cannot be avoided, minimised, or remedied, biodiversity offsetting is provided in accordance with APP2 – Biodiversity Offsetting where possible; then*
- 5 Where biodiversity offsetting of more than minor residual adverse effects is not possible, biodiversity compensation is provided in accordance with APP3 – Biodiversity Compensation; then*
- 6 If biodiversity compensation is not appropriate, the activity itself is avoided.*

ECO-P2: Appropriate vegetation removal in significant natural areas (now ECO-P7)

325. Tyers Stream Group, FENZ and Paul M Blaschke¹³² supported ECO-P2 and sought that the policy be retained as notified.

326. Transpower¹³³ supported ECO-P2 on the basis it is not applicable to infrastructure. Should the policy apply to infrastructure, then Transpower sought that it be amended to recognise vegetation removal necessary to enable the safe and efficient operation of the National Grid. We note that there was no suggested wording, but the submitter

¹³² Submissions #221.37, 273.102, 435.9

¹³³ Submissions #315.164, 315.165

is correct that ECO-P2 is not applicable, and that the INF-NG Sub-Chapter considered as part of Hearing Stream 9 would apply to Transpower's national grid operations.

327. Meridian¹³⁴ supported the policy in part and sought that this it be amended on the basis that the removal of vegetation may also be appropriate where this is necessary to provide for the functional or operational needs of regionally significant infrastructure, including vegetation removal around structures. It sought related changes.
328. As with the Transpower submission, we accept Meridian's support for the policy in part given that the REG chapter deals with the submitters assets where they affect SNAs in a standalone manner.
329. The Aggregate and Quarry Association¹³⁵ considered that while ECO-P2 is unlikely to apply to quarry activities, a new sub-point should be added that enables vegetation clearance where there is an existing activity and this is a legal activity.
330. In response, the reporting officer advised that the policy cannot be expanded to provide a pathway for activities that generally have an operational or functional need, as the list of activities in ECO-R1 and the higher-level groupings in this policy, need to be exhaustive.
331. However, Mr McCutcheon agreed in part with the submitter that a new clause be added to the policy in respect of the operation and maintenance of existing quarries. In his assessment of ECO-R1, Mr McCutcheon recommended a requirement for compliance with ECO-S2, in recognition that SNAs have been identified within the operational area of the Quarry Zone at Kiwi Point and on the periphery of Horokiwi Quarry. We agree that it is reasonable, and like the reporting officer, acknowledge the regional significance of such strategic assets. We therefore recommend allowing for relatively minor clearance for continued operation and maintenance of quarries, but not their expansion.
332. Forest and Bird¹³⁶ considered that:
- (a) The policy should not start from a point of 'enabling' because this policy will be considered when consenting the listed activities where they are no longer Permitted Activities: the matters of discretion for ECO R1.4, 1.5, 2.2, 3.2 refer to this policy;

¹³⁴ Submissions #228.74, 228.75

¹³⁵ Submission #303.15

¹³⁶ Submission #345.188

- (b) It is not clear whether all or some of these references are in error, because of the deletion of some policies just prior to notification;
- (c) It is not appropriate to provide for new roads etc through SNAs as of right, and this should be limited to maintenance of existing roads and tracks;
- (d) It is not clear why conservation activities are referred to in this policy. The rules provide for restoration activities, not conservation activities. If reference to “conservation activities” is to be retained, then the term ‘restoration’ should be amended to align with its submission point on the definition that requested that the term clearly applies to ecological restoration only; and
- (e) The list should be exhaustive, so that it only provides for the intended activities.

333. As such, Forest and Bird sought that the chapeau of the policy is amended as shown below:

ECO-P2 - Appropriate vegetation removal in significant natural areas
Consider enabling ~~Enable~~ vegetation removal within significant natural areas
~~identified within SCHED8~~ where it is of a scale and nature that maintains the
biodiversity values, ~~including~~ to provide for:

- 334. We agree with Mr McCutcheon that the drafting style of the plan is to provide certainty for Permitted Activities through the use of the word “*enable*”, and therefore we accept his recommendation to retain that language in this policy.
- 335. Forest and Bird also sought to qualify clause 2 so that the policy provides for the “*Safe operation of existing roads, tracks and access ways*”.
- 336. Mr McCutcheon agreed in part with Forest and Bird in respect of subclause 2, recommending that instead of using the word ‘*existing*’ the term “*lawfully established*” be used. The latter was the submitter’s relief in respect of this matter in the accompanying rule ECO-R1. We asked him to consider whether the reference in this sub-policy to roads and rail corridors was consistent with the operation of the INF-ECO Sub-Chapter as a standalone set of provisions governing infrastructure effects on biodiversity values. He agreed that this was inconsistent and recommended further amendments to focus the sub-policy on private roads, tracks and accessways. We agree with his logic in both respects.
- 337. We do not agree that the inclusion of conservation activities is unclear as it applies to all ecological initiatives not necessarily related to restoration of habitat. We therefore have no difficulty with it being included in the policy along with restoration activities.

338. TRoTR¹³⁷ sought that clause 6 of ECO-P2 be amended as shown below:

~~*Opportunities to enable*~~ *Provide for tangata whenua to exercise customary harvesting practices (excluding commercial use).*

339. Like Mr McCutcheon we support removing “*opportunities to enable*”, as requested by the submitter. The words “*provide for*” do not need to be added because the chapeau already ends in provide. That subclause can begin with “*tangata whenua*” instead.

340. We asked in Minute 58 for Mr McCutcheon to confirm his response to TRoTR’s submission regarding deletion from notified ECO-P2(6) of reference to commercial use. We accept his position as he outlined¹³⁸ that:

(a) The exclusion of commercial use in renumbered ECO-P7 should remain in the sixth clause of the policy;

(b) Re-reading the full submission of TRoTR, he was unsure if deletion of the exclusion for customary use had been requested, and if the summary of the submission captured this correctly. The submission can be read as seeking amendment to the chapeau and omitting mention of the commercial use exclusion. TRoTR were not present at the hearing to seek clarification;

(c) In any case, his view was that it is appropriate for commercial uses of SNAs to be assessed through a resource consent process given the potential for a large amount of vegetation to be removed, and for effects to be appropriately managed where necessary; and

(d) The matter can also be more fulsomely considered in the Te Ao Māori plan change if it is of priority to TRoTR.

341. In relation to all of these submission points, Mr McCutcheon explained that the role and purpose of ECO-P2, now that the NPSIB is in effect, is to:

(a) Provide policy direction as to when adverse effects on SNAs are permissible to enable specified established activities to occur (per clause 3.15 of the NPSIB); and

(b) Reflect where the NPSIB does not apply to manage adverse effects on SNAs (clause 3.10(6)(a)-(e)).

¹³⁷ Submission #488.52

¹³⁸ Reply of Adam McCutcheon paragraphs 69 to 72

342. We agree with Mr McCutcheon's rationale that the policy establishes the types of activities which are Permitted Activities in rule ECO-R1, subject to standards. These standards in effect act as a proxy for ensuring their effects are no greater in intensity, scale, or character and do not result in the loss of extent of degradation of a SNA (clause 3.15(3)).
343. We also agree with the other recommended changes by the reporting officer to:
- (a) Alter the title and chapeau of the policy to add in the words "trimming, and pruning", which would make the policy title the same as the associated rule;
 - (b) Re-number the policy as a consequence of wider reordering and addition of new policies;
 - (c) Remove the reference to "identified" values consequent on the recommendation for ECO-P7;
 - (d) Remove the reference to SCHED8 as this is contained within the definition of significant natural area; and
 - (e) Amend the chapeau to remove the word "including" because compliance with Clause 3.15 requires that specific types of activities are identified in plans. Accordingly, this means that the rule must contain an exclusive, rather than inclusive list.
344. On the basis of the above, we recommend that ECO-P2 (now ECO-P7) be amended as follows:

*ECO-P27 – Appropriate trimming, pruning or vegetation removal in significant natural areas
Enable vegetation trimming, pruning or removal within significant natural areas ~~identified within SCHED8~~ where it is of a scale and nature that maintains the biodiversity values, ~~including~~ to provide for:*

- 1. Maintenance around existing buildings; or*
- 2. Safe operation of lawfully established private roads ~~or rail corridors~~, tracks and access ways; or*
- 3. Restoration and conservation activities including plant and animal pest control activities; or*
- 4. Natural hazard management activities; or*
- 5. Reduction of wildfire risk through the removal of highly flammable vegetation near existing residential units on rural property; or*
- 6. ~~Opportunities to enable t~~Tangata whenua to exercise customary harvesting practices (excluding commercial use); or*

7. *The continued operation and maintenance of quarries for aggregate extraction.*

ECO-P3: Subdivision, use and development in significant natural areas

345. Tyers Stream Group, Meridian, Horokiwi Quarries Ltd, WCCERG and Paul M Blaschke¹³⁹ supported ECO-P3 and sought that the policy be retained as notified.
346. DoC¹⁴⁰ sought that references to ECO-P2 in the policy be amended to refer to ECO-P1.
347. Forest and Bird¹⁴¹ considered that:
- (a) The policy should not start from a presumption of allowing activities;
 - (b) The policy should also include SNAs in SCHED8, SCHED9 of the Draft District Plan and areas that meet Policy 23 criteria that have not yet been defined, as per the relief sought for the SNA definition.
348. Forest and Bird also supported ECO-P3.1 (subject to correcting the reference to ECO-P1), ECO-P3.2 and ECO-P3.4, but sought amendments to the chapeau and ECO-P3. The changes sought by the submitter are shown below:

ECO-P3 - Subdivision, use and development in significant natural areas
*Only a**Allow for subdivision, use and development in significant natural areas listed in SCHED8 where it:*

- 1. Applies the effects management hierarchy approach in ECO-P1 ~~ECO-P2~~; and*
- 2. Demonstrates that it is appropriate, including by taking into account the findings of an ecological assessment for the activity in accordance with APP15; and*
- 3. Ensures the activities effects on biodiversity values are appropriately managed in accordance with the effects management hierarchy, and where residual effects remain after avoiding, remedying or mitigating, to achieve no net loss of biodiversity values of the ~~identified~~ significant natural area; and*
- 4. Ensures that the ecological processes, functions and integrity of the significant natural area are maintained.*

¹³⁹ Submissions #221.38, 228.76, 271.23, 377.122, 435.10

¹⁴⁰ Submission #385.42

¹⁴¹ Submission #345.189

349. Mr McCutcheon explained, and we accept, that the NPSIB contains an avoidance and effects management hierarchy framework through clauses 3.10/3.11 which generally seek that the adverse effects of new subdivision, use and development on SNAs are avoided and the effects management hierarchy be used only for additional effects or for specific activities. His view was that this approach is fundamentally incompatible with notified ECO-P3.
350. We have already referred to the two new policies Mr McCutcheon recommended to reflect the NPSIB framework (New ECO-P3 Avoiding adverse effects on significant natural areas and New ECO-P4 Specific activities to use effects management hierarchy). The notified ECO-P3 is therefore redundant and needs to be removed.
351. Considering this, we recommend that all submissions seeking the policy be retained as notified or amended be rejected based on its deletion.

ECO-P4: Protection and restoration initiatives (now ECO-P9)

352. Tyers Stream Group and Forest and Bird¹⁴² supported ECO-P4 and sought that the policy be retained as notified.
353. Meridian¹⁴³ supported the policy in part, provided its requested amendments to ECO-P1 are adopted.
354. Paul Van Houtte¹⁴⁴ sought that the policy is amended to restrict the free roaming of cats, as these kill native birds and lizards, and spread toxoplasmosis. Like Mr McCutcheon, we do not consider the District Plan to be the appropriate vehicle for regulating roaming cats. We were advised that the Council has recently updated, and occasionally reviews, the Animal Bylaw 2024, which is a more appropriate place to consider this issue.
355. Victoria University of Wellington Students' Association¹⁴⁵ sought that the policy is amended to allow for the practice of rāhui to be implemented when there is a threat to biodiversity from human activity. In the submitter's view this is an important addition, as rāhui is an important part of Māori conservation practice and will allow certain protected species to thrive and be free from human interference for brief periods when there may be a threat of particular vulnerability.

¹⁴² Submissions #221.39, 345.190

¹⁴³ Submission #228.77

¹⁴⁴ Submission #92.1

¹⁴⁵ Submission #123.41

356. WCCERG¹⁴⁶ supported the policy in part, but sought to add an additional clause to state:

Where possible, recognise and assist with the financial costs associated with protection and restoration initiatives incurred by mana whenua, landowners and community groups.

357. In relation to incentives (clause 3.21(3)), we agree with the reporting officer that there is merit in supporting landowners and community groups with financial incentives, but this is a process outside of the control of the District Plan. We were advised that ultimately no incentives can be offered until such time as these are approved in a Long Term Plan or Annual Plan. This work has to date been deferred.
358. Therefore, while the submission points seeking recognition of, and assistance with, financial costs associated with protection and restoration initiatives are acknowledged, no amendments to the policy are supported at this time, but we do support use of non-statutory methods as outlined below.
359. Mr McCutcheon advised that there are three policies in the NPSIB concerned with the protection and restoration of indigenous biodiversity, being Policies 2, 7 and 13. Clause 3.21 specifically requires that the District Plan includes objectives, policies, and methods to promote the restoration of indigenous biodiversity.
360. We agree that ECO-P4 is consistent with the NPSIB requirements to promote and provide for the protection and restoration of SNAs, including through giving direction to the permitted activity status for restoration activities in ECO-P9.
361. Further, Mr McCutcheon explained that Clause 3.21(3) also requires that:

“local authorities must consider providing incentives for restoration in priority areas referred to in subclause (2), and in particular where those areas are on specified Māori land, in recognition of the opportunity cost of maintaining indigenous biodiversity on that land”

362. In his view, ECO-P4 is consistent with the NPSIB requirements to promote and provide for the protection and restoration of SNAs, including through giving direction to the permitted activity status for restoration activities in ECO-P9.
363. In light of clause 3.21, we agree that a non-statutory method is the most appropriate way to identify and prioritise areas for restoration. Mr McCutcheon reached this

¹⁴⁶ Submission #377.123

conclusion after noting that the RPS-Change 1 Officer recommended provisions¹⁴⁷ include a method to do so in partnership with territorial authorities and mana whenua (Policy IE.3: Maintaining, enhancing, and restoring indigenous ecosystem health – non-regulatory).

364. Given the high level of community interest in the restoration of the city's indigenous biodiversity, and a record of some notable successes (e.g. Zealandia), we can also see merit in raising awareness of this requirement of the NPSIB in the district plan. This method can also include a reference to the promotion of the resilience of indigenous biodiversity to climate change (policy 4 of the NPSIB).

365. Therefore, we support the inclusion of the following Method.

ECO-M1

The Wellington City Council and Greater Wellington Regional Council will work in partnership with mana whenua and in collaboration with landowners, communities, and other stakeholders to prioritise the following areas for restoration:

- a. Significant natural areas whose ecological integrity is degraded;*
- b. Threatened and rare ecosystems representative of naturally occurring and formerly present ecosystems;*
- c. Areas that provide important connectivity or buffering functions;*
- d. Natural inland wetlands whose ecological integrity is degraded or that no longer retain their indigenous vegetation or habitat for indigenous fauna;*
- e. Areas of indigenous biodiversity on specified Māori land where restoration is advanced by the Māori landowners; and*
- f. Any other priorities specified in regional biodiversity strategies or any national priorities for indigenous biodiversity restoration.*
- g. This work will identify opportunities to promote the resilience of indigenous biodiversity to climate change.*

366. In light of the rationale for the Council's resolution discussed in Section 2.1 of our report, and the submissions on this point¹⁴⁸ discussed in section 8.1 of his Section 42A Report, we asked Mr McCutcheon to consider the potential for a second non-statutory method focussed on incentives for protection of SNAs, appropriately qualified to recognise that

¹⁴⁷ Subsequently confirmed in the GWRC Decisions and now the subject of appeal

¹⁴⁸ Steve West [#2.3]; Jane Hurley [#286.1]

its implementation is dependent on support through the LTP process. In his Reply¹⁴⁹, Mr McCutcheon advised that he considered that he supported the idea. He suggested wording as follows:

“Subject to obtaining relevant approvals and supporting funding, Council will seek to establish an incentives and support package to assist landowners to protect, restore and maintain SNAs.”

367. While we understand submitters with SNAs on their land would consider this approach gives limited comfort, given the qualifications, we consider that there is merit in this non-statutory method, and we recommend its adoption.

