

**Before the Hearing Panel Appointed by Wellington City Council
to Hear Submissions on the Proposed Wellington City District Plan**

In the matter of: **the Resource Management Act 1991**

And: **Submissions and Further Submissions
Lodged on the Proposed Wellington City
District Plan by Meridian Energy Limited**

**Statement of Evidence of Christine Anne Foster
Called by Meridian Energy Limited**

**HEARING STREAM 11
ECOSYSTEMS AND INDIGENOUS BIODIVERSITY**

28 August 2024

1. Introduction

- 1.1. My name is Christine Anne Foster. I am a Planning Consultant and sole director of CF Consulting Services Limited, based in Wellington. I hold a Bachelor of Regional Planning and have worked as a resource management planner in New Zealand for over 40 years.
- 1.2. This statement of evidence is within my area of expertise as a resource management planner, except where I state that I rely on the evidence of others or evidence presented in the Council's section 42A reports. I have read the Code of Conduct for Expert Witnesses set out in the Environment Court 2023 Practice Note (**Code**). While this hearing is not a hearing before the Court, I am aware of the obligations imposed on expert witnesses by the Code and agree to comply with the Code of Conduct. I have prepared this statement of evidence in accordance with the Code. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
- 1.3. My qualifications and resource management experience are set out in my statement of evidence to Hearing Stream 1 dated 3 February 2023.
- 1.4. I have been asked by Meridian to consider the analysis and recommendations of the Council's section 42A report and attachments for Hearing Stream 11 that pertain to Meridian's submission and further submissions. I am authorised by Meridian to present this statement of evidence to the Panel.

2. Context and Scope of Evidence

- 2.1 As explained in evidence to earlier Hearing Streams, Meridian's submission and further submissions addressed matters beyond the REG Chapter because it was not clear whether the REG Chapter functioned as a completely discrete stand-alone set of provisions for renewable electricity generation (REG). The evidence of reporting officers to previous Hearing Streams has consistently clarified that the intention is that the REG Chapter is to function as a complete set of provisions, providing for and managing the effects of REG, mutually exclusive from all other chapters of the proposed District Plan (PDP). This statement of evidence addresses whether this is achieved for the ECO and INF-ECO chapters. The recommendations of officers to Hearing Streams 9 and 11 include inserting into some REG policies, by reference, some of

the ECO Chapter policy requirements. In this respect, the chapters are not completely mutually exclusive. This in itself is not problematic. However, I have identified some misalignment where the recommendations have not considered the NPS-IB direction that the NPS-IB does not apply to REG. I also address Mr McCutcheon’s recommendations on Meridian’s further submission points on the ECO and INF-ECO Chapters.

3. Information Relied On

3.1 In preparing this statement of evidence I have read:

- (a) The section 42A report on Ecosystems and Indigenous Biodiversity, together with recommended tracked changes to provisions in the Appendix ‘a’ series attached to the s. 42A report, prepared by Adam McCutcheon;
- (b) The technical reports prepared by Wildlands contained in Appendices ‘c’, ‘d’ and ‘g’ to the s. 42A report;
- (c) The s. 32 Evaluation Reports: Part 2 (Ecosystems and Indigenous Biodiversity) and part 2 (Renewable Electricity Generation);
- (d) The submissions and further submissions referenced in the following sections of this evidence;
- (e) The recommendations of the Hearing Panel and decisions of the Council on Hearing Stream 1 (noting that appeals on those decisions closed on 20 May 2024).

4. Relationship Between REG, ECO and INF-ECO Chapters and the NPS-IB

Submission Points:	Meridian S228.27, S228.28
Further Submissions:	Meridian FS101.48 opposing Forest and Bird S345.57
S. 42A Report:	Paragraphs 768, 781 to 786, 791

4.1 Meridian’s submission (points S228.27 and S228.28) requested the insertion of the following additional clarification in the introduction to the INF-ECO Chapter:

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.

4.2 Mr McCutcheon clarifies, in paragraph 785 of the s. 42A report, that it was established during Hearing Stream 9 that the REG Chapter is a standalone chapter which reconciles SNAs and REG activities. That is also my recollection of the position presented by Mr Jeffries to Hearing Stream 9.

4.3 Mr McCutcheon has recommended (in paragraphs 768 and 786 of the s. 42A report) the insertion of clarifying text which, although slightly different from the wording proposed by Meridian, in my opinion achieves the same purpose. I endorse his recommended amendment shown below:

Introduction

This sub-chapter applies to infrastructure (with the exception of the National Grid and renewable electricity generation) within the significant natural areas ~~overlays~~ identified within SCHED8 the Ecosystems and Indigenous Biodiversity Chapter. It applies in addition to the principal Infrastructure Chapter.

4.4 Although the reporting officers have consistently stated that the REG is a standalone chapter, Mr Jeffries' recommendations to Hearing Stream 9 included references to policies in the ECO Chapter. Mr McCutcheon has proposed substantive change and consequential re-numbering of the ECO Chapter objectives and policies. This results in a potential mis-match between Mr Jeffries' intention and the ECO Chapter content referenced in his proposed REG Chapter amendments. Meridian's particular interest is in the impact on large-scale REG activities addressed by proposed Policy REG-PX as follows:

REG Chapter Reference (from Hearing 9 Joe Jeffries' Rebuttal Statement)	ECO Chapter as Publicly Notified	ECO Chapter Reference and Content (as amended by Adam McCutcheon's s. 42A Report)
REG-PX Large-scale REG within specified overlays: Clause 3 (b) requires regard to be had to:		
ECO-P2	ECO-P2 = trimming and pruning	ECO-P2 = precautionary approach
ECO-P3	ECO-P3 = applies the ECO-P2 effects management hierarchy (possibly a referencing error: ECO- P1 (not P2) sets out the management hierarchy)	ECO-P3 = avoiding specified adverse effects of new use and development
ECO-P4	ECO-P4 = protection and restoration initiatives	ECO-P4 = lists new use and development that must apply the ECO- P5 effects management hierarchy
ECO-P7	ECO-P7 = existing plantation forestry	ECO-P7 = trimming and pruning

4.5 There are similar potential mis-matches for Policies REG-P5 (small-scale REG) and REG-P7 (community-scale REG) also.

The Issues

4.6 There are three issues at play: the first is the potential confusion in the numbering of the ECO-Chapter references. The second is in the fact that many of Mr McCutcheon's proposed amendments draw on or are intended to give effect to the NPS-IB, and the cross-referencing from the REG Chapter means some of these apply to REG. However, the NPS-IB includes an explicit exclusion for REG assets and activities and for electricity transmission (ET) activities. This is found in Part 1.3 (3) of the NPS-IB as follows:

(3) Nothing in this National Policy Statement applies to the development, operation, maintenance or upgrade of renewable electricity generation assets and activities and electricity transmission network assets and activities. For the avoidance of doubt, renewable electricity generation assets and activities, and electricity transmission network assets and activities, are not "specified infrastructure" for the purposes of this National Policy Statement.

4.7 The third issue is that the effects management hierarchy referred to in Policy REG-PX¹, as recommended by Mr Jeffries to Hearing Stream 9, required that effects on SNAs be avoided where practicable and, otherwise, minimised, remedied, offset or compensated for. This management hierarchy did not require absolute avoidance of adverse effects. Amended ECO-P3, which is referenced in Policy REG-PX, appears to apply to REG upgrading and requires absolute avoidance of the listed adverse effects. This conflicts with the explicit NPS-IB Part 1.3 (3) exclusion for REG.

4.8 Mr McCutcheon proposes to remove all references to the national grid and ET activities from the ECO Chapter, on the basis that the interaction between ET activities is addressed completely within the NG Chapter. He states in paragraphs 515 and 785 of the s. 42A report his understanding that the REG Chapter is also a standalone chapter that deals with REG assets and SNAs in a standalone manner. However, the amendments recommended in Hearing Stream 9 mean that the REG Chapter is not entirely 'standalone', but is subject to some of the policies in the ECO Chapter (as demonstrated above).

4.9 Meridian's first-round submission did not address the NPS-IB (because it didn't exist then). Meridian's further submissions responded to other submissions that referenced the (then) draft NPS-IB and requested that any amendments made to the PDP must align with the NPS-IB once gazetted².

4.10 Mr McCutcheon acknowledges the NPS-IB Part 1.3 (3) exclusion for REG and ET assets and activities in paragraph 85 of the s. 42A report. In paragraph 86 Mr McCutcheon notes that the NPS-IB was gazetted after the PDP was publicly notified, so the PDP could not give effect to the NPS-IB at that time. In paragraph 88 Mr McCutcheon identifies the aspects of the PDP he considers do not fully align with the NPS-IB. Paragraph 88 (e) lists the 'carve-out' for national grid ET infrastructure, but is silent on the NPS-IB Part 1.3 (3) 'carve-out' for REG. Unfortunately, this carries through to the balance of the s. 42A report and the discussion of amendments to ECO policies. There is no explicit consideration of the impact of ECO policy

¹ This is specified as Policy ECO-P2 but it appears this may be an error. This was pointed out in Meridian's submission and further submission (FS101.54, FS101.55, FS101.56, FS101.57). Having discussed the matter with Mr McCutcheon and Mr Jeffries, I understand that it is a simple referencing error. The reference should be to Policy ECO-P1 in the publicly notified PDP.