ECO-P5: Significant natural areas within the coastal environment (now ECO-P6)

368. Tyers Stream Group, WCCERG and DoC¹⁵⁰ supported ECO-P5 and sought that this is retained as notified.
369. Forest and Bird¹⁵¹ considered that ECO-P5 should:
- (a) Cross reference to ECO-P1 and not ECO-P2; and
 - (b) Apply to all zones, including residential zones.
370. The changes sought by the submitter are shown below:

ECO-P5 - Significant natural areas within the coastal environment

Only allow activities within ~~an identified~~ significant natural area ~~within~~ ~~SCHED8~~ in the coastal environment where it can be demonstrated that they;

- 1. Avoid adverse effects on the matters in Policy 11(a) of the New Zealand Coastal Policy Statement 2010;*
- 2. Avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on the matters in Policy 11(b) of the New Zealand Coastal Policy Statement 2010; and*
- 3. Protects ~~the other~~ indigenous biodiversity values in accordance with ECO-P1 ~~ECO-P2~~*

371. Meridian¹⁵² supported the policy in part, noting it gives effect to the NZCPS. The submitter sought that the policy is amended by changing clause 3 as follows:

¹⁴⁹ Adam McCutcheon Reply at page 12

¹⁵⁰ Submissions #221.40, 377.124, 385.43

¹⁵¹ Submission #345.191

¹⁵² Submissions #228.78, 228.79

*Protects ~~the~~ other indigenous biodiversity values in accordance with ~~ECO-P1~~
ECO-P2.*

372. Mr McCutcheon advised that clause 1.4 of the NPSIB clarifies that both the NZCPS and NPSIB apply to SNAs within the Coastal Environment. Additionally, Policy 11 of the NZCPS is the most relevant consideration in guiding the policy framework for the district plan for coastal SNAs.
373. We therefore agree with Forest and Bird and Meridian that notified ECO-P2 is incorrectly referenced in the policy, but as previously noted this error has now been corrected by way of a clause 16 amendment to the PDP, albeit the the cross reference is now to renumbered ECO-P5.
374. For the same reasons as he outlined in his assessment of notified ECO-P7, Mr McCutcheon recommended the deletion of the words “*an identified*” be consequentially removed, along with “*within SCHED8*” from the chapeau of ECO-P5, as requested by Forest and Bird. As a minor consequential change, the policy should therefore refer to areas plural.
375. Horokiwi Quarries Ltd¹⁵³ opposed ECO-P5 on the basis that it sought an amendment to the SNA overlay as it relates to the Horokiwi Quarry site. The submitter’s concern in relation to the extent of the SNA on the quarry site have been addressed at section 3 of this report.
376. Therefore, ECO-P5 is recommended to be amended as follows:

ECO-P56 Significant natural areas within the coastal environment

*Only allow activities within ~~an identified~~ significant natural areas
~~within SCHED8~~ in the coastal environment where it can be
demonstrated that they;*

- 1. Avoid adverse effects on the matters in Policy 11(a) of the New Zealand Coastal Policy Statement 2010;*
- 2. Avoid significant adverse effects ~~and avoid, remedy or mitigate other adverse effects~~ of activities on the matters in Policy 11(b) of the New Zealand Coastal Policy Statement 2010; and*
- 3. Manage other adverse effects accordance with the effects management hierarchy at ECO-P5.*
- 4. ~~Protects the indigenous biodiversity values in accordance with ECO-P2.~~*

¹⁵³ Submission #271.24

ECO-P6: New plantation forestry (now ECO-P10)

377. Tyers Stream Group, Forest and Bird and WCCERG¹⁵⁴ supported ECO-P6 and sought that this is retained as notified.
378. Mr McCutcheon explained that the application of the NPSIB to plantation forestry has been considered in respect of ECO-O3 above, where he noted that clause 3.14 primarily related to existing plantation forestry. His view was that as new plantation forestry within SNAs is not provided for in the NPSIB, this falls under clause 3.10 and effects must be avoided.
379. We agree that ECO-P6 is appropriate in that it requires that new plantation forestry activities within SNAs are avoided, while noting for consistency with Mr McCutcheon's recommendations in relation to ECO-P3 and ECO-P5, that the word "*identified*" is deleted.
380. Therefore, we recommend ECO-P6 is amended as follows:

ECO-P610- New plantation forestry

Avoid the establishment of new plantation forestry within ~~identified~~ significant natural areas.

ECO-P7: Existing plantation forestry (now ECO-P11)

381. Tyers Stream Group¹⁵⁵ supported ECO-P7 and sought that this be retained as notified.
382. Forest and Bird¹⁵⁶ opposed ECO-P7 on the basis that it is not clear what activities the provision provides for. The submitter noted that it may be able to support such a policy if this was clarified. Furthermore, it sought that if the policy is retained, it is amended. The change sought is shown below:

ECO-P7 – Existing plantation forestry

Provide for existing plantation forestry and associated activities where these maintain or restore the ~~identified~~ biodiversity values of significant natural areas.

383. As with Mr McCutcheon, we disagree with Forest and Bird that it is not clear what the "*existing plantation forestry activities*" covered by ECO-P7 would be, or that the policy should be deleted. Mr McCutcheon's view was that in a plain sense, this is forestry

¹⁵⁴ Submissions #221.41, 345.192, 377.125

¹⁵⁵ Submission #221.42

¹⁵⁶ Submissions #345.193, 345.194

that has already been established prior to the rule becoming operational, typically as a Permitted Activity, through a resource consent or under the NESPF.

384. Additionally, and in respect of “*identified values*” Mr McCutcheon recognised that it is best practice that values are established, assessed and understood before scheduling something in a district plan. Despite this, there may be additional values present within a SNA not observable from a desktop study, or which change over time as a SNA regenerates.
385. Given this, we agree that it is beneficial to remove the word “*identified*” as use of this terminology limits the scope of biodiversity values that can be maintained and restored. This change is a consistent consequential recommendation throughout the chapter.

5.9 ECO Rules

ECO-R1 Trimming, pruning or removal of vegetation within a significant natural area

386. ECO-R1 is the primary rule of the notified chapter concerned with the trimming, pruning or removal of vegetation within SNAs.
387. We were advised that as drafted, ECO-R1 permits the trimming, pruning or removal of vegetation for a number of activities before cascading to a variety of different activity statuses, depending on the subclause of the Permitted Activity rules not met. Several submissions were received on ECO-R1.
388. Testing submissions in the context of the need to implement the NPSIB, Mr McCutcheon reviewed the activities listed in the notified rule and submissions on the Permitted Activity step to establish whether they:
- (a) Are exempted from the avoid directive of clause 3.10 of the NPSIB through clause 3.10(6); or
 - (b) Should be considered as ‘established activities’ under clause 3.15; or
 - (c) Should be newly added in response to submissions as ‘established activities’.
389. Mr McCutcheon’s view was that where this is the case, they can remain Permitted Activities under ECO-R1. Where this is not the case, they cannot be Permitted Activities under ECO-R1, and instead need to be addressed by a subsequent resource consent step in the rule.

390. Mr McCutcheon then systematically went through all of the clauses of the rule with this in mind. He also considered whether any additional subclauses should be newly added in response to submissions, or because of other changes recommended to be made. These included:
- (a) Pest Plants;
 - (b) Restoration and maintenance of a significant area;
 - (c) Aggregate extraction; and
 - (d) Maintenance and repair of existing buildings and structures.
391. Mr McCutcheon also considered whether a Controlled Activity step is appropriate in the notified rule and can be retained in the rule structure, given the directives of the NPSIB to use an avoidance or effects management hierarchy.
392. He was of the view that it is incompatible with the precautionary approach of policy 3 of the NPSIB and his newly recommended Policy ECO-P2 to apply a Controlled Activity status in this chapter. It follows that there needs to be the ability to decline a resource consent where effects on the matters in recommended ECO-P3 are not avoided, or the effects management hierarchy is not followed.
393. Mr McCutcheon acknowledged the substantial public benefit achieved by GWRC and the Council increasing public access and enabling appreciation of SNAs through establishing tracks, and in absence of the directives of the NPSIB, he would have supported the notified rule. However, new tracks are not exempt from the avoid directive of clause 3.10 or the application of the effects management hierarchy.
394. Accordingly, Mr McCutcheon recommended that this rule step is deleted in its entirety, and that new tracks require resource consent as a Discretionary Activity.
395. He also noted that the maintenance and repair of GWRC and Council's existing tracks will continue to be provided for as a Permitted Activity under ECO-R1.1, where the works also meet the requirements of ECO-S2. We agree with this approach.
396. Having reviewed the notified rule in the new context of the NPSIB avoidance and effects management framework and against the submissions received, Mr McCutcheon arrived at the view that it is overly complicated and can be simplified within the scope of submissions.
397. Mr McCutcheon identified two key issues that were apparent within the submissions:

- (a) Uncertainty around application of the rule to the Coastal Environment; and
 - (b) Different activity statuses and number of rule steps being sought.
398. Firstly, in terms of submissions, Tyers Stream Group¹⁵⁷ supported ECO-R1 and sought that this be retained as notified. Zealandia Te Māra a Tāne¹⁵⁸ supported ECO-R1.a.vi and sought that this be retained as notified.
399. Oliver Sangster¹⁵⁹ sought that ECO-R1 be amended to strike a balance to ensure that people can tend to bush in close proximity to residential buildings and to account for damage resulting from tree roots. The submitter did not request any specific wording.
400. Steve West¹⁶⁰ considered that ECO-R1 is too restrictive as native trees can grow over 15m tall and are not suited to small plots of urban land. In the submitter's view the rule does not account for regular trimming, which is important for maintaining bush in an urban environment. He did not request any specific amended wording, but appeared at the hearing in relation to his concerns with SNAs in the vicinity of his property, on Old Porirua Road.
401. Peter Kelly¹⁶¹ considered that Councillors have a democratic mandate to balance the interests of residents against the important natural environment values represented by significant SNAs. The submitter sought that if SNAs are included on residentially zoned land, then ECO-R1 is amended by amending clause 2a. iii to read:
- To create a firebreak within 10m of an external wall or roof of a residential unit that existed at ~~18 July 2022~~ 1 July 2027; or...*
402. Peter Kelly¹⁶² also sought that ECO-R1 is amended to include the following clause if SNAs are to apply to private residential land:
- c) where trimming or removal of vegetation is required to allow subdivision approved under SUB R-1 within a Significant Natural Area that minimises vegetation loss.*
403. Mr Kelly appeared at the hearing in relation to the property he owns at 170 Parkvale Road and his primary concerns were to do with SNAs on residentially zoned land. He did not expand upon these two submission points at the hearing.

¹⁵⁷ Submission #221.43

¹⁵⁸ Submission #486.1

¹⁵⁹ Submission #112.11

¹⁶⁰ Submission #2.9

¹⁶¹ Submission #16.3

¹⁶² Submission #16.4

404. Horokiwi Quarries Limited¹⁶³ considered that the activity status for works within a SNA outside the Coastal Environment that are not provided for within ECO-R1.1 or ECO-R1.2, is not clear, as ECO-R1.4, ECO-R1.5 and ECO-R1.6 all apply to vegetation within the Coastal Environment, while ECO-R1.3 only applies to certain activities. The submitter considered the rule is open to interpretation and sought the following:
- (a) Clarification of the activity status for trimming, pruning or removal of vegetation within a SNA that is not within the Coastal Environment and does not comply with ECO-R1.1 or ECO-R1.2; and
 - (b) A change to the activity status at ECO-R1.6 from Non-Complying to Discretionary, if amendments sought to the areas identified as SNAs (as outlined in Appendix C of the submission) and amendment to the Coastal Environment Boundary (as identified in Appendix D of the submission) are not accepted.
405. We recommend the submission points from Horokiwi Quarries Ltd are accepted in part given Mr McCutcheon's recommended new rule step for the Quarry Zone and Discretionary Activity framework. We note that our recommended Permitted Activity rule references ECO-S3, to reflect the recommended amendment of that standard to apply to quarries and accepts Mr McCutcheon's proposed further amendments (accepting in turn suggestions from Ms Whitney) to make it clear this rule does not apply to expansion of an existing quarry.
406. FENZ¹⁶⁴ supported ECO-R1 in part, but sought that the rule is amended to provide for vegetation clearance where FENZ is required to remove the vegetation for the purposes of extinguishing or preventing the spread of fire, or where FENZ has served a notice requiring the vegetation is removed for a firebreak. The change requested by the submitter is to add an additional clause viii to the notified rule as follows:
- viii It is necessary to avoid the loss of life, injury or serious damage to property, including from the risk of fire.*
407. We note the submission points from FENZ. We were advised by Mr McCutcheon that ECO-R1.1(a)(iii) in the notified PDP already achieves the relief sought.
408. Forest and Bird¹⁶⁵ made a number of submission points:

¹⁶³ Submissions #271.25, 271.26


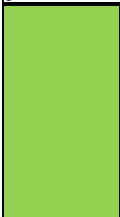
¹⁶⁴ Submissions #273.103, 273.104

¹⁶⁵ Submissions #345.195, 345.196, 345.197, 345.198, 345.199, 345.200, 345.201, 345.202

- (a) It supported the position that the rules under ECO-R1 apply to 'vegetation' within SNAs, not only indigenous vegetation. In its view, this is appropriate because exotic vegetation can provide significant habitat, and also can contribute to the ecosystem functioning of the SNA. We agree that ECO-R1 applies to all vegetation and not only indigenous vegetation within a SNA as this was the notified approach;
- (b) Sought that Council consider whether any activities should be Permitted Activities in residential areas, given its submission that residential SNAs must be reinserted. We have already outlined our position on SNAs within residential areas in Section 2.2 of this report;
- (c) Considered that the rule should also apply to "lawfully established" public roads. We accept that the focus should be on lawfully established facilities, but for the same reasons as set out above in relation to notified ECO-P2, reference to public roads and the rail corridor should be removed, as recommended by Mr McCutcheon in his Reply;
- (d) Considered that new fences can involve the clearing of very large amounts of significant vegetation, and without some kind of limit, this activity is not appropriate as a Permitted Activity and should be a Discretionary Activity. Additionally, it should be clarified that the 2 metre limit is the total clearance allowed (rather than 2 metres on either side of the fence), clause (ii) should also include a limit, that the removal/trimming is only what is strictly necessary and clause (iv) applying to new access tracks should be a Discretionary Activity;
- (e) Considered the activity has the potential to remove large amounts of significant vegetation or habitat, even where the ECO-S4 is applied and is not appropriate to be a Controlled Activity as the Council will not be able to refuse consent regardless of the effects. The submitter sought a more restrictive activity status to align with policy 11 NZCPS. The request to elevate the activity statuses of activities from permitted or controlled to discretionary is accepted in part. The submitter's request to clarify the extent of vegetation clearance is addressed under our recommendations in relation to ECO-S1;
- (f) Sought that ECO-R1.5 refers to policy 11 of the NZCPS in its entirety;
- (g) Sought that the incorrect reference to ECO-P2 is corrected; and
- (h) Supported the Non-Complying Activity status in ECO-R1.6, but opposed the application of this rule being limited to policy 11(a) NZCPS situations as the Non-

Complying status should also apply where policy 11(b) is engaged. The submitter also opposed the application of the effects management hierarchy in ECO-P1 to biodiversity that is required to be protected in accordance with policy 11(a) or 11(b) of the NZCPS, as the policy requires that significant adverse effects are avoided, whereas ECO-P1 only requires avoidance of adverse effects where practicable. The submitter also sought that the rule be clear that ECO-P5 applies as a first step for these activities.

409. The submission points from Forest and Bird requesting that ECO-R1.5 and ECO- R1.6 refer to policy 11 of the NZCPS in its entirety were not supported by Mr McCutcheon given that he proposed to apply a Discretionary Activity status to non-compliance with Permitted Activity steps. Mr McCutcheon also revised the Section 88 Requirements section within new ECO-R1.4 for simplicity and to reduce text from the notified equivalent in partial relief of the submitter. The submission point requesting the reference to ECO-P2 be amended was not supported given Mr McCutcheon's extensive rewrite of the rule.
410. WCCERG¹⁶⁶ supported ECO-R1 in part but sought that the activity status under ECO-R1.4 and ECO-R1.5 be amended from Restricted Discretionary to Non-Complying. We agree with Mr McCutcheon that this submission should be accepted in part, insofar as when the requirements under the Permitted Activity rules are not met, the Discretionary Activity rule will apply.
411. Lastly, we note that after we had drawn their potential relevance to his attention, Mr McCutcheon recommended that compliance with the Resource Management (Stock Exclusion) Regulations 2020 should be an additional ground for Permitted Activity status in the General Rural Zone.
412. We agree with Mr McCutcheon. ECO-R1 is recommended to be amended as follows:

ECO-R1 		<i>Trimming, pruning or removal of vegetation within a significant natural area</i>
	<i>All zones</i>	1. Activity Status: <i>Permitted</i> <i>Where:</i> <i>a. The trimming, pruning or removal of vegetation</i>

¹⁶⁶ Submission #377.126

		<p>is to:</p> <ul style="list-style-type: none"> i. <u>Ensure the operation of any lawfully established formed private public road or rail corridor, private access track or access leg, driveway or right of way where removal of vegetation is limited to within the formed width of the road, rail corridor or access; or</u> ii. <u>Enable flood protection or natural hazard control where undertaken by a Regional or Territorial Authority or agents on their behalf as part of natural hazard mitigation works; or</u> iii. <u>Comply with section 43 or 64 of the Fire and Emergency Act 2017; or</u> iv. <u>Enable tangata whenua to exercise Customary Harvesting (hauhake); or</u> v. <u>Address an imminent threat to people or property represented by deadwood, diseased or dying vegetation and ECO-S1 is complied with; or</u> vi. <u>Enable the ongoing restoration work within the Zealandia sanctuary where undertaken by the Karori Sanctuary Trust; or</u> vii. <u>To eEnable the maintenance of public walking or cycling tracks and parks maintenance and repair undertaken by the Department of Conservation, a Regional or Territorial Authority Greater Wellington Regional Council or Wellington City Council, or their approved contractors, and in accordance with where and ECO-S2 is complied with; or</u> viii. <u>Trim, prune or remove a pest plant; or</u> ix. <u>Enable restoration and maintenance of a significant natural area under ECO-R32; or</u> x. <u>Enable maintenance and repair of existing buildings or structures and ECO-S2 is complied with.</u>
--	--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	<p>General Rural Zone</p> <p>Open Space and Recreation Zones</p>	<p>2. Activity status: Permitted</p> <p>Where:</p> <p>a. The trimming or removal of vegetation is to:</p> <ul style="list-style-type: none"> i. Construct new perimeter fences for stock or pest animal exclusion from areas or <u>Maintenance</u> of existing fences provided the trimming, pruning or removal of any vegetation does not exceed 2m in width; or ii. Maintain an existing farm drain, septic tank disposal field, or constructed stormwater management or treatment device; or iii. To <u>Create</u> a firebreak within 10m of an external wall or roof of <u>any building</u> residential unit that existed at 18 July 2022; or iv. Maintain, or upgrade or create a new <u>an</u> access track for agricultural, pastoral or horticultural activities in accordance with where <u>and ECO-S3 is complied with;</u> or v. <u>Provide for the exclusion of stock from waterways in accordance with the Resource Management (Stock Exclusion) Regulations 2020.</u>
	<p><u>Quarry Zone</u></p>	<p>3. <u>Activity status: Permitted</u></p> <p><u>Where:</u></p> <p>a. <u>The trimming or removal of vegetation is to:</u></p> <ul style="list-style-type: none"> i. <u>Enable the continued operation and maintenance (but not expansion) of quarries for aggregate extraction and ECO-S3 is complied with.</u> <p><u>Note: The above rule does not apply to any extension of quarrying activities into an area not forming part of the existing or previous quarry operation.</u></p>
<p>•</p> <p>-</p>	<p>All Zones</p>	<p>3. Activity status: Controlled</p>