² For example: Meridian's further submission points on submissions S345.176, S345.178 to S345.182, S345.195, S345.398 to S345.408, S351.329 to S351.330, S351.153, S385.35, S377.116, S377.120, S277.121, S385.41.

amendments on REG and how/whether the amendments align with the NPS-IB 'carve-out' for REG. I accept that this may have been on the basis of Mr McCutcheon's understanding that the REG Chapter already dealt with REG and SNAs in a standalone manner. However, it is not as simple as that. Where the amendments proposed to ECO Chapter policies rely on or are intended to give effect to the NPS-IB, and where these are to be applied to REG assets and activities, there needs to be consideration of whether this aligns with (or contravenes) the NPS-IB Part 1.3 (3) 'carve-out'.

4.11 As currently recommended, the proposed ECO Chapter policies apply to REG only in the coastal environment. That is the context specified in Policies REG-P5, REG-P7 and REG-PX. The NPS-IB clarifies that, in the terrestrial coastal environment, both the NPS-IB and the NZCPS apply. NZCPS Policy 11 addresses indigenous biodiversity in the coastal environment (terrestrial and marine). Policy 11 (a) is to avoid all adverse effects on listed rare, threatened and at-risk taxa and habitats. Policy 11 (b) is to avoid significant adverse effects and avoid, remedy or mitigate other adverse effects on listed vegetation and habitats. The Policy 11 (a) and (b) requirements are already accounted for in REG Policies REG-P5 (clause 6 (c)), REG-P7 (clause 5 (b)) and REG-PX (clause 3 (b)). There is nothing additional in the ECO policies that the REG policies need to refer to or rely on to give effect to the NZCPS.

4.12 I have discussed the issues raised above with Mr McCutcheon and Mr Jeffries. Mr McCutcheon considers that the reference to ECO-P2 (in the REG policies) was an error, and that this should have been to ECO-P1. Policy ECO-P1 was originally a requirement to apply an effects management hierarchy as described in paragraph 4.7 above. This mitigation hierarchy is now captured by re-numbered Policy ECO-P5 which replicates the effects management hierarchy defined in the NPS-IB. Policies ECO-P4 and ECO-P5 are not referenced in the REG policies. However, Policy ECO-P3 is referenced and, as proposed by Mr McCutcheon, is the first step in a policy cascade that includes Policies ECO-P4 and ECO-P5. The effects management hierarchy in Policy ECO-P5 is available only to the forms of 'new use and development' listed in Policy ECO-P4. Meridian's particular interest is in REG upgrading which is not strictly 'new' use and development and does not appear to be included in the Policy ECO-P4 list. If REG upgrading is not included under ECO-P4, all adverse effects are required by ECO-P3 to be avoided. This approach differs from the original Policy ECO-P1 approach, and the Hearing Stream 9 recommendation, and conflicts with the express NPS-IB Part 1.3 (3) 'carve-out'.

Summary

4.13 The reference in Policy REG-PX to Policy ECO-P2 did not raise any issues for Meridian in Hearing Stream 9 (because it appeared to be about trimming and pruning and, if the reference was incorrect, the Policy ECO-P1 mitigation hierarchy was reasonable for REG). The issues above arise because of the potential amendment to the ECO-P2 reference in Policy REG-PX and because of the wording of proposed Policies ECO-P3 and ECO-P4. The issues may be best resolved through the Hearing Stream 12 'wrap up', but I signal them now because they arise from the subject matter of Hearing Stream 11.

NPS-IB and NPS-REG

4.14 At the time the NPS-IB was gazetted, the Government was also considering reviews of the NPS-REG and NPS-ET. The intention was that the 'carve-out' in the NPS-IB for REG and ET would be accompanied by new provisions in the replacement NPS-REG and NPS-ET addressing indigenous biodiversity (including SNAs). The reviews of the NPS-REG and NPS-ET are still under way and have not yet caught up with the NPS-IB. An exposure draft replacement NPS-REG was published in April 2023. It included a compulsory policy to be included in district plans which would provide for REG in areas with significant environmental values in specified circumstances. It is entirely different from the NPS-IB effects management hierarchy. But it remains a draft.

4.15 Mr McCutcheon's report references the GWRC hearing process and officer recommendations for Change 1 to the RPS. I have contributed evidence to that process and participated in expert conferencing on the same matters that are at issue in PDP Hearing Stream 11. For that RPS process, it was my recommendation that the RPS should give effect to the NPS-IB 'carve-out' for REG but without creating a gap in the RPS regarding significant indigenous biodiversity. I proposed policy wording that reflected the intention of the draft replacement NPS-REG in providing for and managing the effects of REG in areas of significant indigenous biodiversity. My opinion was, and remains, that this better reflects the 'joined up' intention of the national policy statements collectively and is more constructive than leaving a policy gap (even if temporarily until the NPS-REG is replaced). That was also on the basis that Meridian had been content with the effects management approach proposed in the draft NPS-REG. If the future replacement NPS-REG differs in its approach to SNAs, the RPS will have to be amended (anyway) to give effect to that.

4.16 My suggested approach for the RPS is reflected in amendments agreed at expert conferencing, contained in Appendix 1 to a joint witness statement of planning experts dated 6 May 2024 and recommended in the GWRC reporting officer’s reply statement. The particular example I refer to is proposed RPS Policy 24D on page 10 of Appendix 1 (contained in Attachment 1 to this statement of evidence). At the time of writing this statement of evidence, the fate of those recommendations remains unknown. The GWRC Hearing Panels’ recommendations are expected to be published before the PDP Hearing Stream 11 commences and GWRC’s decisions on recommendations may also be publicly notified by then (albeit still subject to appeal).

4.17 My approach to the PDP is the same: correct application of the NPS-IB (including the REG ‘carve-out’) should not have the result of creating a policy gap for managing REG in SNAs. Even though, as currently worded, there is confusion about which PDP ECO Chapter policies are to apply to REG, I have considered whether there is any gap in the REG policy framework with respect to SNAs and the management of REG. My conclusion is that there is not. As noted above, the NZCPS Policy 11 matters are addressed already. An avoid, remedy or mitigate approach is proposed in the wording recommended by Mr Jeffries for the REG policies managing other adverse effects. This is appropriate and sufficient, in my opinion, to address the matters raised by the ECO policies in a manner consistent with the NPS-IB ‘carve-out’. The Policy ECO-P7 consideration (plantation forestry) is unlikely, in my view, to be an issue for REG in Wellington City. In my opinion, there is no need to refer to the ECO Chapter policies at all. I understand that Mr McCutcheon will address this matter in his reply evidence. I would support deletion of the references to ECO Chapter policies from the REG policies noted above, for the reasons I have explained here.

5. Objectives ECO-O1 and ECO-O2 and Additional Objectives Requested by Other Parties

Submission Points:	Meridian S228.68, S228.69, S228.70 and S228.71
Further Submissions:	Meridian FS101.117 and FS101.126 on Forest and Bird S345.173 and S345.183 Meridian FS101.125 opposing Tyers Stream Group S221.32 Meridian FS101.127 opposing WCC Environmental Reference Group S377.116 Meridian FS101.128 supporting GWRC S351.151
S. 42A Report:	Paragraphs 431 to 481

5.1 Meridian’s submission (points S228.68 and S228.69) requested amendment to Objectives ECO-O1 and ECO-O2 to clarify that it is the values of the identified SNAs that should be protected. Mr McCutcheon makes the point that the NPS-IB refers to ‘areas’, not values within areas. I accept his point and propose no further amendment to the wording of Objective ECO-O1 (now numbered ECO-O3). Mr McCutcheon has recommended, for other reasons, the deletion of Objective ECO-O2. In any event, it is now clear that Objectives ECO-O1 and ECO-O2 do not apply to REG assets and activities (for example, these ECO objectives are not referenced in any REG policies). The concern driving Meridian’s submission point has been addressed.

5.2 Meridian’s FS101.117 supported in part Forest and Bird’s requested additional objective to maintain and enhance indigenous biodiversity that is not identified as SNA. Mr McCutcheon’s proposed new Objective ECO-O2 responds in part to this request and I support his proposed wording.

6. Policies ECO-P1, ECO-P2, ECO-P3, ECO-P4 and ECO-P5

Submission Points:	Meridian S228.72, S228.73, S228.74, S228.75, S228.76, S228.77, S228.78, S228.79
Further Submissions:	Meridian FS101.129, FS101.134, FS101.135, FS101.136 opposing Forest and Bird S345.187, S345.188, S345.189, S345.191 Meridian FS101.130 opposing GWRC S351.153 Meridian FS101.131 and FS101.132 opposing WCC Environmental Reference Group S377.120 and S377.121 Meridian FS101.13 supporting in part DG Conservation S385.41
S. 42A Report:	Paragraphs 482 to 553

6.1 Meridian’s submission requested amendments to the effects mitigation hierarchy set out in Policy ECO-P1, to ensure the approach required avoidance, remediation and mitigation where practicable and to ensure the focus of offsetting and compensation is on effects more than minor. Meridian’s submission on Policy ECO-P2 requested consideration of functional and operational need. Meridian requested retention of Policies ECO-P3 and ECO-P4. Meridian requested a minor amendment to Policy ECO-P5 to reference values other than the NZCPS Policy 11 values (which were already addressed in the policy) and to insert Policy ECO-P1 as the correct reference for the PDP effects mitigation hierarchy.

6.2 As already noted, Mr McCutcheon has recommended wholesale amendments to the ECO policies. The discussion in Section 4 of this statement of evidence is equally relevant to the ECO policies as relates to Meridian's submissions. The short point is that any amendments to the ECO policies that affect REG need to be determined in light of the NPS-IB Part 1.3 (3) exclusion for REG. In my opinion, it is appropriate for REG to be subject to some sort of effects mitigation hierarchy in the intervening period until the NPS-REG is updated. However, this should not feature the absolute avoidance approach of Mr McCutcheon's proposed Policy ECO-P3. It is my opinion that a hierarchy that reflects the following approach is appropriate:

- (a) Recognise the functional and operational needs of REG to locate where renewable energy resources exist;
- (b) Adopt the NZCPS Policy 11 (a) and (b) approach to rare and threatened species and habitats; and otherwise
- (c) Avoid adverse effects where practicable;
- (d) Minimise or remedy adverse effects where practicable;
- (e) Where more than minor residual adverse effects cannot be avoided, minimised or remedied provide for biodiversity offsetting where practicable; then
- (f) If offsetting is not practicable, provide for biodiversity compensation.

6.3 Having considered the wording of proposed Policy REG-PX, my view is that it could stand on its own in already providing for this approach, without needing to reference the ECO policies. However, if references to the ECO policies are to remain in Policy REG-PX, these must not conflict with the clear direction of NPS-IB Part 1.3 (3). My view is that the combination of ECO-P3 and ECO-P4, as currently proposed, conflicts with this direction for the reasons earlier explained. This could be resolved by clarifying that the mitigation hierarchy above (or similar) applies to REG upgrading. The simpler approach is to delete the ECO policy references from Policy REG-PX.

7. Appendices APP-2 and APP-3 and Definition of ‘Biodiversity Compensation’

Submission Points:	Meridian S228.15, S228.118, S228.119, S228.120
Further Submissions:	Meridian FS101.2 and FS101.3 opposing Forest and Bird S345.4 and S345.5 (re definition of ‘biodiversity compensation’) Meridian FS101.169 to FS101.173 and FS101.176 to FS101.181 opposing Forest and Bird S345.398 to S345.402 and S345.403 to S345.408 Meridian FS101.174, FS101.175 and further submission points opposing GWRC S351.327, S351.328 and S351.329 to S351.331
S. 42A Report:	Paragraphs 283 onwards (there is a numbering error after paragraph 283)

7.1 Meridian’s submission requested that the focus of the principles for biodiversity offsetting and compensation should be on effects more than minor (not all adverse effects). This is the approach taken by the NPS-IB and Mr McCutcheon has recommended adoption of the wording of Appendices 3 and 4. Meridian’s concern has been resolved.

7.2 Further submission points FS101.2 and FS101.3 opposed amendments to the definition of ‘biodiversity compensation’. Mr McCutcheon recommends adoption of the NPS-IB definition and I endorse his recommendation.

8. Other Submission Points Resolved by the s. 42A Report Recommendations

Subject:	Definition of ‘Significant Natural Area’
Further Submissions:	Meridian FS101.11 opposing Forest and Bird S345.14
S. 42A Report:	Paragraphs 278 to 281

8.1 The point at issue in Meridian’s further submission point is that the definition and the policy framework should relate to identified SNAs. Mr McCutcheon recommends retaining the publicly notified definition which relates to areas identified in SCHED8. I support his recommendation.

Subject:	INF-ECO Chapter Provisions
Further Submissions:	<p>Meridian FS101.48, FS101.49 and FS101.57 on Forest and Bird S345.57, S345.58 and S345.60</p> <p>Meridian FS101.50, FS101.51, FS101.52 and FS101.53, FS101.56 on WIAL S406.143, S406.144, S406.146, S406.147, S406.150</p> <p>Meridian FS101.54 and FS101.55 on Chorus, Spark Vodafone S99.50 and Powerco S127.32</p> <p>Meridian FS101.58, FS101.59 and FS101.60 opposing Forest and Bird S345.66, S345.67 and S345.68</p> <p>Meridian FS101.61 and FS101.62 opposing Forest and Bird S345.76 and GWRC S351.95</p> <p>Meridian FS101.63 and FS101.64 opposing Forest and Bird S345.77 and GWRC S351.97</p>
S. 42A Report:	Chapter 12

8.2 Meridian’s further submission points opposed Forest and Bird’s suggestion of replicating the ECO objectives in the INF-ECO Chapter and considered further amendment to give effect to the NZCPS unnecessary because it was already given effect by the publicly notified wording. Mr McCutcheon considers the INF-ECO objectives are already aligned with the ECO Chapter and the NZCPS. In any event, Mr McCutcheon has recommended additional text in the introduction to the INF-ECO Chapter that clarifies that the INF-ECO Chapter does not apply to REG. The INF-ECO Chapter provisions are not referenced in any REG objectives or policies. Meridian’s concern is addressed by Mr McCutcheon’s recommended amendments.

8.3 Meridian’s concerns about the WIAL submission points related to how these INF-ECO policies would affect REG. Similarly, the concern about Forest and Bird’s S345.66 request for non-complying activity status related to the interaction between the INF-ECO Chapter and REG Chapter. Similarly, for Forest and Bird’s S345.76 and GWRC S351.95 request to not include operational and functional need as valid considerations and Meridian’s concerns about INF-ECO standards. Mr McCutcheon’s advice and recommended additional explanatory text clarify that the INF-ECO provisions do not apply to REG. On that basis, Meridian’s concerns are resolved.

Subject:	Additional ECO Policies Requested by Other Parties
Further Submissions:	Meridian FS101.118, FS101.119, FS101.122 on Forest and Bird S345.176, S345.178, S345.179, S345.180, S345.182 Meridian FS101.123 supporting in part DG Conservation S385.35
S. 42A Report:	Paragraphs 587 to 702

8.4 Aspects of the additional ECO Policies requested by other parties have been addressed by the amendments Mr McCutcheon has recommended. The focus of Meridian’s concern, through its further submission points, was to ensure that any amendments to the ECO policies align with the relevant higher order policy direction. The discussion in Section 4 of this statement of evidence is equally relevant here and I will not repeat it.

Subject:	Requested Additional ECO Rules and Standards
Further Submissions:	Meridian FS101.119, FS101.120, FS101.120, FS101.121, FS101.122 and FS101.137 on Forest and Bird S345.178, S345.179, S345.179, S345.180, S345.182 and S345.195 Meridian FS101.124 opposing DG Conservation S385.36
S. 42A Report:	Paragraphs 308 to 412

8.5 I can confirm that Meridian’s concerns about the additional rules and standards requested will be resolved if the amendments to introductory text recommended by Mr Jeffries (in the REG Chapter) and Mr McCutcheon are adopted (such that the rules and standards do not apply to REG).

Subject:	SCHED8 SNAs
Further Submissions:	Meridian FS101.185 opposing GWRC S351.347
S. 42A Report:	Page 83

8.6 Meridian’s further submission opposed the request by GWRC to include additional areas as SNAs in SCHED8. Meridian opposed the request because there was no accompanying justification for the SNA identification. I note that Mr McCutcheon has been in discussion with GWRC about the request and that information to support the request may be presented by GWRC in evidence to the hearing. In the absence of supporting information, Mr McCutcheon

has recommended the request be rejected. I will review whatever supporting information GWRC includes in evidence and may have further comments on that at the hearing.

9. Conclusion

9.1 In large measure, the concerns raised by Meridian's submission and further submissions have been addressed by the officers' clarification that the ECO and INF-ECO Chapters do not apply to REG. There is a relationship between the REG Chapter and the ECO Chapter if the recommendations of the s. 42A authors to Hearing Streams 9 and 11 are adopted. Most of the recommended amendments to the ECO Chapter objectives and policies are intended to give effect to the NPS-IB. I have highlighted the clear direction in Part 1.3 (3) of the NPS-IB that its provisions do not apply to REG. Some amendment to the recommended provisions is needed, in my opinion, to give effect to this direction.

9.2 I have suggested an approach that could achieve this whilst still applying an appropriate effects management hierarchy to REG, wholly within the REG Chapter. I have not proposed detailed wording amendments to the ECO Chapter policies this time, primarily because my view is that none need to be referenced in the REG Chapter. However, if the Hearing Panel concludes that additional policy direction is required for REG, I would be happy to have further discussion with Mr McCutcheon and Mr Jeffries if that would assist.

Christine Foster

28 August 2024

Attachment 1

GWRC Proposed Change 1 to the Regional Policy Statement

Joint Witness Statement of Planning Witnesses to Hearing Stream 6 (Indigenous Ecosystems)

Appendix 1

RECOMMENDED CHANGES TO CHANGE 1 INDIGENOUS BIODIVERSITY PROVISIONS: Policies 24 – 24D and Policy 47

Annotations:

Section 42A recommendations in red, rebuttal recommendations in blue. Further amendments agreed in expert conferencing shown in green without highlighting.