		<p>Where:</p> <p>a. The trimming or removal for the upgrade or creation of a new public walking or cycling track and any ancillary structures undertaken by the Department of Conservation, a Regional or Territorial Authority, or their approved contractor and in accordance with ECO-S4; or</p> <p>b. Compliance with ECO-R1.1.a.vii. cannot be achieved.</p> <p>-</p> <p><u>Section 88 RMA information requirements for applications:</u></p> <p>-</p> <p>Applications for activities within an identified significant natural area must provide, in addition to the standard information requirements, an ecological assessment in accordance with APP15:</p> <p>-</p> <p>1. Identifying the indigenous biodiversity values and potential impacts from the proposal; and</p> <p>2. Demonstrating that effects management hierarchy at ECO-P2 has been applied.</p>
	All Zones	<p>4. Activity status: Restricted Discretionary</p> <p>Where:</p> <p>a. Compliance with any of the requirements of ECO-R1.1 cannot be achieved; and</p> <p>b. The significant natural area does not contain any matters identified in Policy 11(a) of the New Zealand Coastal Policy Statement 2010 where located within the coastal environment.</p> <p>-</p> <p>Matters of discretion are:-</p> <p>1. The matters in ECO-P2, ECO-P3 and ECO-P4; and</p> <p>2. The extent and effect of non-compliance with any relevant standard not met as specified in the associated assessment criteria for the infringed standard.</p>

		<p>-</p> <p><u>Section 88 RMA information requirements for applications:</u></p> <p>-</p> <p>Applications for activities within an identified significant natural area must provide, in addition to the standard information requirements, an ecological assessment in accordance with APP15:</p> <p>-</p> <p>1. Identifying the indigenous biodiversity values and potential impacts from the proposal; and</p> <p>2. Demonstrating that effects management hierarchy at ECO-P2 has been applied.</p>
	General Rural Zone	<p>5. Activity Status: Restricted Discretionary</p> <p>Where:</p> <p>a. Compliance with any of the requirements of ECO-R1.2 cannot be achieved; and</p> <p>b. The significant natural area does not contain any matters identified in Policy 11(a) of the New Zealand Coastal Policy Statement 2010 where located within the Coastal Environment.</p> <p>-</p> <p>Matters of discretion are:-</p> <p>1. The matters in ECO-P2, ECO-P3 and ECO-P4; and</p> <p>2. The extent and effect of non-compliance with any relevant standard not met as specified in the associated assessment criteria for the infringed standard.</p> <p>-</p> <p><u>Section 88 information requirements for applications:</u></p> <p>-</p> <p>Applications for activities within an identified significant natural area must provide, in</p>

		<p>addition to the standard information requirements, an ecological assessment in accordance with APP15:</p> <p>-</p> <p>1. Identifying the indigenous biodiversity values and potential impacts from the proposal; and</p> <p>2. Demonstrating that effects management hierarchy at ECO-P2 has been applied.</p>
	All Zones	<p>6. Activity status: Non Complying</p> <p>Where:</p> <p>a. Compliance with the requirements of ECO-R1.1 or ECO-R1.2 or ECO-R1.4 cannot be achieved; and</p> <p>b. The significant natural area includes matters identified in Policy 11(a) of the New Zealand Coastal Policy Statement 2010 where located within the Coastal Environment.</p> <p>-</p> <p><u>Section 88 information requirements for applications:</u></p> <p>-</p> <p>Applications for activities within an identified significant natural area must provide, in addition to the standard information requirements, an ecological assessment in accordance with APP15:</p> <p>1. Identifying the indigenous biodiversity values and potential impacts from the proposal; and</p> <p>2. Demonstrating that effects management hierarchy at ECO-P2 has been applied.</p>
	<u>All zones</u>	<p>4. Activity status: Discretionary</p> <p><u>Where:</u></p> <p>a. <u>Compliance with the requirements of ECO-R1.1, ECO-R1.2 or ECO-R1.3 is not achieved.</u></p> <p><u>Section 88 information requirements for applications:</u></p>

		<p><u>Applications for a resource consent under this rule must contain an ecological assessment in accordance with APP15 – Ecological Assessment.</u></p>
--	--	-----------------------------------------------------------------------------------------------------------------------------------------------------------

ECO-R2: Removal of non-indigenous vegetation within a significant natural area

413. Tyers Stream Group¹⁶⁷ supported ECO-R2 and sought that this be retained as notified.
414. Forest and Bird¹⁶⁸:
- (a) Supported the Permitted Activity rule applying to pest plants only and sought that ECO-R2 is incorporated into ECO-R1;
 - (b) Noted that the rule references ECO-P2 in error and sought that this is corrected. The submitter also queried whether the reference to ECO-P4 in the matters of discretion under ECO-R2.2 is an error, and whether this should be a reference to ECO-P3; and
 - (c) Considered is not clear when this rule would apply. In the submitter's view the rules in ECO-R1 already appropriately apply to the removal of all vegetation, including exotic vegetation. It noted that ECO-R2 states that it applies when compliance with ECO-R2.1 is not achieved, and this suggests that the exotic vegetation at issue is not a pest plant. It submitted that if that is the case, the removal is already regulated by ECO-R1 and suggested that the ECO-R2.1 is incorporated into ECO-R1.1.
415. WCCERG¹⁶⁹ also identified that the rule incorrectly refers to ECO-P2 and not ECO-P1 as intended.
416. Like Mr McCutcheon, we agree with the relief sought by Forest and Bird that the removal of pest plants can be managed under rule ECO-R1. This makes sense given the only purpose of ECO-R2 is to manage the removal of pest plants, while ECO-R1 is concerned with the broader removal of all vegetation.

¹⁶⁷ Submission #221.44

¹⁶⁸ Submissions #345.203, 345.204, 345.205

¹⁶⁹ Submission #377.128

417. Moving the removal of pest plants into ECO-R1 with a new subclause makes ECO-R2 redundant, and we adopt Mr McCutcheon's recommendation that it be deleted.

ECO-R3: Restoration and maintenance of a significant natural area (now ECO-R2)

418. Tyers Stream Group¹⁷⁰ and WCCERG¹⁷¹ supported ECO-R3 and sought that it be retained as notified.
419. Nga Kaimanaaki o te Waimapihi¹⁷² supported the preservation and restoration of indigenous fauna, and was concerned that cats eat native birds, wētā and lizards. As such, the submitter sought that the rule be amended to include provisions restricting pets from roaming in SNAs.
420. Forest and Bird¹⁷³:
- (a) Sought clarification of the term "*identified values*" used in ECO-R3; and
 - (b) Considered that an additional matter of discretion should be added to ECO-R3.2 so that the rule gives effect to policy 11 of the NZCPS, as shown below:

ECO-R3 - Restoration and maintenance of a significant natural area

2. Activity status: Restricted Discretionary

Where:

a. Compliance with the requirements of ECO-R3.1 cannot be achieved

Matters of discretion are:

1. The matters in ECO-P2 and ECO-P4

Section 88 information requirements for applications:

Applications for activities within an identified significant natural area must provide, in addition to the standard information requirements, an ecological assessment in accordance with APP15:

- 1. Identifying the indigenous biodiversity values and potential impacts from the proposal; and***
- 2. Demonstrating that effects management hierarchy at ECO-P2 has been applied; and***
- 3. Demonstrating the effects of the proposal give effect to ECO-P5 in relation to the requirements of policy 11 of the NZCPS.***

¹⁷⁰ Submission #221.45

¹⁷¹ Submission #377.129

¹⁷² Submission #215.2

¹⁷³ Submissions #345.206, 345.207


421. Mr McCutcheon advised that the intent of ECO-R3 is to clearly signal and enable the District Plan's enablement of restoration activities. It sets out a range of circumstances where restoration of a SNA is permitted subject to subclauses of the rule.
422. We agree with Mr McCutcheon's view that the rule should be as enabling as possible to support inherently positive activities for SNAs.
423. Consistent with our recommendation above to remove the word "*identified*" we recommend that change here. It is even more relevant given that restoration through planting new plants will likely contribute to changing values of a SNA.
424. Zealandia Te Māra a Tāne¹⁷⁴ was concerned that ECO-R3 might limit activities such as reintroductions of fauna species, and other related activities it undertakes. Zealandia Te Māra a Tāne is not subject to the Reserves Act, Conservation Act or Queen Elizabeth the Second National Trust Act. Thus, the submitter sought an additional clause under ECO-R3 that enables Zealandia operations to continue, as provided in other rules in the Plan.
425. The concerns raised by Zealandia Te Māra a Tāne are acknowledged. Restoration and maintenance works within Zealandia could inadvertently be captured by the rule, and we note that there is a carve-out for vegetation trimming, pruning or removal within the Zealandia site at ECO-R1. In response, Mr McCutcheon recommended that the same carve out be introduced into ECO-R3 so that restoration and maintenance works within Zealandia are clearly Permitted Activities.
426. Further, Mr McCutcheon outlined that his recommendations for ECO-R1, is for a full Discretionary Activity status to be triggered for non-compliance with Permitted Activity standards. While he acknowledged that no specific submissions were made seeking this change, his view was that this change is consistent with those general submissions seeking that the plan be aligned with the NPSIB through this hearing process. We agree that this would meet the concerns of DoC, GWRC and Forest and Bird.
427. With respect to the submission point from Ngā Kaimanaaki o te Waimapihi, Mr McCutcheon acknowledged that cats can eat native birds, wētā and lizards, but as referenced previously, he did not consider that the District Plan is the appropriate place to regulate the roaming of pets. Rather, it should be considered under the Council's

¹⁷⁴ Submission #486.2

Animal Bylaw. We agree with his recommendation that the submission point should be rejected.

428. We also note Mr McCutcheon's recommended alternative wording for the Section 88 Requirements section. We agree that this change is useful, captures the relief sought by Forest and Bird in its submission, and aligns with the reporting officer's recommendations in relation to ECO-R1.

429. Therefore, we recommend ECO-R3 (now ECO-R2) is amended as follows:

<p><i>ECO-R32</i></p> 	<p><i>Restoration and maintenance of a significant natural area</i></p>
<p><i>All Zones</i></p>	<p>1. Activity Status: <i>Permitted</i></p> <p>Where:</p> <p>a. The works are for the purpose of restoring or maintaining the identified values of a significant natural area by;</p> <p>i. Planting eco-sourced local indigenous vegetation or;</p> <p>ii. Carrying out pest animal or pest plant control activities; or</p> <p>iii. Carrying out activities in accordance with a registered protective covenant under the Conservation Act 1987 or Queen Elizabeth the Second National Trust Act 1977; or</p> <p>iv. Carrying out activities in accordance with a reserve management plan approved under the Reserves Act 1977; or</p> <p>v. Mana whenua in accordance with the principle of kaitiakitanga or</p> <p>vi. <u>Carrying out ongoing restoration work within the Zealandia sanctuary where undertaken by the Karori Sanctuary Trust.</u></p>
<p><i>All Zones</i></p>	<p>2. Activity status: Restricted <i>Discretionary</i></p> <p>Where:</p> <p>a. Compliance with the requirements of ECO-R3.1 cannot be <u>is not</u> achieved</p>

		<p>Matters of discretion are:</p> <p>1. The matters in ECO-P2 and ECO-P4</p> <p><u>Section 88 information requirements for applications:</u></p> <p>Applications for activities within an identified significant natural area must provide, in addition to the standard information requirements, a resource consent under this rule must contain an ecological assessment in accordance with APP15 – Ecological Assessment.:</p> <p>1. Identifying the indigenous biodiversity values and potential impacts from the proposal; and</p> <p>2. Demonstrating that effects management hierarchy at ECO-P2 has been applied.</p>
--	--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

ECO-R4: Removal of non-indigenous vegetation within a significant natural area (now ECO-R3)


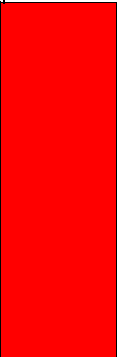
430. Tyers Stream Group¹⁷⁵, Forest and Bird¹⁷⁶ and WCCERG¹⁷⁷ supported ECO-R4 and sought that this be retained as notified.
431. Mr McCutcheon outlined that notified ECO-R4 requires new plantation forestry to obtain consent as a Non-Complying Activity. He also stated that he did not have submission scope to recommend this be changed and otherwise considered this is consistent with the requirements to the NPSIB to take a precautionary approach that must be applied where the effects of an activity are unknown.
432. However, he identified a gap in that the information requirements otherwise required for resource consent under the chapter have not been carried across to this rule. An assessment under Appendix 15 – Ecological Assessment would always be requested by a consenting officer. To make this clear he recommended these same information requirements be copied into the rule. We agree.

¹⁷⁵ Submission #221.46

¹⁷⁶ Submission #345.208

¹⁷⁷ Submission #377.130

433. Therefore RCO-R4 (now ECO-R3) is proposed to be amended as follows:

<p><i>ECO-R43</i></p> 	<p><i>New plantation forestry within a significant natural area</i></p>
 <p><i>All Zones</i></p>	<p>1. Activity status: <i>Non-Complying</i></p> <p><u><i>Section 88 information requirements for applications:</i></u></p> <p><u><i>Applications for a resource consent under this rule must contain an ecological assessment in accordance with APP15 – Ecological Assessment.</i></u></p>

New ECO-R4: Trimming, pruning or removal of indigenous vegetation outside of a significant natural area (except that falling under CE-R6) (Proposed by Mr McCutcheon)

434. As discussed extensively in Section 2.4 of this Report, Mr McCutcheon proposed a new rule covering indigenous vegetation removal outside of SNAs. We do not propose to repeat that evaluation here other than to state that we have significant concerns with the extent of urban zoned properties that may be affected.

5.10 ECO Standards

435. Mr McCutcheon advised that he had reviewed the ECO standards to ensure that for Permitted Activities, they are generally appropriate as a proxy for the tests in clause 3.15(2) of the NPSIB or are appropriate to manage any effects from activities excluded in clause 3.10(6).

436. He was of the view that, the standards and their thresholds of clearance or requirements for particular approaches to be taken to trim, prune or remove vegetation are appropriate.

ECO-S1: Trimming, pruning or removal where there is the imminent threat to the safety of people or property

437. Tyers Stream Group¹⁷⁸ and WCCERG¹⁷⁹ supported ECO-S1 and sought that this be retained as notified.

¹⁷⁸ Submission #221.47

¹⁷⁹ Submission #377.131

438. Forest and Bird¹⁸⁰ supported ECO-S1, noting that both ‘Technician Arborist’ and ‘Works Arborist’ are defined in the Plan. The submitter sought that point 3 of the standard is amended to the defined term, ‘Technician Arborist’, as the definition requires the skills appropriate for risk assessment relevant to this activity, and to provide clarity for plan users. This request is shown below:

*3. Any removal is undertaken or supervised by a suitably qualified
~~arboricultural expert~~ Technician Arborist.*

439. Mr McCutcheon disagreed with Forest and Bird that ECO-S1 should require the works be undertaken by a Technician Arborist. He considered that this is a higher test than the equivalent emergency works rule for a notable tree (TREE-R3), which must be undertaken by a works arborist, defined in the plan. We agree with this approach and note that the submitter did not expand on this submission point at the hearing.
440. GWRC¹⁸¹ considered that the assessment criteria within the standard should be amended so that it applies to both indigenous and non-indigenous vegetation, as this would make it clear that all vegetation (aside from pest plants) is to be protected in these areas, except where otherwise specified for restoration or other purposes. The submitter noted that any non-indigenous plants within SNAs that are not pest plants may provide significant habitat for indigenous biodiversity such as birds, bats and lizards. This understanding is recognised in Section 6(c) of the Act which directs the protection of the “*significant habitats of indigenous fauna*” not the significant indigenous habitats of indigenous fauna. The change sought by GWRC is shown below:

1. The extent to which the trimming or removal of ~~indigenous~~ vegetation limits the loss, damage or disruption to the ecological processes, functions and integrity of the significant natural area; and

441. Given that the rule which the standard is part of is relevant for the removal of all vegetation, indigenous or not, Mr McCutcheon agreed with GWRC that the assessment criteria should be aligned with the intent of the rule by considering the removal of vegetation generally. He therefore recommended that the request by GWRC is adopted into the assessment criteria within ECO-S1 and all other standards as a consequential amendment. We agree.
442. Consistent with previous recommendations in respect of references to “*identified values*”, Mr McCutcheon also recommended these words be removed. He also

¹⁸⁰ Submission #345.209

¹⁸¹ Submission #351.154

recommended as a minor change that assessment criteria consistently refer to “*trimming, pruning and removal*”, to be consistent with the rule title, and that a note be added to acknowledge the role of the Electricity (Hazards from Trees) Regulations 2003. We agree with this approach.