All changes to Policy 24, 24A and 24B agreed by all experts.

Changes to Policy 24C and 24D, and inclusion of new Policy 24CC agreed by all experts except as described in the joint witness statement for Topics 4, 5 and 6 - refer **green highlighted** text.

Policy 24: Protecting indigenous ecosystems and habitats with significant indigenous biodiversity values – district and regional plans

~~As soon as reasonably practicable and by no later than 4 August 2028~~ By 30 June 2025,
District and regional plans shall include policies, rules and methods to protect indigenous ecosystems and habitats with significant indigenous biodiversity values from inappropriate subdivision, use and development, including by applying:

- (a) Policy 24B Clause 3.10 and Clause 3.11 of the National Policy Statement for Indigenous Biodiversity 2023 to manage adverse effects on significant indigenous biodiversity values in the terrestrial environment;
- (b) Policy 24C 11 of the New Zealand Coastal Policy Statement 2010 to manage adverse effects on indigenous biodiversity values in the coastal environment; and
- (c) Policy 24D to manage the adverse effects of REG activities and ET activities on significant indigenous biodiversity values (these activities are not subject to Policy 24A and Policy 24B). Policies 18A and 18B in this Regional Policy Statement to manage adverse effects on the values and extent of natural inland wetlands and rivers.

~~Where the policies and/or rules in district and regional plans enable the use of biodiversity offsetting or biodiversity compensation for an ecosystem or habitat with significant indigenous biodiversity values, they shall:~~

~~(a) not provide for biodiversity offsetting;~~

~~(i) where there is no appropriate site, knowledge, proven methods, expertise or mechanism available to design and implement an adequate biodiversity offset; or~~

~~(ii) when an activity is anticipated to causes residual adverse effects on an area after an offset has been implemented if the ecosystem or species is threatened or the ecosystem is naturally uncommon;~~

~~(b) not provide for biodiversity compensation where an activity is anticipated to cause residual adverse effects on an area if the ecosystem or species is threatened or the ecosystem is naturally uncommon;~~

~~(c) ecosystems and species known to meet any of the criteria in (a) or (b) are listed in Appendix 1A (Limits to biodiversity offsetting and biodiversity compensation);~~

~~(d) require that the outcome sought from the use of biodiversity offsetting is at least a 10 percent net biodiversity gain, or from biodiversity compensation is at least a 10 percent net biodiversity benefit.~~

Explanation

Policy 24 applies to provisions in regional and district plans. This requires the protection of significant indigenous biodiversity values in terrestrial, freshwater and coastal environments consistent with section 6(c) of the RMA. It also clarifies that the effects management provisions for significant indigenous biodiversity values in higher order national direction instruments that need to be applied when giving effect to this policy in regional and district plans. Policies 18A and 18B in this Regional Policy Statement include effects management provisions to manage adverse effects on the values and extent of natural inland wetlands and rivers.

~~The policy provides clarity about the limits to, and expected outcomes from, biodiversity offsetting and biodiversity compensation for an ecosystem or habitat with significant indigenous biodiversity values. Ecosystems and species known to meet the criteria in clauses (a and b) are listed in Appendix 1A (Limits to biodiversity offsetting and biodiversity compensation).~~

~~Calculating a 10 percent net biodiversity gain (offsetting) or a 10 percent net biodiversity benefit (compensation) employs the same or a similar calculation methodology used to determine 'no net loss or preferably net gain' under a standard offsetting approach. The distinction between 'net gain' and 'net benefit' is to recognise that the outcomes achievable through the use of offsetting and compensation are different. An offsetting 'net biodiversity gain' outcome is expected to achieve an objectively verifiable increase in biodiversity values while a compensation 'net biodiversity benefit' outcome is more subjective and less preferable.~~

Table 16 in Appendix 1 identifies rivers and lakes with significant indigenous ecosystems and habitats with significant indigenous biodiversity values by applying criteria taken from policy 23 of rarity (habitat for threatened indigenous fish species) and diversity (high macroinvertebrate community health, habitat for six or more migratory indigenous fish species).

Policy 47 will need to be considered alongside policy 24 when changing, varying or reviewing a regional or district plan.

Policy 24 is not intended to prevent change, but rather to ensure that change is carefully considered and is appropriate in relation to the biodiversity values identified in policy 23.

Policy 24A: Principles for biodiversity offsetting and biodiversity compensation – regional and district plans (except for REG and ET activities)

- (a) Where district and regional plans provide for *biodiversity offsetting or aquatic offsetting or biodiversity compensation or aquatic compensation* as part of an *effects management hierarchy* for indigenous biodiversity and/or for aquatic values and extent, they shall include policies and methods to:
- (i) ensure this meets the requirements of the full suite of principles for *biodiversity offsetting and/or aquatic offsetting* ~~*biodiversity compensation*~~ set out in Appendix 1C Appendix 3 and 4 of the National Policy Statement for Indigenous Biodiversity 2023 or for *biodiversity compensation* ~~*aquatic offsetting*~~ and/or *aquatic compensation* set out in Appendix 1D 6 and 7 of the National Policy Statement for Freshwater Management 2020;
 - (ii) provide further direction on where *biodiversity offsetting, aquatic offsetting, biodiversity compensation, and aquatic compensation* are ~~not in~~ inappropriate, in accordance with clauses (b) to (d) and ~~(e)~~ below;
 - (iii) provide further direction on required outcomes from *biodiversity offsetting, aquatic offsetting, biodiversity compensation, and aquatic compensation*, in accordance with clauses ~~(de)~~ and ~~(ef)~~ below; and
- (b) In evaluating whether *biodiversity offsetting or aquatic offsetting* is inappropriate because of irreplaceability or vulnerability of the indigenous biodiversity, extent, or values affected, the feasibility to offset residual adverse effects on any *threatened or naturally uncommon ecosystem or threatened species* must be considered, including those listed in Appendix 1A ~~must be considered~~ as a minimum; and
- (c) In evaluating whether *biodiversity compensation or aquatic compensation* is inappropriate because of the irreplaceability or vulnerability of the indigenous biodiversity, extent, or values affected, recognise that it is inappropriate to use *biodiversity compensation or aquatic compensation* where residual adverse effects affect an ecosystem or species that is listed in Appendix 1A as a *threatened or*

naturally uncommon ecosystem or threatened species, including those listed in Appendix 1A as a minimum; and

- (d) In evaluating whether *biodiversity offsetting or aquatic offsetting* is inappropriate because there are no technically feasible methods to secure gains in acceptable timeframes, recognise that this is likely to be inappropriate for those species and ecosystems listed in column Policy 24A(d) in Appendix 1A; and
- (e) District and regional plans shall include policies and methods that require *biodiversity offsetting or aquatic offsetting* to achieve at least a net gain, and preferably a 10% net gain or greater, in indigenous biodiversity outcomes to address residual adverse effects on indigenous biodiversity, extent, or values. This requires demonstrating, and then achieving, net gains in the type, amount, and condition of the indigenous biodiversity, extent, or values impacted. Calculating net gain requires a like-for-like quantitative loss/ gain calculation of the indigenous biodiversity values (type, amount, and condition) affected by the proposed activity; and
- (f) District and regional plans shall include policies and method to require *biodiversity compensation or aquatic compensation* to achieve positive effects in indigenous biodiversity, extent, or values that outweigh residual adverse effects on affected indigenous biodiversity, extent, or values.

Explanation:

Policy 24A recognises that the outcomes achievable through the use of biodiversity or aquatic offsetting and compensation are different. A ‘net gain’ outcome from offsetting is expected to achieve an objectively verifiable increase in the target values, while a compensation outcome is more subjective and less preferable. This policy applies to the use of biodiversity offsetting and biodiversity compensation to address the residual adverse effects on indigenous biodiversity in the terrestrial and coastal environments and aquatic offsetting and compensation to address the loss of extent or values of natural inland wetlands and rivers.

Policy 24A is to be read with Policy 24C(1) which sets out adverse effects on indigenous biodiversity in the coastal environment that need to be avoided, meaning that applications for biodiversity offsetting or biodiversity compensation cannot be considered. These ecosystems and species are also listed in Table 17 and Appendix 1A. Policy 24A does not apply to *REG activities* and *ET activities* which are subject to 24D. Instead Policy 24D(3) requires *REG activities* and *ET activities* to have regard to the principles for *biodiversity offsetting and biodiversity compensation*.

Policy 24B: Managing adverse effects on significant indigenous biodiversity values in the terrestrial environment – district and regional plans (except for REG and ET activities)

As soon as reasonably practicable, and by no later than 4 August 2028, district plans shall include policies, rules and methods to protect indigenous ecosystems and habitats with significant indigenous biodiversity values in the terrestrial environment by:

- 1) Except as provided for by clause (2) and (3), avoiding the following adverse effects:
 - (a) loss of ecosystem representation and extent;
 - (b) disruption to sequences, mosaics, or ecosystem function;
 - (c) fragmentation of indigenous ecosystems and habitats with significant indigenous biodiversity values or the loss of buffers or connections within these ecosystems and habitats;
 - (d) a reduction in the function of indigenous ecosystems and habitats with significant indigenous biodiversity values as a buffer or connection to other important habitats or ecosystems;
 - (e) a reduction in the population size or occupancy of Threatened or At Risk species that use a habitat with significant indigenous biodiversity values for any part of their life cycle.

- 2) Applying the effects management hierarchy to adverse effects not referred to in clause (1) and to the following new subdivision, use and development activities, which are exempt from clause (1):
 - (a) ~~the development, operation, maintenance~~ Construction or upgrade of specified infrastructure (excluding REG activities and ET activities) if;
 - (i) it provides significant national or regional public benefit; and
 - (ii) there is a functional need or operational need to be in that particular location; and
 - (iii) there are no practicable alternative locations for the activity.
 - (b) ~~the development, operation and maintenance of m~~Mineral extraction activities if:
 - (i) it provides a significant national public benefit that could not otherwise be achieved using resources within New Zealand; and
 - (ii) there is functional need or operational need to be in that particular location; and
 - (iii) there are no practicable alternative locations for the activity.

- (c) ~~The development, operation and maintenance of a~~ Aggregate extraction activities if:
- (i) it provides a significant national or regional public benefit that could not otherwise be achieved using resources within New Zealand; and
 - (ii) there is functional need or operational need to be in that particular location; and
 - (iii) there are no practicable alternative locations for the activity.
- (d) The operation or expansion of any coal mine that was lawfully established before August 2023 (except that, after 31 December 2030, this exception applies only to such coal mines that extract coking coal) if;
- (i) there is functional need or operational need to be in that particular location; and
 - (ii) there are no practicable alternative locations for the activity.
- (e) ~~Activities to develop a~~ New use and development associated with a single residential dwelling on an allotment that was created before 4 August 2023 and where there is no practicable location within the allotment where a single residential dwelling and essential associated on-site infrastructure can be constructed without avoiding the adverse effects referred to in clause (1).
- (f) ~~Use or development Activities that are~~ for the purpose of maintaining or restoring ecosystems and habitats provided it does not involve the permanent destruction of significant habitat of indigenous biodiversity (or an alternative management approach established to restore indigenous biodiversity).
- (g) ~~Use or development Activities~~ in an area of indigenous vegetation or habitat of indigenous fauna (other than an area managed under the Forests Act 1949) that was established and is managed primarily for a purpose other than the maintenance or restoration of that indigenous biodiversity and the loss of indigenous biodiversity values is necessary to meet that purpose.
- (h) ~~Use and development Activities~~ associated with the harvest of indigenous tree species, such as track clearance or timber storage (but not the harvest itself managed under clause (3)(d)), from within an ecosystem or habitat with significant indigenous biodiversity values that is carried out in accordance with a forest management plan or permit under Part 3A of the Forests Act 1949.
- 3) Allowing the following use, development, work and activities without being subject to clause (1) and (2):

- (a) Use and development Activities required to address a high risk to public health or safety;
- (b) The sustainable customary use of indigenous biodiversity conducted in accordance with tikanga;
- (c) 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 (other than land held for administrative purposes), provided that the work or activity:
 - (i) Is undertaken in a way that is consistent with any applicable conservation management strategy, conservation management plan, or management plan established under the Conservation Act 1987, or any other Act specified in Schedule 1 of that Act; and
 - (ii) Does not have a significant adverse effect beyond the boundary of the land.
- (d) The harvest of indigenous tree species that is carried out in accordance with a forest management plan or permit under Part 3A of the Forests Act 1949.

Explanation

Policy 24B applies to indigenous ecosystems and habitats with significant indigenous biodiversity values in the terrestrial environment. Clause (1) sets out a list of adverse effects that need to be avoided to ensure the protection of these ecosystems and habitats, their *ecosystem function* and values. Clause (2) sets out a list of activities that are exempt from clause (1) and instead adverse effects are to be managed in accordance with the *effects management hierarchy* and other relevant requirements are met (e.g. there is an operational need or functional need for the activity to be in that particular location). Clause (3) sets out a list of essential activities, customary activities, or activities undertaken in accordance with conservation management plan or forest management plan that are exempt from clause (1) and (2). **Policy 24B does not apply to REG activities and ET activities.**

Policy 24C: Managing adverse effects on indigenous biodiversity values in the coastal environment – district and regional plans

As soon as reasonably practicable, and by no later than 4 August 2028, district and regional plans shall include policies, rules and methods to manage adverse effects on indigenous biodiversity values in the coastal environment to:

- (1) Avoid adverse effects of activities on the following ecosystems, habitats and species with significant indigenous biodiversity values:

- (a) indigenous taxa that are listed as *Threatened or At-Risk species* in the New Zealand Threat Classification System lists;
 - (b) taxa that are listed by the International Union for Conservation of Nature and Natural Resources as threatened;
 - (c) *threatened indigenous ecosystems* and vegetation types that are threatened in the coastal environment, or are *naturally rare*;
 - (d) habitats of indigenous species where the species are at the limit of their natural range, or are *naturally rare*;
 - (e) areas containing nationally significant examples of indigenous community types; and
 - (f) areas set aside for full or partial protection of indigenous biological diversity under other legislation; and
- (2) Avoid significant adverse effects ~~and avoid, remedy or mitigate other adverse effects of activities~~ on the following indigenous ecosystems and habitats:
- (a) areas of predominantly indigenous vegetation in the coastal environment;
 - (b) habitats in the coastal environment that are important during the vulnerable life stages of indigenous species;
 - (c) indigenous ecosystems and habitats that are only found in the coastal environment and are particularly vulnerable to modification, including estuaries, lagoons, coastal wetlands, dunelands, intertidal zones, rocky reef systems, eelgrass and saltmarsh;
 - (d) habitats of indigenous species in the coastal environment that are important for recreational, commercial, traditional or cultural purposes;
 - (e) habitats, including areas and routes, important to migratory species; and
 - (f) ecological corridors, and areas important for linking or maintaining biological values.
- (3) Manage non-significant adverse effects on the indigenous ecosystems and habitats referred to in clause (2) by:
- (a) avoiding adverse effects where practicable; then
 - (b) where adverse effects cannot be avoided, minimising them where practicable; then
 - (c) where adverse effects cannot be minimised they are remedied where practicable; then

- (d) where residual adverse effects cannot be avoided, minimised, or remedied, biodiversity offsetting is provided where possible; then
 - (e) if biodiversity offsetting of residual adverse effects is not possible, the activity itself is avoided unless the activity is regionally significant infrastructure then biodiversity compensation is provided, and
 - (f) the activity itself is avoided if biodiversity compensation cannot be undertaken in a way that is appropriate as set out in Appendix 1D.
- (4) for all other ecosystems and habitats not listed in clause (1) and (2), manage significant adverse effects on indigenous biodiversity values using the effects management hierarchy.

Explanation:

This policy applies to provisions in district and regional plans. This requires district and regional plans to manage adverse effects on indigenous biodiversity in the coastal environment by applying a hierarchy approach based on the values of the indigenous species, ecosystem or habitat. Policy 24C is to be read together with:

- Policy 24A which sets out principles for biodiversity offsetting and biodiversity compensation which apply in the coastal environment.
- Policy 24B in relation to the coastal environment above mean high water springs, with Policy 24C to prevail where there is conflict that cannot be resolved.
- Policy 24C is to be read alongside Policy 24CC which relates to existing regionally significant infrastructure (excluding ET activities) and REG activities in the coastal environment. ~~and~~
- Policy 24D which applies to REG activities in terrestrial, freshwater and coastal environments.

Policy 24CC: Existing regionally significant infrastructure and REG activities in coastal environment - regional and district plans

As soon as reasonably practicable, and by no later than 4 August 2028, district and regional plans shall include policies, rules and methods to consider providing for the operation, maintenance, upgrade and extension of existing regionally significant infrastructure and REG activities that may have any of the adverse effects referred to in clause (1) and (2) of Policy 24C where:

- (1) There is a functional need or operational need for the regionally significant infrastructure or REG activities to be in the area; and
- (2) There is no practicable alternative on land or elsewhere in the coastal environment for the activity to be located; and

- (3) The activity provides for the maintenance and, where practicable, the enhancement or restoration of the affected significant indigenous biodiversity values and attributes at, and in proximity to, the affected area, taking into account any consultation with the Wellington Regional Council, the Department of Conservation and mana whenua.

Explanation: Policy 24CC is to be read with Policy 24C and enables consideration of the operation, maintenance, upgrade and extension of existing regionally significant infrastructure (excluding ET activities) and existing REG activities with adverse effects listed under clause (1) and (2) of Policy 24C when certain requirements are met, including demonstrating a functional or operational need, no practicable alternative locations, and provision for the maintenance, enhancement or restoration of significant indigenous biodiversity values at the area affected.