443. Therefore, we adopt Mr McCutcheon’s recommendation that ECO-S1 be amended as follows.

ECO-S1	<i>Trimming, pruning or removal where there is the imminent threat to the safety of people or property</i>	
All Zones	<p>1. <i>The works are essential due to imminent threat to the safety of people or property and Council is advised of this threat as soon as practicable;</i></p> <p>2. <i>All trimming or pruning must be undertaken to a growth point or branch union; and</i></p> <p>3. <i>Any removal is undertaken or supervised by a suitably qualified arboricultural expert.</i></p> <p><u><i>Note: The Electricity (Hazards from Trees) Regulations 2003 regulates the trimming, pruning or removal of vegetation in proximity to electricity lines.</i></u></p>	<p><i>Assessment criteria where the standard is infringed:</i></p> <p>1. <i>The extent to which the trimming, <u>pruning</u> or removal of indigenous vegetation limits the loss, damage or disruption to the ecological processes, functions and integrity of the significant natural area; and</i></p> <p>2. <i>The effect of the vegetation <u>trimming, pruning or removal</u> on the <u>identified</u> biodiversity values.</i></p>

ECO-S2: Vegetation removal associated with maintenance or repair of public walking and cycling tracks including parks maintenance and repair

444. Tyers Stream Group¹⁸² and WCCERG¹⁸³ supported ECO-S2 and sought that it be retained as notified.

¹⁸² Submission #221.48

¹⁸³ Submission #377.132

445. Forest and Bird¹⁸⁴ supported ECO-S2 in part, but considered this could be clearer as to how much vegetation clearance it allows. The submitter sought the following amendment:

ECO-S2 – Vegetation removal associated with maintenance or repair of public walking and cycling tracks including parks maintenance and repair

Vegetation removal or trimming must:

- 1. Not be greater than 2.5m in width in total to accommodate the track; and*
- 2. Not involve removal of any tree with a trunk diameter exceeding that in Schedule 9 as measured 1.4m above ground.*

446. Consistent with its requested change to ECO-S1 and for the same reasons, GWRC¹⁸⁵ sought that the assessment criteria within the standard are amended to apply to both indigenous and non-indigenous vegetation. The change sought by GWRC is shown below:

ECO-S2 – Vegetation removal associated with maintenance or repair of public walking and cycling tracks including parks maintenance and repair

Assessment criteria where the standard is infringed:

- 1. The extent to which the trimming or removal of indigenous vegetation limits the loss, damage or disruption to the ecological processes, functions and integrity of the significant natural area; and*
- 2. The effect of the vegetation removal on the identified biodiversity values*

447. Mr McCutcheon agreed with Forest and Bird that the standard as it is written is open to interpretation. He recommended the changes that the submitter sought be adopted to clarify vegetation trimming, pruning and removal is subject to a maximum 'width'. We consider that this will provide clarity and enable effective monitoring of the standard.
448. Mr McCutcheon also advised that given his recommendation in respect of a Permitted Activity in respect of the continued operation and maintenance of quarries for aggregate extraction subject to compliance with this standard, the title of the standard should be amended to reflect this. Subsequently (in his rebuttal evidence), Mr McCutcheon identified that provision for quarries better aligned with farm tracks, and recommended the suggested change be shifted to ECO-S3.
449. Further and consistent with his recommendation in respect of 'identified values' we agree that these words should be removed.

¹⁸⁴ Submission #345.210

¹⁸⁵ Submission #351.155

450. Lastly, Mr McCutcheon also recommended as a minor change the assessment criteria consistently refer to “*trimming, pruning and removal*”, to be consistent with the rule title and as a consequential change for consistency removing the word “*indigenous*”. We agree and ECO-S2 is recommended to be amended as follows:

ECO-S2	Vegetation <u>trimming, pruning or removal</u> associated with: <ul style="list-style-type: none"> <i>maintenance or repair of public walking and cycling tracks including parks maintenance and repair</i> <i><u>maintenance and repair of existing buildings and structures</u></i> 	
All Zones	Vegetation <u>trimming, pruning or removal</u> must: <ol style="list-style-type: none"> <i>Not be greater than 2.5m in width to accommodate the track; and</i> <i><u>Not extend further than 2.5 metres from the outside wall of any building or structure; and</u></i> <i>Not involve removal of any tree with a trunk diameter exceeding that in <u>Schedule 9</u> as measured 1.4m above ground.</i> 	Assessment criteria where the standard is infringed: <ol style="list-style-type: none"> <i>The extent to which the <u>trimming, pruning or removal</u> of indigenous vegetation limits the loss, damage or disruption to the ecological processes, functions and integrity of the significant natural area; and</i> <i>The effect of the <u>vegetation trimming, pruning or removal</u> on the identified biodiversity values.</i>

ECO-S3: Vegetation removal associated with farm access tracks

451. Tyers Stream Group¹⁸⁶, Forest and Bird¹⁸⁷ and WCCERG¹⁸⁸ supported ECO-S3 and sought that it be retained as notified.
452. Consistent with its requested change to ECO-S1 and S2 and for the same reasons, GWRC sought that the assessment criteria within the standard are amended to apply to both indigenous and non-indigenous vegetation:

¹⁸⁶ Submission #221.49

¹⁸⁷ Submission #345.211

¹⁸⁸ Submission #377.133

453. As with other recommendations for the other two standards, we agree with Mr McCutcheon's recommended changes:

- (a) Removing the words "*identified values*";
- (b) A minor change to the assessment criteria so it consistently refers to "*trimming, pruning and removal*", to be consistent with the rule title; and
- (c) A consequential change for consistency, removing the word "*indigenous*".

454. We also agree with his suggested amendment to insert reference in the heading to the continued operation and maintenance of quarries for aggregate extraction. In our view, that change has implications for the content of the standard. It needs to apply in the Quarry Zone, since that is where the existing quarries are located and the third precondition needs to be qualified, since vegetation clearance for the purpose of aggregate extraction is, by definition not for the purpose of "*providing farm vehicle access*". We recommend those consequential matters be addressed as shown in Appendix 1.

455. ECO-S3 is proposed to be amended as follows:

ECO-S3	<i>Vegetation <u>trimming, pruning or removal</u> associated with:</i> <ul style="list-style-type: none"> • <i>farm access tracks</i> • <i><u>the continued operation and maintenance of quarries for aggregate extraction</u></i> 	
<p><i>General Rural Zone</i></p> <p><u><i>Quarry Zone</i></u></p>	<p><i>Vegetation removal must:</i></p> <ol style="list-style-type: none"> 1. <i>Be no greater than 5.0m in width to accommodate the access track; and</i> 2. <i>Not involve removal of any tree with a trunk diameter exceeding that in Schedule 9 as measured 1.4m above ground; and</i> 3. <i><u>Where not for the continued operation and maintenance of quarries for aggregate extraction,</u></i> <i><u>be solely for the purpose of providing farm vehicle access</u></i> 	<p><i>Assessment criteria where the standard is infringed:</i></p> <ol style="list-style-type: none"> 1. <i>The extent to which the <u>trimming, pruning or removal</u> of indigenous-vegetation limits the loss, damage or disruption to the ecological processes, functions and integrity of the significant natural area; and</i> 2. <i>The effect of the <u>vegetation trimming, pruning or removal</u> on the identified biodiversity values.</i>

•	<i>directly related to farming and primary production activities.</i>	
---	-----------------------------------------------------------------------	--

ECO-S4: Vegetation removal associated with upgrading of existing and creation of new public walking and cycling tracks and associated buildings and structures

456. Tyers Stream Group¹⁸⁹ supported ECO-S4 and sought that this standard be retained as notified.
457. Forest and Bird¹⁹⁰ supported the standard in part, but sought it be amended as shown below, also noting its objection in general to new tracks being a Permitted Activity in SNAs.

ECO-S4 – Vegetation removal associated with upgrading of existing and creation of new public walking and cycling tracks and associated buildings and structures

Vegetation removal or trimming must:

- 1. Not be greater than 2.5m in width in total to accommodate the track and associated track structures; and*
- 2. Not be greater than 5m² in area to accommodate any ancillary buildings or structures.*

458. WCCERG¹⁹¹ considered that it is vital that any new tracks and associated buildings and structures are well considered from an ecological perspective, to avoid high-value biodiversity being inadvertently damaged. To achieve this, the submitter sought that ECO-S4 is separated into two standards, as shown below:

ECO-S4 - Vegetation removal associated with upgrading of existing and ~~creation of new~~ public walking and cycling tracks and associated buildings and structures

Vegetation removal must:

- 1. Not be greater than 2.5m in width to accommodate the track and associated track structures; and*
- 2. Not be greater than 5m² in area to accommodate any ancillary buildings or structures.*

ECO-S5 – Vegetation removal associated with the creation of new public walking and cycling tracks and associated buildings and structures

Vegetation removal must:

- 1. Not be greater than 2.5m in width to accommodate the track and associated track structures;*
- 2. Not be greater than 5m² in area to accommodate any ancillary buildings or structures; and*

¹⁸⁹ Submission #221.50

¹⁹⁰ Submission #345.212

¹⁹¹ Submission # 345.212

3. Demonstrate that it is appropriate by taking into account the findings of an ecological assessment for the activity in accordance with APP15.

459. As with the other standards, GWRC¹⁹² again sought that the assessment criteria within the standard are amended to apply to both indigenous and non-indigenous vegetation.
460. Mr McCutcheon recommended substantial changes to rule ECO-R1 to which this standard was triggered in a Controlled Activity step. These changes, which we accept, have had the effect of deleting the Controlled Activity step in its entirety because the NPSIB promotes use of a declinable resource consent process for anything other than 'specified established activities'.
461. Given the deletion of the Controlled Activity step and the use of a full Discretionary Activity status, this standard is now defunct. We accept Mr McCutcheon's recommendation that ECO-S4 be deleted. Appropriate thresholds for clearance around newly developed tracks granted resource consent can be set as conditions of consent or under the operation of ECO-R1 and ECO-S2.

5.11 Appendix 2 - Biodiversity Offsetting

462. Ten submitters collectively made 25 submission points in relating to Appendix 2. Firstly, Claire Nolan, James Fraser, Biddy Bunzl, Margaret Franken, Michelle Wolland and Lee Muir¹⁹³, WCCERG¹⁹⁴ and DoC¹⁹⁵ supported Appendix 2 and sought that it be retained as notified.
463. Further, Taranaki Whānui¹⁹⁶ sought that the Appendix reflects an awareness of the NPSIB. We agree with Mr McCutcheon who was of the view that the principles in the PDP are largely similar to those in the NPSIB and therefore considered that the relief sought by Taranaki Whānui is achieved.
464. Meridian¹⁹⁷ supported Appendix 2 in part, and sought that it be retained subject to the following amendments:
- (a) Use of the term 'biodiversity offsetting' within the appendix as this term is defined in the Plan, correction of the reference ECO-P2 with ECO-P1 and additional

¹⁹² Submission #351.157

¹⁹³ Submission #275.36,

¹⁹⁴ Submission #377.515

¹⁹⁵ Submission #385.84

¹⁹⁶ Submission #389.134

¹⁹⁷ Submissions #228.15, 228.16, 228.17

amendments to the wording of the appendix to align this with the approach used in the PNRP. The requested changes are shown below:

Appendix 2 – Biodiversity Offsetting

The following sets out a framework of principles for the use of biodiversity offsetting offsets. Principles must be complied with for an action to qualify as a biodiversity offset. These principles will be used when assessing the adequacy of proposals for the design and implementation of offsetting as part of resource consent applications.

1 Adherence to the effects management hierarchy: The proposed biodiversity offset will be assessed in accordance with the management hierarchy set out in ECO-P1. ~~ECO-P2~~. It should only be contemplated after the management hierarchy steps in ECO-P1 ~~ECO-P2~~ have been demonstrated to have been sequentially exhausted. Any proposal for a biodiversity offset will demonstrate how it addresses the more than minor residual adverse effects of the activity.

2 Limits to offsetting: Many biodiversity values cannot be offset and if they are adversely affected then they will be permanently lost. These situations include where:

- a. Residual adverse effects cannot be offset because of the irreplaceability or vulnerability of the indigenous biodiversity affected or there is no appropriate offset site;*
- b. There are no technically feasible ~~or socially acceptable~~ options or no appropriate site, knowledge, proven methods, expertise or mechanism available to design and implement an adequate biodiversity offset options by which to secure gains within acceptable timeframes; and*
- c. Effects on indigenous biodiversity are uncertain, unknown or little understood, but potential effects are significantly adverse. ...*

- (b) The submission outlined that the concept of trading up is to ensure that where biodiversity values are lost, any replacement vegetation to offset this loss must result in a better outcome than the existing situation.

465. Forest and Bird¹⁹⁸ supported the mandatory requirement to comply with the principles in Appendix 2 when offsetting is undertaken. The submitter sought the following amendments to this Appendix:

- (a) Clarification of the wording of principle 2: Limits to offsetting, which it considered to be a crucial principle;

¹⁹⁸ Submissions #345.397, 345.398, 345.399, 345.400, 345.401, 345.402

- (b) Deletion of the last clause of principle 7: Long-term outcomes, as this is unusual and may increase the uncertainty inherent to offsetting (i.e. that an overall ecologically improved outcome will be achieved);
- (c) An amendment to principle 8: Time lags, on the basis that the word 'minimise' is open to interpretation and its use in the principle may result in poor indigenous biodiversity outcomes;
- (d) Deletion of principle 9: Trading up, on the basis that this is contrary to the requirement that offsetting is 'like for like'; and
- (e) Minor amendments to principle 11: Proposing a biodiversity offset, to ensure the principle is clear and efficient.

466. The amendments sought are shown below:

Appendix 2 – Biodiversity Offsetting

2.Limits to offsetting: biodiversity offsetting is not available, and the activity causing the residual adverse effects must be avoided where: Many biodiversity values cannot be offset and if they are adversely affected then they will be permanently lost. These situations include where:

- a. The biodiversity affected by the residual adverse effects is irreplaceable or vulnerable;*
- b. Residual adverse effects cannot be offset because of the irreplaceability or vulnerability of the indigenous biodiversity affected or t There is no appropriate offset site;*
- c. There are no technically feasible or socially acceptable options by which to secure gains within acceptable timeframes; and*
- d. Effects on indigenous biodiversity are uncertain, unknown or little understood, but potential effects are significantly adverse.*

7. Long-term outcomes: The biodiversity offset must be managed to secure outcomes of the activity that last at least as long as the impacts, and preferably in perpetuity, ~~including through the use of adaptive management where necessary.~~

8. Time lags: The delay between loss of indigenous biodiversity at the impact site and gain or maturity of indigenous biodiversity at the offset site must be minimised the shortest necessary to achieve the best possible biodiversity outcome and must not exceed the consent period or 35 years whichever is shorter. so that gains are achieved within the consent period and Any time lag must be identified within the biodiversity offset management plan.

9.Trading up: When trading up forms part of an offset, the proposal must demonstrate that the indigenous biodiversity values gained are demonstrably of higher value than those lost, and the values lost are not indigenous taxa that are listed as Threatened, At-risk or Data deficient in the New Zealand Threat Classification System lists, or considered vulnerable or irreplaceable.

- 11. Proposing a biodiversity offset: A proposed biodiversity offset must include a specific biodiversity offset management plan, that:*
- a. Sets out baseline information on the indigenous biodiversity that is potentially impacted by the proposed activity at both the donor and recipient sites, and*
 - b. Demonstrates how the requirements set out in this schedule are met, and how they will be carried out, and*
 - c. Identifies the monitoring approach that will be used to demonstrate how the principles set out in this schedule will be fulfilled over an appropriate timeframe in accordance with the principles set out above.*

467. GWRC¹⁹⁹ sought the following:

- (a) Retention of Appendix 2, subject to amendments;
- (b) That the appendix states that the long-term outcome must be at least a 10% biodiversity gain or benefit, to have regard to policy 24 of the proposed RPS Change 1; and
- (c) That the appendix sets out the limitations where biodiversity *offsetting is not appropriate*.

468. In relation to all of these submissions, Mr McCutcheon advised that Appendix 3 of the NPSIB sets out principles for biodiversity offsetting and he had reviewed Appendix 2 of the PDP against Appendix 3 of the NPSIB. He recommended a number of further refinements to Appendix 2 to fully align with Appendix 3 of the NPSIB.

469. We agree with Mr McCutcheon's approach and note that there was no discussion about this at the hearing. We also note that submissions on the Plan were received prior to the gazettal of the NPSIB. Based on this, our recommendations are therefore that:

- (a) Submission points seeking the retention of the Appendix as notified are accepted in part, in that the appendix is retained, but in an amended form;
- (b) Submission points supporting Appendix 2 in principle are accepted;
- (c) Submission points that result in alignment between Appendix 2 and the NPSIB are accepted, in that this achieves the relief sought by these submission points;

¹⁹⁹ Submissions #351.326, 351.327, 351.328

- (d) Submission points seeking clarification or deletion of specific principles are not accepted, in that they would result in a departure from Appendix 3 of the NPSIB or are rendered moot as a result of the recommended changes; and
- (e) In respect of the submission from GWRC to achieve a 10% net gain, Mr McCutcheon noted that the RPS-Change1 Officer recommendations²⁰⁰ are that 10% is 'preferable' and not required. We agree that the specification of a precise net gain percentage is not required in the Appendix.

470. We recommend that Appendix 2 is amended to read as follows:

Principles for Biodiversity Offsetting

These principles apply to the use of biodiversity offsets for adverse effects on indigenous biodiversity.