Policy 24D: Managing the effects of REG activities and ET activities on indigenous ecosystems and habitats with significant indigenous biodiversity values – district and regional plans

As soon as reasonably practicable, and by no later than 4 August 2028, district and regional plans shall include policies, rules and methods to manage the effects of REG activities and ET activities on indigenous ecosystems and habitats with significant indigenous biodiversity values to:

- 1) Allow REG activities and or ET activities to locate in areas with significant indigenous biodiversity values if:
 - (a) there is an operational need or functional need for the REG activities or ET activities to be located in that area; and
 - (b) the REG activities or ET activities are nationally or regionally significant; and
 - (c) clause (2) is applied to manage adverse effects.
- 2) Manage adverse effects by applying the following hierarchy:
 - (a) adverse effects are avoided where practicable; then
 - (b) where adverse effects cannot be avoided, they are minimised where practicable; then
 - (c) where adverse effects cannot be minimised, they are remedied where practicable; then
 - (d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, biodiversity offsetting is provided where practicable; then

- (e) if biodiversity offsetting of more than minor adverse effects is not practicable, biodiversity compensation is provided; then
 - (f) if biodiversity compensation is not appropriate to address any residual adverse effects:
 - i. the REG activities or ET activities must be avoided if the residual adverse effects are significant; but
 - ii. if the residual adverse effects are not significant, the REG activities or ET activities must be enabled if the national significance and benefits of the activities outweigh the residual adverse effects.
- 3) When considering biodiversity offsetting and biodiversity compensation, have regard to the principles set out in Appendix 1C and Appendix 1D.

Explanation

Policy 24D applies to REG activities and ET activities and applies a specific pathway and effects management framework for these activities to ensure adverse effects of these activities on indigenous ecosystems and habitats with significant indigenous biodiversity values are appropriately managed.

Policy 47: Managing effects on indigenous ecosystems and habitats with significant indigenous biodiversity values – consideration

When considering an application for a resource consent, notice of requirement, or a change, variation or review of a district or regional plan, a determination shall be made as to whether an activity may affect indigenous ecosystems and habitats with significant indigenous biodiversity values, and in determining whether the proposed activity is inappropriate particular regard shall be given to:

- (a) maintaining connections within, or corridors between, habitats of indigenous flora and fauna, and/or enhancing the connectivity between fragmented indigenous habitats;
- (b) providing adequate *buffering* around areas of significant indigenous ecosystems and habitats from other land uses;
- (c) managing natural wetlands for the purpose of aquatic ecosystem health, recognising the wider benefits, such as for indigenous biodiversity, water quality and holding water in the landscape;
- (d) avoiding the cumulative adverse effects of the incremental loss of indigenous ecosystems and habitats;

- (e) providing seasonal or core habitat for indigenous species;
- (f) protecting the life supporting capacity of indigenous ecosystems and habitats;
- (g) ~~remediating or mitigating~~ minimising or remedying adverse effects on the indigenous biodiversity values where avoiding adverse effects is not practicably achievable except where Clause (i) and (j) apply; and
- (h) the need for a precautionary approach to be adopted when assessing and managing the potential for adverse effects on indigenous ecosystems and habitats, where;
 - (i) the effects on indigenous biodiversity are uncertain, unknown, or little understood; and
 - (ii) those effects could cause significant or irreversible damage to indigenous biodiversity;
- (i) ~~the limits for biodiversity offsetting and biodiversity compensation set out in Appendix 1A~~ the provisions to protect significant biodiversity values in Policy 24, Policy 24B, and Policy 24C and the principles for biodiversity offsetting and biodiversity compensation in Policy 24A, except that Policy 24A and Policy 24B do not apply to REG activities and ET activities;
- (j) the provisions to manage the adverse effects of REG and ET activities on significant biodiversity values in Policy 24D;
- (k) protecting indigenous biodiversity values of significance to mana whenua/tangata whenua, particularly those associated with a significant site for mana whenua/tangata whenua identified in a regional or district plan;
- (l) except for REG activities and ET activities, enabling established activities affecting significant biodiversity values in the terrestrial environment to continue, where provided that the effects of the activities:
 - (i) are no greater in intensity, scale and character; and
 - (ii) do not result in loss of extent, or degradation of ecological integrity, of any significant biodiversity values; and
- (m) ensuring that the adverse effects of plantation forestry activities on significant indigenous biodiversity values in the terrestrial environment are managed in a way that:
 - (i) maintains significant indigenous biodiversity values as far as practicable, while enabling plantation forestry activities to continue; and

- (ii) where significant biodiversity values are within an existing plantation forest, maintains the long-term populations of any *Threatened or At Risk (declining) species* present in the area over the course of consecutive rotations of production.

Explanation

Policy 47 provides an interim assessment framework for councils, resource consent applicants and other interested parties, prior to the identification of ecosystems and habitats with significant indigenous biodiversity values in accordance with ~~Policy~~ Policy 23, and the adoption of plan provisions for protection in accordance with ~~Policy~~ Policy 24. ~~Remedying and mitigating effects can include offsetting, where appropriate.~~ Policy 47 makes it clear that the provisions in Policy 24 and Policy 24A to protect significant indigenous biodiversity values must be considered until those policies are given effect to in regional and district plans. Policy 47 also provides for established activities and plantation forestry activities affecting significant indigenous biodiversity values to continue, provided certain tests are met, consistent with the requirements in the National Policy Statement for Indigenous Biodiversity 2023. The clauses above that relate to Policy 24A, Policy 24B and established activities do not apply to REG activities or ET activities.

In determining whether an activity may affect significant indigenous biodiversity values, the criteria in ~~Policy~~ Policy 23 should be used.

This policy shall cease to have effect once policies 23 and 24 are ~~in place~~ given effect to in an operative district or regional plan, including all of the matters listed in (a) to (l) above.

Appendix 2

CHANGES TO POLICY IE.2A RECOMMENDED BY COUNCIL REPORTING OFFICERS:

Not agreed by all experts

Annotations:

Section 42A recommendations in red, rebuttal recommendations in blue. Changes recommended by s42A Authors during caucusing in green. Amendments not agreed in joint witness statement, refer Topic 7.

Policy IE.2A: Maintaining indigenous biodiversity in the terrestrial environment – consideration

When considering an application for a resource consent, notice of requirement, or a plan change, variation or review of a district plan or regional plan, indigenous biodiversity in the terrestrial environment that does not have significant indigenous biodiversity values as identified under Policy 23 and is not on Māori land, shall be maintained by:

- ~~(a) recognising and providing for the importance of maintaining indigenous biodiversity that does not have significant biodiversity values under Policy 23;~~
- (a) avoiding, remedying or mitigating the adverse effects of REG activities and ET activities to the extent practicable; and
- (b) managing any significant adverse effects on indigenous biodiversity from any other proposed activity by applying the effects management hierarchy in the National Policy Statement for Indigenous Biodiversity 2023; and
- (c) managing all other adverse effects on indigenous biodiversity from any proposed activity to achieve at least no overall loss in indigenous biodiversity within the region or district as applicable.; and or
- ~~(d) avoiding, remedying or mitigating the adverse effects of REG activities and ET activities to the extent practicable.~~

Explanation

Policy IE.2A recognises that it is important to maintain indigenous biodiversity that does not have significant indigenous biodiversity values to meet the requirements in section 30(1)(ga) and section 31(b)(iii) of the RMA. This policy applies to indigenous biodiversity that does not have significant values in the terrestrial environment as identified under Policy 23 and requires a more robust approach to managing any significant adverse effects on indigenous

biodiversity from a proposed activity and to maintain indigenous biodiversity more generally.

UNDER Schedule 1 of the Resource Management
Act 1991 (the Act)

IN THE MATTER OF Proposed Change 1 to the Regional Policy
Statement for the Wellington Region

JOINT WITNESS STATEMENT OF PLANNING EXPERTS

Indigenous Ecosystems Topic

Date of conference: 6 May 2024

INTRODUCTION

- 1 This joint witness statement relates to expert conferencing of planning experts on the topic of Indigenous Ecosystems for Proposed Change 1 (**PC1**) to the Regional Policy Statement for the Wellington Region (**RPS**).
- 2 The expert conferencing was held on 6 May 2024 at the Regional Council's head office in Central Wellington and via remote videoconference.
- 3 Attendees at the conference were:
 - a) Pam Guest, s42A reporting officer for Greater Wellington Regional Council (**PG**)
 - b) Jerome Wyeth, s42A reporting officer for Greater Wellington Regional Council (**JW**)
 - c) Pauline Whitney, for Transpower (**PW**)
 - d) Claire Hunter, for Wellington International Airport Limited (**CH**)
 - e) Christine Foster, for Meridian Energy Limited (**CF**)
 - f) Murray Brass, for the Department of Conservation (**MB**).
- 4 Apologies were received from Catherine Heppelthwaite for Waka Kotahi - NZ Transport Agency (**NZTA**).
- 5 The session was facilitated by Jason Jones, Principal Consultant with Resource Management Group.
- 6 Notes were taken by Josephine Knight-Maclean, Policy Advisor with Greater Wellington Regional Council.

CODE OF CONDUCT

- 7 Although this is a Council hearing process, this joint statement has been prepared in accordance with section 9.5 of the Environment Court Code of Conduct for Expert Witnesses 2023.

ASSUMPTIONS, PURPOSE AND SCOPE OF CONFERENCING

- 8 Limited to scope of evidence presented at Hearing Stream Six – Indigenous Ecosystems , held 20 – 22 February 2024.
- 9 The conferencing and this Joint Witness Statement are to provide:

- a) Drafting assistance to the Panel; and
- b) A clear indication of – matters that are not in contention, matters that are agreed during conferencing, and matters that remain in contention.