1 Adherence to effects management hierarchy: *A biodiversity offset is a commitment to redress more than minor residual adverse effects and should be contemplated only after steps to avoid, minimise, and remedy adverse effects are demonstrated to have been sequentially exhausted.*

2 When biodiversity offsetting is not appropriate: *Biodiversity offsets are not appropriate in situations where indigenous biodiversity values cannot be offset to achieve a net gain. Examples of an offset not being appropriate include where:*

- a. residual adverse effects cannot be offset because of the irreplaceability or vulnerability of the indigenous biodiversity affected;*
- b. effects on indigenous biodiversity are uncertain, unknown, or little understood, but potential effects are significantly adverse or irreversible;*
- c. there are no technically feasible options by which to secure gains within an acceptable timeframe.*

3 Net gain: *This principle reflects a standard of acceptability for demonstrating, and then achieving, a net gain in indigenous biodiversity values. Net gain is demonstrated by a like-for-like quantitative loss/gain calculation of the following, and is achieved when the indigenous biodiversity values at the offset site are equivalent to or exceed those being lost at the impact site:*

- a. types of indigenous biodiversity, including when indigenous species depend on introduced species for their persistence; and*
- b. amount; and*
- c. condition (structure and quality).*

4..Additionality: *A biodiversity offset achieves gains in indigenous biodiversity above and beyond gains that would have occurred in the*

²⁰⁰ Subsequently confirmed in GWRC's decisions and now the subject of appeal

absence of the offset, such as gains that are additional to any minimisation and remediation undertaken in relation to the adverse effects of the activity.

5 Leakage: Biodiversity offset design and implementation avoids displacing harm to other indigenous biodiversity in the same or any other location.

6 Long-term outcomes: A biodiversity offset is managed to secure outcomes of the activity that last at least as long as the impacts, and preferably in perpetuity. Consideration must be given to long-term issues around funding, location, management and monitoring.

7 Landscape context: Biodiversity offsetting is undertaken where this will result in the best ecological outcome, preferably close to the impact site or within the same ecological district. The action considers the landscape context of both the impact site and the offset site, taking into account interactions between species, habitats and ecosystems, spatial connections, and ecosystem function.

8 Time lags: The delay between loss of, or effects on, indigenous biodiversity values at the impact site and the gain or maturity of indigenous biodiversity at the offset site is minimised so that the calculated gains are achieved within the consent period or, as appropriate, a longer period (but not more than 35 years).

9 Science and mātauranga Māori: The design and implementation of a biodiversity offset is a documented process informed by science and mātauranga Māori.

10 Tangata whenua and stakeholder participation: Opportunity for the effective and early participation of tangata whenua and stakeholders is demonstrated when planning biodiversity offsets, including their evaluation, selection, design, implementation, and monitoring.

11 Transparency: The design and implementation of a biodiversity offset, and communication of its results to the public, is undertaken in a transparent and timely manner.

5.12 Appendix 3: Biodiversity Compensation

471. Six submitters made 21 submission points in relating to Appendix 3. Claire Nolan, James Fraser, Bidy Bunzl, Margaret Franken, Michelle Wolland and Lee Muir²⁰¹ and DoC²⁰² supported Appendix 3 and sought that it is retained as notified.
472. Meridian²⁰³ supported Appendix 3 in part:
- (a) Clarification of the expression ‘trading up’ at principle 8; and
 - (b) Correction of the reference to ECO-P2 within principle 1, which should refer to ECO-P1.

²⁰¹ Submission #275.37

²⁰² Submission #385.85

²⁰³ Submissions #228.118 – 218.120

473. The submitter proposed the following amendments to the wording of the appendix on the basis that the ECO policy framework and Appendix 3 should allow consideration of biodiversity compensation where necessary to address residual adverse effects that are more than minor, which would align with the NRP:

Appendix 3 – Biodiversity Compensation

The following sets out a framework of principles for the use of biodiversity compensation. Principles must be complied with for an action to qualify as biodiversity compensation.

1. *Adherence to effects management hierarchy: Biodiversity compensation is a commitment to redress residual adverse effects that are more than minor. It must only be contemplated after the management hierarchy steps in ECO-P1 ECO-P2 have been demonstrated to have been sequentially exhausted and thus applies only to residual adverse effects on indigenous biodiversity that are more than minor.*
2. *Limits to biodiversity compensation: In deciding whether biodiversity compensation is appropriate, a decision-maker must consider the principle that many indigenous biodiversity values are not able to be compensated for because:*
 - a. *The indigenous biodiversity affected is irreplaceable or vulnerable;*
 - b. *There are no technically feasible ~~or socially acceptable~~ options or no appropriate site, knowledge, proven methods, expertise or mechanism available to design and implement an adequate biodiversity offset ~~options~~ by which to secure gains within acceptable timeframes; and*
 - ...

474. Forest and Bird²⁰⁴ opposed the use of compensation as a management approach for indigenous biodiversity and therefore sought that Appendix 3 is deleted in its entirety.

475. However, should Appendix 3 be retained, Forest and Bird²⁰⁵ was supportive of the mandatory principles to its use, but sought the following:

- (a) Clarification as to why the wording in the pōtae / chapeau differs from that used in Appendix 2 (Biodiversity Off-setting);
- (b) Clarification of principle 2: Limits to biodiversity compensation as, in their view, this is a crucial principle and the drafting includes a confusing standard of appropriateness, as well as a direction to 'consider the principle';

²⁰⁴ Submission #345.403

²⁰⁵ Submissions #345.404, 345.405, 345.406, 345.407, 345.408

- (c) An amendment to principle 3: Scale of biodiversity compensation, to ensure this principle is consistent with the Council's obligation to maintain indigenous biodiversity;
- (d) An amendment to principle 7: Time lags; and
- (e) A new principle 10 that replicates principle 11 of Appendix 2.

476. The amendments sought by Forest and Bird were:

Appendix 3 – Biodiversity Compensation

These principles will be used when assessing the adequacy of proposals for the design and implementation of offsetting as part of resource consent applications.

2. Limits to biodiversity compensation: In deciding whether biodiversity compensation is appropriate, a decision-maker must consider the principle that many indigenous biodiversity values are not able to be compensated for because: biodiversity compensation is not available, and the activity causing the residual adverse effects must be avoided where:

3. Scale of biodiversity compensation: The values to be lost through the activity to which the biodiversity compensation applies must be addressed by positive effects to indigenous biodiversity that are proportionate to the adverse effects on indigenous biodiversity. There must be at least no net loss of indigenous biodiversity values as between the values lost through the activity and the values gained through the biodiversity compensation.

7. Time lags: The delay between loss of indigenous biodiversity at the impact site and gain or maturity of indigenous biodiversity at the compensation site must be minimised the shortest necessary to achieve the best possible biodiversity outcome and must not exceed the consent period or 35 years whichever is shorter, so that gains are achieved within the consent period and Any time lag must be identified within the biodiversity offset management plan.

10. Proposing a biodiversity offset: A proposed biodiversity offset must include a specific biodiversity offset management plan, that:

- a. Sets out baseline information on the indigenous biodiversity that is potentially impacted by the proposed activity at both the donor and recipient sites, and
- b. Demonstrates how the requirements set out in this schedule will be carried out, and
- c. Identifies the monitoring approach that will be used to demonstrate how the principles set out in this schedule will be fulfilled over an appropriate timeframe.

477. GWRC²⁰⁶ sought the following:

- (a) An amendment to principle 3, on the basis that positive effects offered should outweigh the adverse effects incurred. In the submitter's view this would recognise the inherent risks and uncertainty of compensation, thus aiming for an overall net

²⁰⁶ Submission #351.329, 351.330, 351.331

gain from the exchange would align with that suggested in the definition for biodiversity compensation in the PDP, the approach taken in the NRP and NPSIB exposure draft;

- (b) Deletion of principle 8, on the basis that it is redundant for managing biodiversity compensation exchanges as it essentially just specifies what the limits of biodiversity compensation are, and compensation exchanges are always like for unlike; and
- (c) An amendment to principle 2 to incorporate direction from principle 8 into the limits for off-setting under the Plan.

478. The amendments sought by GWRC were as follows:

Appendix 3 – Biodiversity Compensation

3. Scale of biodiversity compensation: The values to be lost through the activity to which the biodiversity compensation applies must be addressed by positive effects to indigenous biodiversity that ~~are proportionate to~~ outweigh the adverse effects on indigenous biodiversity.

~~8. Trading up: When trading up forms part of biodiversity compensation, the proposal must demonstrate the indigenous biodiversity values gained are demonstrably of higher indigenous biodiversity value than those lost. The proposal must also show the values lost are not indigenous taxa that are listed as Threatened, At-risk or Data deficient in the New Zealand Threat Classification System lists, or considered vulnerable or irreplaceable.~~

2. Limits to biodiversity compensation: In deciding whether biodiversity compensation is appropriate, a decision-maker must consider the principle that many indigenous biodiversity values are not able to be compensated for because: a. The indigenous biodiversity affected is irreplaceable or vulnerable;

a. The values lost are not indigenous taxa that are listed as Threatened, At-risk or Data deficient in the New Zealand Threat Classification System lists;

b. There are no technically...”.

479. As was the case with his recommendations in respect of notified Appendix 2 – Biodiversity Offsetting, Mr McCutcheon recommended that notified Appendix 3 – Biodiversity Compensation be replaced with Appendix 4 of the NPSIB in its entirety.

480. Mr McCutcheon noted that clause 10 of the NPSIB compensation appendix refers to financial contributions. He did not propose to include any rule meeting the requirements of s77E of the RMA in respect of financial contributions. His view was that this should take place in a future plan change and follow a full consultation process.

Consequently, he also considered that this clause of the compensation framework would be unenforceable, but would align with the NPS appendix. Therefore, Mr McCutcheon recommended acceptance or rejection of the above submissions are based on whether they support the changes to the NPSIB.

481. We asked Mr McCutcheon to consider if Appendix 3 should be amended to add a note advising that financial contributions might nevertheless be offered. Mr McCutcheon saw merit in this idea²⁰⁷ and suggested a Note to this effect be included in Principle 10.
482. We agree with this approach and recommend Appendix 3 read as follows:

Principles for Biodiversity Compensation

These principles apply to the use of biodiversity compensation for adverse effects on indigenous biodiversity:

- 1 **Adherence to effects management hierarchy:** Biodiversity compensation is a commitment to redress more than minor residual adverse effects, and should be contemplated only after steps to avoid, minimise, remedy, and offset adverse effects are demonstrated to have been sequentially exhausted.
- 2 **When biodiversity compensation is not appropriate:** Biodiversity compensation is not appropriate where indigenous biodiversity values are not able to be compensated for. Examples of biodiversity compensation not being appropriate include where:
 - a. the indigenous biodiversity affected is irreplaceable or vulnerable;
 - b. effects on indigenous biodiversity are uncertain, unknown, or little understood, but potential effects are significantly adverse or irreversible;
 - c. there are no technically feasible options by which to secure a proposed net gain within acceptable timeframes.
- 3 **Scale of biodiversity compensation:** The indigenous biodiversity values lost through the activity to which the biodiversity compensation applies are addressed by positive effects to indigenous biodiversity (including when indigenous species depend on introduced species for their persistence), that outweigh the adverse effects.
- 4 **Additionality:** Biodiversity compensation achieves gains in indigenous biodiversity above and beyond gains that would have occurred in the absence of the compensation, such as gains that are additional to any minimisation and remediation or offsetting undertaken in relation to the adverse effects of the activity.
- 5 **Leakage:** Biodiversity compensation design and implementation avoids displacing harm to other indigenous biodiversity in the same or any other location.

²⁰⁷ Adam McCutcheon Reply at page 15

- 6 **Long-term outcomes:** *Biodiversity compensation is managed to secure outcomes of the activity that last as least as long as the impacts, and preferably in perpetuity. Consideration must be given to long-term issues around funding, location, management, and monitoring.*
- 7 **Landscape context:** *Biodiversity compensation is undertaken where this will result in the best ecological outcome, preferably close to the impact site or within the same ecological district. The action considers the landscape context of both the impact site and the compensation site, taking into account interactions between species, habitats and ecosystems, spatial connections, and ecosystem function.*
- 8 **Time lags:** *The delay between loss of, or effects on, indigenous biodiversity values at the impact site and the gain or maturity of indigenous biodiversity at the compensation site is minimised so that the calculated gains are achieved within the consent period or, as appropriate, a longer period (but not more than 35 years).*
- 9 **Trading up:** *When trading up forms part of biodiversity compensation, the proposal demonstrates that the indigenous biodiversity gains are demonstrably greater or higher than those lost. The proposal also shows the values lost are not to Threatened or At Risk (declining) species or to species considered vulnerable or irreplaceable.*
- 10 **Financial contributions:** *A financial contribution is only considered if:*
 - a. *there is no effective option available for delivering biodiversity gains on the ground; and*
 - b. *it directly funds an intended biodiversity gain or benefit that complies with the rest of these principles.*

Note: While there are no rules in the ECO chapter requiring financial contributions, this does not preclude one being proactively offered.
- 11 **Science and mātauranga Māori:** *The design and implementation of biodiversity compensation is a documented process informed by science, and mātauranga Māori.*
- 12 **Tangata whenua and stakeholder participation:** *Opportunity for the effective and early participation of tangata whenua and stakeholders is demonstrated when planning for biodiversity compensation, including its evaluation, selection, design, implementation, and monitoring.*
- 13 **Transparency:** *The design and implementation of biodiversity compensation, and communication of its results to the public, is undertaken in a transparent and timely manner.*

5.13 Appendix 15 - Ecological Assessment

483. Claire Nolan, James Fraser, Biddy Bunzl, Margaret Franken, Michelle Wolland and Lee Muir²⁰⁸ and DoC²⁰⁹ supported Appendix 15 and sought that this be retained as notified.
484. Forest and Bird²¹⁰ supported the appendix in part, but considered it is missing a requirement to clearly identify the potential effects of the proposal, including any cumulative effects. The submitter supported 2(a) and (b) but noted ECO-P1 needed to

²⁰⁸ Submission #275.49

²⁰⁹ Submission #385.86

²¹⁰ Submission #345.409

be amended to explicitly incorporate these concepts. It sought the following amendments to achieve this:

APP15 - Ecological Assessment

2. Identifying the biodiversity values and potential effects of the proposal, including cumulative effects.

485. Mr McCutcheon explained that this appendix sets out what an ecological assessment for a resource consent required in respect of a SNA must contain. It has a narrower scope than the specific information requirements set out in clause 3.24 (information requirements) which considered indigenous biodiversity more generally. We also are cognisant of the NPSIB requirement that Councils must amend their plans to reflect this higher order policy direction.
486. Further, Mr McCutcheon advised that there are also requirements in clause 3.10(4) where the effects management hierarchy is proposed to be followed to demonstrate adherence to those principles and biodiversity offsetting and compensation.
487. In addition, there is a degree of commonality between those matters required in the assessment under notified Appendix 15 and the requirements of Clause 3.24. The notified appendix states that it is relevant in respect of the effects management hierarchy, which does not align with that of clause 3.24.
488. The requirement to provide an ecological assessment to be included in all rules in the chapter is recommended by Mr McCutcheon, noting that for indigenous vegetation outside of SNAs, we have not recommended ECO-R4 proceed.
489. We consider that it is appropriate to replicate the requirements of clause 3.24 in replacement of notified Appendix 15 – Ecological Assessment, subject to Mr McCutcheon’s minor modifications to amend internal appendix referencing and reflect a resource consent application situation.
490. We asked Mr McCutcheon to consider whether clarification was required as to when and how taonga would be ‘identified’. In his Reply²¹¹, Mr McCutcheon recommended a Note be added to clarify that aspect. We agree that the suggested note is useful and adopt that recommendation.

²¹¹ Adam McCutcheon Reply, page 15

491. Therefore Appendix 15 is proposed to be amended as follows:

Ngā Aromatawai Hauropi - APP15 – Ecological Assessment
<p><u>1. A resource consent must include a report that:</u></p> <ul style="list-style-type: none">a. <u>is prepared by a suitably qualified ecologist and as required, any other person with suitable expertise, such as someone with expertise in mātauranga Māori; and</u>b. <u>comply with clause (2); and</u>c. <u>be commensurate with the scale and significance (to indigenous biodiversity) of the proposal.</u> <p><u>(2) The report must:</u></p> <ul style="list-style-type: none">a. <u>include a description of the existing ecological features and values of the site; and</u>b. <u>include a description of the adverse effects of the proposal on indigenous biodiversity and how those effects will be managed; and</u>c. <u>identify any effects on identified taonga; and</u>d. <u>identify the ecosystem services associated with indigenous biodiversity at the site; and</u>e. <u>include an assessment of the ecological integrity and connectivity within and beyond the site; and</u>f. <u>include mātauranga Māori and tikanga Māori assessment methodology, where relevant; and</u>g. <u>if biodiversity offsetting is proposed, set out:</u><ul style="list-style-type: none">i. <u>a detailed plan of what is proposed, including a quantified loss and gain calculation, the currency used in the calculation, and the data that informs the calculation and plan; and</u>ii. <u>a description of how the relevant principles in Appendix 2- Biodiversity Offsetting have been addressed; and</u>iii. <u>an assessment of the likely success of the plan in achieving a net gain in biodiversity values; and</u>h. <u>if biodiversity compensation is proposed, set out:</u><ul style="list-style-type: none">i. <u>a detailed plan of what is proposed; and</u>ii. <u>a description of how the relevant principles in Appendix 3 – Biodiversity Compensation have been addressed; and</u>iii. <u>an assessment of the likely success of the plan in achieving its outcomes.</u> <p><u>Note: Clause 3.19 of the NPS-IB requires that the Council work with tangata whenua to determine the indigenous species, populations, and ecosystems in that rohe that are taonga (and these are acknowledged taonga). Further if tangata whenua agree, the Council must identify acknowledged taonga in the District Plan (these are identified taonga).</u></p> <p><u>At present clause 3.19 has not been implemented and the district plan does not identify any taonga species. This work is to take place in a future 'Te Ao Māori Plan Change', scheduled for public notification in 2026.</u></p>

~~For the purposes of preparing an ecological assessment for a resource consent application required for an activity within an SNA.~~

~~The following sets out the principles for preparing an ecological assessment that will determine the indigenous biodiversity values and the impact of the activity on those values through the application of the effects management hierarchy in ECO-P2.~~

~~The ecological assessment is required to be undertaken by a suitably qualified and experienced ecologist and to include the following as a minimum:~~

- ~~1. Map and quantify the indigenous habitats on the site;~~
- ~~2. Determine the extent to which the proposal has applied the effects management hierarchy to avoid adverse effects on indigenous biodiversity values, then minimise and then remedy to arrive at the net residual effect (or net benefit if that is the case). This will include consideration of the following (but not limited to):~~
 - ~~a. The extent to which fragmentation of the Significant Natural Area occurs and, if so, how it is proposed to minimise the extent; and~~
 - ~~b. The extent to which the trimming or removal of indigenous vegetation avoids the loss, damage or disruption to the ecological processes, functions and integrity of the Significant Natural Area; and~~
- ~~3. How any residual adverse effects are proposed to be addressed through Biodiversity Offsetting (APP2);~~
- ~~4. How any residual adverse effects that cannot be offset are proposed to be addressed via Biodiversity Compensation (APP3), if deemed appropriate; and~~
- ~~5. Overall conclusion on whether the activity can be supported following the approach to addressing the indigenous biodiversity values on the site.~~

5.14 Schedule 8 – Significant Natural Areas

492. Schedule 8 contains a summary of each individual SNA and the relevant criteria under the NPSIB to justify inclusion within the District Plan. Taking the first SNA within the Schedule as an example, each individual SNA is described. This is set out as follows, noting that it includes Mr McCutcheon amended recommendation, on changes to the text.