INDEX OF TOPICS DISCUSSED

- 10 Discussions between the experts addressed the following topics:
 - a) Preliminary in-principle discussions;
 - b) Topic 1 – Policy 24
 - c) Topic 2 – Policy 24A
 - d) Topic 3 – Policy 24B
 - e) Topic 4 – Policy 24C
 - f) Topic 5 – Policy 24D
 - g) Topic 6 – Policy 47
 - h) Topic 7 – Policy IE.2A.
- 11 All experts participated in the discussions on all topics summarised above.
- 12 Attached at **Appendix 1** is an annotated version of Policies 24, 24A, 24B, 24C, 24D and 47. Amendments to these provisions have either been fully agreed between the experts, or largely agreed with some exceptions as described in Topics 4-6 below.
- 13 At **Appendix 2** is a version of Policy IE.2A proposed by JW and PG, which is referred to in Topic 7 below but not agreed between the experts.

PRELIMINARY IN-PRINCIPLE DISCUSSIONS

- 14 Following introductions, JW provided a high-level summary of in-principle changes he and PG consider are appropriate following further consideration of evidence presented at the hearing. Those can be summarised as follows:
 - a) a greater level of nuance between the provisions relating to electricity transmission activities ('ET') and renewable energy generation activities ('REG'); and

b) further refinement of provisions applying to the coastal environment specifically, including achieving closer alignment with related provisions in the Wellington Natural Resources Plan ('NRP').

15 There was general consensus among the experts that the above principles were helpful starting points to frame the discussions on individual policies; however, some participants held reservations as to the scope for making certain changes as to natural justice issues that may be arising for submitters who have not been afforded an opportunity to fairly consider the implications of making major substantive changes at this juncture.

16 PW, in particular, noted her overall concern about the scale of the changes introduced through the S42A evidence and rebuttal evidence specifically in relation to ET. She stressed that a number of parties have not had the ability to participate at the caucusing or on the provisions. Specific to ET, PW is also conscious that any further changes to the National Policy Statement for Electricity Transmission (**NPS-ET**) will need to be given effect to. She noted that in some cases there may be scope from submissions for some of the changes, but that the bigger issue for her is the scale of the changes and elements of natural justice.

17 While PG and JW acknowledged concerns that the scale of proposed amendments raises issues of scope and natural justice, they noted that they all directly align with either national direction or policy drafting already agreed in the NRP.

18 The experts agreed to consider scope and natural justice issues at appropriate intervals when discussing changes to the Change 1 provisions, and this is reflected in the topics below.

TOPIC 1 – Policy 24

Agreed matters

19 All experts agree Policy 24 as amended in **Appendix 1** provides value in clarifying when and how policies 24A-24D apply; and provides important context in terms of meeting obligations under section 6(c) of the Resource Management Act 1991 (**RMA**). On that basis all experts support the retention of Policy 24 and enhancements to explanations in Policies 24A to 24C for consistency.

Matters remaining in contention

20 No matters remain in contention between the experts in relation to Policy 24.

TOPIC 2 – Policy 24A

Agreed matters

- 21 The experts agreed several amendments to Policy 24A and attendant provisions in Change 1 as summarised below.

Clarifying the relationship between Policy 24A and Policy 24D

- 22 CF sought clarification of whether Policy 24A is intended to be applicable where Policy 24D applies. JW confirmed it is not intended that Policy 24A applies to REG in Policy 24D. JW clarified that REG need to have regard to the principles for offsetting and compensation in Appendices 1C and 1D. CF supported that approach.
- 23 CF confirmed also that she has recommended this approach (have regard to appendices 1C and 1D) and Meridian is comfortable with that approach.
- 24 All experts agree that it would be useful to include this clarification in the RPS to assist with plan interpretation. The following text should be added to the end of the explanation to Policy 24A: *Policy 24A does not apply to the REG and ET activities¹ which are subject to Policy 24D. Policy 24D(3) requires REG and ET activities to have regard to the principles for biodiversity offsetting and biodiversity compensation in Appendices 1C and 1D.*

Potential amendments in response to NZTA submission

- 25 The experts considered potential amendments to Policy 24A(d) and Appendix 1A as requested by NZTA. Ultimately it was decided that the matter would be addressed in the council reply evidence. CF, PW, CH have no view on the matter. MB considers that the outcome sought by NZTA is already achieved with the current drafting.

Content of Appendix 1A

- 26 CH noted that Appendix 1A as notified appears to include species that are not necessarily significant and therefore has concerns about the application of that appendix in the context of these policies. CH noted that a specific example of this is the ‘mixed kelp assemblages’, which according to ecologists (on behalf of WIAL) have advised that it is unclear as to what it means and whether it is significant in a coastal ecological context.

¹ Note the application of Policy 24D to ET remains a matter of contention as discussed further below.

- 27 PG noted that Council experts have reviewed Appendix 1A and have agreed that ‘mixed kelp assemblages’ do not meet the New Zealand Coastal Policy Statement 2010 (NZCPS) Policy 11A criteria. PG proposed to delete the item ‘mixed kelp assemblages’ from Appendix 1A, and this will be reflected in the amended provisions of the councils reply. CH supported removal of mixed kelp assemblages; however, she considers this is an example of the breadth of Appendix 1A and the further errors that may arise with its application.
- 28 MB supported deletion of reference to ‘mixed kelp assemblages’ in Appendix 1A but continues to support retention of Appendix 1A overall.
- 29 CF and PW did not address this in evidence therefore proffered no view.

Clarifying application within the Coastal Environment

- 30 The experts note that the explanation to Policy 24A applies to the effects on indigenous biodiversity in the terrestrial and coastal environment. However, all experts agree it could be made clearer in the explanation to Policy 24C that Policy 24A applies in the coastal environment through the following statement “*Policy 24C is to be read with Policy 24A which also applies in the coastal environment*”. JW and PG clarified that the species and taxa captured by Policy 24C (1a) and (1b) include items listed in appendix 1A column 4.

Matters remaining in contention

- 31 The experts did not reach consensus on whether Appendix 1A should be retained. The relative positions for this are already clearly set out in evidence before the Panel.

TOPIC 3 – Policy 24B

Agreed matters

- 32 The experts agreed on multiple amendments to Policy 24B.

Clarifying that Policy 24B does not apply to REG and ET activities

- 33 JW suggested that to provide clarification the following sentence be provided at the end of the explanation to Policy 24B: “*Policy 24B does not apply to REG activities and ET activities*”. The amendment was supported by PW, CF, PG and MB. CH was neutral on the matter.

Other minor changes for clarity & consistency of language

34 JW recommended some minor corrections in sub-clauses 1-3 to better align with the NPS-IB. All experts agreed with JW's suggested minor amendments to Policy 24B as recorded in **Appendix 1**.

Matters remaining in contention

35 No matters remain in contention between the experts in relation to Policy 24B.

TOPIC 4 – Policy 24C

Agreed matters

36 The experts agree the NPSIB does not apply to ET or REG. However, RMA section 6(c) and the functions in section 30 and 31 still apply. All experts also note the NPSET, NZCPS and NPSREG also apply.

Matters remaining in contention

37 The experts were not able to reach consensus on the substance of Policy 24C.

Policy 24C and implementation of national direction

38 The experts agreed that the framing of Policy 24C(1) is appropriate, reflecting Policy 11(a) of the NZCPS. However, CF, CH, and PW considered Policy 24C(1) does not reconcile NZCPS Policy 6(a) or other NPS policy direction in relation to infrastructure, energy generation and transmission. CF noted that Policy 24C is a directing policy and there are other policies in the RPS that require consideration of other imperatives for example benefits of REG. The expectation is that when regional plan and district plan provisions are developed, they will be required to reconcile these potentially competing imperatives (their task will not be confined to Policy 24C) in giving effect to all relevant national policy directions. MB and PG considered that Policy 24C is still able to be reconciled with NZCPS Policy 6(a) and other national direction, and agree with CF that regional and district plans will be required to reconcile these.

39 JW and PG considered that, when read together, Policy 24A and new recommended Policy 24CC do reconcile NZCPS Policy 6(a) and other relevant higher order documents in relation

to regionally significant infrastructure in the coastal environment, aligning with the policy approach in the operative NRP (as detailed further in paragraph 45).

40 PW noted that Policy 24C, newly recommended Policy 24CC (Refer **Appendix 1**) and Policy 24D need to be better reconciled for ET due to the direction of the operative NPS-ET.

41 PW prefers that reference to ET be removed from Policy 24D (and 24C). Instead, PW seeks reliance on Policy 47 accepting this will be an interim approach subject to any changes to the NPS-ET. The reasons for this position are as follows:

- a) Clause 1.3 of the National Policy Statement for Indigenous Biodiversity 2023 (**NPS-IB**) is very clear in its directive that it does not apply to ET.
- b) The policies as drafted would apply to all ET activities, including maintenance, upgrades and new assets. This would have implications for the huge number of existing grid assets in the Wellington region. The provisions do not give effect to the operative NPS-ET. The option to amend Policy 24D to only apply to the development of new ET assets would not address the concerns with the relationship to Policy 24C or the wider lack of policy direction to give effect to the NPS-ET.
- c) Policies 24C and 24D as applied to ET have not been reconciled or provide the framework for a structured analysis. Policy 24C is very clear as an avoid policy for adverse effects on the identified values in clause (1). While there is a potential pathway in Policy 24D, this comes up against the avoid directive in Policy 24C.
- d) The operative NRP (Policy 14) provides a management framework specific to the National Grid and provides for a structured analysis.
- e) Policy 23 and Policy 47 of the RPS would continue to apply.