“WCC001

Site Name

Westhaven Bush & surrounds

Site

Three areas of inland broadleaved indigenous

Summary

scrub dominated by mahoe with a pocket of primary broadleaved forest. In a mosaic of gorse scrub and plantation forest. Part of the Outer Green Belt and provides habitat and connectivity for fauna. Described by Park (1999) as tawa, hinau, kohekohe, pukatea, porokaiwhiri, mapou,

**Relevant criteria
values under
Policy 23 of the
RPS**

mamaku, heketara, titoki, kaikomako, lancewood, matai and puka (0502.1). Part is WCC public land and the site includes DOC EcoSite No.988-Tawa Bush.

*Representativeness (Policy 23(a))
Diversity and pattern Policy 23(e)
Ecological context Policy 23(d)”*

493. Mr McCutcheon explained that these amendments were due to the need to have alignment to reflect the updated identification criteria within the with the NPSIB. We agree with this approach and note that there was no discussion on the NPSIB related changes at the hearing.
494. In addition to submissions seeking the removal or addition of SNAs generally, many submitters made submissions on specific SNAs. These submission points are addressed in a table that was provided in Mr McCutcheon’s Assessment section²¹². This table included an assessment of these submission points and incorporated advice provided by ecologists from Wildlands, who reviewed the submission points, undertook both further desktop analysis and a number of site visits. We note that this section also addressed submission points in relation to Schedule 8 and the mapped SNA overlay.
495. We have already discussed the site-specific submissions on SNAs that were made in Section 3 of this report, and requests to include SNAs on residentially zoned properties in Section 2.2.
496. Accordingly, we adopt Mr McCutcheon’s recommended changes to Schedule 8.

5.15 Schedule 9 – Indigenous Tree Sizes

497. Forest and Bird²¹³ opposed SCHED9, on the basis that it sought the reinstatement of SCHED9 of the Draft District Plan – being the schedule titled ‘Urban Environment Allotments’ that identified residential SNAs. The submitter did not raise specific concerns with respect to the content of the notified SCHED9.

²¹² Section 42A Report from Paragraph 230

²¹³ Submission #345.412

498. VicLabour²¹⁴ sought the same amendment as Forest and Bird above, being that SCHED9 is amended to reintroduce SNAs on residential land. It did not have specific comments in relation to the notified SCHED9.
499. Mr McCutcheon advised that the purpose of Schedule 9 is to identify particular species of trees of an age which have important roles contributing to ecosystem functioning. If these trees were to be removed there would be adverse effects on indigenous biodiversity values of that ecosystem. Further he stated that the schedule and accordingly restrictions on the removal of these specific trees is triggered through standards ECO-S2 and ECO-S3 by measuring tree trunk diameter at 1.4m above ground level. While Mr McCutcheon also proposed to include the schedule in his recommended new rule for 'outside SNA' indigenous vegetation removal, we do not consider that such a rule and a reference to this Schedule is appropriate as outlined in Section 2.4 of this report.
500. Mr McCutcheon also noted that Schedule 9 includes a column for tree height which is not referenced in ECO-S2 and ECO-S3. Having sought ecological advice from Mr Goldwater, Mr McCutcheon advised that height is not a suitable proxy for tree age or ecological contribution in the same way which tree diameter is. We agree with his position, where he could not see how tree height could be a relevant consideration for the application of the standard, and therefore that the 'height' column serves no purpose.
501. Given that the height column is redundant, adds no value, and creates confusion, we recommend that it is removed as a minor and inconsequential amendment.
502. The relief sought by the submitters is addressed in Section 2.2 of this report, where we have recommended that SNAs are not applied to residential land as a part of this hearing process. The amended Schedule 9 is included in full in Appendix 1 to this recommendation report.

6 INFRASTRUCTURE – ECOSYSTEMS AND INDIGENOUS BIODIVERSITY CHAPTER (INF-ECO)

503. We were advised by Mr McCutcheon that the purpose of the INF-ECO chapter is to reconcile the operation, maintenance, upgrade and development of infrastructure within SNAs. In particular he stated:

²¹⁴ Submission #414.61

- (a) As detailed in sections 5 and 6 of this report (i.e. his Section 42A Report), the NPSIB was gazetted post notification of the PDP. In terms of infrastructure, the NPSIB provides a definition of 'specified infrastructure'. Clauses 3.10 and 3.11 of the NPSIB then provide guidance as to how the NPSIB is to be implemented in terms of managing adverse effects on SNAs;
- (b) Clause 3.11(1)(a)(i) provides that for "*the construction or upgrade of specified infrastructure that provides significant national or regional public benefit*" any adverse effects on a SNA must be managed in accordance with clause 3.10(3) and 3.10(4) (which relate to application of the effects management hierarchy);
- (c) Clause 3.15(2) also provides direction for some infrastructure activities in a SNA. Clause 3.15(2) directs local authorities to provide provisions in their District Plans to enable specified established activities within SNAs, such as existing infrastructure, to continue where the effects on SNAs are no greater in intensity, scale or character over time, and do not result in the loss of extent or degradation of ecological integrity of a SNA. Clause 3.15(2) therefore has an influence on clause 3.11(1)(a)(i), meaning that, in terms of upgrades of existing infrastructure in a SNA, clause 3.11(1)(a)(i) only applies to upgrades that do not meet the requirements of clause 3.15(2);
- (d) Key to understanding how the NPSIB is implemented with respect to infrastructure is an understanding of how specified infrastructure as defined in the NPSIB aligns with the PDP. The definition of 'specified infrastructure' in the NPSIB is:

Specified infrastructure means any of the following:

- a. infrastructure that delivers a service operated by a lifeline utility (as defined in the Civil Defence Emergency Management Act 2002):*
- b. regionally or nationally significant infrastructure identified as such in a National Policy Statement, the New Zealand Coastal Policy Statement, or a regional policy statement or plan:*
- c. infrastructure that is necessary to support housing development, that is included in a proposed or operative plan or identified for development in any relevant strategy document (including a future development strategy or spatial strategy) adopted by a local authority, in an urban environment (as defined in the National Policy Statement on Urban Development 2020):*
- d. any public flood control, flood protection, or drainage works carried out:*

i. by or on behalf of a local authority, including works carried out for the purposes set out in section 133 of the Soil Conservation and Rivers Control Act 1941; or

ii. for the purpose of drainage, by drainage districts under the Land Drainage Act 1908:

e. defence facilities operated by the New Zealand Defence Force to meet its obligations under the Defence Act 1990.

504. To understand how the definition applies to the infrastructure provided for under the PDP, Mr McCutcheon produced a table²¹⁵ that sets out the PDP definition of infrastructure in the left hand column, with the remaining columns detailing how the constituents parts of that definition align with clauses (a) and (b) of the NPSIB definition of specified infrastructure.

505. In terms of this analysis, Mr McCutcheon explained that all infrastructure in the PDP, except for navigation installations, is specified infrastructure in the NPSIB, either by being a lifeline utility as defined in the CDEMA, or by being Regionally Significant Infrastructure in the RPS. He noted that there is some infrastructure, such as local roads and local electricity distribution that is not recognised as Regionally Significant Infrastructure in the RPS, but does form part of lifeline utilities under the CDEMA. Nonetheless they are captured within the NPSIB definition of ‘specified infrastructure’ for the purpose of implementation.

506. Consequently, specified infrastructure is exempted through clause 3.11(1)(a)(i) from the clause 3.10(2) requirement to avoid adverse effects on indigenous biodiversity for all infrastructure in SNAs (except for navigation aids).

507. Mr McCutcheon then reviewed the notified chapter for its alignment with the NPSIB followed by amendments sought in submissions.

6.1 General Submissions

508. WCC ERG²¹⁶ sought to retain the INF-ECO chapter as notified.

509. Forest and Bird²¹⁷ sought to amend the INF-ECO chapter to mirror the provisions in the ECO chapter to apply a similar level of protection.

²¹⁵ Section 42A report paragraph 753

²¹⁶ Submission #377.39

²¹⁷ Submission #345.57

510. In response Mr McCutcheon was of the view that the INF-ECO chapter should, as far as it can within the structure outlined above, mirror the ECO chapter. He advised that given the direction provided in clauses 3.10(2), 3.10(3) and 3.10(4) of the NPSIB, as influenced by clause 3.11, any 'specified infrastructure', which constitutes nearly all infrastructure provided in Wellington City, must be considered against the effects management hierarchy.
511. Mr McCutcheon further considered that this is generally achieved in the notified INF-ECO chapter, where all new infrastructure and upgrading of existing infrastructure within a SNA requires resource consent. Through the recommendations on the provisions below (namely in relation to upgrading of existing infrastructure) he was of the view that, where necessary, this alignment has been improved.
512. We agree with this evaluation and note that counsel for Forest and Bird did not expand upon this submission at the hearing. We therefore agree with the reporting officer that the purpose of the INF-ECO chapter is consistent with the requirements of the NPSIB in respect to addressing the effects of infrastructure on SNAs.
513. Transpower²¹⁸ sought to amend the INF-ECO chapter provisions to recognise and provide for the National Grid as set out in subsequent submission points. We note that the Infrastructure – National Grid (**INF-NG**) Sub-Chapter, was recommended through Hearing Stream 9, as a standalone chapter providing for the national grid. We agree that it is not subject to the ECO chapter, rather it reconciles the national grid and SNAs within that chapter.
514. Consequently, we agree that it is not necessary to refer to the National Grid in the INF-ECO chapter. We note that this is also true of renewable electricity generation which is reconciled through the REG chapter.
515. Mr McCutcheon recommended amendments to the Introduction to the INF-ECO Sub-Chapter to clarify these inter-relationships. In the subsequent Wrap-Up hearing the reporting officer (Mr Sirl) recommended further amendments providing a standardised introduction for all of the Infrastructure Sub-Chapters describing their role in relation to the other chapters of the Plan. Report 9 discusses and records the Hearing Panel's agreement with Mr Sirl's proposal. We concur.

²¹⁸ Submission #315.104

516. Report 9 also discusses²¹⁹ the issues created by the approach of the notified PDP, numbering the provisions of the Infrastructure Chapter and Sub-Chapters in one sequence. It recommends that the Infrastructure Sub-Chapters be treated as stand-alone for this purpose, each with its own numbering scheme. We agree with that approach and recommend that the INF-ECO Sub-Chapter be treated the same way. Appendix 1 reflects that approach. To avoid confusion, we reference the notified numbering unless otherwise stated.

6.2 New INF-ECO Provisions

517. Forest and Bird²²⁰ sought to add a new policy to give effect to policy 11 of the NZCPS as follows:

INF-ECO-Px - All infrastructure activities in the coastal environment

Only allow activities within a significant natural area in the coastal environment where it can be demonstrated that they:

1. Avoid adverse effects on the matters in Policy 11(a) of the New Zealand Coastal Policy Statement 2010.
2. Avoid significant adverse effects and avoid, remedy or mitigate other adverse effects of activities on the matters in Policy 11(b) of the New Zealand Coastal Policy Statement 2010; and
3. Protect other indigenous biodiversity values in accordance with ECO-P1.

518. As with Mr McCutcheon, we agree that the recommended amendments to notified INF-ECO-P33 which apply the effects management hierarchy in New ECO-P5, provides appropriate alignment with policy 11 of the NZCPS, and gives effect to the relief sought by Forest and Bird.
519. Transpower²²¹ sought to add a new National Grid specific policy to provide for the operation, maintenance and minor upgrade of the National Grid, while managing the adverse effects of these activities.

²¹⁹ At Section 2.1

²²⁰ Submission #345.58

²²¹ Submission #315.110

520. Transpower²²² also sought to add a new highly detailed National Grid specific policy to replace INF-ECO-P37 (New development of National Grid within significant natural areas).
521. These matters have been overtaken by events. The relief sought has been given effect to through the recommendation in Hearing Stream 9 (accepted by that Hearing Panel in Report 9) to include a standalone INF-NG chapter in the PDP. We note that Ms Whitney²²³ for Transpower agreed with this approach.
522. WIAL²²⁴ sought to add a new policy to provide for the safe and/or efficient operation of regionally significant infrastructure as follows:

INF-ECO-P38 - Appropriate vegetation removal in significant natural areas

Enable vegetation removal within significant natural areas identified within SCHED8 where:

1. The vegetation removal is required to provide for the ongoing and safe operation of regionally significant infrastructure; and,
2. Any adverse effects on indigenous biodiversity values within a significant natural area are considered in accordance with ECO-P1.

523. WIAL²²⁵ also sought to add a new rule to provide for the safe and/or efficient operation of regionally significant infrastructure as follows:

INF-ECO-R43A All Zones Removal of vegetation within significant natural areas to protect regionally significant infrastructure

1. Activity Status: Restricted Discretionary

Matters of discretion are:

1. The matters in INF-ECO-P38.

524. In considering the WIAL submission points, Mr McCutcheon considered that the policies and rules as recommended to be amended provide the same relief that the submitter sought, but does so in a way which aligns with the NPSIB.
525. We agree, noting that Ms O'Sullivan for WIAL did not pursue the above submission points at the hearing.

²²² Submission #315.111

²²³ Evidence of Pauline Whitney paragraph 1.7

²²⁴ Submission #406.143

²²⁵ Submission #406.144

6.3 INF-ECO Introduction

526. Meridian²²⁶ sought to amend the Introduction to the chapter by inserting the following or a similar clarification note under the heading 'Other relevant District Plan provisions':

The rules applicable to renewable electricity generation activities are contained in Chapter REG Renewable Electricity Generation. The rules in Chapter INF-ECO Infrastructure Ecosystems and Indigenous Biodiversity do not apply to renewable electricity generation activities.

527. As was discussed in other Hearing Streams, particularly Stream 9, this was a consistent issue, and we note that consistent with the other Infrastructure Sub-Chapters discussed in Report 9, we have recommended a revised statement within the INF-ECO Sub-Chapter introduction confirming that the REG Chapter is a standalone chapter which reconciles SNAs and renewable electricity generation.
528. Taranaki Whānui²²⁷ sought to amend the 'Other relevant District Plan provisions' to include the Sites and Areas of Significance to Māori chapter.
529. The submitter raised similar points to the above on the other Sub-Chapters to the Infrastructure chapter, and these were addressed in Hearing Stream 9. Mr McCutcheon was of the view that in any instance, should any Sites and Areas of Significance to Māori be located in a SNA, then the Infrastructure - Other Overlays provisions would apply as well as the INF-ECO chapter. We agree, while noting that as a consequence of Mr Sirl's recommended amendments in the Wrap-Up hearing (which we have accepted), this section of the Introduction is recommended to be deleted.
530. Transpower²²⁸ sought to amend the Introduction to the chapter to clarify that the National Grid and Gas Transmission Pipelines Corridor are subject to specific provisions within the ECO-INF Sub-Chapter and that other general Sub-Chapter provisions do not apply to the National Grid. We note that this submission has been overtaken by the introduction of a proposed INF-NG Sub-Chapter in Report 9 and our adoption of Mr Sirl's suggested common amendments to the Infrastructure Sub-Chapter Introductions.
531. Given this recommendation and the recommendations in Hearing Stream 9 we recommend that all policies and rules referencing the National Grid should be deleted

²²⁶ Submissions #228.27, 228.28

²²⁷ Submission #389.57

²²⁸ Submission #315.105

from the INF-ECO chapter. That would leave a number of rules just referencing the gas transmission pipeline. Mr McCutcheon did not consider²²⁹ that if reference to the National Grid was removed, there was a case for treating gas transmission assets any differently from other infrastructure in this respect; unlike the National Grid and REG, it does not have a supportive National Policy Statement. He considered this a consequential change. Firstgas did not appear to tell us why this was incorrect, and we agree with Mr McCutcheon's reasoning. As a result, we recommend that the relevant rules (notified INF-ECO-R44- INF-ECO-R47) be deleted in their entirety.

6.4 INF-ECO-Policies

INF-P33: Operation, maintenance and repair of existing infrastructure within a significant natural area

532. Forest and Bird, Waka Kotahi, DoC and KiwiRail²³⁰ supported notified INF-ECO-P33, and sought that it be retained as notified.
533. WIAL²³¹ opposed INF-ECO-P33 in part and sought that this is amended to better align with the NZCPS, particularly with respect to recognising that there may be operational and functional need to locate infrastructure within SNAs and providing a consenting pathway for the removal of vegetation where required to protect the safe operating and functioning of this infrastructure. The submitter was concerned that the policy as notified focusses on controlling the removal of vegetation from the SNA. WIAL considered it is more appropriate to avoid enhancing habitats that have the potential to create a risk to aircraft in close proximity to the Airport and instead encourage them to locate elsewhere within the coastal environment. The amendments sought by WIAL were as follows:

INF-ECO-P33 – Operation, maintenance and repair of existing infrastructure within a significant natural area

Provide for the operation, maintenance and repair of existing infrastructure within significant natural areas where ~~the activity, including associated earthworks, not adversely affect the biodiversity values.~~ it can be demonstrated that:

- 1. There is an operational need or functional need that means the infrastructure's location cannot be practicably avoided; and*
- 2. Any adverse effects on indigenous biodiversity values within a significant natural area are applied in accordance with ECO-P1.*

²²⁹ Section 42A Report at paragraph 790

²³⁰ Submissions #345.59, 370.114, 370.115, 385.29, 408.65

²³¹ Submissions #406.145, 406.146

534. Alternatively, and for the same reasons, WIAL²³² sought that INF-ECO-P33 be deleted in its entirety.
535. In his Section 42A Report, Mr McCutcheon was of the view maintenance and repair of infrastructure is defined in the PDP as any “*work or activity necessary to continue the operation or functioning of existing infrastructure. It does not include upgrading but does include replacement of an existing structure with a new structure of identical dimensions*”. As such, maintenance and repair is limited in its extent of what can be done to the infrastructure, and therefore limited in its extent as to what effects can reasonably occur on indigenous biodiversity.
536. In terms of WIAL’s submission points, Mr McCutcheon considered that as the policy applies to existing infrastructure in a particular location, a policy that requires justification of the location of existing infrastructure is not appropriate. The infrastructure already exists in that location, and it is appropriate to provide for the operation, maintenance and repair of that infrastructure. In terms of clause (2) as sought by WIAL, effects on indigenous biodiversity are provided for through the limited work which can be done as maintenance and repair by definition in the Plan. No amendments were recommended to INF-ECO-P33.
537. For WIAL, Ms O’Sullivan²³³ did not agree. She was of the view that:

“As drafted, the policy sets a significant bar for the infrastructure providers to meet when it comes to the operation, maintenance and repair of existing infrastructure. That is, such activities must not have any adverse effect on biodiversity values within the SNA.

I anticipate that this policy is seeking to give effect to Clause 3.15(1) and (2) of the NPS-IB. In summary, these clauses require Local Authorities to include provisions in their policy statements and plans which enable the continuation of established activities (including their maintenance, operation and upgrade) within SNAs where their effects are no greater in intensity, scale or character and do not result in the loss of extent or degradation of ecological integrity.

INF-ECO-R41 appears to be the key method that defines the tipping point where the Council considers the parameters of Clause 3.15(1) and (2) are no longer being met and an activity is no longer permitted. In that scenario, the NPS-IB directs the activity should be managed as if it were a new development or use under Clauses 3.10 to 3.14, or 3.18. Put another way, the maintenance, operation and upgrade of specified infrastructure should be managed in accordance with the effects management hierarchy, provided the activity has

²³² Submission #406.147

²³³ Evidence of Kirsty O’Sullivan paragraphs 4.6 and 4.7

operational or functional need to be in that location and there is no alternative location.”

538. Ms O’Sullivan recommended that INF-ECO-P33 is further revised to ensure the operation, maintenance and repair of infrastructure is provided for in a way that is consistent with the higher order policy documents and proposed alternative wording.
539. In his rebuttal, Mr McCutcheon²³⁴ agreed with Ms O’Sullivan that the notified (and Section 42A) version of the policy does not fully reflect the nuance of these clauses of the NPSIB.
540. He noted that Ms O’Sullivan’s recommended amendments sought to achieve alignment, namely where:
- (a) Infrastructure can be a ‘specified established activity’ under clause 3.15; and
 - (b) Infrastructure that meets the requirements of 3.11(1)(a)(i) and 3.11(1)(b) and 3.11(1)(c) is able to use the effects management hierarchy.
541. In addition, Mr McCutcheon noted that, mechanically, rule INF-ECO-R41 cascades from a Permitted to Restricted Discretionary Activity status, and in the absence of amendments, there is little useful policy direction in terms of how Permitted Activity standard contraventions should be assessed other than some generic assessment criteria. The matters of discretion in ECO-R41.2 refer only to assessment criteria and not back to the policy direction.
542. Mr McCutcheon recommended that INF-ECO P33 be consequently amended in line with Ms O’Sullivan’s redrafted policy, except for a grammatical error in the second clause and amendments to the cross reference to ECO-P5 to address the issue Ms O’Sullivan also identified with INF-ECO-P44 referencing to ECO-P5 (which has a chapeau pointing to ECO-P3 and ECO-P4). Ms O’Sullivan supported these provisions at the hearing.
543. We agree with the combined position of Mr McCutcheon and Ms O’Sullivan and recommend that INF-ECO-P33 be amended as follows.

INF-ECO-P33 Operation, maintenance and repair of existing infrastructure within a significant natural area

²³⁴ Rebuttal Statement of Adam McCutcheon Paragraphs 79 to 82

Provide for the operation, maintenance and repair of existing infrastructure within significant natural areas where the activity, including associated earthworks:

- 1. Is of a nature and scale that does not adversely affect the biodiversity values; or*
- 2. Provides significant national or regional public benefit; and*
- 3. Has an operational need or functional need to be in that particular location and where there are no practicable alternative locations for the activity; and*
- 4. Adverse effects are managed in accordance with the effects management hierarchy in ECO-P5.1 – ECO-P5.6.*

INF-ECO-P34: Upgrades to and new infrastructure within a significant natural area

544. Waka Kotahi, DoC and KiwiRail²³⁵ supported notified INF-ECO-P34 and sought that this be retained as notified.
545. Chorus, Spark and Vodafone²³⁶ and Powerco Limited identified that ECO-P34 incorrectly cross-references ECO-P2, whereas the reference should be to the effects management hierarchy as set out in ECO-P1. The submitters sought that this error be rectified.
546. As noted previously, the cross reference to ECO-P2 is incorrect, and this should be updated to now ECO-P5 to ensure that the effects management hierarchy is in play as a matter of discretion when rules require INF-ECO-P34 to be considered.
547. Forest and Bird²³⁷ also identified the incorrect reference to ECO-P2 in INF-ECO-P34. The submitter sought that this be amended, along with additional changes to INF-ECO-P34 to give effect to the changes it requested in relation to the wording of ECO-P1. The submitter opposed the reference to operational or functional needs within INF-ECO-P34 as it could encompass a very wide range of considerations. Additionally, the submitter sought that INF-ECO-P34 include a cross-reference to ECO-P5. The changes sought are shown below.

INF-ECO-P34 – Upgrades to and new infrastructure within a significant natural area

Consider allowing ~~Allow~~ for upgrades to existing infrastructure and for new infrastructure within significant natural areas only where it can be demonstrated that:

²³⁵ Submissions #370.116, 385.30, 408.65

²³⁶ Submissions #99.50, 127. 32

²³⁷ Submission #345.60

~~1. There is an operational need or functional need that means the infrastructure's location cannot be avoided; and~~

2. Any adverse effects on indigenous biodiversity values within a significant natural area are managed applied in accordance with ECO-P1 ~~ECO-P2~~ and ECO-P5.

548. In terms of Forest and Bird's submission point, we agree with Mr McCutcheon that there is no need to introduce the word "*consider*" at the outset to the policy as it sets out where upgrades to existing infrastructure or new infrastructure within significant natural areas are allowed, being where there is an operational and functional need that means the location of the infrastructure cannot be avoided, and effects on indigenous biodiversity values within a significant natural area are managed in accordance with the effects management hierarchy. Mr McCutcheon's view was that these are relevant considerations, which essentially require an alternatives assessment, as well as aligning with the direction provided in clause 3.10(3) of the NPSIB.

549. Mr McCutcheon further recommended that the wording in respect of effects on coastal SNAs is copied from renumbered ECO-P6 (Coastal SNAs) and included in INF-ECO-P34, as it is aligned with the recommendations of the reporting officer for RPS-Change¹²³⁸ and appropriately gives effect to the NZCPS.

550. For the same reasons as its opposition in relation to INF-ECO-P33, WIAL²³⁹ opposed INF-ECO-P34, and sought that the policy deleted in its entirety. Alternatively, WIAL requested that INF-ECO-P34 is amended as follows:

INF-ECO-P34 – Upgrades to and new infrastructure within a significant natural area

Allow for upgrades to existing infrastructure and for new infrastructure within significant natural areas where it can be demonstrated that:

1. *There is an operational need or functional need that means the infrastructure's location cannot be practicably avoided; and*

2. Any adverse effects on indigenous biodiversity values within a significant natural area are managed ~~applied~~ in accordance with ECO-P1 ~~ECO-P2~~.

551. Mr McCutcheon considered that the addition of the term "*practicably*" as requested by WIAL is an appropriate amendment to the policy when considering operational or functional need. Practicability should be a relevant consideration to stop frivolous or vexatious alternatives from needing to be considered.

²³⁸ Subsequently confirmed in GWRC's decisions. We understand that aspects of those decisions are the subject of appeal.

²³⁹ Submissions #406.148, 406.149, 406.150

552. In respect of the other changes proposed, we have discussed the changes to the effects management hierarchy in ECO-P1 (now redrafted to be ECO-P5) We agree that INF-ECO-P34 should be amended in that regard.

553. Ms O'Sullivan²⁴⁰ outlined that:

"As set out in section 2 of my evidence, Policies 24 to 24CC of PC1 (expert conference and right of reply version) of the RPS (and Policies 38, 39 and 41 of the NRP) set out a detailed and structured approach that regional and district plans must apply when promulgating objectives, policies and methods that manage indigenous biodiversity within SNAs and the coastal environment.

These provisions are intended to reconcile both the relationship between the NPS-IB and the NZCPS, as well as any competing policies within the NZCPS. Notably, proposed Policy 24CC addresses NZCPS Policy 11(a) and (b) by providing for the operation, maintenance, upgrading and extension of existing regionally significant infrastructure."

554. Further, Ms O'Sullivan²⁴¹ explained:

"Following a brief analysis of the submissions filed with respect to INF-ECOP34 it is not clear there is sufficient scope to undertake a wholesale redraft of the policy in a way that is totally consistent with the higher order policy documents discussed above. Further analysis may reveal a general submission that seeks to ensure the Proposed Plan is aligned with PC1 to the RPS or the NRP. I have not undertaken that analysis to date.

In the interim however, I am of the view that the new clause 3 should not be included in INF-ECO-P34 as this makes the policy inconsistent with the NRP and may not give effect to the RPS when decisions are issued shortly. Ultimately it may be that a variation or similar could be required in order to introduce a policy suite for new infrastructure located within a SNA and the coastal environment that aligns with the RPS. This could also depend on what or whether further amendments are made by central government."

555. In his Reply, Mr McCutcheon²⁴² agreed with this position. He revisited the question of submission scope and found no specific or general submission which would enable INF-ECO-P34 to be aligned with RPS Policy 24CC. He also revisited submission scope for his recommended clause 3 in his Section 42A Report version of the provision. He determined he did not have scope to make this change given that it is concerned

²⁴⁰ Evidence of Kirsty O'Sullivan Paragraphs 4.27 to 4.29

²⁴¹ Ibid Paragraphs 4.33 and 4.34

²⁴² Reply of Adam McCutcheon Paragraphs 183 to 185

with the coastal environment (and a construct of the NZCPS), rather than general implementation of NPSIB.

556. He therefore agreed with Ms O Sullivan that proposed clause 3 should be removed from INF-ECO-P34.
557. We also agree with the outcome that INF-ECO-P34 be amended to remove clause 3, but consider that a change to align this policy more closely with RPS Policy 24CC is desirable and should be considered at a future time, once appeals on GWRC's RPS Change 1 decisions have been resolved²⁴³. The end result we recommend at this point is an amended INF-ECO-P34 as follows:

INF-ECO-P34 Upgrades to existing infrastructure and development of new infrastructure in significant natural areas

Allow for upgrades to existing infrastructure and for new infrastructure within significant natural areas where it can be demonstrated that:

Provide for the operation, maintenance and repair of existing infrastructure within significant natural areas where the activity, including associated earthworks:

- 1. There is an operational need or functional need that means the infrastructure's location cannot practicably be avoided; and*
- 2. Any adverse effects on indigenous biodiversity values within a significant natural area are managed ~~applied~~ in accordance with ECO-P5.1 – ECO-P5.6.2.*

6.5 INF-ECO Rules

INF-ECO-R41: Operation, maintenance, repair, and removal of existing infrastructure within a significant natural area

558. Waka Kotahi and KiwiRail²⁴⁴ supported notified INF-ECO-R41 and sought that this be retained as notified.
559. Forest and Bird²⁴⁵ opposed INF-ECO-R41 in part and sought that the Restricted Discretionary rule is amended. Additionally, Forest and Bird sought a new Non-Complying Activity component to INF-ECO-R41. The changes sought by the submitter are shown below:

²⁴³ We understand that this particular issue is the subject of appeal.

²⁴⁴ Submissions #370.120, 408.67

²⁴⁵ Submissions #345.64, 345.65, 345.66

<p><i>INF-ECO-R41 - Operation, maintenance, repair, and removal of existing infrastructure within a significant natural area</i></p>
<p>2. Activity status: <i>Restricted Discretionary</i> <i>Where:</i></p> <ol style="list-style-type: none"> <i>Compliance with any of the requirements of INF-ECO-R41.1 cannot be achieved; and</i> <i>The significant natural area does not contain any matters identified in Policy 11 of the New Zealand Coastal Policy Statement 2010 where located within the Coastal Environment.</i> <p><i>Matters of discretion are:</i></p> <ol style="list-style-type: none"> <i>The matters in INF-ECO-P33 (or refer back to ECO P1); and</i> <i>The extent and effect of non-compliance with any relevant standard not met as specified in the associated assessment criteria for the infringed standard.</i> <p>3. Activity status: <i>Non Complying</i> <i>Where:</i></p> <ol style="list-style-type: none"> <i>Compliance with the requirements of INF-ECO R41.1 cannot be achieved; and</i> <i>The significant natural area includes matters identified in Policy 11 of the New Zealand Coastal Policy Statement 2010 where located within the Coastal Environment.</i> <p><u><i>Section 88 information requirements for applications:</i></u> <u><i>Applications for activities within an identified significant natural area must provide, in addition to the standard information requirements, an ecological assessment in accordance with APP15:</i></u></p> <ol style="list-style-type: none"> <u><i>Identifying the indigenous biodiversity values and potential impacts from the proposal; and</i></u> <u><i>Demonstrating that ECO P5 (or refer to the new policy 11 policy sought above) has first been met, and the effects management hierarchy at ECO-P1 has been applied to other adverse effects.</i></u>


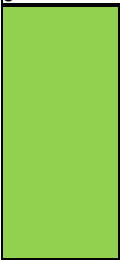
560. In response to this submission, Mr McCutcheon outlined that:

- Policy 11 of the NZCPS concerns the protection of indigenous biological diversity in the Coastal Environment. Clause 1.4 of the NPSIB clarifies that both the NZCPS and NPSIB apply to SNAs within the Coastal Environment, with the NZCPS to prevail if any conflict arises;
- Further, he was of the view that policy 6 of the NZCPS must also be considered in the context of the Forest and Bird submission points. Policy 6 relates to activities in the Coastal Environment and, through sub-clause 1(a), requires recognition that

the provision of infrastructure in the Coastal Environment are activities important to the social, economic and cultural well-being of people and communities;

- (c) When considering both policy 11 and policy 6 of the NZCPS, Mr McCutcheon did not consider a Non-Complying Activity status to be appropriate. INF-ECO-R41 relates to the operation, maintenance, repair and removal of existing infrastructure that is within a SNA. The rule requires that, should the Permitted Activity standards not be met, the functional and operational needs of the infrastructure must be considered, as well as the effect of the activity on the SNA (which includes avoidance if need be). These are matters of discretion, and if they cannot be met, consent can be declined. Should a SNA be in the Coastal Environment, both the applicant and Council's resource consent planner must apply that criterion within the framework set by policy 11 of the NZCPS; and
- (d) In terms of the change sought to introduce ECO-P1 into the matters of discretion, this would introduce the effects management hierarchy to the operation, maintenance and repair of existing infrastructure in SNAs. As per the direction provided by Clause 3.15 of the NPSIB, he did not consider this necessary. In any instance, any non-compliance with a standard requires an applicant and the Council's resource consent planner to evaluate the *effect of the activity and removal on the identified biodiversity values of the significant natural area and the measures taken to avoid, minimise or remedy the effects and where relevant the ability to offset biodiversity impacts*.