42 PW's recommended changes to Policy 47 are as outlined in evidence. Accepting that the RPS as a whole does not give effect to the operative NPS-ET and concerned with the lack of a broader policy framework in relation to ET, PW considers Transpower submission point on Policy 24 could be resolved by inserting the Transpower Policy 24 relief within Policy 47 and applying to new ET assets only.

43 JW would prefer that Policy 24C (and 24D) apply to ET activities; however he appreciates that this will cause issues due to the nature, complexity and scale of ET activities - particularly the operation, maintenance and upgrading of ET assets. There is also no scope

to give effect to the NPS-ET in full through Change 1. Therefore, JW would support the approach in the original Transpower submission (refer para 48 for wording) on Policy 24 but by way of a new clause in Policy 47 for ET activities, recognising that this is an interim policy framework until the NPSET is given effect to in full. However, JW has a different opinion on the most appropriate wording of that clause as set out in Policy 47 below. Based on the recommended clause above JW would support the exclusion of ET activities from Policy 24C and 24D. If agreed by the panel, this would need to be made clear in both policies.

- 44 MB and PG note para 36 above and that Change 1 has been developed prior to the NPS-IB in response to issues that also predate the NPS-IB. MB and PG consider that it is open to the Panel to include ET in Policy 24C (and 24D) and it would provide a more effective framework than relying on Policy 47 alone. MB and PG also note that some of the issues particular to ET are covered through reference to functional and operational need. MB and PG would support a different regime along the lines of Policy 47(l) for *existing* ET activities given that location has already been decided.

Potential amendments to align with NRP provisions

- 45 JW considered that the NRP already does an effective job of reconciling NZCPS Policy 11(b) with the need to provide for regionally significant infrastructure. He recommended that Policy 24C is amended and a new Policy 24CC is introduced to align with Policies P38 and P39 in the NRP. All experts supported these amendments because these issues have already been reconciled in the operative NRP for this Region, and therefore align in practice with the current policy framework for the coastal environment of Wellington region. All experts agreed that the changes JW proposes are generally appropriate against the above backdrop with two caveats:

- a) PW held residual concerns around application to ET and desire for these policies not to apply to ET.
- b) There is a question of scope and potential natural justices impacts through introducing this extent of change at this point in the process without opportunity for input from other potentially interested parties.

TOPIC 5 – Policy 24D

Agreed matters

- 46 Consensus was reached in relation to the following aspects of Policy 24D:
- a) PG, CF, JW and MB agreed that the Policy should apply to REG. PW and CH are neutral in relation to REG.
 - b) PG, CF, JW and MB all agreed that Policy 24D should be drafted as recommended in rebuttal evidence by the council (subject to whatever the panel determines on exclusion of ET). PW and CH are neutral in relation to REG.

Matters remaining in contention

- 47 The experts disagreed on whether ET activities should be excluded from Policy 24D or not - namely:
- a) PW and JW supported the relief sought to exclude ET from Policy 24D for the reasons outlined in relation to Policy 24C.
 - b) CF and CH were neutral on the deletion of ET from Policy 24D.
 - c) MB and PG opposed the relief sought to exclude ET from Policy 24D for the reasons outlined in relation to Policy 24C.

TOPIC 6 – Policy 47

Agreed matters

- 48 The experts agreed the following in relation to Policy 47:
- a) All experts agreed that the listed provisions in Policies 24A, 24B, 24C, 24CC and 24D should be matters that need to be given particular regard in the application of Policy 47. Reporting officers will consider this in their reply evidence.
 - b) JW and PG recommended that Clause (I) relating to established activities is amended to not apply to REG and ET activities. CF and PW agreed with that recommendation as the genesis of Clause (I) is from Clause 3.15 of the NPS-IB; and that Clause 1.3(3) prevails and means Clause 3.15 does not apply to REG and ET.

- c) All experts noted some interpretation issues with Clause (l) and all agreed that the words “provided that” should be replaced with “where”, to make it clear that this operates as an enabling policy not as a bar where activities do not meet the criteria. There was also an acknowledgement by the experts that the inclusion of “where” is consistent with Clause 3.15 of the NPS-IB where this provision has been derived from.
- d) All Experts agreed that Policy 47 Clause (g) should apply except where the more specific effects management provisions under clauses (i) and (j) apply. This can be achieved through the following words at the end of the clause, “except where Clause (i) and [new for ET] (j) apply”.

Matters remaining in contention

- 49 There was partial agreement in relation to the Transpower relief on Policy 24 being adapted to Policy 47. The wording proposed in the submission was as follows: *In the case of the National Grid, following a route, site and method selection process and having regard to the technical and operational constraints of the network, new development or major upgrades of the National Grid shall seek to avoid adverse effects, and otherwise remedy or mitigate adverse effects, on ecosystems or habitats with significant indigenous biodiversity values.*
- 50 As an interim policy framework JW supported the wording above as sought in Transpower’s original submission on Policy 24 applying to both new and major upgrades of ET. JW also recommended that the word “mitigate” is replaced with “minimised” to be more consistent with other RPS and NRP provisions and higher order documents.
- 51 MB and PG preferred that ET is addressed within the 24A, 24C and 24D suite of policies, but if the above provision is imported to Policy 47 considered that it should apply to both new and major upgrades of ET and be restructured to more clearly align with Policy 14 in the NRP.
- 52 PW would accept a new policy based on that provided in the Transpower submission. However, she would only support it being confined to ‘new’ ET activities on the basis of a lack of wider policy direction in the RPS to give effect to the NPS-ET. PW notes NRP Policy 14 is more nuanced and refers to ‘upgrade’ in context of indigenous biodiversity within context of NZCPS Policy 11(a) and (b). The use of the word mitigate reflects Policy 3 of the NPS-ET and therefore she preferred the use of the term “mitigate” over “minimise”. While PW would support a policy approach as provided in NRP Policy P14, PW maintained her

position that a future plan change may be the most appropriate way in which to give effect to the NPSET in context of IB.

53 CH and CF have no view on this aspect of Policy 47.

TOPIC 7 – IE.2A

Agreed matters

54 No consensus was reached in relation to Policy IE.2A.

Matters remaining in contention

55 JW and PG tabled amended drafting for Policy IE.2A (refer Appendix 2).

56 CF, CH and PW considered the scope of Policy IE.2A raises significant potential difficulties for new and existing RSI that were not apparent in the publicly notified version of Change 1 and are best dealt with via a separate schedule 1 process.

57 JW and PG noted the concerns above, but considered that Policy IE.2A is appropriate to give effect to the NPS-IB and relief sought in submissions for a regulatory policy to implement new direction in RPS Objective 16A relating to the maintenance of biodiversity outside of non-significant biodiversity areas. JW and PG further noted that clause (b) and (c) directly implement Clause 3.16 in the NPS-IB and do not apply to ET and REG activities. However, they considered that is important to provide direction to manage effects of ET and REG outside significant biodiversity areas. They recognised the concerns that the direction to avoid, remedy or mitigate adverse effects to the extent practicable could be potentially overly onerous for ET activities in particular and would support amendments to Clause (a) to align with Policy 3 or 5 in the NPS-ET and to better recognise the benefits of these activities consistent with other RPS provisions. No specific wording was provided.

58 CH noted that the approach being taken in Policy IE.2A meant that regionally significant infrastructure (**RSI**) need to apply the same level of management regardless of whether the activity was affecting significant areas of biodiversity (i.e SNAs) or areas with little or no significance.

59 MB considered that Policy IE.2A needs to apply direction for REG and ET in order to meet council functions under sections 30 and 31. He supported the retention of “to the extent

practicable” in clause (a) but would also support an addition to recognise the functional and operational constraints and benefits of REG and ET especially for existing activities.

60 CF agreed with MB that the RPS should provide direction for management of effects on non-significant biodiversity, including for REG and other RSI. However, the wording proposed does not sufficiently account for the benefits of REG and RSI recognised in RPS Policy 39. Hence her reason for proposing that it would be better to explore those issues through a separate process.


PARTIES TO JOINT WITNESS STATEMENT

61 The signatories to this joint witness statement confirm that:

- a) They agree with the outcome of the expert conference as recorded in this statement;
- b) They have read section 9 – Code of Conduct for Expert witnesses – of the Environment Court’s Practice Note 2023 and agreed to comply with it;
- c) The matters addressed in this statement are within their area of expertise; and
- d) They have not omitted material facts known to them that might alter or detract from their opinions.

SIGNED:

Name	Signature
Murray Brass	
Christine Foster	
Pam Guest	

Claire Hunter	
Pauline Whitney	
Jerome Wyeth	

DATE:

9 May 2024