561. Further, in relation to Ms O'Sullivan's evidence in respect of INF-ECO-P33 and INF-ECO-P34, Mr McCutcheon outlined that the matters of discretion in ECO-R41.2 refer only to assessment criteria and not back to policy direction. He recommended this be consequently amended. We agree with this position. We recommend that renumbered INF-ECO-R1 be amended to include reference to now INF-ECO-P1 as follows:

<p>INF-ECO-R41</p> 	<p>Operation, maintenance, repair and removal of existing infrastructure within a significant natural area</p>
	<p><i>All Zones</i></p> <p>1. Activity status: Permitted</p> <p>Where:</p> <p>a. Compliance is achieved with the following standards:</p>

		<p>i. INF-ECO-S19; and</p> <p>ii. INF-ECO-S20.</p>
	All Zones	<p>2. Activity status: Restricted Discretionary</p> <p>Where:</p> <p>a. Compliance with any of the requirements of INF-ECO-R41.1 cannot be achieved.</p> <p>Matters of discretion are:</p> <p>1. <u>The matters in INF-ECO-P1; and</u></p> <p>2. <u>The extent and effect of non-compliance with any relevant standard not met as specified in the associated assessment criteria for the infringed standard.</u></p>

INF-ECO-R42: Upgrades to existing infrastructure within a significant natural area

562. Waka Kotahi and KiwiRail²⁴⁶ supported INF-ECO-R42 and sought that it be retained as notified.
563. Forest and Bird²⁴⁷ sought that the Restricted Discretionary rule under INF-ECO-R42 is amended and a new Non-Complying Activity component is added. The changes sought by the submitter are shown below:

INF-ECO-R42 - Upgrades to existing infrastructure within a significant natural area

2. Activity status: *Restricted Discretionary*

Where:

1. Activity status: *Restricted Discretionary*

Matters of discretion are:

1. *The matters in INF-ECO-P33 and ECO-P1; and*
2. *The extent and effect of non-compliance with any relevant standard not met as specified in the associated assessment criteria for the infringed standard.*

²⁴⁶ Submissions #370.121, 408.68

²⁴⁷ Submission #345.67

3. Exemption: The significant natural area does not contain any matters identified in Policy 11 of the New Zealand Coastal Policy Statement 2010 where located within the Coastal Environment.

2. Activity status: Non Complying

Where:

1. The significant natural area includes matters identified in Policy 11 of the New Zealand Coastal Policy Statement 2010 where located within the Coastal Environment.

Section 88 information requirements for applications:

Applications for activities within an identified significant natural area must provide, in addition to the standard information requirements, an ecological assessment in accordance with APP15:

1. Identifying the indigenous biodiversity values and potential impacts from the proposal; and
2. Demonstrating that ECO P5 (or refer to the new policy 11 policy sought above) has first been met, and the effects management hierarchy at ECO-P1 has been applied to other adverse effects.

564. As per Mr McCutcheon's assessment of the Forest and Bird submission points on INF-ECO-R41, he did not consider that, in light of both policies 6 and 11 of the NZCPS, a Non-Complying Activity status is appropriate for infrastructure activities in a SNA in the Coastal Environment.
565. However, in light of the submission, he considered that the INF-ECO policy framework for upgrading and new infrastructure is consistent with policy 11 of the NZCPS. This was because this is sufficiently different to operation and maintenance as provided for under INF-ECO-R41, given the scale of works which could be undertaken.
566. His original recommendation was that rather than specifying within the rule that direct recourse to NZCPS policy 11 is required, the wording recommended for renumbered ECO-P6 (Coastal SNAs) be included in INF-ECO-P34. However, we have agreed that there is no submission scope to do so, leaving the only matter of discretion in INF-ECO-R42 as INF-ECO-P34 without that addition. Along with our recommendation for the matter to be considered in the context of INF-ECO-P34 at a future change, we also recommend revisiting this rule at the same time.
567. Mr McCutcheon also outlined that a consequential amendment is required to INF-ECO-R42, as it currently references INF- ECO-P33 as a matter of discretion. INF-ECO-P33 concerns operation and maintenance of existing infrastructure. INF-ECO-P34 is the

policy which should be referenced in INF-ECO-R42, as this is the policy which concerns upgrades to, and new infrastructure in a significant natural area.

568. Lastly, Mr McCutcheon was of the view that the second matter of discretion in the rule can be deleted. This matter concerned the extent and effect of non-compliance with any relevant standard not met as specified in the associated assessment criteria for the infringed standard, and is irrelevant to INF-ECO-R42, as it does not require the consideration of any standards.
569. Noting that there was no further discussion on this matter from the submitter at the hearing we recommend that now INF-ECO-R2 be amended in line with Mr McCutcheon's recommendations, as follows:

INF-ECO-R42		<i>Upgrades to existing infrastructure within a significant natural area</i>
	<i>All Zones</i>	<p>1. Activity status: <i>Restricted Discretionary</i></p> <p><i>Matters of discretion are:</i></p> <p>1. <i>The matters in INF-ECO-P233; and</i> 2. <i>The extent and effect of non-compliance with any relevant standard not met as specified in the associated assessment criteria for the infringed standard.</i></p>

INF-ECO-R43: New infrastructure within a significant natural area

570. Waka Kotahi and KiwiRail²⁴⁸ supported INF-ECO-R42 and sought that this be retained as notified.
571. Forest and Bird²⁴⁹ sought that that the rule have a Non-Complying Activity status rather than a Discretionary status to give effect to policy 11 of the NZCPS and section 6(c) of the RMA.
572. In his Section 42A report, Mr McCutcheon was of the same view as in relation to INF-ECO-R41 and INF-ECO-R42, namely that the amendments he recommended to INF-

²⁴⁸ Submissions #370.122, 408.69

²⁴⁹ Submission #345.68

ECO-P34 provide alignment with NZCPS policy 11 and would require consideration for all new infrastructure in a SNA that is within the Coastal Environment. However, as outlined under our section on INF-ECO-R42, for the same reasons, we consider that this should be evaluated at some stage in the future by Plan Change due to lack of scope to make those policy changes.

573. We do agree with the view of the reporting officer that given the direction in NZCPS policy 6, a Non-Complying Activity status for infrastructure within a SNA that is in the Coastal Environment as requested by Forest and Bird is not appropriate. No changes to INF-ECO-R43 (other than as to numbering) are therefore recommended.

6.6 INF-ECO Standards

INF-ECO-S19: Trimming or removal of indigenous vegetation or trees within a significant natural area

574. WELL and Waka Kotahi²⁵⁰ sought to retain INF-ECO-S19 as notified.
575. FENZ²⁵¹ sought to amend the standard to add a new assessment criterion in order to ensure that fire risk mitigation is taken into account when assessing applications to trim or remove indigenous vegetation in areas subject to high risk of fire. We agree with Mr McCutcheon that the matter raised by FENZ is not infrastructure-specific and as such should not be in the INF-ECO chapter. Fire risk within SNAs is considered under the ECO chapter.
576. Forest and Bird²⁵² sought to amend the standard as follows:

INF-ECO-S19 - Trimming or removal of indigenous vegetation or trees within a significant natural area

1. Trimming or removal of indigenous vegetation or trees within a significant natural area must be limited to 2m ~~within the footprint of existing infrastructure, access tracks or fences~~ to accommodate an existing track.

...

Assessment criteria:

~~1. Operational or functional needs of infrastructure; and~~

²⁵⁰ Submissions #355.47, 370.123

²⁵¹ Submissions #273.42, 273.43

²⁵² Submission #345.76

~~2. The effect of the activity and removal on the identified biodiversity values of the significant natural area and the measures taken to avoid, minimise or remedy the effects and where relevant the ability to offset biodiversity impacts.~~

1. The extent to which the trimming or removal of indigenous vegetation limits the loss, damage or disruption to the ecological processes, functions and integrity of the significant natural area; and

2. The effect of the vegetation removal on the identified biodiversity values.

577. GWRC²⁵³ sought to amend the wording of the standard to remove “*identified*” before the term “*significant biodiversity values*” when referring to adverse effects caused by activities or maintenance of biodiversity values. It further sought to amend the standard (where relevant) to change “*indigenous vegetation*” to “*vegetation*”.
578. As with Mr McCutcheon, we agree that operational and functional requirements are an appropriate assessment criterion. These are defined terms in the PDP and allow for interrogation into the reason why such works that exceed the Permitted Activity standards are necessary. The avoidance, minimisation or remediation of effects on indigenous biodiversity is appropriate in light of the functional or operational need for the infrastructure to be in that location. The alternative wording sought by Forest and Bird, and GWRC, does not allow for the functional and operational requirements of the infrastructure. As such, we do not support the submissions received, noting that there was no additional evidence on this matter from the submitters.
579. KiwiRail²⁵⁴ sought to increase the limit for the trimming and removal of indigenous vegetation or trees to 5m within the footprint of existing infrastructure. We had no further evidence in support of this submission and therefore prefer the notified standard in this regard.
580. Transpower²⁵⁵ opposed reference to INF-ECO-S19 and sought to delete reference to this standard in any National Grid specific rules. As stated, all matters concerning the National Grid are now recommended to be housed in the INF-NG Sub-Chapter.
581. However, consistent with our recommendations in relation to ECO-P3 and ECO-P5 we recommend the word “*identified*” be removed as proposed by GWRC. Otherwise, INF-ECO-S9 is recommended to remain substantively unchanged.

²⁵³ Submissions #351.95, 351.96

²⁵⁴ Submission #408.70

²⁵⁵ Submissions #315.106, 315.107

INF-ECO-S20: Earthworks within a significant natural area

582. Waka Kotahi and KiwiRail²⁵⁶ sought to retain INF-ECO-S20 as notified.
583. Telcos²⁵⁷ sought to amend the standard to at least provide a nominal allowance for other infrastructure that may require some localised earthworks in significant natural areas for maintenance and upgrading.
584. Forest and Bird²⁵⁸ sought to amend the standard as follows:

INF-ECO-S20: Earthworks within a significant natural area

1. Earthworks within a significant natural area must be limited to maintenance of existing tracks. ~~not exceed:~~

a. ~~More than 50m³ per transmission line support structure; or~~

b. ~~100m³ per access track.~~

Assessment criteria:

~~1. Operational or functional needs of infrastructure; and~~

~~2. The effect of the activity and removal on the identified biodiversity values of the significant natural area and the measures taken to avoid, minimise or remedy the effects and where relevant the ability to offset biodiversity impacts.~~

1. The extent to which the earthworks limits the loss, damage or disruption to the ecological processes, functions and integrity of the significant natural area; and

2. The effect of the earthworks on the identified biodiversity values.

585. GWRC²⁵⁹ sought to amend the wording of the standard to remove “*identified*” before the term “*significant biodiversity values*” when referring to adverse effects caused by activities or maintenance of biodiversity values.
586. WELL²⁶⁰ sought to amend sub-clause 1.a by replacing “*transmission*” with “*electricity*”.

²⁵⁶ Submissions #370.124, 408.71

²⁵⁷ Submission #99.51

²⁵⁸ Submission #345.77

²⁵⁹ Submission #351.97

²⁶⁰ Submission #355.48, 355.49

587. Transpower²⁶¹ opposed reference to INF-ECO-S20 and sought to delete reference to this standard in any National Grid specific rules.
588. Mr McCutcheon advised that in terms of the applicability of the standard (noting with the submissions sought by Transpower that references to the National Grid be removed), the works only allow for earthworks associated with access tracks. The standard limits this to a volume of 100m³. The amendment sought by Forest and Bird increases this volume, depending on the extent of access track. We agree with the view of Mr McCutcheon that a volume limit is appropriate as it is readily measured.
589. WELL requested that 50m³ of earthworks be permitted for electricity line support structures, and the Telco's sought a nominal allowance for other infrastructure that may require some localised earthworks.
590. Mr McCutcheon outlined that the operation of infrastructure within SNAs can be comprised of a number of potential components, including any structures necessary for the provision of the infrastructure, as well as ancillary matters including an access track to that infrastructure and any fences. There are likely to be a need for earthworks for any of these matters for operational reasons. As such, he did not consider it appropriate that the standard is limited solely to existing access tracks but should include all necessary components.
591. In considering this, Mr McCutcheon considered that the 100m³ limit should be for all activities, not limited to the access track. This provides a nominal amount, including an allowance for any residual earthworks outside of maintaining an access track, and provides an overall total quantum for infrastructure providers. We agree that this is a pragmatic approach.
592. In terms of Forest and Bird and GWRC's submission points on the assessment criteria, we agree that the conclusions reached above for INF-ECO-S19 are equally applicable for INF-ECO-S20.
593. We also note that the relief sought by Transpower has been given effect to through the recommendation at Hearing Stream 9 to include a standalone INF-NG chapter in the PDP.
594. Therefore INF-ECO-S20 is proposed to be amended as follows:

²⁶¹ Submissions #315.108, 315.109

INF-ECO-S20	Earthworks within a significant natural area	
All Zones	<p>1. Earthworks within a significant natural area must not exceed <u>100m³</u>:</p> <p>2. More than 50m³ per transmission line support structure; or</p> <p>3. 100m³ per access track.</p>	<p>Assessment criteria:</p> <p>1 Operational or functional needs of infrastructure; and</p> <p>2 The effect of the activity and removal on the identified biodiversity values of the significant natural area and the measures taken to avoid, minimise or remedy the effects and where relevant the ability to offset biodiversity impacts.</p>

6.7 Minor Consequential Changes

595. We note that with the transfer of the INF-ECO Sub-Chapter into this Hearing Stream, the Stream 9 reporting officer recommended a change to the numbering of policies, rules and standards in the other infrastructure Sub-Chapters, to ensure the numbering remained continuous. This necessitates consequential changes in the INF-ECO Sub-Chapter, so its provisions number sequentially from the INF-OL Sub-Chapter. Appendix 1 shows the necessary changes.

596. We note that as notified, both the ECO Chapter and the INF-ECO Sub-Chapter had a note on the front page related to provisions having legal effect. The note is in each case now redundant as, following the Council making decisions on our recommendations, all provisions will have legal effect. We recommend that therefore that they be deleted.

7 ALIGNMENT WITH PREVIOUSLY DETERMINED PROVISIONS

597. While the Section 42A Report focused on the notified ECO chapter, INF-ECO chapter and related schedules and appendices, Mr McCutcheon also considered that there are other chapters which will need further amendments to reconcile the NPSIB.

598. In particular two chapters already determined – Subdivision and Earthworks contain policy and rule frameworks which in his view could do with further alignment.
599. He noted that the following provisions warrant further consideration either consequentially on the recommendations included in his report following his methodology to implement the NPSIB, or through a future plan change:

Earthworks

- EW-P9 Minor earthworks within significant natural areas;
- EW-P10 Earthworks within significant natural areas; and
- EW-R8 Earthworks within a significant natural area (appealed).

Subdivision

- SUB-P17 Subdivision in significant natural areas; and
- SUB-R11 Subdivision of land within a significant natural area.

600. He further explained that this suggestion is because the avoidance framework and effects management frameworks (Clause 3.10 – 3.11) of the NPSIB apply to all forms of subdivision, use and development (including earthworks). The same is true for clause 3.16 ‘outside SNA’ indigenous biodiversity although we have not recommended a Rule to that effect.
601. Mr McCutcheon only made recommendations in the ECO chapter in respect of uses and development not otherwise addressed in other chapters of the plan and did not consider the subdivision aspect of these clauses.
602. The provision that he was most immediately concerned about was EW-P10 (Earthworks within significant natural areas) which references particular policies in the ECO chapter which are recommended be changed in their intent, renumbered or deleted.
603. The example referred to by Mr McCutcheon was for the EW-P10 policy to still make sense, the following changes to policy numbering should be made:

Only allow for earthworks of a more than minor scale within Significant Natural Areas only where it can be demonstrated that any adverse effects on indigenous biodiversity values are addressed in accordance with ECO-P1 ECO-P3 and the matters in ECO-P3 ECO-P4 and ECO-P5.

604. We consider that a change to EW-P10 to reference the amended policy numbers is a consequential correction, or minor effect, and therefore within Clause 16(2) of the first Schedule. We recommend it be amended accordingly, and that Council undertake a broader revision of provisions considered in the ISPP phase of hearings to locate and check cross references to the ECO Chapter to ensure they are correct.

8 CONCLUSIONS

605. We have sought to address all material issues of the parties who have appeared before us put in contention in relation to the topics discussed in this report.
606. To the extent that we have not discussed submissions on this topic, we agree with and adopt the reasoning of the Section 42A Report, as amended in Mr McCutcheon's written Reply.
607. Appendix 1 sets out the amendments we consider should be made to the PDP as a result of our recommendations. We note that the attached provisions do not include the amendment we have recommended be made to EW-P10 in Section 7 of our report above.
608. To the extent that the Section 42A Reporting Officer has recommended amendments to the Plan requiring evaluation in terms of Section 32AA that we agree with, we adopt their evaluation for this purpose.
609. Where we have discussed amendments, in particular where we have identified that further amendments should be made, our reasons in terms of Section 32AA of the Act are set out in the body of our Report.
610. Appendix 2 sets out in tabular form our recommendations on the submissions allocated to Hearing Stream 11 topics considered in this report.
611. Finally, we draw the attention of Council to our recommendations:
- (a) To consider further how the NPSIB should be implemented in the urban environment as both identification and management of SNAs and identification and management outside SNAs, having regard to the competing directions of the NPSUD, with a view to such implementation occurring through the mechanism of a future Plan Change (refer Sections 2.2 and 2.4 of our report above);
 - (b) To consider further whether the identification of SNAs in rural areas deprives the ability of landowners to make reasonable use of their land, and if so, whether it is

necessary and appropriate to amend the Plan through a future Plan Change (refer Section 2.3 of our report above);

- (c) To consider further the wording of ECO-O4 in the context of the Te Ao Māori Plan Change we understand Council is working on (refer Section 5.7 of our report above);
- (d) To consider whether amendments need to be made via a future Plan Change to implement RPS Change 1 as it relates in particular to renumbered INF-ECO-P2 (notified INF-ECO-P34) and the rules implementing that policy once all relevant appeals on the relevant RPS Change 1 provisions have been resolved (refer Section 6.4 of our report above);
- (e) To review provisions in the plan resolved as part of the ISPP to see if the ECO Chapter is cross referenced correctly, and if not, to correct same (refer Section 7 of our report above)

For the Hearing Panel:



Trevor Robinson

Chair

Wellington City Proposed District Plan Hearings Panel

Dated: 12 February 2025